

Meeting:	Planning Committee
Date:	22 July 2009
Subject:	13 -17 Manor Road, Harrow, HA1 2NZ
Responsible Officer:	Stephen Kelly, Divisional Director of Planning
Portfolio Holder:	Councillor Marilyn Ashton – Portfolio Holder for Planning, Development and Enterprise
Exempt:	No
Enclosures:	Nil

Section 1 – Summary and Recommendations

This report relates to the unauthorised erection of a block of 15 flats built in breach of planning control.

Recommendations:

The Committee is requested to:

Having regard to the provisions of the Unitary Development Plan and all other material planning considerations (in accordance with Section 172 of the Town and Country Planning Act 1990 (as amended), to authorise the Director of Legal and Governance Services to:

- (1) Take all necessary steps for the preparation, issue and service of an Enforcement Notice (including the service of any s330 Town and Country Planning Act notice necessary to facilitate the service of the enforcement notice itself) with the following requirements:-
 - (A) Cease the use of the unauthorised flat (no. 15) at second floor level and remove all internal partitions and installations that enable its use

- (B) Reinstate the block as 14 flats and
 - (C) Install a lift to accord with planning permission ref: P/2889/04, granted on appeal on 4 October 2005.
 - (D) Remove from the land all debris and materials arising from compliance with requirements (A) to (C) above.
with a period of 6 calendar months being given for compliance.
- (2) In the event of non-compliance with the above enforcement notice to;
- (A) Institute legal proceedings, should it be considered in the public interest to do so, pursuant to Section 179 of the Town and Country Planning Act 1990.
 - (B) Carry out works in default, should it be considered financially viable to do so, under the provisions of Section 178 of the Town and Country Planning Act 1990.
- Reason: (For recommendation)**
- To remedy a breach of planning control which is materially affecting interests of acknowledged planning importance.

Section 2 – Report

Background

Planning permission (P/2889/04) was granted on appeal on 4 October 2005 (appeal ref: App/M5450/A/05/1179291) for a block of 14 flats at 13-17 Manor Road, Harrow. However, following investigations into an alleged breach of planning control, it appears that the development has not been built in accordance with the approved plans because, as built, the block contains 15 flats and not the 14 for which permission was granted. Officers have attempted to secure the regularisation of the breach of planning control, but to date all efforts have failed. Having assessed the harm being caused as a result of the breach, it is considered that it is expedient to initiate formal enforcement action.

The development is contrary to London Plan policy 3A.8, 3A.9 and 3A.10 concerning the provision of affordable housing. In addition, the changes to the internal layout in particular the omission of the lift have led to non-compliance the Lifetime Homes Standards as noted in the adopted supplementary planning document which amplifies the former Harrow Unitary Development Plan (UDP) policy H18 and London Plan policy 3A5.

Site and Surroundings

The site is situated at the junction of Manor Road and Bonnersfield Lane within a predominantly residential area. The site was previously occupied by a pair of semi-detached houses and a detached house, which were demolished and replaced by a 2 / 3 storey residential block.

Breach of Planning Control

The breach of planning control can be summarised as “without planning permission the construction of block of 15 flats”.

Planning permission for a block of 14 flats was granted on appeal on 4 October 2005.

As approved, the plan drawings showed the following breakdown of flats on each floor:

Ground Floor:	5 x 2 bed
First Floor:	5 x 2 bed
Second Floor:	1 x 1 bed and 3 x 2 bed
Total	14 flats (1x 1 bed, 13 x 2 bed)

However, as built the block contains a total of 15 flats in the following breakdown:

Ground Floor:	5 x 2 bed
First Floor:	5 x 2 bed
Second Floor:	2 x 1 bed, 3x 2 bed flats
Total	15 flats (2 x 1bed, 13 x 2 bed)

As a result of the provision of the unauthorised additional flat internal alterations within the building have resulted in the provision of smaller flats at second floor level and an internal lift proposed in the approved scheme has not been provided.

The development has not therefore been carried out in accordance with the approved drawings and this amounts to a breach of planning control.

Planning policy

The following policies of the Harrow Unitary development Plan and :London Plan are relevant to the development:-

D4 – Standard of Design and Layout
D5 - New Residential development – Amenity Space and Privacy
Supplementary Planning Document – Access for All
Draft Supplementary Planning Document – Accessible Homes

London Plan

3A.5 – Housing Choice
3A.6 - Quality of new housing provision
3A.8 – Definition of Affordable Housing
3A.9 – Affordable Housing Targets
3A.10 – Negotiating Affordable Housing in individual private residential and mixed use schemes
3A.11 – Affordable Housing thresholds

Assessment of Harm

Affordable Housing

The construction of 15 units within a building for 14 units allowed on appeal is considered to represent an attempt to carry out development whilst not providing affordable housing. At the time of the appeal decision Harrow UDP

Policy H5 provided that the Council would seek the maximum reasonable proportion of affordable housing on suitable sites of either 0.5 hectares or more or on developments of 15 or more dwellings. On the basis that 14 units were to be provided, no affordable housing contribution was sought or made. Had the applicant sought permission for 15 units as now constructed then a contribution would have been looked for under the policy.

It is a relevant factor to the assessment of harm that between the date of the appeal decision on 4 October 2005 and the date of this report the Council's planning policy in respect of affordable housing has changed. Harrow UDP Policy H5 was not one of those saved by the Secretary of State's direction on 28 September 2007. Since this time the Council has relied upon the London Plan for its affordable housing policy. The current London Plan Policy 3A.11 provides that the threshold for the provision of affordable housing is 10 units.

As a result of the breach of planning control therefore, the Council has lost an opportunity to provide 7 units of affordable residential units much needed within the Borough.

Internal Lift

In respect of the omission of the lift, at the date of the appeal decision the standard for design and layout was controlled by Harrow UDP policy H18 in respect of lifetime homes which aims to encourage new housing developments to be accessible to all and this is endorsed by London Plan policy 3A.5 stating that all new housing is built to "Lifetime Homes" standards.

As with Harrow UDP Policy H5, this was not saved under the Secretary of State's direction and the Council now relies upon London Plan policy 3A.5 together with the Council's Supplementary Planning Document (SPD) entitled "Access for All" and draft SPD entitled "Accessible Homes". There are altogether 16 standards for designing Lifetime Homes providing detailed guidance to design new residential developments. The addition of a further flat created by the omission of the lift and alterations to the approved flats at second floor level have resulted in the flats being relatively smaller than the approved flats at second floor level. As a consequence the flats do not comply with the "Lifetime Homes" standard which results in material harm to the amenity of occupiers.

Officers do not consider that planning permission would be granted for the development as existing, because planning conditions could not overcome the objections to the development.

Expediency

The enforcement of planning control is a discretionary power for the local planning authority. In order for an enforcement notice to be served, not only does there have to be a breach of planning control but it must also be expedient for to issue an enforcement notice, having regard to the provisions of the development plan and to any other material considerations.

In this case, expediency has been assessed with regard to the statutory Development Plan, which for the Borough consists of the saved UDP policies and the London Plan 2008. The expediency of enforcement action has also

been assessed with reference to guidance contained in PPG18 and Circular 10/97 both entitled 'Enforcing Planning Control'.

The development is contrary to policies of the London Plan and results in the shortage of affordable housing and housing built in accordance with the lifetime homes standards in the borough being exacerbated without justification. In view of this enforcement action is considered expedient and justifiable in this case

Other Relevant Information

In April 2008, the developer made a retrospective planning permission (ref: P/1189/08) for the additional flat built as part of the development. However, as the Council took the view that the entirety of the development was unauthorised that application was returned to the owner as invalid as it only dealt with the additional flat. The owner lodged an appeal against this decision. On 12 December 2008 the Planning inspectorate refused to acknowledge the appeal on the ground that the built block amounts to a new scheme so the application should have been made for the 15 flats.

Fourteen of the flats have now been sold and are occupied.

In May 2009, the developer made a further retrospective application for retention of the existing building including an existing flat. The application is currently invalid awaiting further information about renewable energy, sustainability and lifetime homes issues etc. at the time of drafting this report.

The Planning Service has kept the occupiers of the flats informed of the situation, since if enforcement action is authorised, the enforcement notice is required to be served on all persons holding a legal interest in the property.

Human Rights

The Human Rights Act 1998 (the Act) has incorporated part of the European Convention on Human Rights into English law, Section 6 states that it is unlawful for any public authority to act in a way which is incompatible with any Convention right. The conclusion reached in this report has been made having had full regard to the human rights of those likely to be affected. The decision to issue an enforcement notice in this instance is in accordance with the law, serves a legitimate aim (namely the preservation of the environment in the wider public interest) and is necessary and proportionate in all the circumstances. It is therefore considered that the recommendation is compatible with the Act.

The recipient of an enforcement notice can, in any event, appeal against it to the Planning Inspectorate under Section 174 of the Town and Country Planning Act 1990 on one of six grounds, including that planning permission ought to be granted, that the alleged breach of planning control has not occurred, that the requirements of the notice exceed what is necessary to remedy the breach of planning control and that period specified in the notice for compliance is too short.

Legal implications

Section 172 of the Town and Country Planning Act 1990 provides that the Council may issue an enforcement notice where it appears to them that there has been a breach of planning control and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

The enforcement notice must specify the matters alleged to constitute a breach of planning control and must specify the steps the Council requires to be taken in order to remedy the breach.

A person having an interest in the land to which an enforcement notice relates, may appeal against the enforcement notice, and the effect of the enforcement notice will then be suspended until the appeal has been determined.

Financial Implications

In the event of the Council serving an enforcement notice, the owner would be entitled to lodge an appeal against the enforcement notice. Potential appeal may be dealt with in house. If the matter went to a Public Inquiry, there may be additional legal costs. Furthermore, if a planning inspector determining the appeal, found that that Council acted unreasonably, then the Council may be required to pay the appellant's costs for which there is no budget provision.

Section 3 - Statutory Officer Clearance

Name: Sheela Thakrar	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 10 July 2009		
Name: Izindi Visagie	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 10 July 2009		

Section 4 - Contact Details and Background Papers

Contact: Sucha Singh Basuta Senior
Professional Development Management /
Enforcement (Tel: 0208 736 6169)

Background Papers

London Plan

Unitary Development Plan
Supplementary Planning Document – Access for All
Supplementary Planning Document – Accessible Homes

If appropriate, does the report include the following considerations?

1.	Consultation	NO
2.	Corporate Priorities	NO