

6.01 - Reference: 310/05/085

ENFORCEMENT OF PLANNING CONTROL

Four Winds, Farley Common, Westerham

ITEM FOR DECISION

This matter has been referred to Development Control Committee at the discretion of the Community and Planning Services Director.

Planning permission has been refused and subsequently dismissed on appeal for the retention of a replacement dwelling, including a basement double garage and a 2.5m high boundary wall. The boundary wall and the basement remain on site without the benefit of planning permission.

This matter was previously presented to Committee on 10th March 2011, when Members authorised the service of an Enforcement Notice relating to the removal of a brick boundary wall, backfilling a basement garage together with the permanent closure of any internal access and permanent cessation of uses within the garage and the breaking up and removal of the retaining walls adjacent to the access ramp to the garage.

However, following receipt of further advice, the measures seeking the complete removal of the brick boundary wall are considered unreasonable, as the owner could erect a brick wall up to 2m in height without the benefit of planning permission.

This report therefore seeks to consider the expediency of enforcement action to the basement garage and require the reduction in height of the brick wall to a height not exceeding 2m in height.

RECOMMENDATION:

That authority is to serve an Enforcement Notice, subject to the Head of Legal and Democratic Services agreeing the wording of the terms of the Notice, requiring the:

- (a) The reduction in the height of the brick boundary wall along the eastern boundary to a height not exceeding 2m above ground level.
- (b) Back filling of the basement garage structure with inert material and permanent closure of any internal access and permanent cessation of uses within the garage.
- (c) Breaking up and removal of the retaining walls adjacent to the access ramp to

the garage and;

- (i) The restoration of the original ground levels to the front north-eastern corner of the site, or;
- (ii) The restoration of the original ground levels incorporating the approved parking layout under ref: SE/07/03532/FUL and SE/08/01003/DETAIL, or;
- (iii) The implementation of an alternative scheme of restoring this part of the site to include a car parking layout, (i.e. not at the original ground level), details of which shall first have been submitted to and approved in writing by the District Planning Authority. Such details to include cross sections (both north-south and east-west), to show the original and proposed levels.

FOR THE FOLLOWING REASONS:

1 The land lies within the Metropolitan Green Belt where strict policies of restraint apply. The developments comprising the retention of a 2.5m high wall and basement garage with access ramps, add to the built form on the land to a degree that is harmful to the character and appearance of the area. This conflicts with PPG2 (Green Belts) and policy H13 of the Sevenoaks District Local Plan.

2 The land lies within an Area of Outstanding Natural Beauty. The developments comprising the boundary wall and basement garage with access ramps, detract from the character and appearance of that area. This conflicts with policy L08 of the Sevenoaks District Council's Core Strategy Development Plan Document.

Compliance period: Six months

Head of Development Services Appraisal

Breach of Control

- 1 The continued retention of the garage, associated retaining walls and the boundary wall at a height of 2.5m following the dismissal of the appeal against the refusal of planning permission constitutes a breach of planning control.

Relevant Background:

- 2 Details of the relevant planning policies, planning history description of the site and consideration of the determining issues remain as set out in the previous

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Enforcement report to Committee (10th March 2001). For convenience this is provided in full as Appendix A.

- 3 The reason this matter is being referred back to Committee is because of an inaccuracy at paragraph 17 of that report. This stated that:

“Whilst in some situations it may be possible to consider the lesser remedy of reducing the height of the wall to 2m, which would be permitted development, in this instance permitted development rights for all enclosures were removed by virtue of condition 4 on the original planning permission, therefore, any boundary wall would require planning permission.”

- 4 However, further legal advice has since concluded that the reference to enclosures in the above condition does not apply to a means of enclosure erected along the boundary of the site. In light of this, the owner would be entitled to exercise his normal permitted development rights relating to this particular form of development, which enable the erection of a wall up to a height of 2m without the benefit of planning permission.

- 5 In the circumstances rather than seek the removal of the brick boundary wall in its entirety, the recommendation has been amended to seek the reduction in the height of the brick boundary wall along the eastern boundary to a height not exceeding 2m above ground level. In all other respects the enforcement notice remains as recommended and agreed previously.

- 6 Members may note that with regard to the breaking up and removal of the retaining walls adjacent to the access ramp to the garage, there are considered to be several possible options which may satisfactorily resolve the situation and hence these are listed as options 1 to 3 of requirement (C) in the recommendation.

- 7 In considering whether or not to enforce against unauthorised works, Government guidance (PPG 18 – Enforcing Planning Control) advises that Local Planning Authorities have a general discretion to take enforcement action, where they regard it as expedient. They should be guided by a number of considerations.

- 8 The decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity, or the existing use of land and buildings meriting protection in the public interest. The guidance also notes that an authority may be liable to “maladministration” if they fail to take effective enforcement action which was plainly necessary.

- 9 In this instance, the Council has already refused an application for the retention of these works, on the basis that there is substantial harm to the public interest in terms of the impact on openness and the visual amenities of the area. This was upheld in an appeal decision dated 16th March 2010. Copies of the appeal decision and earlier Committee report on the 2009 application are attached as

Appendix B and C respectively, and these set out the planning issues and policies that apply in this case.

- 10 Members should note that the proposed enforcement notice does not relate to the basement area permitted under the house. Additionally, Enforcement Action is not sought for the removal of the additional basement garage area, but it is required to be infilled and not used. Matters raised in relation to the potential impact of this box structure being demolished in whole or in part have therefore been addressed.

Considerations

- 11 No change is proposed to the Enforcement Notice, other than in its relation to the action sought regarding the brick boundary wall. Members previously agreed Enforcement Action regarding the basement garage and associated works, which is covered in the attached reports, and therefore, this report will focus on the issue of the wall.

- 12 In this respect, I note the wall exceeds the height allowed under permitted development (2m) by 0.5m over its entire length of some 47m, 33m of which extends beyond the rear of the new house well into the garden.

- 13 In dismissing the appeal against the planning application for the retention of these works, the Inspector specifically considered the impact of the wall. At paragraph 15, the Inspector made the following comments:

“The boundary wall is, itself a tall and upstanding structure, which is visually impermeable from either side along its not inconsiderable length. Although erected as a garden boundary, domestic gardens are an integral part of the Green Belt and not excluded from the relevant policy provisions. From what I could see of the remaining sections of the original garden boundary hedge, the now existing wall is both significantly higher and more dense than what existed before. In my estimation, there can be no question that the presence of the wall fails to maintain the openness of the Green Belt and, again returning top the first main issue, must also therefore be regarded as inappropriate Green Belt development.”

- 14 The Inspector commented further on the visual impact of the wall at paragraph 19 of his decision as follows:

“To the extent that it has already been faced, the boundary wall is clad in bricks that match the exterior of the house itself and, by way of ornamentation, it also includes a raised diaper patten. Whatever the merits of both bricks and design, the Council says that it has produced supplementary planning guidance in the form of a Village Design Statement for Westerham and Crockham Hill, which advocates the greater use of hedges as boundaries between properties in future developments. It seems to me that a wall of the height and length now existing does not

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represent permitted development and (whether or not finished as proposed, and supplemented with garden shrubbery), detracts from the informal visual relationship that currently prevails between private gardens and natural woodlands hereabouts. It also reinforces rather than reduces the urbanising impact of the development subject of this appeal as a whole. This bears particularly harmfully on the AONB, the natural landscape quality of which would not be conserved by its retention or completion.”

- 15 It is clear that the wall as built is a form of development, which fails to maintain openness and fails to safeguard the countryside from encroachment. Notwithstanding the fact that the wall could be erected at a height of 2m without express planning permission, the fact that the wall significantly exceeds 2m in height over its entire length, exacerbates the visual impact by adding to the physical presence of this structure and renders it more imposing than it would otherwise be, adding to the suburban appearance of the site. I therefore, consider the retention of the wall at its current height of 2.5m to be unacceptable.
- 16 Accepting that the owner would be entitled, and indeed is perhaps likely, to retain a 2m high brick wall along the western boundary, it is my view that rather than help to reduce the visual impact of the basement garage and retaining walls, the solid, rather imposing and suburban appearance of the wall would in fact compound the impact, resulting in significant visual harm detrimental to the character of the locality.
- 17 Furthermore, with specific regard to the basement, I would note that even if the visual harm were to be rectified through removal of the retaining walls to the garage and infilling of the entrance and actual groundwork, without cessation of the use of the garage the harm in principle to the Green Belt would remain. This would result in a disproportionate addition to the dwelling, contrary to National and Local Planning Policy and its retention of use would be at odds with the District Council’s application of Green Belt policy.
- 18 Members should also be aware that further comments were submitted by the owner immediately prior to the presentation to Committee on 10th March 2011. In summary, these alleged a number of factual errors in the Council’s understanding of the structure as constructed, which the owner considered to be pivotal to his case.
- 19 These are summarised as follows;
 - A The house and garage do not have separate foundations but are one single slab and are contiguous with the house.
 - B The retaining walls of the house do not resist the lateral forces of the subsoil and ground water – the walls are contiguous and interlinked for strength. The walls between the house and garage have no reinforcing and are not capable of taking lateral loads as the enforcement demands.

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- C The site has immense hydrological problems and avoidance of the risk of floatation of the structure is the main driving design factor.
- D The extended slab and box section is a technical solution derived in compliance with best practice.
- 20 The owner states that there are numerous other technical matters of fact, which can be proved as matters of calculation and accordance with best professional engineering practice.
- 21 The Council's Building Inspector has examined the points raised and has responded as follows:
- "I would respond by stating that no new information or technical justification has been provided to demonstrate that the construction of a below ground concrete structure was the only engineering solution, available to the applicant, to deal with the on site ground conditions.
- The owner has previously (16th June 2009) argued that the infilling of the garage structure would adversely affect the overall structural integrity of the building. It has been commented that the external garage basement walls, together with the internal separating block wall, have not been designed to resist lateral forces which would result from the infilling of the garage structure and could cause differential movement and settlement.
- It is important to note that it is for the owner to provide details of the proposed method of infilling, together with structural justification, for the approval of Building Control. Although the owner and his advisors are responsible for proposing an acceptable solution it is feasible that lightweight preassembled units could be used to infill the garage, transferring no lateral loading, at all, to the walls, only the vertical self weight of the units to the floor slab."
- 22 I would also note, that the engineering background was a matter raised at the planning appeal stage. However, the Planning Inspector reached the conclusion that they did not warrant the very special circumstances required to outweigh the harm to the Green Belt and other harm identified. The matter of very special circumstances does not fall to be considered at this stage. It is now necessary to consider what remedial measures are necessary to rectify the breaches of planning permission which have taken place.
- 23 With regard to deferral, the owner has been given ample opportunity to discuss the potential terms of the Enforcement Notice, but has not responded specifically on this matter to date.
- 24 In any event, the Enforcement Notice does not require the removal of the main element of the basement garage structure. The principal walls, floor and roof are not required to be removed.

Update

- 25 Further correspondence was exchanged since the 10th March 2011 Committee meeting and, as some was copied to the (then) Development Control Committee, selected copies are shown at Appendix D, together with related reports in Appendix E for convenience. These do not alter the recommendation.

Human Rights Act:

- 26 Article 8 of the Human Rights Act provides for everyone to have the right to respect for their family life, home and correspondence. This is subject to the proviso that there shall be no interference by public authority with the exercise of this right, except when pursuing a legitimate aim in law as is necessary in a democratic society, in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others. Article 8 applies even if the erection of the creation of the basement garage/store, associated access works and brick boundary wall are unauthorised. However, in my opinion any rights of the owners of the site to erect the garage and wall is outweighed by the public interest. I am satisfied that the serving of an enforcement notice is expedient in this case. The site lies within the Metropolitan Green Belt and an Area of Outstanding Natural Beauty. The primary objectives in this area are to protect the character, amenity and openness of the Green Belt and the countryside in general.

Conclusion

- 27 In light of the recent planning history, including the recent appeal decision, I am of the view that the basement garage/store, the associated access ramp and retaining walls and brick boundary wall represent inappropriate development harmful to the maintenance of the Green Belt and to its openness. Furthermore, these works adversely affect the visual amenities of the Green Belt and this part of the Area of Outstanding Natural Beauty.
- 28 I therefore recommend enforcement action as set out above.

Background Papers

APPENDIX A – Previous Enforcement report 10th March 2011, including Late Observations.

APPENDIX B – Previous Appeal Decision.

APPENDIX C - Previous report to Committee on planning application (subject to latter appeal).

APPENDIX D – Copy of all correspondence sent to Members post March Committee and SDC response.

APPENDIX E – Copies of previous correspondence, structural reports and Building Control comments.

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