ADUR
DISTRICT COUNCIL

Planning Committee
26 April 2010
Agenda Item

Ward: St Nicolas

Key Decision: ~~Yes~~ / No

Report by the Executive Head of Planning, Regeneration and Wellbeing

Enforcement of Planning Control: Metal flue on side roof slope of new extension not in accordance with planning permission

1.0 Report Summary

1.1 To report an alleged breach of planning control consisting of a chimney flue not constructed in accordance with the approved plans and to consider the expediency of enforcement action. Although there is some visual detriment to the environment, it is considered that enforcement action is not expedient because of the 'permitted development' rights to install such flues. It concerns the property at 85 Buckingham Road, Shoreham-by-Sea.

2.0 Background to Enforcement Considerations

2.1 The Committee, when considering whether or not to take enforcement action, should consider the following matters:-
(a) Has there been a breach of planning control?
(b) Is it expedient to issue an enforcement notice?

2.2 PPG18 'Enforcing Planning Control' gives the following guidance:-

"5. Nothing in this Note should be taken as condoning a wilful breach of planning law. LPAs have a general discretion to take enforcement action, when they regard it as expedient. They should be guided by the following considerations:-

(ii) Parliament has given LPAs the primary responsibility for taking whatever action bmay be necessary, in the public interest, in their administrative area (a private citizen cannot initiate planning enforcement action);

(iii) the Commissioner for Local Administration (the Local Ombudsman) has held, in a number of investigated cases, that there is "maladministration" if the authority failed to take effective enforcement action which was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice;

(iii) in considering any enforcement action, 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;

(iv) enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site);

(iv) where the LPA's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop. (LPAs should bear in mind the statutory time limits for taking enforcement action)".

85 Buckingham Road, Shoreham-by-Sea: Metal flue on side roof slope of new extension not in accordance with planning permission ADC/0303/09 as amended by ADC/0433/09

3.0 ***Description of the site and alleged breach***

3.1 The property is situated on the west side of the north end of the road, close to its junction with Upper Shoreham Road. It consists of a former chalet-type dwelling erected as infill development in 1984. On 28 September 2009 permission was granted for its substantial enlargement into a four-bedroom house, with raising of the entire roof including both eaves and ridge and a groundfloor rear extension (ADC/0303/09). The plans showed the existing projecting brick-built chimney stack on the north side (5.7m high above ground level) raised in height to 8.5m, with most of it except the lower part rebuilt to a narrower profile (0.7m instead of 0.9m). A subsequent application for a revision to the roof design, showing the brick-built chimney stack at 7.5m height, was approved on 11 December 2009 (ADC/0433/09).

3.2 On 22 December 2009, the neighbours immediately to the north sent a letter complaining that the existing brick-built chimney stack had been removed and that a shiny metal flue which which was ugly and totally out of character had been installed projecting through the roof.

3.3 Contact was made with the applicant who then sent a letter and plan requesting that the flue be treated as an amendment to the permission. He stated that the existing chimney stack had been found to be structurally defective and consequently they could not build onto it. Instead their agent had suggested an internal metal flue that projected through the side roof slope. The complainants were notified and replied stating that they wished it to be put on record that the ugly flue should be moved to the east of their south-facing part stained glass bedroom window so as not to be viewed directly in front of it.

3.4 The applicant then moved the flue slightly to the east as requested by the neighbour but increased its height by 0.3m to approximately 1.6m. This resulted in a further complaint from the neighbours stating that, if this “hideous large metal flue” had been shown on the original plans, they would never have agreed to it and would not have expected it to have been permitted. They request that action be taken to require it to be removed as the approved plans show a brick-built chimney that is in keeping with the houses. They do not consider that the ‘permitted development rights’ related to such flues should be taken into account on the basis that there is a breach of planning control unless the development is first built as shown on the approved plans.

4.0 Whether there is a Breach of Planning Control

4.1 As stated above, the plans that were granted planning permission in September and December 2009 under applications ADC/0303/09 and ADC/0433/09 show the existing projecting brick chimney stack altered and extended in height. The erection of a metal flue projecting through the roof is not in accordance with these approved plans and is thus unauthorised.

4.2 The erection of the flue is considered to be ‘development’ under section 55 of the Town and Country Planning Act 1990 which defines ‘development’ as including building, engineering or other operations in, on, over or under land. It is not considered to be a ‘de minimis’ operation as it has materially changed the external appearance of the building.

4.3 It has to be borne in mind, however, that upon completion of the permitted enlargement of the dwelling, the flue could subsequently be re-installed without requiring specific permission owing to the provisions of Class G of Part 1 of Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995 (as amended in 2008). Class G states that, outside a Conservation Area or AONB/National Park, a chimney, flue, soil or vent pipe on a dwellinghouse can be installed, altered or replaced without applying

for planning permission provided its height does not exceed the highest part of the roof (ie. the main ridge) by 1 metre or more. The removal of the existing brick-built chimney stack would also fall within 'permitted development' under Class G.

5.0 Planning Assessment

Policies

5.1 Policy AH7 of the Local Plan, relating specifically to householder extensions and alterations, states that they should be designed so as to be sympathetic to the original dwelling and area in general.

5.2 Government policy is set out in Planning Policy Statement PPS1 'Delivering Sustainable Development'. Relevant paragraphs are 17, which refers to the commitment to protecting and improving the environment; 18 which states that planning should seek to maintain and improve the local environment and help to mitigate the effects of declining environmental quality.

Visual amenity

5.3 The flue, although towards the rear of the new hipped side slope of the roof of this enlarged dwelling, is visible from the road through the gap between the houses. It is dark grey in colour and, although not particularly prominent, it does have a detrimental visual effect as it is not in keeping with the character and appearance of the houses in the locality.

Conclusions

5.4 The taking of enforcement action in a case such as this poses difficulties because of the 'permitted development' rights referred to under paragraph 4.3 above. These rights indicate that Government has intended that such works should not normally be subject to planning control outside Conservation Areas, etc.

5.5 Although it appears legally possible to take enforcement action concerning unauthorised development not in accordance with the approved plans, the results of such enforcement action in this instance are likely to lead to the owner of the property temporarily removing the flue, completing the extensions and roof and then re-installing the flue claiming it as 'permitted development'. There is a legal point of argument as to whether the extensions can be fully completed without first building the brick chimney stack to accord with the approved plans. However, whether or not they would apply in the above scenario, the existence of the 'permitted development rights' for installing flues is clearly a material consideration and it seems likely that it would be taken into account by a planning inspector in deciding any appeal against an enforcement notice. In this circumstance, it is not considered that it is expedient to take enforcement action.

6.0 Recommendation

That an enforcement notice is not issued.

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Local Government Act 1972
Background papers:

Planning Policy Guidance PPG18 'Enforcing Planning Control' (DoE 1991)
'Enforcing Planning Control: Good Practice Guide for Local Planning Authorities' (DETR 1997

Applications ADC/0303/09 and ADC/0433/09 and related correspondence including letters and emails of complaint.

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Schedule of other matters

1.0 Council Priority

- To promote a clean, green environment

2.0 Specific Action Plans

2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

3.1 Matter considered and no issues identified.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 None in this context.

6.0 Human Rights Issues

6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those affected by proposed developments and the relevant considerations which may justify interference with human rights have been considered in the planning assessment.

7.0 Reputation

7.1 Decisions are required to be made in accordance with the Town & Country Planning Act 1990 and associated legislation and subordinate legislation taking into account Government policy and guidance (and see 6.1 above and 14.1 below).

8.0 Consultations

8.1 As referred to in the above report.

9.0 Risk Assessment

9.1 As referred to in the above report.

10.0 Health & Safety Issues

10.1 As referred to in the above report.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

12.1 Matter considered and no issues identified.

13.0 Legal

13.1 Powers and duties contained in the Town and Country Planning Act 1990 (as amended) and associated legislation and statutory instruments.

14.0 Financial implications

14.1 Decisions made which cannot be substantiated or which are otherwise unreasonable having regard to valid planning considerations can result in an award of costs against the Council if the land owner is aggrieved and lodges an appeal. Decisions made which fail to take into account relevant planning considerations or which are partly based on irrelevant considerations can be subject to judicial review in the High Court with resultant costs implications.