



---

**Development Control Committee – 12<sup>th</sup> March 2012**

**Report of the Director of the Urban Environment**

**44, Gospel End Road, Sedgley**

**Purpose of Report**

- 1 To inform the Committee of an enforcement investigation regarding development at 44, Gospel End Road, Sedgley.
- 2 To seek approval from the Committee to not pursue formal enforcement action.

**Background**

- 3 The site is a bungalow, set within a large plot and part of a linear development of exclusively residential properties. It is set back within a large plot, back from the established building line.
- 4 In May 2010 a planning application was submitted for extensions to 44, Gospel End Road, Sedgley (reference P10/0462). These plans showed development at the front, side and rear of the property, however, they also indicated that part of the development would be undertaken in accordance with Permitted Development rights as defined by the Town and Country Planning (General Permitted Development) Order 2008 (as amended).
- 5 To avoid confusion and on the advice of the case officer, the applicant amended the plans to omit the part of the development which could be constructed under Permitted Development rights. The proposals for extensions to the front and side of the property were approved by the Development Control Committee on 2<sup>nd</sup> August 2010.
- 6 On 12<sup>th</sup> August 2010 a Lawful Development Certificate application was submitted for the omitted elements (reference P10/1152). That application was assessed against the Permitted Development allowances in the General Permitted Development Order 1995 (as amended), and was determined to be lawful on 6<sup>th</sup> October 2010. Included on the decision document was a note for information to the applicant which read:

*"This certificate confirms that, at the time of their consideration, the extensions do not require the express grant of planning permission. However, if constructed contemporaneously with the extensions and alterations granted planning*

*permission under application No. P10/0462, or any other extensions/alterations as one building operation, planning permission may be required.”*

7 A complaint has been received regarding the impact of the development on the amenities of the occupiers of the neighbouring property to the east. The main concerns of the complainant have been expressed as;

- that the development is unlawful;
- that there are an excessive number of side facing velux windows;
- that those velux windows are not obscurely glazed or permanently fixed shut;
- that the rear facing window in the hipped roof should be removed;
- that conditions should be imposed on the development.

### Assessment

8 Despite the above informative, both of the above developments were subsequently constructed as a single entity. Where extensions are built concurrently *Sage v Secretary of State for the Environment [2003]* establishes that planning consent is required even though there are separate planning consents in place.

9 This represents a technical breach of planning.

10 Planning Policy Guidance: Enforcing Planning Control (PPG18) explains that when considering enforcement action ‘the decisive issue for the Local Planning Authority 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....’.

11 PPG18 also states:

*“...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).”*

12 An assessment must be made as to the acceptability of the development, the level of harm arising and whether or not it would be likely to be approved if a formal planning application had been submitted.

13 The resulting completed development is largely the same as the two approved applications. Planning application P10/1152 was deemed to be Permitted Development; such development is limited so as to protect the amenity of adjacent residents. Planning application P10/0462 was assessed against adopted policies and determined to be acceptable and not result in any demonstrable harm. Therefore, the only logical conclusion is that this development also cannot result in any demonstrable harm.

14 However, there are variations to the approved plans, which include;

- One single larger rear velux window (rather than two velux windows covering the same approximate area);
- An additional side facing obscure glazed velux window (four windows in situ rather than the three indicated on the previously approved plans);
- Fenestration differences of a design which varies from previously approved plans has been inserted in the front elevation as built;
- Glazing to the front dormer window is not obscure as required by condition;
- A single storey side extension to the rear of the garage.

- 15 The single storey extension was not shown on either planning application. With the exception of this side extension, the scale and mass of the overall development is in accordance with that previously approved. The additional side extension is not considered to have an adverse impact upon the outlook, privacy or amenities of the occupiers of the adjacent property which is set at a higher level.
- 16 Revisions to the first floor rear velux window are not considered to have any adverse impact on the amenities of the occupiers of the neighbouring dwellings, facing directly to the rear garden of the host property.
- 17 The insertion of additional side facing velux windows, predominantly to the main roof scape of the original dwelling, would normally constitute Permitted Development, being obscure glazed and set a minimum of 1.7m above the first floor level.
- 18 Whilst there is a variation from the approved fenestration to the front elevation, no harm is considered to arise to the character or visual amenities of the locality.
- 19 Without a formal planning application to determine, the Local Planning Authority would be unable to impose conditions on the development and therefore should conditions be deemed necessary, such requirements could only be achieved through the pursuit of formal enforcement action.
- 20 Whilst it is acknowledged that a condition was previously attached to require the front dormer window glazing to be obscured. The window has been obscure glazed as required, however it is accepted that as the condition is no longer valid, ongoing compliance cannot be guaranteed. In the event that the obscure glazing is removed from the window, it is not considered that there would be a significantly adverse impact from overlooking, to warrant formal enforcement action and would not be proportionate.
- 21 As mentioned in paragraph 11 of this report, PPG18 advises that any action must be proportionate to the breach (*"enforcement action should always be commensurate with the breach"*). PPG18 also states:

*"While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought."*

## Conclusions

- 22 Further, circular 10/97 advises that the use of enforcement powers is discretionary and 'should only be used where the LPA [Local Planning Authority] are satisfied that there has been a breach of planning control and it is expedient to issue a notice, having regard for the provisions of the development plan and any other materials considerations'.
- 23 Whether or not something is "expedient" is determined by the harm arising from development and whether or not it is "in the public interest" to pursue a matter. Even where it is determined it is not expedient to pursue, it does not endorse the actions of the person responsible or the act itself.
- 24 The Council is of the opinion that even though there are two existing permissions for the builds, technically the overall development now requires consent. However, this is a technical breach only as having assessed the development it is considered that no harm has been caused and therefore taking formal enforcement action would not be reasonable or appropriate (and so failing to meet the tests set out in circular 10/97 and guidance in PPG18). For these reasons formal action is not considered appropriate or justified.

## Finance

- 25 There are no direct financial consequences for the Council arising from this matter, however the Committee should be aware that the complainant could potentially make a complaint to the Ombudsman, which may result in costs being awarded against the Council if it is found that maladministration has occurred, resulting in harm to the neighbouring occupiers.
- 26 In addition members should be aware that if enforcement action were to be pursued, the recipients of any notice would have the right of appeal and may claim costs against the Council should action be deemed to be unreasonable.

## Law

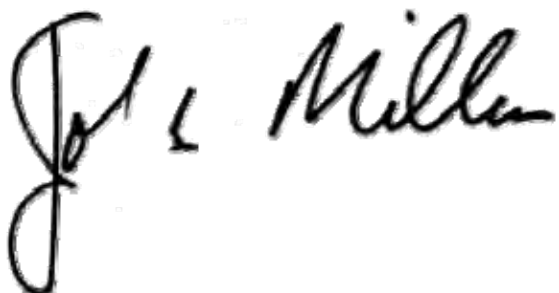
- 27 The planning process is governed under the Town and Country Planning Act 1990 (as amended) and Circular 10/97.

## Equality Impact

- 28 The proposal contained within this report takes into account the Council's equal opportunities policies and assist with the Council Plan's objective of achieving a fairer society.

## **Recommendation**

- 29            That the Committee resolves NOT to pursue formal enforcement action due to the lack of demonstrable harm for the reasons set out in the report.

A handwritten signature in black ink, appearing to read 'John Millar'. The signature is written in a cursive style with a large initial 'J'.

.....  
**John Millar**  
**Director of the Urban Environment**

Contact Officer:     Carl Mellor  
                         Telephone: 01384 814157  
                         Email: [carl.mellor@dudley.gov.uk](mailto:carl.mellor@dudley.gov.uk)