



# REGULATORY SERVICES COMMITTEE

# REPORT

3 October 2013

**Subject Heading:**

Planning Contravention  
38 Heaton Avenue

**Report Author and contact details:**

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Local Development Framework

**Policy context:**

**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**

Ensuring a clean, safe and green borough	<input type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Value and enhance the life of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input type="checkbox"/>

## SUMMARY

This report concerns the construction of an unauthorised rear dormer. Dormer windows, subject to certain criteria, can normally be constructed without planning permission. The dormer window at No. 38 Heaton Avenue fails to comply with permitted development criteria as it is not finished in materials which match the roof of the property. The development is considered to be overbearing and intrusive and have a detrimental impact on the rear garden environment. Enforcement action is recommended.

## RECOMMENDATIONS

That the committee consider it expedient that an Enforcement Notice be issued and served to require within 6 months of the effective date of the enforcement notice:

1. Carry out the remedial works required to bring the dormer to within permitted development conditions set out in the Town and Country Planning (General Permitted Development) Order 1995 Schedule 2, Part 1 Class B, and supporting Technical Guidance by finishing with materials of a similar colour and design to the materials used in the main roof of the dwellinghouse
2. Remove from the Land all waste materials and rubble resulting from compliance with 1 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 38 Heaton Avenue is a semi detached residential bungalow. The surrounding area comprises of two storey semi-detached and terraced dwellings and high rise flats.

### 2. **The Alleged Planning Contravention**

- 2.1 Without planning permission, the construction of an unauthorised dormer window.

### 3. **Relevant Planning and Enforcement History**

- 3.1 On 1 August 2012 the Authority received a complaint that a rear dormer was being constructed. Officers investigated the complaint and found that the dormer was being constructed within permitted development criteria in relation to its size and position and would not have needed planning permission provided it was going to be finished in tiles to match the roof.

3.2 Instead of being finished off in tiles to match the main roof of the bungalow, the dormer was completed and finished off in render and painted cream. As the development no longer meets the permitted development criteria, planning permission is required.

3.3 After discussions with the owner, it became apparent that the owner was not in a position to either carry out the works required to bring the dormer within permitted development or to submit a planning application.

#### 4. **Policy and Other Material Considerations**

4.1 As the unauthorised dormer is not constructed within permitted development conditions as it fails to comply with the conditions set out in the. Town and Country Planning (General Permitted Development) Order 1995 Schedule 2, Part 1 Class B and supporting Technical Guidance.

4.2 The main planning issue in this case is that the dormer window by reason of its inappropriate finish and given its width, height and position is overbearing, visually intrusive and appears out of character with the neighbouring properties. It detracts from the residential amenity of the rear garden environment and neighbouring properties.

4.3 Policy DC61 (Design) of the Local Development Framework states that planning permission will only be granted for development which maintains, enhances or improves the character and appearance of the local area.

4.4 The Council considers it expedient to enforce due to the scale of the dormer and the adverse impact in terms of appearance of non-compliance with the conditions set out in the. Town and Country Planning (General Permitted Development) Order 1995 Schedule 2, Part 1 Class B and supporting Technical Guidance.. Further it is regarded that the appearance of the unauthorised dormer roof extension is contrary to policy DC61 and also the Supplementary Design Guidance (Residential Extensions and Alterations).

#### 5. **Recommendation for action**

5.1 The owner of the property has written in to explain that they are not in a position to either submit a planning application or to carry out the works required (i.e. finish off the dormer in materials of a similar colour and design to the materials used in the main roof of the dwellinghouse). With that in mind, it is considered that the only course of action available to protect the Council's position and to maintain control over this development is to serve an Enforcement Notice.

5.2 Given the intrusive nature of the development it is considered that the works should be carried out to ensure the dormer is finished in materials of a similar colour and design to the materials used in the main roof of the

dwellinghouse within 6 months from the effective date of the enforcement 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 1<sup>st</sup> 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 considered the above duty and the Human Rights Act 1998 there are no equality or discrimination implications.

## **BACKGROUND PAPERS**

OS Plan  
Photographs