



REGULATORY SERVICES COMMITTEE

REPORT

17 July 2014

Subject Heading:	Planning Contravention 1 Spinney Close Rainham Essex
Report Author and contact details:	Simon Thelwell Projects and Regulation Manager 01708 432685 simon.thelwell@havering.gov.uk
Policy context:	Local Development Framework
Financial summary:	Enforcement action and a defence of the Council's case in any appeal will have financial implications.

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input checked="" type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

This report concerns an outbuilding that lies to the rear of a residential property at No. 1 Spinney Close, Rainham. The outbuilding is being used to house a hot tub and gymnasium. The outbuilding has been constructed without the benefit of planning permission.

The outbuilding is considered to be unacceptable due to its height and bulk in the rear garden environment. It is therefore requested that authority be given to issue and serve an Enforcement Notice to seek to remedy the breach of planning control.

RECOMMENDATIONS

That the Committee consider it expedient that an Enforcement Notice be issued and served to require, within 3 months of the effective date of the notice:

- Remove the unauthorised outbuilding; or
- Reduce the height of the outbuilding to a maximum of 2.5m in compliance with Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended;
- Remove from the land all materials and equipment associated with compliance with either of the above.

In the event of non compliance, and if deemed expedient, that proceedings be instituted under the provisions of the Town and Country Planning Act 1990.

REPORT DETAIL

1. Site Description

- 1.1 1 Spinney Close, Rainham, shown outlined bold black on the attached plan (“the Property”) is a detached house in a small Close of similar style properties. The rear garden of the Property is abutted by gardens in Karen Close and Frederick Road.
- 1.2 The rear gardens of the properties in Spinney Close are fairly compact.

2. The alleged planning contravention

- 2.1 Without planning permission, the erection of a single storey outbuilding in the area hatched black on the attached plan (“the Outbuilding”). The Outbuilding is L shaped and is a maximum of 6.5 metres wide by 8.2 metres deep and 3.4 metres high to the ridge, with a floor area of 31 square metres.
- 2.2 The Outbuilding is used to house a hot tub and a fully equipped gymnasium. The breach of planning control has occurred within the last 4 years.

3. **Relevant Planning History**

- 3.1 P0468.13 – Application to retain Outbuilding – Invalid and on hold.

4. **Enforcement Background**

- 4.1 A complaint was received in February 2013 alleging that an Outbuilding had been erected in the rear garden of the Property. A Building Control application was required and applied for as the floorspace measured 31sq.m. (App: BN/9003/13/3). A site visit confirmed that the Outbuilding was over 2.5m in height (measuring 3.4m) and was within 2m of the boundary of a neighbouring property.
- 4.2 Access to the Outbuilding can be obtained via a side extension to the Property. The Outbuilding has been constructed to a high standard and it is in use as a hot tub and a gymnasium.
- 4.4 The owner of the Property submitted a retrospective planning application in May 2013 which was placed on hold as no plans were attached. Several requests were made for the owner to provide the outstanding information. The owner had agreed to submit the requested information in November 2013 but to date has failed to do so. Therefore a decision needs to be made as to whether it would be appropriate to serve an Enforcement Notice against the Outbuilding.

5. **Policy and Other Material Considerations**

- 5.1 Article 3 and Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended (the GPDO) provides that an outbuilding within the curtilage of a dwelling house would be permitted development. However, this is subject to Condition E.1. The condition prevents permitted development rights where an outbuilding: (i) is within 2 meters of the boundary of the curtilage of the dwelling house and (ii) exceeds 2.5 meters in height above the surface of the ground immediately adjacent to the outbuilding.
- 5.2 As the Outbuilding is not constructed within permitted development criteria it is considered that the development fails to comply with condition E.1 as set out in Part 1 of Schedule 2 to the GPDO.
- 5.1 Policy DC61 (Urban Design) states that planning permission will only be granted for development which maintains, enhances or improves the character and appearance of the area.
- 5.2 Paragraph 9.5 of the residential extensions SPD states that outbuildings should be subordinate in scale to the existing dwelling and to the plot. In

assessing proposals, the Council will consider factors such as the scale, height, proximity to boundaries, roof design, finishing materials and prominence in the street scene or rear garden environment. As with all extensions, outbuildings should not detract from the character of the area and should be unobtrusively located to the side and rear of the existing dwelling.

- 5.3 In this case, the Outbuilding takes up quite a significant part of the rear garden of the Property and is located close to neighbouring residential boundaries. Due to its size and height it is considered to appear as an inappropriately dominant structure that appears out of character in the rear garden environment.
- 5.4 It is considered that if a valid planning application were received for retention of the Outbuilding, refusal of planning permission would be recommended due to the harm to visual amenity, contrary to Policy DC61 of the LDF and guidance in the Residential Extensions SPD.

6. **Recommendation for Action**

- 6.1 For the reasons outlined above, the Outbuilding is considered to be unacceptable. The owner of the Property has not submitted a valid planning application and the Outbuilding remains in place.
- 6.2 Taking into account the harm that has been identified, it is recommended that enforcement notices be served requiring either the removal of the unauthorised Outbuilding or its reduction in height to a maximum of 2.5 metres in order to comply with permitted development regulations. It is considered that three months would be adequate period to secure compliance with the notice.

IMPLICATIONS AND RISKS

Financial implications and risks:

Enforcement action may have financial implications for the Council.

Legal implications and risks:

Enforcement action, defence of any appeal and, if required, prosecution procedures will have resource implications for the Legal Services.

Human Resources implications and risks:

No implications identified.

Equalities implications and risks:

Section 149 of the Equalities Act 2010 (EA) came in to force on 1st April 2011 and broadly consolidates and incorporates the 'positive equalities duties' found in Section 71 of the Race relations Act 1976 (RRA), Section 49 of the Disability Discrimination Act 1995 (DDA) and section 76(A)(1) of the Sexual Discrimination Act 1975 (SDA) so that due regard must be had by the decision maker to specified equality issues. The old duties under the RRA, DDA and SDA remain in force.

The duties under Section 149 of the EA do not require a particular outcome and what the decision making body decides to do once it has had the required regard to the duty is for the decision making body subject to the ordinary constraints of public and discrimination law including the Human Rights Act 1998.

Having consider the above duty and the Human Rights Act 1998 there are no equality or discrimination implications raised

BACKGROUND PAPERS

1. Ordnance survey extracts showing site and surroundings.