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## **BREACH OF PLANNING CONTROL AT 39 BARLING ROAD, BARLING, ESSEX**

### **SUMMARY**

- 1.1 To consider the report of the Head of Planning Services regarding a breach of planning control, namely the breach of conditions three and four of planning permission reference no.99/00449/FUL, requiring obscure glazing to be fitted to the parapet of the balcony, and also the construction of a footpath as an extension of the garden to this property within the Metropolitan Green Belt.
- 1.2 Members will need to consider whether it is expedient to serve enforcement notices, etc. and this function is discretionary. However, the mechanisms of such actions are statutorily controlled.

### **2 INTRODUCTION**

- 2.1 There are currently two separate breaches. The first breach involves the non-compliance with conditions three and four of planning application reference 99/00449/FUL. These were placed on this permission, which gave consent to use the flat roof at the rear of the property as a balcony.
- 2.2 Condition three required details of the obscure glazing to be submitted to the authority for approval, and then fitted to the east elevation of the balcony prior to its first use. Condition four required that the area enclosed by the parapet wall should not be used as a balcony until the glazed panel has been fitted.
- 2.3 The second breach taking place is occurring in the field immediately west of the property. The dwelling itself has been extended, with permission, up to the boundary of the site. However, apparently in order to provide pedestrian access to the rear of the property, a paved footpath has been constructed, adjacent to the dwelling thereby extending the garden into the adjacent field.

### **3 PLANNING HISTORY**

- 3.1 There have been previous breaches here of other conditions on earlier permissions. Permission was granted via planning application reference F/0162/98/ROC for a flat roofed extension to the property. Attached to this was a condition requiring the flat roof not to be used as a balcony. Reports were then received that the flat roof was being used as a balcony. However, it was hoped that by granting a further permission (99/00449/FUL) this matter could be resolved by including additional conditions to protect the amenity of the neighbouring property. This current breach of conditions is therefore disappointing

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and was brought to Officers attention by a nearby resident. The construction of the path/garden extension was noticed by a planning officer on a site visit.

- 3.2 The owner of the site was served a Planning Contravention Notice (PCN) asking various questions about the site. In his response the owner admitted that the path had only recently been constructed.
- 3.3 Following the return of the PCN a letter was sent to the owner of the site advising him that both the construction of the path, and the lack of obscure glazing on the balcony, represented breaches of planning control. This letter advised the owner to either remove the path or to apply in retrospect for its retention, but a recent site visit revealed that neither had been done.
- 3.4 Likewise he was asked to erect an obscure glazed panel on the balcony but it was also revealed during this visit that this had not been completed either.

#### **4 PLANNING ISSUES**

- 4.1 Following the granting of permission for the use of the flat roof as a balcony it was felt paramount, in the interests of residential amenity and privacy, to include a number of conditions on this permission. The location of the balcony area, close to the boundary of the property, means unrestricted views are available directly into the rear garden of the adjoining property.
- 4.2 Appendix 1 of the Rochford District Local Plan sets out the Council's local policy guidance on residential extensions etc. including balconies. In order to safeguard the privacy of neighbouring properties, conditions are usually imposed on the use flat roofs as balconies. It is therefore paramount, in order to protect the private use of the neighbouring curtilage, that these conditions are enforced fully.
- 4.3 The property is located within the Metropolitan Green Belt and so any development must be considered against Green Belt Policy. The construction of a footpath or any other hard surface, within the curtilage of a dwellinghouse, would not normally require express planning permission. However, in this instance the works have been constructed outside of the authorised garden area which is extended by this operation.
- 4.4 Policy GB1, as supported by Policy C1 of the Essex Structure Plan, states that permission will not be granted, except in exceptional circumstances, for purposes other than agriculture, forestry and mineral extraction, or for outdoor participatory sports. Policy GB9 goes on to give guidance restricting the extension of gardens into the Green Belt by requiring that consent will only be granted where it can clearly be

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demonstrated that a proposal will not affect the visual appearance of the Green Belt.

- 4.5 It is felt that this footpath and garden use does incrementally erode the openness of the Green Belt. Furthermore, this development leads to a gradual expansion of the built up area into the Green Belt, and as such, should be resisted on principle.
- 4.6 The recommendation therefore seeks authority to serve formal Notices requiring that the conditions attached to application reference 99/00449/FUL be enforced, via the courts if necessary. It also seeks authority to serve a formal Notice requiring that the footpath be removed and garden extension use be ceased.

## **5 RECOMMENDATION**

- 5.1 It is proposed that the Committee **RESOLVES**

That the Corporate Director (Law, Planning and Administration) be authorised to take all necessary action including the issue of Notices and action in the Courts to secure the remedying of the breach now reported. (HPS)

Shaun Scrutton

Head of Planning Service

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