

Meeting:	Development Management Committee
Date:	Wednesday 28 February 2007
Subject:	31 Northumberland Road, North Harrow
Key Decision: (Executive-side only)	No
Responsible Officer:	Group Manager (Planning and Development)
Portfolio Holder:	Councillor Marilyn Ashton
Exempt:	No
Enclosures:	1:1250 OS Site Plan

## **SECTION 1 – SUMMARY AND RECOMMENDATION**

This report seeks the Committee's agreement to withdraw the Enforcement Notice requiring demolition of extensions at 31 Northumberland Road, following the recent appeal decision, which has, in effect, quashed the Notice.

### **RECOMMENDATION:**

The Committee is asked to authorise the withdrawal of the Enforcement Notice issued on 1 June 2006, that required the demolition of a single storey front extension, and of a part single, part two storey rear extension.

**REASON:** (For recommendation - Executive-side reports only)

## SECTION 2 - REPORT

### Background

- 2.1 Planning permission, ref: P/2928/04/DFU, was granted on 11 January 2005 for the construction of two storey side to rear, single storey front and rear extensions and rear dormer. The development was built during the latter part of 2005 and the first half of 2006.
- 2.2 A series of complaints, and a petition, were received relating to planning and construction works at the above property, in particular:
- the manner in which planning permission was granted
  - that the development under construction is not being carried out in accordance with the approved plans
  - a lack of proper supervision of the work being carried out
- 2.3 A report was submitted to the Development Control Committee on 8 February 2006, and the Committee resolved not to agree with the recommendations and instructed Officers to submit a further report on the issues, in particular in respect of:
- the additional forward projection of the front porch extension by 100mm (10cm)
  - the additional rearward projection of the single and two storey rear extension by 150mm (15cm)
- 2.4 On 15 March 2006, the Committee considered a further report and resolved that an Enforcement Notice be issued, requiring the removal of the unauthorised extensions.
- 2.5 Meanwhile, planning application P/179/06/DFU had been submitted for extensions and alterations and conversion of the extended dwelling to two self-contained dwellings. Planning permission was refused on 13 April 2006 for 6 reasons: three relating to parking objections, one relating to accessibility issues, and two raising the same objections to the extensions that were the subject of the Enforcement Notice.
- 2.6 Two appeals were lodged subsequently: against the issue of the Enforcement Notice, and the refusal of planning permission.

### The Appeals

- 2.7 **Appeal A** – an appeal against the **Enforcement Notice** that required the demolition of the single storey front extension and the part single part two storey rear extension, within a period of three months from the date the Notice took effect.

The appeal was made on the following four grounds:

- a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted
  - c) that those matters (if they occurred) do not constitute a breach of planning control
  - f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach
  - g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed
- 2.8 Because the appellant did not pay the appeal fee in relation to the ground (a) appeal this ground of appeal lapsed and the Inspector did not therefore consider the merits of the scheme in dealing with the Enforcement Notice appeal.
- 2.9 **Appeal B** – an appeal against the **refusal of planning permission** for application P/179/06/DFU that sought permission for extensions and alterations **as built** and the conversion of the extended dwelling to two self-contained dwellings.
- 2.10 The appellant submitted a claim for an award of costs on the grounds that the Council had behaved unreasonably.

### The Decisions

#### 2.11 **Appeal A:**

**Ground c)** – failed

**Ground f)** – succeeded to the extent that the Inspector modified the requirements of the Notice to include two options – 1) the steps as drafted in the original enforcement notice, or 2) to modify the extensions to those previously granted permission in application P/2928/04/DFU.

**Ground g)** - failed

#### 2.12 **Appeal B:**

Appeal allowed.

- 2.13 This decision to grant planning permission for, amongst other things, **the extensions as built**, overrides the Enforcement Notice decision. However, the Enforcement Notice is still in place as the ground c) and ground g) appeal failed.

### Costs Application

- 2.14 The Inspector refused to award costs in respect of the Council's service of an Enforcement Notice. He found that the arguments at the appeal were sufficient to support the Council's contrary view to their officers.
- 2.15 However, the Inspector did award costs in respect of the planning application as he considered that the Council ignored the findings of the previous Inspector on the detailed reasons for refusal that he had thought could be overcome by conditions. By pursuing the same reasons for refusal the Inspector concluded that the Council had acted unreasonably, thereby incurring unnecessary expense to the appellant.

### Further Action

- 2.16 The appellant has requested that the Council withdraws the Enforcement Notice.
- 2.17 As planning permission has been granted on appeal for the extensions as built, the legal position is that the Enforcement Notice ceases to have effect so far as it is inconsistent with the planning permission granted.
- 2.18 In the circumstances there appears to be no justification for retaining the Enforcement Notice. The appeals provide an audit trail for the events that have occurred.
- 2.19 My conclusion is that the Enforcement Notice should be withdrawn, as set out in the Recommendation.

### Resources, Costs and Risks Associated with Recommendation

- 2.20 It is understood that local residents are pursuing a High Court appeal against the Inspector's decisions. However, any decision by the Council to withdraw the Enforcement Notice would not prejudice any challenge by the residents of the inspector's decision.
- 2.21 If the challenge is upheld, the Council, as the local planning authority, can take a fresh view at that stage whether to issue a further enforcement notice. The Council has powers under S 173A(4) of the Town & Country Planning Act 1990 to issue a further enforcement notice where a previous notice has been withdrawn.

### Staffing / Workforce Implications

- 2.22 None

### Equalities Impact

- 2.23 None

Legal Comments

2.24 Included in report

Financial Comments

2.25 There are no financial implications at present as a result of withdrawing the Enforcement Notice.

**SECTION 3 - STATUTORY OFFICER CLEARANCE**

Chief Finance Officer	<input type="checkbox"/>	Name: Sheela Thakrar.... Date: 13 February 2007
Monitoring Officer	<input type="checkbox"/>	Name: David Galpin Date: 13 <sup>th</sup> February 2007

**SECTION 4 - CONTACT DETAILS AND BACKGROUND PAPERS**

**Contact:** Frank Stocks: Senior Professional – Development Management

**Background Papers:** *Appeal Decision dated 10 January 2007*

**IF APPROPRIATE, does the report include the following considerations?**

1.	Consultation	<del>YES</del> / NO
2.	Corporate Priorities	<del>YES</del> / NO
3.	Manifesto Pledge Reference Number	N/A

