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| Meeting: | Development Control Committee |
| Date: | 17 th October 2006 |
| Subject: | 19 Victoria Terrace, Harrow on the Hill |
| Key Decision: (Executive-side only) | No |
| Responsible Officer: | Group Manager, Planning and Development |
| Portfolio Holder: | Planning, Development and Housing |
| Exempt: | No |
| Enclosures: | Site plan |

SECTION 1 – SUMMARY AND RECOMMENDATIONS

This report relates to the installation of two rectangular shaped uPVC double glazed windows to the northern (rear) elevation to this detached dwellinghouse at ground floor level. The dwellinghouse is sited within the Harrow on the Hill Village Conservation Area, and is also subject to an Article 4(2) Direction enabling control to be exercised over the insertion or replacement of windows on the elevations of dwellinghouses, with the exception of the rear elevation.

In June 2006 the Council issued an enforcement notice in respect of these two windows, requiring them to be removed and the wall re-instated to match the existing walls. An appeal has subsequently been lodged against this enforcement notice and this appeal is to be heard by way of a Public Inquiry.

However, the Council now wishes to withdraw its enforcement notice, as it considers that one of the requirements of the enforcement notice is vague and consequently the notice is legally defective, and also it is considered that a breach of planning control has not occurred as the installation of windows on the rear elevation is not covered by the Article 4(2) Direction and consequently the insertion of the windows constitutes permitted development under Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

RECOMMENDATIONS:

That the Committee endorse the Council's exercise of its rights under Section 173A of the Town and Country Planning Act 1990 (as amended) to withdraw an enforcement notice issued by the Council on 14th June 2006 in relation to the installation of two windows in the ground floor northern elevation of the property at 19 Victoria Terrace, Harrow on the Hill.

SECTION 2 - REPORT

- 2.1 The site that is the subject of this report, 19 Victoria Terrace, Harrow on the Hill, consists of a two-storey detached dwellinghouse located on the northern side of this predominantly residential cul-de-sac, which, with the exception of No. 19, comprises terraced properties.
- 2.2 The dwellinghouse that is the subject of this report and the surrounding area fall within Harrow on the Hill Village Conservation Area, which was designated in 1968 and the area is also covered by an Article 4(2) Direction from 1983 removing certain permitted development rights, including the installation of doors and windows on all elevations of dwellinghouses, other than the rear elevation, without planning permission.
- 2.3 In November 2004, the Council established that two rectangular shaped uPVC double glazed windows had been installed in the northern elevation of the original dwellinghouse. These windows replaced two oval shaped windows that were part of the original dwellinghouse.

2.4 In October 2005, the Council refused to grant retrospective planning permission (application ref. P/2177/05/DCO) for the retention of the two windows in the northern elevation of the property.

2.5 This application was refused for the following reasons;

'The retention of the windows in the north elevation, by reason of siting and location in relation to residential properties, would permit unreasonable actual and perceived overlooking of No. 1 and No. 2 Wellington Terrace, to the detriment of the privacy amenity of the neighbouring occupiers.'

2.6 An appeal against this decision to refuse planning permission is currently being determined by the Planning Inspectorate on behalf of the Secretary of State.

2.7 On 14th June 2006, the Council issued an enforcement notice in relation to the installation of the two windows on the northern elevation of the property at ground floor level. This enforcement notice required the removal of the two windows, and the re-instatement of the walls to match the existing walls, within three calendar months of the notice taking effect.

2.8 Before this notice had taken effect, an appeal against it was lodged with the Planning Inspectorate, on behalf of the Secretary of State, and this appeal is to be heard by way of a Public Inquiry.

2.9 Following a review of the circumstances surrounding this case, the Council now considers that the installation of the two windows in the northern elevation of the dwellinghouse at ground floor level constitutes permitted development under Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), and accordingly planning permission is not required for their installation and no breach of planning control has occurred.

- 2.10 Under Class A, the insertion, enlargement, improvement or other alteration of a window in an existing wall of a dwellinghouse does not require planning permission. However, an Article 4(2) Direction from August 1983 removes permitted development rights for the insertion of windows into the wall of an original dwellinghouse.
- 2.11 Notwithstanding this, the Article 4(2) Direction goes on to state that in relation to rear walls, planning permission is not required for alterations to, and replacement of, doors and windows. The windows that are the subject of this report are in the rear elevation of the dwellinghouse at 19 Victoria Terrace, and therefore benefit from permitted developments rights under Class A. Consequently no breach of planning control has occurred and the Council should not have issued an enforcement notice.
- 2.12 Additionally, it is also considered that one of the requirements of the enforcement notice is imprecise and vague, and consequently the Council considers that the Inspector appointed to determine the enforcement notice would rule the notice defective and quash it.
- 2.13 The second requirement of the enforcement notice states, “re-instate the walls to match the existing wall”. Neither within the enforcement notice nor on the attached plan is it clarified which walls need to be re-instated, nor which of the existing walls the re-instated wall should match.
- 2.14 Government guidance emphasises the need for clear and correct specification of the steps that must be taken to secure with an enforcement notice is fundamental, so that any recipient of an enforcement notice must be able to establish from the notice exactly what he or she is required to do or abstain from doing.

- 2.15 It is considered that the second requirement of the enforcement notice does not clearly set out what steps any recipient needs to take to remedy this breach, nor does it consider that such a fundamental error would be able to be altered by an Inspector determining an appeal without causing injustice.
- 2.16 Therefore, due to the circumstances outlined, the Council wishes to withdraw its enforcement notice issued on 14th June 2006. Failure to withdraw this enforcement notice is likely to result in substantial costs being awarded against the Council at any Public Inquiry resulting from the serving of the notice, with an Inspector likely to conclude that the Council has acted unreasonably and caused the appellant un-necessary financial expense.
- 2.17 The Council will likely have to pay costs to the recipient of the notice upon withdrawal of the enforcement notice in any event. These costs will be minimised by withdrawing the enforcement notice sooner rather than later. The cost will be paid by the Planning Services Team.

SECTION 3 - STATUTORY OFFICER CLEARANCE

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| Chief Finance Officer | <input checked="" type="checkbox"/> | Name: Anil Nagpal Date: 16/10/2006 |
| Monitoring Officer | <input checked="" type="checkbox"/> | Name: <u>David Galpin</u> Date: 16/10/2006. |

SECTION 4 - CONTACT DETAILS AND BACKGROUND PAPERS

Contact: Adam Beamish (adam.beamish@harrow.gov.uk) tel. 0208 7366160

Background Papers

- Unitary Development Plan
- Harrow on the Hill Village Conservation Area Policy Statement

IF APPROPRIATE, does the report include the following considerations?

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| 1. | Consultation | NO |
| 2. | Corporate Priorities | NO |
| 3. | Manifesto Pledge Reference Number | |