



SHEFFIELD CITY COUNCIL Planning & Highways Committee Report

Report of: Director of Development Services

Date: 9th December 2014

Subject: Enforcement Report

Author of Report: Brendan Gillespie

Summary:

Unauthorised car port and balcony erected to the rear of 523 Loxley Road

Reasons for Recommendations

The structure is considered to be unacceptable in terms of its scale and built form and is therefore considered to be contrary to Supplementary Planning Guidance and the provisions of Unitary Development Plan Policy H14.

Recommendations

That authority be given to the Director of Regeneration and Development Services or Head of Planning to take all necessary steps, including enforcement action and the institution of legal proceedings, if necessary, to secure the removal of the balcony to the rear of the property.

The Head of Planning is delegated to vary the action authorised in order to achieve the objectives hereby confirmed, including taking action to resolve any associated breaches of planning control.

Background Papers:

Category of Report: OPEN

ENFORCEMENT REPORT

523 LOXLEY ROAD, SHEFFIELD S6 6RR: UNAUTHORISED DEVELOPMENT – BALCONY ERECTED TO REAR OF DWELLINGHOUSE

1. PURPOSE OF REPORT

- 1.1 To inform Members of the situation at the above address and make recommendations on the appropriate form of action.

2. BACKGROUND

- 2.1 A complaint was received stating that the land owner had erected a balcony to the rear of his property without first obtaining planning permission from the Council.
- 2.2 An Enforcement Officer visited the site and inspected the structure.
- 2.3 The officer's observations confirmed that the raised decking/car port structure did not enjoy permitted development rights, and on speaking to the owners, they advised that it was their intention to eventually fit a rail or screen around the perimeter to create a sitting balcony.
- 2.4 After being advised planning permission would be required for the structure as it stood, even without the screening to be fitted, the owners submitted a planning application on 9th July 2013.
- 2.5 The planning application (Reference 13/00974/Ful) for the retention of the balcony (retrospective application) was refused on 27th December 2013. The Planning Officer's main concern being the proposed extension would result in unacceptable overlooking and overbearing to adjoining residential properties, leading to unacceptable effect on the living conditions of occupiers of the adjoining properties.
- 2.6 Following this decision the owners submitted an appeal to the Planning Inspectorate who on 1st April 2014 dismissed the appeal. The Inspector, in his decision re-iterated the issues already raised, pertaining to the living conditions of the neighbouring properties, particularly with regards to their loss of privacy and the visual impact of the structure, and felt that these concerns could not be overcome, even by the imposition of conditions, and so dismissed the appeal.
- 2.7 On receipt of the Inspectorate's decision the Council wrote to the owners asking them to remove the remaining unauthorised structure.

- 2.8 The owners contacted the Council advising that they had removed their previous balcony because it was in a poor condition and believed they could construct their new car port without the need for planning permission, but it was again explained to them that the structure they had built was beyond the property's permitted development limitations. It had been built within 2 metres of the property's boundary and the construction included a balcony or raised platform. The owner was adamant that the structure was Permitted Development and had advised they could not afford to remove the structure. She also had major concerns that the stress and worry of this situation would affect her husband's health and asked if there was any way we might reconsider our decision. She was advised to write to the Team Manager to explain her position and assured that any further action would be held in abeyance until her argument had been given due and considered reason.
- 2.9 A letter was duly received on the 20th April outlining the occupant's reasoning for keeping the structure and why they think it an acceptable development. A compromise was offered allaying to the erecting of a screen on the car port to try and protect the privacy of the neighbouring properties. Having considered the letter and its contents, Officers could still not see any planning grounds to change its decision and as such requires the removal of the unauthorised structure.

3 ASSESSMENT

- 3.1 The site is located within a Housing Area in the Adopted UDP. Policy H14 of the UDP requires that any development in such a location should not deprive residents of privacy and should be in scale and character with neighbouring buildings and the area.
- 3.2 The development consists of a balcony, raised platform over a recently constructed car port, measuring 3.6m deep by 4.6 metres wide, at a height of approx 3m, within 2 metres of the property's rear boundary.
- 3.3 Planning permission will be required to construct a car port if the enlarged part of the house a) would be located within 2 metres of the property boundary, b) the height of the eaves of the enlarged part exceeds 3 metres, c) the extension includes the construction of a veranda, balcony or raised platform and d) the car port extends beyond the rear wall of the original house by more than 3 metres.
- 3.4 The Car port, incorporating the raised platform, is considered to be unacceptable in terms of its scale and built form, and the platform when used as a balcony provides a significant amount of overlooking, which is therefore considered to be contrary to Supplementary Planning Guidance and the provisions of Unitary Development Plan Policy H14.

4 REPRESENTATIONS

- 4.1 A complaint has been received from a neighbouring property and also Bradfield Parish Council lodged their concerns about the development.

5 ASSESSMENT OF ENFORCEMENT OPTIONS

- 5.1 The power to issue an Enforcement Notice (under Section 172 of the Town and Country Planning Act 1990) is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach of control *and* it is expedient to issue a Notice, having regard to the provisions of the development plan and any other material considerations. In this case such a notice would require the removal of the unauthorised car port from the land.
- 5.2 Enforcement action in respect of all breaches of planning control is subject to time limits – 4 years for operational development and 10 years for change of use. In this case the unauthorised development took place within the prescribed time limits for taking enforcement action.
- 5.3 An Enforcement Notice must be served on the owner(s) and occupier(s) of the land, together with anyone else who is known to have an interest in the land. It takes effect no less than 28 days after the date of service and carries the right of appeal. Any appeal would hold the Notice in abeyance. If there is no appeal, or an appeal is dismissed, failure to comply with the requirements of the Notice would render the owner of the land liable to prosecution. It is an offence for a person who has control of or an interest in the land (other than the owner) to carry on any activity, which is required by the notice to cease.

6 FINANCIAL AND EQUAL OPPORTUNITY IMPLICATIONS

- 6.1 There are no additional financial implications expected as a result of this report. If an appeal is made against the enforcement notice, costs can be made against the Council if it is shown that they have behaved “unreasonably” in the appeal process, it is unlikely that this will happen in this case. However, in the unlikely event compensation is paid, it would be met from the planning revenue budget. There are no equal opportunity implications arising from the recommendations in this report

7 RECOMMENDATIONS

- 7.1 That the Director of Development Services or Head of Planning be authorised to take any appropriate action including, if necessary enforcement action and the institution of legal proceedings to secure the removal of the development.

- 7.2 The Head of Planning be delegated to vary the action authorised in order to achieve the objectives hereby confirmed, including taking action to resolve any associated breaches of planning control.

Maria Duffy
Head of Planning

20 November 2014

THE DEVELOPMENT AT 523 LOXLEY ROAD





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