

Bath & North East Somerset Council		
MEETING:	Development Control Committee	AGENDA ITEM NUMBER
MEETING DATE:	23 November 2011	
REPORT OF	David Trigwell, Divisional Director of Planning and Transport Development	
REPORT ORIGINATOR:	Lisa Bartlett, Development Control Manager, Planning and Transport Development (Telephone: 01225 477281)	
DATE PREPARED: 9 November 2011		
TITLE:	Enforcement Report: The Old Orchard, 1 The Shrubby, Lansdown, Bath BA1 2RU	
WARD:	Lansdown	
BACKGROUND PAPERS: Planning Application 09/00367/FUL, Condition application 10/00919/COND and Enforcement file 11/00271/NONCOM		
AN OPEN PUBLIC ITEM		

1.0 PURPOSE OF REPORT

To seek Members view on the harm caused to the City of Bath Conservation Area, the World Heritage Site and the visual amenities of the area by unauthorised development relating to the erection of a new dwelling and the formation of a parking area.

2.0 LOCATION OF PLANNING CONTRAVENTIONS

The Old Orchard, 1 The Shrubby, Lansdown, Bath, BA1 2RY ("the Property"), as outlined in bold on the attached site location plan (Appendix 1).

3.0 OUTLINE OF PLANNING CONTRAVENTIONS

- a) The materials used to clad the boundary wall to the garden and parking areas, and parts of the new dwelling, do not match the approved sample.
- b) The boundary to the property has not been constructed in accordance with the details approved under planning permission 09/00367/FUL;
- c) The boundary to the parking area has not been constructed in accordance with approved plan S2B, in breach of Condition 10 of planning permission 09/00367/FUL;

- d) The surface of the parking area has not been constructed in accordance with approved plan S2B, in breach of Condition 10 of planning permission 09/00367/FUL; and
- e) Gates to the parking area have been erected on the western boundary, without planning permission.

4.0 RELEVANT PLANNING HISTORY

In February 2009 an application (09/00367/FUL) was received by the Local Planning Authority for a single dwelling on vacant land located between Lansdown Road and Portland Place.

The application was referred to Planning Committee (5th August 2009) with a recommendation to refuse planning permission. Members resolved however to grant conditional planning permission. Of particular relevance are Conditions 2 and 10.

Condition 2 states:

"No development shall commence on the site for a dwelling house until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved."

Reason: In the interests of the appearance of the development and the character and appearance of the Conservation Area."

Condition 10 states;

"The dwelling hereby approved shall not be occupied or brought into use until the area allocated for parking and turning on the submitted plans has been properly consolidated (not loose stone or gravel) and thereafter kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted. The parking area including the boundary wall/fence shall be constructed in accordance with drawing No. s2b dated 5th June 2009 and permanently retained as such."

Reason: In the interest of highway safety."

In March 2010 an application (10/00919/COND) was received to discharge a number of conditions, including condition 2 (materials). Within the application was a photograph marked "photograph B" which showed a stone sample panel. The planning case officer subsequently visited the site and viewed the sample board. Based on the information provided, the condition was formally discharged on 28th April 2010.

In response to a number of complaints received, the Property was visited on the 11th May 2011. The Enforcement Officer observed that the materials used to clad the new dwelling and boundary wall along The Shrubbery public footpath did not match those approved under application 10/00919/COND. The Enforcement Officer noted that the stone was of an orange colour and did not match the surrounding structures built of Bath Stone. Also during the visit the Enforcement Officer noted that the opening onto The Shrubbery footpath from the parking area was wider than that shown on approved plan S2B. It was noted that the opening was wide enough to facilitate a motor vehicle.

The owner was advised by letter on 20th May 2011 that the parking area has not been built in accordance with approved plans and that, following a consultation with the Authority's Highway Team and Public Rights of Way Team, under no circumstances must The Shrubbery footpath be used for any form of vehicular access, in the interest of public and highway safety. The owner was also advised to provide the stone sample approved by the Authority for clarification.

The Enforcement Officer received a reply from the owner dated 29th May 2011. The letter advised that the sample board had been removed deliberately from the site by persons unknown.

The owner is in dispute the Local Planning Authority about the external stone used on the dwelling and boundaries. The Enforcement Team have conducted an independent investigation and are of the view that the stone used on the dwelling and boundary is different to that which was approved by the Planning Authority. The appearance of the wall is demonstrated in photographs taken from The Shrubbery public footpath.

The owner was advised by letter on 13th June 2011 the parking area should be built in accordance with the approved scheme and again under no circumstances must The Shrubbery footpath be used for vehicular traffic. This was following advice from the Council's Highway Development Team Leader who had advised that the emergency services would not attempt to drive across the footpath due to the width of the gates and lack of ground clearance; and that it would not be safe for private vehicles. In the event of an emergency the Fire Brigade would park their appliances in St. James's Park and enter the property on foot.

On 13th June 2011, the owner submitted an application (11/02513/COND) to discharge condition 10 (parking area) of planning permission 09/00367/FUL. This application was subsequently refused on 8th August 2011 for the following reason:

"The development has not been constructed in accordance with the requirement of condition 10 of planning application 09/00367/FUL and the condition can therefore not be discharged."

A letter was received from the owner on 1st July 2011 stating that the stone used on the development is the same stone that was approved by the Planning Authority through application 10/00919/COND. The letter further states that the parking area has been built in accordance with the approved plan which was not intended to be

scaled. The letter also confirms that the owner would not use The Shrubbery public footpath for vehicular access.

The owner was advised by letter (Appendix 2) on 14th July 2011 by the Development Manager that, following a site visit, it was noted that it would not be safe to drive a vehicle over The Shrubbery footpath, and that the loose material used to surface the parking area is unacceptable and contravenes the requirements of condition 10 of permission 09/00367/FUL. The letter further advised that the stone used on the development does not match the stone used on the approved sample board which can be proven through photographic evidence; and that the stone used is not acceptable in terms of the location of the site within the Conservation Area and World Heritage Site, and in close proximity to several listed buildings. The owner was also advised that Officers did not initially consider it expedient to pursue the issue of the stone used on the dwelling, but that Members may reach a different conclusion in the event of the matter being considered in the Development Control Committee. The owner was given the option of revising the development in order to mitigate the harm caused in terms of the boundary wall and parking area.

A subsequent site visit has identified the further contraventions described in 3 b) and e) above.

There have been considerable amounts of correspondence with the owner and her legal representative in an attempt to seek an acceptable resolution to this situation. However, the situation has not been resolved and the dwelling, boundary treatments and parking area remain unauthorised. Your officers are therefore seeking authority to take appropriate action.

5.0 DEVELOPMENT PLAN

Of particular relevance to this matter is the Bath and North East Somerset Local Plan, including minerals and waste policies, adopted October 2007 (the Local Plan). Policies D.2 and D.4 therein relate to design and townscape objectives. Policies BH.2 and BH.6 relate to the built and historic environment and policy T.24 relates to highway safety.

6.0 CENTRAL GOVERNMENT ADVICE

Relevant advice is contained in Planning Policy Statement 1 (PPS 1): *Delivering Sustainable Development*; PPS 3: *Housing*; PPS 5: *Historic Environment*; and Planning Policy Guidance 18: *Enforcing Planning Control*.

7.0 EXPEDIENCY OF ENFORCEMENT ACTION

The development is located within the City of Bath Conservation Area and the designated World Heritage Site. The site is visible from a number of Grade I and Grade II listed buildings, and from the public domain.

Whilst the new dwelling has been clad (in part) using inappropriate stone, your officers do not consider it expedient to seek to the removal of the stone from the dwelling for the reasons that the dwelling is not clearly visible from the public

viewpoint; and the detailed design means that the occupiers of the neighbouring properties predominantly view the roof or glazed sections of the new dwelling. This reduces the impact of the unauthorised material. However, the boundary wall, which is clad using the same unauthorised stone, is constructed next to a busy public footpath and considered detrimental to the setting of the surrounding listed buildings. It fails to either preserve or enhance the Conservation Area and is, in fact, harmful to the character and appearance of both the World Heritage Site and Conservation Area. The stone continues to cause significant harm because its overall appearance - with an orange colour and contrasting jointing - appears as an incongruous feature and is therefore contrary to policies D.2, D.4, BH.2 and BH.6 of the Local Plan.

Whilst the current owner has stated that she does not intend to drive through the gate, she has been unwilling to amend the boundary treatment as has been suggested. It remains possible for either the current owner or future owners to drive through the gates across the public footpath. This would result in a hazard to pedestrians using the path. The surface materials used within the parking area are loose in nature and present a hazard to users of the public footpath and to the highway in St. James's Park, contrary to policy T.24 of the Local Plan.

In the circumstances, enforcement action in respect of the materials used on the boundary walls; the surfacing of the parking area; and the gates to/from the parking area is therefore considered expedient.

8.0 HUMAN RIGHTS

It is considered that Article 1 of Protocol 1 (peaceful enjoyment of possessions) and Article 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights may apply in this case. However, these rights must be weighed against the rights of neighbouring occupiers who may be adversely affected by the unauthorised development; and the identified harm to the character and appearance of the Conservation Area. Taking into account the planning harm identified above, it is considered that the public interest weighs in favour of enforcement action.

9.0 RECOMMENDATIONS

That delegated authority be granted to the Development Manager, in consultation with the Planning and Environmental Law Manager, to take any necessary enforcement action on behalf of the Local Planning Authority in respect of the alleged planning contravention outlined above, by exercising the powers and duties of the Authority (as applicable) under Parts VII and VIII of the Town and Country Planning Act 1990 (including any amendments to or re-enactments of the Act or Regulations or Orders made under the Act) in respect of the above Property.

General Note

This specific delegated authority will, in addition to being the subject of subsequent report back to Members in the event of Enforcement Action either being taken, not being taken or subsequently proving unnecessary as appropriate, be subject to:
(a) all action being taken on behalf of the Council and in the Council's name;

- (b) all action being subject to statutory requirements and any aspects of the Council's strategy and programme;*
- (c) consultation with the appropriate professional or technical officer of the Council in respect of matters not within the competence of the Head of Planning Services, and*
- (d) maintenance of a proper record of action taken.*