

E/08/0111/B - Unauthorised two storey rear extension at 54 Campfield Road, Hertford, SG14 2AD

Parish: **HERTFORD**

Ward: **HERTFORD - SELE**

RECOMMENDATION

- a) That the Director of Neighbourhood Services be authorised to take direct action under Section 178 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the removal of the unauthorised extensions.

- b) That the Director of Neighbourhood Services, in consultation with the Director of Internal Services, be authorised to instigate the procurement process in accordance with the appropriate financial regulations to enable direct action to remove the unauthorised extension.

Reasons why it is expedient to take direct action:

- 1. The extension, by reason of its scale, bulk and design, is of excessive size in relation to the existing dwelling and out of keeping with its character. Accordingly it is contrary to policy ENV5 of the East Herts Local Plan Second Review April 2007.

- 2. The extension by reason of its height, scale and bulk is intrusive in the surrounding area, to the detriment of the amenities of nearby residents and the character and appearance of the area. It is thereby contrary to policies ENV1, ENV5 and ENV6 of the East Herts Local Plan Second Review April 2007.

(011108E.GD)

1.0 Background

- 1.1 The site is shown on the attached Ordnance Survey extract. It is located on the east side of Campfield Road, Hertford adjacent to the northern extent of the road.

- 1.2 In May 2007 informal plans were submitted to officers by an agent seeking pre-application advice for a proposed two storey extension to the rear of nos.54 and 56 Campfield Road, Hertford, a pair of semi-detached dwellings. In June 2007 a reply was sent indicating that the proposals were considered excessive in length, bulk and ridge height which would result in a development that officers considered would be unsympathetic to the

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character and appearance of the original dwellings. Concern was also expressed regarding the impact on neighbouring properties and advice was given on reducing the size and height of the proposal.

- 1.3 In June 2007 further plans were submitted to officers seeking advice on an amended scheme for a reduced extension, now having a shallower two storey element, with a single storey element to the rear of it. However, officer advice sent in the same month was that the proposal still gave rise to concerns over the bulk of the two storey element, the proposed ridge heights and the width of the two storey element.
- 1.4 The enforcement officer visited the site on 7th March 2008 following a complaint regarding a large unauthorised extension to both properties. Although there was no one present on site it was apparent that a two storey extension was under construction and had been 'topped out'. The enforcement officer wrote to the owners of the properties asking that they contact him to make an appointment to view the works.
- 1.5 On 28th March 2008 the enforcement officer again visited the site to meet the husband of the owner of 54 Campfield Road, who was building both extensions. The owner did not attend the site nor contact the officer. However, the enforcement officer spoke to the owner of 56 Campfield Road and measured the extension to that property (which was symmetrical to that at number 54). The extensions appeared to be built in accordance with the first set of (unacceptable) plans submitted to the authority in May 2007 and considerably exceeded the permitted development allowance for the properties.
- 1.6 As the owner of 56 Campfield Road stated her intention to submit a retrospective planning application seeking to regularise the development, the enforcement officer wrote to both owners on 28th March 2008 asking that any such application be submitted within 28 days. The letter pointed out that all works on site continued at the owners' risk.
- 1.7 As no application or contact resulted, and following the committee authorisation on 2nd July 2008, enforcement notices were issued on the 25th July 2008 requiring the demolition of the unauthorised extensions and the removal of the resultant materials from the site.
- 1.8 An appeal was lodged with the Planning Inspectorate who, after due consideration, upheld the notice on the 24th February 2009 but varied the time of compliance from 3 months to 6 months. Therefore the date for compliance was the 24th August 2009.

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- 1.9 During this period the owner of No.56 sought and was granted planning permission for an amended scheme, which has been completed on site. No further action is deemed necessary in respect of this property.
- 1.10 However, the owner of no.54 has failed to comply with the Notice. She also failed to attend court on three occasions and a warrant was issued for her arrest. She was arrested and taken to court on the 10th February 2010, where she pleaded guilty and was fined £2,030 to include costs and surcharge.
- 1.11 Subsequent to the court appearance and sentence the owner has once again failed to respond to correspondence seeking her proposals to comply with the requirements of the notice.
- 1.12 On the 9th April 2010, an officer visited the site to confirm if the valid Enforcement Notice had been complied with. During that visit it was evident that the notice had not been complied with and the officer spoke to the husband of the owner who stated that he would be visiting the Hertford offices of the Council on Monday 12th April 2010 to discuss the submission of an application for planning permission for an amended scheme. He failed to attend the offices or make any further contact.
- 1.13 In view of the above history of this case Officers are now reporting back to the committee outlining the possible courses of action open to the Council.

2.0 Planning History

- 2.1 There is no recent planning history relating to this site, other than the enforcement notice and appeal referred to above.

3.0 Policy

- 3.1 The relevant 'saved' policies of the adopted Local Plan in this matter are:-

ENV1 – Design and environmental quality
ENV5 – Extensions to dwellings

4.0 Considerations.

- 4.1 Your officers consider that there are three options open to the Council in respect of this unlawful development: -

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1. Do nothing;
2. Continue with legal proceedings in the local magistrates court;
3. Take direct action.

'Doing nothing' option:

- 4.2 Taking into account all the circumstances of this case it is not considered appropriate to do nothing; to take no further action. This extension was built despite clear advice from planning officers that the extension was excessive in length, bulk and ridge height and it has resulted in a dominant structure that is unsympathetic to the character and appearance of the original dwelling.
- 4.3 Doing nothing would also indicate to others that, after the full course of the process has been exhausted, those who have contravened planning control can, in effect, be immune from further action. This would be most unsatisfactory and may encourage others to undertake unauthorised development in the knowledge that, ultimately they would be able to enjoy the benefit of it unhindered.
- 4.4 Further legal proceedings:

It is of course open to the Authority simply to pursue further legal proceedings; however, as the report explains at paragraphs 1.10 the owner failed to attend court on three separate occasions previously and this resulted in her being the subject of a warrant for her arrest. Whilst continuing legal action may eventually prompt the owner to comply with the notice, there is no guarantee of this and it may, in any event, unacceptably delay compliance and involve a considerable amount of both staff time and the financial resources of the Council.

- 4.5 Direct Action:

Amongst a range of tools available to the planning enforcement function, parliament gives local planning authorities the power to take direct action by virtue of Section 178 of the Town and Country Planning Act 1990 to secure compliance with the requirements of a valid enforcement notice.

- 4.6 This section states that *'if any steps which by virtue of s 173(2)(a) are required by an enforcement notice to be taken (other than the discontinuance of a use of land) have not been taken within the compliance period, the local planning authority may: -*

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- a) *enter the land and takes those steps, and*
- b) *recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so'.*

- 4.7 Recipients of an enforcement notice are warned of the potential of such action when an enforcement notice is served. The final sentence of the notice clearly states 'Failure to comply with an Enforcement Notice, which has taken effect, can result in prosecution and/or remedial action by the Council.'
- 4.8 Members will be aware that such action is a significant step. In this case, where the development constitutes part of the living accommodation on the site, any such action will be particularly disruptive to residents and may result in the removal of considerable amenity from the property. Members will also be aware of the form and nature of publicity that a step such as this may generate.
- 4.9 Weighed against that, Members will want to take into account reaction it may receive should it fail to rectify the situation here. They should also consider the fact that the adjacent neighbour, 56 Campfield Road had an identical two storey extension built by the husband of the owner of the subject property at the same time as the subject unauthorised extension. However, after the dismissal of their joint appeal to the Planning Inspectorate, that owner contacted the Council and submitted an application for an amended two storey extension which was considered acceptable and planning permission was granted. This owner then immediately implemented the approved scheme.

Financial Implications

- 4.10 There are inevitably financial implications in taking direct action and these should be considered by Members. The property owner would be liable to meet these and officers will advise her as such, with an indication of the scale of costs. However, if works are undertaken and the owner refuses to meet the cost the Council would be obliged to settle the amount and then pursue payment through the courts and by placing a charge on the property. This would result in the debt being discharged upon any sale of the property. It is understood that the Council are able to charge interest on the debt at a rate which officers believe to be in the region of 8% under section 69 of the County Courts Act 1984.

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- 4.11 Officers have informally discussed this possible operation with an independent expert in the field of direct action who advises that the cost, given the complications of access, attachments to the extension etc, may be in the order of £50,000. However, two local companies, who would be able to undertake the work estimate a figure in the region of £20,000.
- 4.12 The Council has no budget for works of this nature. Given that, in accordance with financial regulations, it would be necessary to seek the agreement of the Executive to a supplementary estimate before any such action could take place. Members will want to weigh in the balance the potential costs of this action. If Members are supportive of the recommendations then it would remain subject to the subsequent support of the Executive.

Summary

- 4.13 Your officers consider the preferred option is to take direct action to remove the unauthorised development. This is a 'last resort' option and something that the Council undertakes infrequently and reluctantly. However, there is a need for the Council to take this action in order to ensure that the breach of planning control is rectified and the unauthorised development is removed. This would also ensure that the public perception of planning enforcement is upheld; would ensure a consistent and fair approach (in view of the neighbours efforts to comply); and act as a deterrent to others undertaking unlawful development.
- 4.14 It is also considered that, in addition to the direct action, the Council's solicitor should be instructed to issue further summonses for the continuing offence.

5.0 Recommendation

- 5.1 It is therefore recommended that authorisation be given to take direct action subject to the subsequent agreement of the Executive to release funds to enable this to take place.