

Agenda Item 8

Development Control
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Report

Report subject: The Barkers, Barkers Hill, Semley.

Report to: Western Area Committee

Date: 19th April 2007.

Author: Stephen Hawkins, Principal Planning Officer (Enforcement).

Report Summary:

To consider the expediency of enforcement proceedings in relation to the retention of an extension at the above property which does not comply with approved plans.

This report has been brought to Committee as the Head of Development services does not consider it prudent to exercise delegated powers in this case.

Introduction:

The site consists of a chalet bungalow set in grounds in an elevated position, in the small settlement of Barkers Hill. The site and surroundings lie within the Cranborne Chase and West Wiltshire Downs AONB.

Members will recall that a planning application for alterations and extensions to the dwelling were approved at the Western Area Committee on 7th August 2006 following a site visit.

In December 2006, the Enforcement Team received representations that the development was not being carried out in accordance with the approved plans. In particular it was alleged that a small room had been constructed to the rear. At a subsequent inspection in January 2007, Officers viewed what appeared to be an enlargement to the footprint of the extension, projecting approximately a further two metres beyond the rear of the dwelling, including additional door/window openings. Moreover it was noted that the conditions regarding submission of samples of materials and a water efficiency scheme had not been submitted. The developer advised Officers that he would be making a new planning application; Officers warned him that continuing development was entirely at his own risk.



Awarded in:
Housing Services
Waste and Recycling Services



In response to further allegations that work was continuing at the site, Officers revisited on 13th February and ascertained that the extension as enlarged had been built up to at or about eaves level of the original dwelling. In addition it was noted that additional changes, principally an increase in the depth of the first floor window in the east (front) elevation and new openings in the north elevation of the extension including a first floor full depth window. The developer undertook not to proceed with elements of the development which did not previously have approval and to submit a planning application. Further warnings were given regarding proceeding with development in breach of planning control.

Officers subsequently gave informal guidance on the submission of an application and an application was in fact received on 8th March however this could not be registered as a valid application largely due to the poor quality of the plans deposited. Officers have since sought to obtain additional details however at the date of writing these have not been received.

In the meantime at a recent site visit it was noted that some work has apparently continued at the site, principally by increasing the height of blockwork by a further metre and partial cladding of the extension and existing dwelling in green sand stone, the latter in accordance with the approved scheme.

Planning history:

In addition to the above application, planning permission was given in December 2005 by reference S/05/2522 for alterations and a two-storey side extension at the site. The 2006 permission represents a revision to the earlier approval.

Local residents:

One letter received expressing concerns at lack of enforcement action to date, delays in submitting retrospective application, continuing work on the development and urging action to require development to cease (summary).

Planning Policies:

Polices G2, H31, D3 and C5 of the SDLP are all relevant.

Considerations:

Planning merits

The principle of extending and altering this dwelling has been agreed through approval of the previous application. The 'planning merits' considerations in this case therefore relate to the increase in size to the rear of the approved extension and the alterations to the elevations.

Impact on visual amenity/Area of Outstanding Natural Beauty: As noted above, the increase in the footprint over that of the approved extension is at the rear of the dwelling. This part of the extension is set into the rising levels of the site and it is considered that the additional extension will result in minimal increase in the perceived overall scale and bulk over the extension already approved and will minimal visual impact on the surroundings.

Effect on neighbouring amenities: The approved extension runs parallel to the boundary of the garden of the neighbouring dwelling (Honeysuckle Cottage). The visual impact of the additional part of the extension on the neighbouring garden is offset significantly by the rising levels of the site, a timber shed in the neighbours garden, boundary fencing and vegetation all of which appear to be within the neighbour's control.

As noted above, there have also been elevational alterations over that approved, principally at the first floor level to the front and side. Whilst the increase to full depth of the first floor window in particular may result in a slightly greater perception of overlooking from neighbouring property, the window is otherwise in the location and of the size previously approved and on balance it is considered that the degree of change will not have so significant effects as to be objectionable on grounds of loss of privacy. The new first floor window on the northern elevation is also considered not to have any material adverse effect on neighbouring amenities as there is no significant overlooking of any neighbouring private space.

Conclusions on planning merits: The judgment of Officers is that the additional works to date have not resulted in any material adverse impact on the AONB or adverse effect on neighbouring amenities over that already approved.

Enforcement considerations

Members are reminded that it is not an offence to undertake works without planning permission/ without complying with the approved plans/ conditions and that the planning legislation specifically provides for submission of retrospective planning applications to regularise such matters.

Moreover, Members will recall that whilst the decision to take enforcement action is at the Council's discretion, such action must be 'expedient' in that there must be demonstrable harm to planning interests. Government guidance is clear that if the balance of considerations is that the development can be made acceptable by an unconditional or conditional grant of planning permission, a planning application should be invited and; that taking enforcement action merely to remedy the absence of planning permission amounts to unreasonable behaviour.

Members will also recall the Council's own priorities for taking enforcement action, adopted by the Council in 1999 and re-endorsed by Cabinet in 2004:

1. Any unauthorised development including a breach of condition which causes immediate and irreparable harm in the locality;
2. Unauthorised demolition or partial demolition of a building which it is essential/desirable to retain;
3. Any unauthorised development or breach of condition which results in serious harm to amenity in the neighbourhood;
4. Any unauthorised development where the time limit for taking enforcement action will expire within the next 6 months;
5. Unauthorised development in the New Forest Heritage Area, Cranborne Chase and unauthorised development in the New Forest Heritage Area, Cranborne Chase and West Wiltshire Downs AONB, Designated Conservation Area or which affects a listed building or its setting.
6. Any long-standing case which was drawn to the Council's attention more than 2 years previously or where no action has taken place for 2 years.

Officers are therefore firmly of the view that whilst noting in particular the frustrations of local residents, the balance of considerations is that it would not be expedient to take enforcement action in this case at this time.

Enforcement powers

Notwithstanding the above, for Members further consideration/information, the range of formal powers available to the Council and their application to the development at this site is dealt with below. Members will be aware that breaching the formal Notices listed below is serious matter which potentially carries significant criminal penalties.

1. *Enforcement Notice:* Such a Notice could require steps to be taken to remedy a breach of planning control. As noted above, such Notices should only be used where it is considered that planning permission would not be granted for the development. Such a Notice could not require immediate

cessation of work as legally at least 28 days are required before the Notice can take effect. Moreover in the event of an appeal to the Planning Inspectorate, the effect of the Notice would be suspended.

2. *Stop Notice*: This could require a breach to cease immediately. These are only used in cases where there is demonstrable serious and ongoing harm to planning interests, for example unauthorised development of contaminated land, archaeology or immediate danger to highway safety. They must be served at the same time as an Enforcement Notice.
3. *Temporary Stop Notice*: The purpose of introduction of this power was to require a potentially serious breach causing danger of damage to interests such as the wider environment, contaminated land archaeology to cease immediately and allow the Council a limited period (no more than 28 days), in which it has to decide whether it is expedient to take formal enforcement action. Having regard to the nature of the development described above and also conclusions reached on the planning merits it is considered that the use of such powers would be unwarranted and disproportionate in this case; moreover they would not achieve other than, at best, a short cessation of work at the site
4. *Breach of Condition Notice*: This could require conditions attached to planning permission to be complied with within a minimum of 28 days. Whilst as noted above conditions have not been complied with in this case, Officers are of the view given that the approved plans have not been complied with the conditions attached to the earlier planning permission no longer have effect in planning law terms, so it would not be possible to serve a BCN. Moreover, the development appears to be being carried out utilizing amongst other things, suitable external materials.
5. *Injunction*: To restrain a breach of planning control. Similar considerations regarding the proportionality of the use of such powers in this case apply to those at as 4 above.

Human Rights

Article 8 –right to respect for private and family life; and Article 1,1-protection of property, are particularly relevant.

Given the lack of harm to planning interests identified above, whilst it could be argued that there would be interference in the rights of neighbouring residents by not taking action at this stage, the balance of considerations in this case is such that the owner/developer's rights and having regard to the lack of demonstrable harm to planning interests at the current time, outweigh any interference which there may be with the rights of neighbours.

Conclusions

It is considered that the development at the site could be made acceptable by imposing planning conditions and the balance of considerations is that it would not be expedient to take enforcement action in this case at this time.

Members should be aware that this recommendation relates solely to the current circumstances. Officers' conclusions would be reviewed in the event of future material changes in circumstances at the site and a further report brought before Members if required.

If however, Members do not agree with Officers' recommendation, it will be necessary to bring a further report to the next available meeting of the Western Area Committee, examining in more detail the most appropriate course of action in the light of Member's reasons.

RECOMMENDATION:

1. **That, in consideration of all the circumstances it is NOT expedient to pursue formal enforcement action at the current time.**

2. That the owner/developer of the site is reminded that further development of the site which does not accord with plans granted planning approval is unauthorised; he should stop work on the relevant parts of the development and he proceeds on those parts entirely at his own risk.
3. That the owner/developer of the site be further invited to resubmit and make valid his retrospective planning application to retain and complete the development, as a matter of urgency.
4. That Officers continue to monitor the site and keep the above decision at 1 under review and if necessary, bring a further report to the Western Area Committee concerning the expediency of enforcement action.

Implications:

- **Financial: None at this time.**
- **Legal: Detailed in the report.**
- **Environmental implications: Detailed in the report.**
- **Council's Core Values: Excellent service; fairness and equal opportunity for all.**
- **Wards Affected: Knoyle.**
- **Human Rights: Detailed in the report.**