

Bath & North East Somerset Council		
MEETING:	Development Control Committee	<div>AGENDA ITEM NUMBER</div> <div></div>
MEETING DATE:	14 December 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: 30 November 2011		
TITLE:	Enforcement Report: The Old Orchard, 1 The Shrubbery, 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 further advise Members with regard to unauthorised development relating to the erection of a new dwelling and the formation of a parking area. The matter(s) was initially considered by Members at the meeting on 23rd November 2011.

2.0 LOCATION OF PLANNING CONTRAVENTIONS

The Old Orchard, 1 The Shrubbery, 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 as shown in *photograph B*;
- 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.

At the meeting on 23rd November 2011 Members resolved to authorise enforcement action in respect of b), c) and d) above; and defer a decision to authorise enforcement action in respect of the boundary walls referred to in a) above, to enable further information relating to the materials to be obtained. Members resolved not to authorise enforcement action in respect of e) above, and the cladding of the dwelling referred to in a) above.

4.0 UPDATE FOLLOWING DEFERRAL FROM THE PREVIOUS COMMITTEE MEETING

Members resolved at the previous meeting on 23rd November 2011 to defer consideration of the boundary walls for Officers to investigate whether the material which has been used in the boundary walls is available in a lighter colour. Further information has been obtained from the suppliers of the facing material in this regard. The supplier has confirmed that the stone which was ordered by Ms Wilson to clad the boundary walls is a reconstituted stone – Stegu (manufacturer) Calabria sandstone. The Enforcement Team have investigated whether there is any similar reconstituted stone supplied by Stegu available in a lighter colour. Looking at the range of materials there does not appear to be any other material within the range which would be of a lighter colour and consistent texture and coursing arrangement to the sample panels which were submitted with the discharge of condition application or to Bath stone more generally.

The supplier has advised that they did not provide the sample boards that were presented (and photographed) in connection with the application to discharge Condition 2. They advise that whilst they supplied sample materials these would be closer in colour to the materials which have been used to clad the boundary walls. They also advise that they have not supplied sufficient quantities to make up a m² sample board as was displayed at the site.

They do however suggest that the lighter (approved) material as shown on the photos submitted with the condition discharge application have been identified to be Stegu Calabria. They advise that this material must however have come from a relatively early production of this material (perhaps 4 years old) as the normal production colour is now darker. They advise that the samples which they have provided would all have come from later production runs of the materials.

The origin of the sample panels which were submitted for approval is not therefore clear but the stone which has been used could be from the same manufacturer albeit it appears that it comes from stone quarried at a later date which is acknowledged to be significantly darker than that which was approved. When dealing with the condition discharge application in respect of the materials for the boundary walls the

Case Officer was not provided with manufacturer details and therefore only approved the colour, coursing and texture of the materials which were a closer match to Bath stone. The materials which have been used are much more orange than those approved and Officers remain of the view that these materials were not approved and that they are unacceptable.

5.0 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 is Condition 2.

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.”

In March 2010 an application (10/00919/COND) was received to discharge a number of conditions, including condition 2 (materials). The application included a photograph marked “photograph B” which showed sample stone panels. The planning case officer subsequently visited the site and viewed the sample boards. Based on the information provided, the condition was formally discharged on 28th April 2010. The submission did not give any manufacturers details of the stone sample panels which were erected on site. The supporting documentation did note that the stone slips were constructed of reconstituted Bath and Cotswold stone and that the sample panels show a close match in texture, colour and ageing properties with traditional Bath stone.

The Planning Case Officer visited the site and viewed the sample panels. The Officer commented in the delegated report that although natural Bath stone would be preferred, the sample submitted is of a similar appearance to that of Bath stone. The submitted photographs indicate this to be the case.

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.

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 with 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 Shrubby public footpath.

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 owner was advised by letter (Appendix 2) on 14th July 2011 by the Development Manager that, following a site visit, 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 given the option of revising the development in order to mitigate the harm caused in terms of the boundary wall.

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.

6.0 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.

7.0 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*.

8.0 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. The Shrubby is a well-used public footpath.

In previously resolving to authorise enforcement action in respect of the gates within the boundary walls and the surfacing of the parking area, Members noted that whilst the current owner has stated that she does not intend to drive through the gates, 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 material used within the parking area is loose in nature and presents 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 previously resolving not to authorise enforcement action in respect of the cladding of the new dwelling, Members accepted 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 facing material 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. Further investigation has confirmed that the material used does not sufficiently resemble the samples previously submitted and approved.

In the circumstances, enforcement action in respect of the materials used on the boundary walls is therefore considered expedient. Any action would be in addition to that previously authorised by Members, and referred to above.

4.0 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.*