

**REPORT OF: PLANNING, BUILDING CONTROL & LICENSING  
SERVICES MANAGER**

**TO: NELSON COMMITTEE**

**DATE: 4<sup>TH</sup> JANUARY 2016**

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#### **PURPOSE OF REPORT**

For Committee to consider whether it is expedient to take enforcement action in respect of the materials used on the roof of the extension

#### **RECOMMENDATION**

That a breach of condition notice is issued in respect of the breach of the condition to require the approved materials to be used on the extension.

#### **REASONS FOR RECOMMENDATION**

The materials that are in place harm the appearance of the conservation area contrary to the policies in the development plan, the National Planning Policy Framework and contrary to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

#### **BACKGROUND**

1. A planning application was considered at the meeting of this Committee in December 2015 to vary the condition on planning application 13/13/0246P. Planning permission had been granted for the erection of a rear extension. The submitted plans showed that natural slate would be used for the roof and this was also required under the conditions on the decision notice.

2. The extension was subsequently built. The materials used on the roof were tiles and not the slate that had been applied for. The planning application (13/15/0415P) considered at this Committee in December sought to vary the condition to allow the tiles that had been used to remain on the roof.
3. Prior to taking the decision on the application Committee were advised that approving the application would result in a referral to the Development Management Committee.
4. The application was refused based on the development not being acceptable in a conservation area as the development would be harmful to the conservation area and would be against policy.
5. A decision was subsequently taken by Committee that, notwithstanding the refusal and the harm the development would have, that enforcement action should not be taken against it.
6. Before the vote was taken at the December meeting, Committee were advised that a decision to approve the application would be a significant departure from the Council's policy. Following the meeting, the Democratic and Legal Manager confirmed that the decision to refuse permission followed immediately by a decision not to take enforcement action was in his view no different to an approval. His view was therefore that the decision was a significant departure from policy and should be referred to Development Management.
7. Concerns were raised about this by the Chairman, specifically that the decision was not pre-empted by Committee being warned that the decision not to enforce would result in the matter being referred to Development Management.
8. In the circumstances a further report to Committee to consider the matter is appropriate as it raises issues of fundamental importance for decision making and its relationship to enforcement.

### **Issues**

9. The site lies in a conservation area which is a designated heritage asset for the purposes of national planning policy. There is a statutory duty under Section 72 of the Listed Buildings Act to have regard to preserving and enhancing conservation areas.
10. Extant planning policy in the Replacement Pendle Local Plan under Policy 10 states that conservation areas will be preserved and that high standards of design that preserves and enhances the appearance of the area would be required.
11. Policy ENV 1 of the adopted Core Strategy states that our heritage assets will be preserved and should be enhanced. Policy ENV 2 requires development to contribute to their sense of place and make a positive contribution to the historic environment and all new development will be required to meet high standards of design. Importantly the policy is very specific in requiring materials to be used that are appropriate to their setting.

### **Decision to Refuse Permission to Vary the Condition**

12. The decision to refuse permission to vary the condition to allow modern unsympathetic material to be used on the extension has been taken by Committee. Refusal of the application confirms that the development is not acceptable in the locality and is contrary to prevailing planning policy for such development.
13. The decision to refuse therefore confirms that the development departs from the planning policy relating to the development.

### **Relationship of Planning and Enforcement Decisions**

14. In this case, as in any other matter where planning decisions for a site are linked to a decision on enforcement, there is a relationship between a decision on a planning application and a subsequent decision which relates directly to that planning application. They are not divorced from each other in terms of their impacts.
15. Any decision not to take enforcement action on a development that has occurred and which has had a planning application refused on it, such as in this case, has a direct effect on the original decision. For example if a development of an extension that was contrary to design policy, and which had a severely detrimental impact on the amenity of a neighbour, were to be refused planning permission it would then be an illogical step not to then enforce against that unacceptable development.
16. In this particular case the location of the development in the conservation area has a direct impact on the departure from policy. Weight given to poor design in conservation areas would be higher than poor design outside of a conservation area based on the requirements of the Listed Buildings and Conservation Areas Act 1990 as well as the policies in the development plan which are given primacy in making any planning decision.
17. Having refused planning permission for a development that is contrary to policy there would need to be justifiable reasons not to then proceed to take enforcement action. Otherwise the effect of deciding not to take action is tantamount to granting planning permission which has already been deemed not to be acceptable by Committee deciding to refuse to grant permission to alter the roof materials.
18. It should also be noted that the change of materials has been a deliberate act as what was applied for as detailed in the applicant's own planning application was slate for the roof. The planning permission granted merely reinforced the need to use slate.

### **Council's Constitution**

19. Under the constitution of the Council Area Committees are to deal with all applications under the Planning Acts as well as enforcement under the Town & Country Planning Act 1990.

20. The constitution says that on a *planning matter* (emphasis added) that a decision can be referred by the Planning, Building Control and Licensing Manager to the Democratic and Legal Manager for a decision as to whether that matter is referred to the Development Management Committee. The grounds for referral are that a decision would either be a significant departure from policy or there would be a significant risk of costs.

### **Conclusions**

21. As outlined above the decision not to taken enforcement action at the last meeting is directly linked to the decision to refuse the planning application and the net effect was that of a grant of planning permission. Committee were informed prior to the decision being taken that an approval would result in a referral under the constitution of the Council.

22. Committee are invited to look again at the situation as to whether enforcement action should or should not be taken. For the avoidance of doubt a decision not to take enforcement action would lead to a significant departure from policy and would need to be referred to the Democratic and Legal Services Manager to confirm whether he agrees with that view.

### **IMPLICATIONS**

**Policy:** Not taking enforcement action would undermine policies ENV 1 and ENV 2 of the Core Strategy

**Financial:** None

**Legal:** None arising directly from the report.

**Risk Management:** None arising directly from the report.

**Health and Safety:** None arising directly from the report.

**Sustainability:** None arising directly from the report.

**Community Safety:** None arising directly from the report.

**Equality and Diversity:** None arising directly from the report.