

Item No.

Responsible Officer: Head of Planning and Enforcement

Address: Langside, Larkwood Rise, Pinner, HA5 2HH

Ward : Northwood Hills

LBH Ref No : ENF/606/15/

This report was originally include in the agenda in Part II, Members only. At the North Planning Committee held on 15 September 2015, Committee Members resolved to make the officer's report and the associated decision public.

Purpose of Report

To acquaint Members with an alleged breach of planning control in order that Members determine whether the taking of Enforcement action would be justified on grounds of expediency and/or in the public interest.

1. RECOMMENDATIONS

1.1 That the Committee agree that the enforcement investigation be ceased and no further action be taken on the basis that there is no breach of planning control at Langside, Larkwood Rise, Pinner, HA5 2HH.

2. BACKGROUND AND ASSESSMENT

2.1 The property is a two storey detached property located on the south western side of the cul de sac, Larkwood Rise. The area to the front of the property is covered by a mixture of hard and soft landscaping and provides space to park two vehicles within the curtilage of the site. The street scene is residential in character and appearance comprising large detached properties. The dwellings nearest to the site are two storey buildings of varying designs, although there are some single storey properties at the other end of the cul de sac. The site is located within a developed area, on the boundary of the Eastcote Village Conservation Area, as identified in the Hillingdon Local Plan Part 2 - Saved Unitary Development Plan Policies (November 2012).

- 2.2 On 11 February 2015 the Council granted planning permission for '*Part two storey, part single storey rear extension including a Juliet balcony*' under App. Ref. No: 68232/APP/2014/4372.
- 2.3 On 29 April 2015 the Council granted permission for '*First floor side extension and raising of roof to allow for conversion of roof space to habitable use to include 1 front and 3 rear rooflights*' under App. Ref. No: 68232/APP/2015/805.
- 2.4 The Council received a complaint on 6 May 2015 that the single storey rear extension under construction at Langside had encroached across the southern boundary into the neighbouring garden of Marlborough Cottage.
- 2.5 On 7 May 2015 a Planning Enforcement Officer visited the site to carry out an inspection. The Officer confirmed that the single storey rear extension had not been extended across the boundary. He recorded that the extension sat within the boundary fence and had been extended straight off the rear of the existing side elevation. He further reported that it had not been stepped out over the boundary.
- 2.6 The Council received a complaint on 3 July 2015 that the main roof was higher than approved. A Planning Enforcement Officer visited the site the following day. It appeared to the Officer that the works carried out were a combination of both approved planning permissions, 68232/APP/2014/4372 & 68232/APP/2015/805, rather than just the implementation of one of them. The front of the property reflected 68232/APP/2015/805 with the first floor side extension over the garage and the raising of the roof. The rear reflected 68232/APP/2014/4372 with the Juliet Balcony and the single storey rear extension. At this stage the Officer took the view that the development was not to plan because it did not accurately reflect any of the approved plans in their entirety. The first floor side extension built over the integral garage and the raising of the roof were not shown on the plans attached to 68232/APP/2014/4372. The Juliet balcony and single storey rear extension were not shown on the plans attached to 68232/APP/2015/805. The Officer subsequently contacted the architect and invited him to submit a new planning application to request the regularisation of the 'as built' development.
- 2.7 On 16 July 2015 the Officer carried out a further site visit to measure the height of different elements of the development. The Officer confirmed that the Juliet Balcony and the single storey rear extension were built to the approved height in accordance with planning permission 68232/APP/2014/4372. The Officer also measured the height of the building and confirmed that it was 100mm lower than the height approved under planning permission 68232/APP/2015/805. The Officer noted that there was no ridge tile on the roof at this stage, which would account for the height of the roof being slightly lower than approved. The Officer was satisfied that the ridge height of the roof was not higher than approved.

- 2.8 Following his visit the Officer carried out a full review of the case. He concluded that there had been no breach of planning control because there had been no overlap with the implementation of each planning permission. Planning permission 68232/APP/2014/4372 for the part two storey rear extension with the Juliet balcony and the single storey rear extension only affected the rear of the property. Planning permission 68232/APP/2015/805 for the first floor side extension above the garage and the raising of the roof space did not affect the approved works carried out at the rear. In essence, the elements of each planning permission had been implemented independently without affecting the other permission. The Officer also checked the conditions attached to each permission and confirmed that there were no conditions attached to either permission stating that implementation of one would preclude the implementation of the other.
- 2.9 As detailed in paragraph 4.6 below, the power to issue an Enforcement Notice is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach or breaches of planning control. In this case there has been no breach of planning control because the built elements of the development have been granted planning permission and built in accordance with the permissions granted. Therefore, there are no planning grounds to issue an enforcement notice.

3. PUBLIC INTEREST

- 3.1 This case has prompted a significant level of public interest. Planning enforcement matters are normally dealt with in Part II closed session and therefore there isn't the same opportunity for local residents to speak at the committee meeting. To address this, and provide the ability for the residents the opportunity to make their views known, their comments have been set out within an appendix attached to this report.
- 3.2 In the interests of natural justice the house owner has been provided with the same opportunity to put forward their comments. These are also set out in the appendix.

4. OBSERVATIONS OF THE BOROUGH SOLICITOR

- 4.1 When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application.
- 4.2 In addition, Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family

life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

- 4.3 Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.
- 4.4 Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.
- 4.5 Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.
- 4.6 The power to issue an Enforcement Notice is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach or breaches of planning control. It must also be satisfied that it is expedient to issue the Notice having regard to the provisions of the Development Plan and to any other material considerations. Consequently the Council must decide based on the particular circumstances of each individual case the question of expediency. The decision to take enforcement action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds. Enforcement action should not be taken purely to regularise the situation.

5. OBSERVATIONS OF THE DIRECTOR OF FINANCE

- 5.1 The costs of issuing an Enforcement Notice are not significant, but costs of up to £5,000 may be incurred if an appeal is made against the notice lodged and a public enquiry results. The costs of an appeal to be heard by written representations or hearing are negligible. At the present time, there is satisfactory provision within the enforcement budget with which to fund these likely costs.

6. CONCLUSION

- 6.1 The two main complaints received from residents concerning the development are that it is higher than approved and that it does not bear any resemblance to any of the approved plans. In regards to the height of the building, a Planning Enforcement Officer measured its height and confirmed that it has been built to the approved height. In terms of the second issue it is understandable that residents believe the development is not to plan because it does not reflect any of the approved plans in their entirety. The front of the property does not resemble planning permission 68232/APP/2014/4372 and the rear does not resemble planning

permission 68232/APP/2015/805. Therefore, it can appear that the owner is mixing both permissions to build a larger development that he has been given permission for. However, this is not the case because there is no overlap between both permissions because each is for separate elements that do not affect the other. In other words both can be implemented, not just one of them.

- 6.2 It is concluded that it is not expedient to take enforcement action because the development carried out has been granted planning permission and has been built in accordance with the permissions granted.

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Appendix

1. Comments from local residents concerning the development:

[The plans and photographs referred to will be shown to the Committee by the Officer presenting the report]

'We the undersigned are writing to you concerning the continuing disregard of the planning permissions granted to Langside Larkwood Rise for the development of this house. As you may be aware there has been a breach of Planning Control which we are awaiting to hear exactly what action will be taken by the Planning Committee. To this date we have no information and fear that a decision will be made at a future meeting of Planning North Committee without the residents of Larkwood Rise being given any opportunity to comment.

As you know we have been appalled at the way in which Planning Permission have been applied for, currently 3, on each occasion the plans submitted show the existing floor plan prior to the commencement of any building work. (see attached Nos 1-6) However the plan then submitted bears no relationship to modification which had been applied for in the previous application, i.e. compare 2 with 3 and 5 with 4. Indeed plan 4 would appear to imply that the extension to the left of the building facing Marlborough Cottage had been removed. This same discrepancy occurs in 5 and 6.

We urgently request that the entire project should be halted and the Planning Committee confronted with this glaring discrepancy which has led to a monstrosity being built. This detracts from the environment of Marlborough Cottage and its environments which is an integral part of the Eastcote Conservation area.'

2. Comments from the agent representing the owner:

- 1) *Planning permission 68232/APP/2014/4372 relates to a part 2 storey and part single storey rear extension. This involves works projecting from the existing rear elevation of the building only. It does not affect the remainder of the building.*
- 2) *Planning permission 68232/APP/2015/805 relates to a first floor side extension and raising of the roof space to provide habitable use. The proposed side extension projects from the side of the existing house and does not involve or affect any of the two-storey rear extension approved under 2014/4372. In other words, there is no overlap. The proposed raising of the roof relates to the overall ridge height to the main roof at the front of the building and does not affect or alter the approved rear extension. Again there is no overlap between the two permissions.*

- 3) *It was evident in the Council's determination of the second application that both permissions could be implemented. The officer's report acknowledges the first permission. It does not suggest in its assessment that in granting and implementing the second permission the first permission could not also be implemented.*
- 4) *Notably there is no planning condition stating that these permissions are alternative schemes and that the implementation of one would preclude implementation of the other (Appendix A to Circular 11/95 on Use of Conditions, which remains DCLG guidance, includes such a model condition).*

In short the two permissions involve separate and distinct extensions to different parts of the building. They are mutually exclusive and can both be implemented in accordance with the respective approved drawings. There is no need to submit a fresh single application to combine the various elements.'