

East Area Planning Committee

5<sup>th</sup> March 2014

**Subject:** Seek support for a decision that it is expedient to take direct action to secure the requirements of an outstanding enforcement notice. This requires the demolition of a building in the rear garden of 73 Dene Road. It follows the expiry of the compliance periods of 23<sup>rd</sup> November 2013 for the demolition of the building and 23<sup>rd</sup> December 2013 for the removal of the resultant materials from the site in response of an Enforcement Notice (reference 12/00635/ENF) issued on 30<sup>th</sup> January 2013

**Site Address:** 73 Dene Road, Oxford, Oxfordshire

**Ward:** Marston

**Agent:** N/A

**Applicant:** Mr Singh Turna

---

## Recommendation:

It is RECOMMENDED that, in the event that the requirements of the enforcement notice (12/00635/ENF) are not complied with imminently following a final warning to the owner and occupier of the property that the committee supports officers' intention to take direct action to secure the demolition of the unauthorised outbuilding at the rear of 73 Dene Road.

## Introduction and Background

1. A single storey detached outbuilding with a flat roof has been erected at the rear of 73 Dene Road. The outbuilding was constructed for and is used as a residential building. The location of the property is shown at **Appendix 1**. Following complaints made about the outbuilding the property was visited by a planning enforcement officer when it was at an early stage of construction and found to require planning permission. Letters were sent to the owner informing him that planning permission was required and the outbuilding was unauthorised. Building work continued and no planning application was submitted; the outbuilding was completed at the beginning of 2013. The owner was informed that if he did not apply for planning permission then the Council would consider issuing an enforcement notice requiring the unauthorised outbuilding's demolition.
2. In the absence of a planning application seeking the outbuilding's retention an

enforcement notice was issued on 30<sup>th</sup> January 2013. A copy of the enforcement notice can be found in **Appendix 2**.

3. An appeal was lodged against the issuing of the enforcement notice. The appeal was dismissed on 23<sup>rd</sup> August 2013; a copy of the Inspector's Decision can be found in **Appendix 3**.
4. As part of the appeal process both the Council and the Inspector were obliged to consider the interference with the human rights of the owner under Articles 1 and 8 of the Human Rights Act 1998 that would occur through the demolition of the building. Any interference with the human rights of the owner of the property must be balanced against the Council's legitimate aim of acting in the public interest, conferred under the various Articles. The objections to the retention of the outbuilding are serious ones and it is clear that the dismissal of the appeals against the requirements of the enforcement notice demonstrates that the public interest can only be safeguarded through the requirement to demolish the building. Therefore the requirement to demolish the building has been found to be expedient and proportionate to the nature of the harm arising from it. It is therefore important to acknowledge that the Council can be readily satisfied that it was right to enforce against the building and that the requirement to demolish the building is fully justified.
5. Following the dismissal of the appeal against the enforcement notice the owner applied for a Certificate of Lawful Development for a proposed outbuilding at the property. The proposed outbuilding was identical to the existing unauthorised outbuilding apart from being 150mm lower. The application for the Certificate of Lawful Development was refused on 14<sup>th</sup> November 2013 as the outbuilding was not considered incidental to the existing dwellinghouse i.e it was of such a size and scale that activities within it were unlikely to be restricted to those which would reasonably be considered as incidental.
6. An appeal has subsequently been lodged in relation to the refusal to grant the Certificate of Lawful Development. This appeal is currently pending. It is considered however that the outbuilding proposed in the Certificate of Lawful Development application is only sought on the basis to retain and modify the existing unauthorised outbuilding. This would not be considered acceptable as the outbuilding is clearly in a residential use and could not be considered incidental. Also the outbuilding has a harmful impact on the amenity of neighbouring residential properties; this would not be remedied through the reduction in height of the outbuilding. The inspector that dealt with the appeal against the enforcement notice would have had the opportunity to allow for the retention and slight lowering of the outbuilding but did not do so. On this basis it is suggested that the matter currently being considered at appeal has already effectively been dealt with by the Inspector in the previous appeal (see **Appendix 3**).
7. In addition to lodging the appeal against the refusal to grant the Certificate of Lawful Development a solicitor wrote to the Council on 22<sup>nd</sup> November 2013 requesting that we extend the period of compliance with the enforcement

notice until after the determination of the appeal. A response was sent explaining that it was the Council's view that the matter had already been dealt with in the previous appeal; the enforcement notice took precedence and the enforcement notice should be complied with within the time-frame previously advised.

8. To date the outbuilding has not been demolished and the enforcement notice has therefore not been complied with.

### **Prosecution**

9. Following the failure of the owner to comply with the enforcement notice the Council has instituted proceedings in the Magistrates Court to prosecute the owner for the offence committed (Section 179(2) of the Town and Country Planning Act 1990 (as amended)).
10. An Information and Summons for the offence has been prepared; a first hearing has taken place on 3<sup>rd</sup> March 2014. **A verbal update of the outcome of the hearing will be advised to the Committee.**

### **Direct Action**

11. Section 178(1) of the Town and Country Planning Act 1990 gives the local planning authority the power to enter the land the subject of an enforcement notice and execute the works that were required to be executed but have not been within the compliance period. It also provides that any costs that had been reasonably incurred by the Local Planning Authority in entering the land and executing the works can be recovered from the owner of the land. This option therefore allows the Council to carry out the requirements of the enforcement notice as though it were the owner and then recover any costs incurred. The effect for the owners is precisely the same as though they were to comply with the requirements of the notice voluntarily.
12. The option of direct action has the advantage of securing an immediate resolution to the matter and removing the planning harm identified as resulting from the continued presence of the building. It would remove any further possibility of more planning applications being submitted to retain the building and the need to defend any planning appeals lodged in the event that further retrospective planning applications were refused. Although costs associated with this action are likely to be at least as expensive as other options, there does appear to be a realistic prospect of these costs being recovered at some point.
13. Officers have had recent advice from other authorities in relation to planning enforcement; particularly relating to unauthorised outbuildings. Oxford City Council has considered direct action before but has never undertaken any. Despite this, the experiences of other authorities would suggest that this is an effective course of action.

#### **Financial Implications (Confidential) – See Appendix 4**

14. As explained above there would be costs associated with this action but there are legal provisions available to the Council so there is a realistic prospect of such costs being recovered from the owner.

#### **Risk Assessment (Confidential) – See Appendix 5**

#### **Legal Implications**

15. The legal implications are set out in the body of the report. The recommendation of direct action in this case is considered to be a proportionate response to the continuing breach of the enforcement notice.
16. It is considered that the reluctance of the owner to demolish the outbuilding means that direct action may be the only way of resolving the breach in planning controls. To date the Council has invested a considerable amount of time and money in this matter. To cease to act now would leave the Council open to criticism that it issues enforcement notices with no intention of securing compliance with them all. A consequence of this could be that future enforcement notices issued by the Council may not be taken seriously enough.
17. If the Council were to take no action at this point it is possible that, in the event that a complaint were made to the Ombudsman, a finding of maladministration could result as the Council would have failed to take effective enforcement action to remedy the harm caused by the building. The Ombudsman may recommend a compensatory payment to be made.
18. The Council must secure compliance with the enforcement notice through proportionate means. Prosecution is being pursued already. However, given the time that has elapsed between the end of the compliance period and now it is suggested that direct action is a legitimate and proportionate method to ensure compliance.

#### **Carbon management**

19. Materials resulting from the demolition will be separated and disposed of in an environmentally friendly way.

#### **Equalities Implications**

20. There are no equalities implications arising from this report and the issues relating to Human Rights have been addressed by the Inspector as set out in Paragraph 1.4.

## **Conclusion**

21. Notwithstanding the lengthy enforcement actions taken to date, the building remains in situ, as does the harm arising from it. Therefore officers have decided that taking 'direct action' is the most appropriate and proportionate action to resolve this matter in the event that the building is not demolished in the imminent future. A final warning will be sent to the owner informing them that the direct action will be carried out unless they demolish the building.
22. Officers do not approach this decision lightly. They are aware of the ongoing efforts by the owner to secure permission for the partial retention of the outbuilding; however this matter has already been resolved at appeal. He has also committed an offence by failing to comply with the enforcement notice already and there have been no indications that he is willing to comply with the notice. Officers consider that by taking firm and appropriate action the Council will be seen as maintaining confidence in and upholding the credibility of the planning system in Oxford.
23. Members are asked to give their support to the officers' intentions.

### **Background Papers:**

13/00635/ENF  
13/02792/CPU

**Contact Officer:** Robert Fowler  
**Extension:** 2104  
**Date:** 28th March 2013

This page is intentionally left blank