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Planning Enforcement Sub-Committee 5th July 2012

Bedfont

6 Benedict Drive, Bedfont, TW14 8JL (266611)

Report by: Development Control Support Manager

Summary

This report seeks Members' authority to issue an enforcement notice in respect of without planning permission the use of the outbuilding to the side of the main house as a separate self-contained residential unit.

1.0 RECOMMENDATION

1.1 That the Committee considers it expedient, having regard to the provisions of the Unitary Development Plan, and all material considerations, to grant authority for:

1.2 All necessary steps to be taken for the preparation, issue and service of an enforcement notice(s) in relation to 6 Benedict Drive, Bedfont requiring within three calendar months:

- Cease the use of the outbuilding located to the side of the main house as a separate self-contained residential unit
- Remove the kitchen and kitchen related facilities from the outbuilding
- Remove all resultant debris associated with the unauthorised use from the premises;

and for

The institution of any necessary legal proceedings in the event of non-compliance with the above enforcement notice(s), pursuant to Section 179 of the Town and Country Planning Act 1990; and

The carrying out of works in default under Section 178 of the Town and Country Planning Act 1990 in the event of non-compliance with the enforcement notice, including the recovery of the Council's costs in carrying out such work; and

So as to ensure that the allegations and requirements in the enforcement notice(s) or replacement enforcement notice(s) accurately reflect (and / or take account of any material changes in) the use or development of the land occurring before service of the said notice(s), authority to amend, supplement and / or delete the allegations and the requirements set out in the Recommendations herein. [A replacement enforcement notice is an enforcement notice issued following action taken pursuant to s.173A of the Town and Country Planning Act 1990, namely the withdrawal of the enforcement notice or the waiving or relaxation of any of its requirements.]

2.0 SITE DESCRIPTION

- 2.1 The site contains a two-storey semi detached property facing north onto Benedict Drive. The property has an existing single storey flank extension approved under planning permission. There is also an existing detached outbuilding to the west of the property. The outbuilding was extended and converted from a garage under planning permission. There is also a new outbuilding to the end of the rear garden built under permitted development, which is used as storage.
- 2.2 To the west of the property is 4 Benedict Drive, this property also has a detached building built on the boundary line. To the east of the site is adjoining property No.8.
- 2.3 The surrounding area is made up of residential dwellings.
- 2.4 The outbuilding to the east of the main property is being used as a separate self-contained residential unit. This use is the subject of this report.

3.0 PLANNING HISTORY AND OTHER RECORDS

3.1 Planning Records

- 00109/6/P1 Single storey flank extension
Approved 16th June 1987
- 00109/6/P2 Conversion of existing garage into store room and erection of single storey rear extension to the existing garage to form a garden room
Approved 01st June 2006
- 00109/6/P3 Erection of a front porch and single storey addition connecting the detached outbuilding and the dwelling to form one building.
Refused 23rd December 2011
Reason:
The proposed porch and side infill extension by reason of its bulk, appearance, design and position would result in an obtrusive and overbearing feature that would as a result of the cumulative impact of the existing side extension and outbuilding harm the character and design of the original dwelling. The development is neither subordinate to the original dwelling, nor complementary to the original features and design of the house.
- 00109/6/P4 Erection of a single storey side extension linking the house to the detached garden/storage room.
Refused: 26th March 2003
Reason:
The proposed side infill extension by reason of its scale, appearance and position would result in an obtrusive and overbearing feature

that would as a result of the cumulative impact of the existing side extension and outbuilding harm the character and design of the original dwelling. The development is neither subordinate to the original dwelling, nor complementary to the original features and design of the house. It is therefore harmful to the character and appearance of the house and surrounding area, contrary to Adopted Unitary Development Plan 2003 Policies ENV-B.1.1 (New Development) and H.6.4 (Extensions and Alterations) and the Residential Extension Guidelines.

3.2 Other Council Records

Council tax records show that only the main property is registered for council tax.

4.0 ENFORCEMENT HISTORY, INVESTIGATION AND EVIDENCE.

- 4.1 The use of the side structure/garage as a separate self-contained residential unit is a breach of planning control as planning permission has not been obtained and the use is neither incidental nor ancillary to the use of the main house.
- 4.2 On the 29th August 2006 a complaint was received that the side structure is beginning to look like a separate residential unit.
- 4.3 On the 7th September 2006 a site visit was conducted to the property which revealed that the side structure contained a kitchen, however did not appear to be in occupation at that time.
- 4.4 On the 8th September 2006 a letter was sent to the owner advising them that a breach had occurred and they were required to remove the kitchen from the outbuilding or apply for planning permission. No response was received so a further letter was sent on the 3rd October 2006.
- 4.5 On the 5th October 2006 a letter was received from the owner which stated that the kitchen had been removed from the outbuilding and invited the officer to conduct a site visit. On the 10th October 2006 a site visit was conducted to the property which revealed that the kitchen facilities had been removed. The case was then closed on the 20th October 2006.
- 4.6 On the 19th December 2006 a further letter was sent to the owner/occupier of the property following a number of complaints that the kitchen facilities had been reinstated and that the use as a residential unit had commenced. The owner/ occupier were requested to contact the officer to arrange a visit. No response was received. On the 11th January 2007 a right of entry letter was sent to the owner/occupier giving a time and date for a site visit.
- 4.7 On the 18th January 2007 a right of entry site visit was conducted to the property. The site visit showed that the outbuilding contained a kitchen. At the site visit the owner filled in a PCN stating that the outbuilding was used as ancillary to the main house as storage, shower and kitchen. The case was again closed as it was considered that the outbuilding was used ancillary to the main house and not as a separate unit.

- 4.8 On the 12th October 2010 the Council's Housing team reported that the outbuilding was in residential use and that the current tenant had been in there for 2 years. On the 16th July 2011 a complaint was received that a further outbuilding was being built to the end of the rear garden. A further complaint was received on the 11th October 2011 that the side structure was in residential use.
- 4.9 On the 18th October 2011 a site visit was conducted to the property; however no access was gained into the side structure. On the 19th October 2011 an entry letter was sent to the owner of the property requesting a site visit. On the 2nd November 2011 an arranged site visit was conducted to the property which showed that the side structure was set up and equipped to be used as a separate residential unit. At the site visit it was stated that the structure had been in residential use, however following advice from the Council's Housing team the tenants had been evicted and now only the owner used the structure.
- 4.10 On the 5th January 2012, following the refusal of application 00109/6/P3 a letter was sent to the owner stating that as planning permission had been refused they needed to remove the kitchen facilities from the side structure. On the 15th February 2012 a site visit was conducted to the property which showed that the kitchen facilities had been removed from the outbuilding and it no longer appeared to be in residential use. The case was then closed.
- 4.11 Following the closure the Enforcement team received a number of complaints on the 2nd March 2012 and 6th March 2012 that the side structure was again being lived in. The complainants stated that it was not the owner that used the structure and that a couple were living there. On the 9th March 2012 a site visit was conducted to the property however there was no answer at the main house and no access was obtained to the side structure. Complaints continued to be received.
- 4.12 On the 8th June 2012 a site visit was conducted to the property, the resident of the main house was present and stated that the side structure was not in residential use. He did not have the keys for the structure. However when the case officer looked through the windows of the structure she saw that there was a kitchen and also saw a lady inside the structure. The outbuilding is being used as a separate unit.

5.0 ANALYSIS

Expediency in general

- 5.1 Under Section 172 of the Town and Country Planning Act 1990 (as amended), the Council has the power to take enforcement action where it assesses that a breach of planning control has resulted in material harm in planning terms.
- 5.2 Guidance as to how to apply this power and when a Council should find enforcement action expedient is contained in Circular 10/97, entitled 'Enforcing Planning Control'. The government urges local planning authorities to use enforcement action as a last resort. Reports are not brought forward to committee unless it has been concluded that there is no other course of action available.
- 5.3 In addition to Government guidance the statutory Development Plan sets criteria against which to judge whether a breach of planning control is unacceptable.

5.4 POLICY

Determining applications for full or outline planning permission

When determining applications for planning permission, the authority is required to have regard to (a) the development plan, so far as is material, (b) any local finance considerations, so far as is material, and (c) to any other material considerations. Local finance considerations means the Community Infrastructure Levy, or a grant or other financial assistance that has been, or will or could be, provided to a relevant authority (such as the Council, the Mayor of London, the Homes and Communities Agency, etc.) by a Minister of the Crown.

In addition, the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

The Development Plan

The Development Plan for the Borough comprises the Council's Unitary Development Plan (UDP), Employment Development Plan Document, Brentford Area Action Plan and the London Plan.

The emerging Core Strategy

On 12 July 2011, the Council's Cabinet approved that the Core Strategy "Preferred Strategy" should go out to consultation. As emerging policy, the Local Planning Authority (LPA) considers that the emerging Core Strategy is capable of being a material consideration. Given that the emerging Core Strategy is still in the consultation stages, the LPA considers that in general limited weight can be given to it at this stage and that where a specific core strategy policy is engaged by an application greater weight may be attached.

The National Planning Policy Framework

The National Planning Policy Framework (NPPF) came into force on 27 March 2012 and has replaced national policies and guidance formerly contained in Planning Policy Statements and Planning Policy Guidance notes and some other documents. The Local Planning Authority (LPA) considers that, where pertinent, the NPPF is a material consideration and as such, it will be taken into account in decision-making as appropriate.

Relevant Planning Policy

5.5 The Development Plan policies relevant to this case are:

ENV-B.1.1	New Development
H.4.1	Housing standards and guidelines
T.1.4	Car and cycle parking and servicing facilities for developments

Supplementary Planning Guidance

Supplementary Planning Guidance 1997

Section 10	Private amenity space
Section 12	Internal space provision

Residential Extension Guidelines

Section 7 Detached outbuildings

5.6 The key planning issues that need to be considered in assessing the expediency of taking enforcement action are as follows:

- The acceptability in principle of this use
- Standard of accommodation provided and compliance with the Council’s supplementary planning guidance
- The impact of this use on surrounding neighbours’ living conditions
- Traffic, access and parking issues resulting from this use

Assessment of Harm

5.7 The acceptability in principle of this use

Section 7 of the Councils Residential Extension Guidelines states that the use of the outbuilding should be restricted to normal domestic uses related to the residential use of the main house. In principle the use of the side structure as a separate self-contained residential unit is unacceptable as it causes harm to the amenity of the adjacent properties and fails to provide adequate living accommodation and does not meet the relevant Unitary Development Plan policies.

5.8 Standard of accommodation provided and compliance with the Council’s supplementary planning guidance

Internal space provision

Section 12 of the Councils SPG states that 45sq.m of internal floor space should be provided for a two person flat such as the subject outbuilding. The internal floor area of the outbuilding is 25.24sq.m (as measured on the submitted plans for P4 application) and therefore the internal floor area falls well below the minimum standard required. This results in cramped and sub-standard living accommodation for the inhabitants. Furthermore Section 12 provides minimum individual room sizes (sq.m) for conversions which can be applied to this case.

	Council’s minimum standard (Non-family unit)	Provided on site	Meets SPG?
Kitchen +dining/living	19.5 sq.m	10.66 sq.m	No
Bathroom	3.7 sq.m	2.77 sq.m	No
Main bedroom	12.0 sq.m	10.4 sq.m	No

The table above shows that all of the rooms in the side structure fail to provide the minimum floor areas that would be considered acceptable.

Amenity space

The Council's standards for private amenity space provision in section 10 of the SPG recommend that each flat of three habitable rooms and under should benefit from 25 square metres amenity space, therefore a total of 100sq.m should be provided, 75sq.m for the main house and 25sq.m for the outbuilding. No specific amenity space is provided for the outbuilding that is not overlooked. Although there is well over 100sq.m of amenity space on site it has not been divided between the main house and the outbuilding. Therefore the inhabitants of the side structure do not have any specific private amenity space that is not overlooked.

Living conditions

The position of the outbuilding means that it is only 1m away from the side extension to the main house. One of the windows of the outbuilding directly faces towards the side of the main house and also the garden of No.6. Due to the position of the outbuilding and its proximity to the main house results in the outbuilding being heavily overlooked by the main house and the neighbouring properties, this leads to a lack of privacy for the inhabitants of the outbuilding as well as the main house.

5.9 The impact of this use on surrounding neighbours' living conditions

The use of the outbuilding as a separate residential unit is likely to generate higher levels of activity particularly in terms of visitors and therefore result in increased vehicular activity to the property as well as increased noise. The street is entirely residential in character comprising mainly single-family houses and therefore the additional noise, as well as general disturbance, generated from this conversion results in an adverse effect on neighbours' living conditions.

5.10 Traffic, access and parking issues resulting from these uses

To comply with the Council's maximum parking standards the main property would require two off street parking spaces and a further parking space would be required for the use of the outbuilding. Although there is hardsatnding at the front of the property to provide off-street parking any other vehicles connected with this property would need to park on the highway, reducing the width of the public highway and restricting the free flow of traffic on a narrow road that already has limited on-street parking. Due to the number of units at the property being increased from one to two it is considered that there would be much more vehicular activity to and from the site. This would result in conditions prejudicial to both highway and pedestrian safety.

Proposed action

- 5.8 Cease the use of the outbuilding located to the side of the main house as a separate self-contained residential unit, remove the kitchen and kitchen related facilities from the outbuilding and remove all resultant debris associated with the unauthorised use from the premises.

6.0 EQUALITIES DUTIES IMPLICATION

The Council has had due regard to its Equalities Duties and in particular with respect to its duties arising pursuant to the Equality Act 2010, section 149. Following a relevance test, which is available at:

http://www.hounslow.gov.uk/index/council_and_democracy/equality/eias/environment_eias.htm it is considered that there will be no specific implications with regard to the Council's duty in respect of its equalities duties and that if approving or refusing this proposal the Council will be acting in compliance with its duties.

7.0 COMMUNITY INFRASTRUCTURE LEVY

7.1 Some new developments granted planning permission on or after 1st April 2012 will be liable to pay Community Infrastructure Levy (CIL) to the Mayor of London with respect to the funding of Crossrail. This is at the rate of £35 per m² of new floor space.

7.2 This development is liable to pay **£883.40** Community Infrastructure Levy should planning permission be granted because a new dwelling has been created.

8.0 SUMMARY AND CONCLUSION

8.1 The use of the outbuilding as a separate self-contained residential unit, due to its position, size and lack of private amenity space provides substandard accommodation for the occupants. Amenity space on site is underprovided and heavily overlooked by neighbouring properties. Moreover, the use of the outbuilding as a separate dwelling in at the side of the main house is unacceptable in principle. It degrades the environmental quality of the area for neighbours and harms their living conditions both as a result of the activity generated and because of the adverse effect on their privacy and their living conditions.

8.2 The residential use of this outbuilding generates higher levels of visitor and vehicle activity and increased noise. Any road space lost through on-street parking due to the residential use of the outbuilding is likely to result in conditions prejudicial to both highway and pedestrian safety.

8.3 Therefore this use is contrary to policies ENV-B.1.1 (New Development), H.4.1 (Housing Standards and Guidelines) (and the Supplementary Planning Guidance related to it) and T.1.4 (Car and Cycle Parking and Servicing Facilities for Developments) of the Council's adopted Unitary Development Plan and Section 7.0 (Detached Outbuildings) of the Residential Extensions Guidelines.

8.4 Based on the information in this report it has been concluded that no action short of the proposed enforcement action described in this report can remove the harm caused by these breaches of planning control. In these circumstances, it is considered expedient to take enforcement action as recommended at the start of this report.

Background Papers:

The contents of planning file referenced on the front page of this report, save for exempt or confidential information as defined in the Local Government Act 1972, Sch. 12A Parts 1 and 2

