

**WIRRAL COUNCIL**  
**PLANNING COMMITTEE**  
**20 FEBRUARY 2014**

<b>SUBJECT:</b>	<b>FAILURE TO COMPLY WITH PLANNING ENFORCEMENT NOTICE AT 137 RAEBURN AVENUE, EASTHAM WIRRAL CH62 8BE</b>
<b>WARD/S AFFECTED:</b>	<b>EASTHAM</b>
<b>REPORT OF:</b>	<b>STRATEGIC DIRECTOR – REGENERATION &amp; ENVIRONMENT</b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b>COUNCILLOR PAT HACKETT - ECONOMY</b>
<b>KEY DECISION?</b>	<b>NO</b>

**1.0 EXECUTIVE SUMMARY**

- 1.1 The purpose of this report is to advise members of the failure to comply with the requirements of a Planning Enforcement Notice in relation to the property at 137 Raeburn Avenue, Eastham, Wirral.
- 1.2 This report sets out the options open to the Council to proceed with the matter and seeks authority from Planning Committee to take the appropriate course of action.

**2.0 BREACH OF PLANNING**

- 2.1 Unauthorised extension to a residential dwelling and failure to comply with a Planning Enforcement Notice requiring the removal of the unauthorised development.

**3.0 REASON/S FOR RECOMMENDATION/S**

- 3.1 The reason for action is due to non-compliance with an Enforcement Notice, this report seeks to resolve the breach of planning control.
- 3.2 It was considered expedient to issue an Enforcement Notice due to the following reason;

1) It is considered that the siting and scale of the extension on a corner plot property is unacceptable by reason of visual impact onto the character of the area and the street scene and is therefore contrary to Wirral's adopted Supplementary Planning Guidance Note 11 – House Extensions.

#### **4.0 BACKGROUND AND KEY ISSUES**

- 4.1 A planning application, reference APP/11/00548, was made on 11<sup>th</sup> May 2011 for the retention of a single storey side extension, labelled as “garage” on plan reference 01 which was subsequently refused.
- 4.2 An appeal was submitted to the Planning Inspectorate against the Council’s decision to refuse the retention of a single storey side extension; the appeal was dismissed on 13<sup>th</sup> September 2011.
- 4.3 An Enforcement Notice was issued on 10<sup>th</sup> January 2012 which came into effect on 17<sup>th</sup> February 2012 and required the removal of the single storey side extension by 17<sup>th</sup> June 2012. The Enforcement Notice required the single storey side extension to be removed within four months from the 17<sup>th</sup> February 2012. The Council deemed it expedient to issue an Enforcement Notice due to the visual impact of the single storey side extension, having regard to the current planning policy for house extensions, Supplementary Planning Guidance note 11.
- 4.4 A site visit to the property on 20<sup>th</sup> November 2012 found that the breach had not been resolved. A letter to the owner/occupier was sent on 20<sup>th</sup> November 2012 affording the owner/occupier to rectify the breach before the 20<sup>th</sup> February 2013.
- 4.5 A solicitor acting on behalf of the owner/occupier contacted the Planning Department to advise that the owner/occupier had their assets seized and that they would support this with a statement from the Police. No documents to date have been submitted pertaining to this.
- 4.6 The property has previously been extended with a two-storey side extension; the addition of the single storey side garage extension does not accord with the guidance set out in Wirral’s Supplementary Planning Guidance Note 11. Due to the scale of the extension having regard to the character of the area and the original corner plot property, the structure has a visually detrimental impact onto to the character of the area and the street scene.
- 4.7 In this case, the enforcement notice is directed against the unauthorised development which is considered to be visually detrimental to the character and street scene of Raeburn Avenue.
- 4.8 There are a number of options available to the Council when considering how best to deal with the matter, which are set out below.

#### **Option A**

- 4.9 The Council would pursue a prosecution in the Magistrate’s Court against the occupiers for their failure to comply with the notice. The likely outcome would be that the occupiers are found guilty of the offence and fined. The Council would then afford a further period of time in which to comply with the enforcement notice. If the occupiers still do not comply with the notice, the Council would pursue a prosecution against them again.

- 4.10 The public interest in pursuing a prosecution would be the removal of a structure that does not comply with Wirral's adopted Supplementary Planning Guidance note 11.

### **Option B**

- 4.11 The Council would pursue a prosecution against the occupiers for their failure to comply with the requirements of the notice. The likely outcome would be that the occupiers are found guilty of the offence and fined. If the occupiers do not comply with the requirements of the notice following prosecution, the Council can take the stance that it is not in the public interest to pursue a further prosecution.
- 4.12 The Council would not continue to pursue compliance with the notice by the current owners. The enforcement notice would remain in force and any future buyer of the property would be responsible for ensuring that the requirements of the notice are carried out.

### **Option C**

- 4.13 The Council can take the stance that it is not in the public interest to pursue a prosecution against the occupiers at all. The occupiers would be issued with a formal caution.
- 4.14 The Council would not continue to pursue compliance with the notice by the current owners. The enforcement notice would remain in force and any future buyer of the property would be responsible for ensuring that the requirements of the notice are carried out.

### **Option D**

- 4.15 The Council can carry out the works required by the notice in default. It is estimated that the works would cost around £4000.00. A charge would be placed on the land and the Council would recoup that money if the property were sold.
- 4.16 In addition the Council has the option of either pursuing a prosecution against the occupiers for their failure to comply with the notice, or issuing a formal caution.

## **5.0 RECOMMENDATION**

- 5.1 In this instance Option B is recommended as the most appropriate course of action. This course is recommended because any Enforcement Notice served would remain on the property and responsibility of ensuring the notice is complied with would fall on future owners of the property.

## **6.0 RELEVANT RISKS**

- 6.1 I am not aware of any direct risks

## **7.0 OTHER OPTIONS CONSIDERED**

7.1 None required

## **8.0 CONSULTATION**

8.1 None required.

## **9.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

9.1 There are no opportunities to involve voluntary, community and faith organisations.

## **10.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

10.1 There are no direct financial implications for Option A.

10.2 There are no direct financial implications for Option B.

10.3 There are no direct financial implications for Option C.

10.4 There are financial implications for Option D. It would cost the Council around £4000.00 to carry out the work in default and that money would not be recouped until the property was sold.

## **11.0 LEGAL IMPLICATIONS**

11.1 There are no direct legal implications.

## **12.0 EQUALITIES IMPLICATIONS**

12.1 None relevant.

12.2 Equality Impact Assessment (EIA)

(a) Is an EIA required? No

(b) If 'yes', has one been completed? N/A

## **13.0 CARBON REDUCTION IMPLICATIONS**

13.1 There are no direct carbon usage implications or other relevant environmental issues.

## **14.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

14.1 There are no direct community safety implications.

### **REPORT AUTHOR:**

Alexandra McDougall  
Planning Officer  
telephone: (0151) 691 8356

email: alexandramcdougall@wirral.gov.uk

**APPENDICES**

Notice of Refusal of Planning Permission APP/11/00548 including a copy of the plan 01.

Appeal Decision reference 2157355

Planning Enforcement Notice issued on the 10<sup>th</sup> January 2012.

**REFERENCE MATERIAL**

Supplementary Planning Guidance note 11 - House Extensions as adopted 2004

**SUBJECT HISTORY**

APP/09/05279 Erection of a two-storey side extension, single storey rear extension, rear dormer and garage – Refused

APP/09/05938 Erection of a two-storey side extension, single storey rear extension, rear dormer and garage – Approved

APP/11/00548 Retention of single storey garage side extension – Refused

APP/W4325/D/11/2157355 Appeal against notice of refusal APP/11/00548 – Appeal Dismissed.

Enforcement Notice served on 10<sup>th</sup> January 2012.

Enforcement notice came into effect on 17<sup>th</sup> February 2012.

Letter to owner/occupier on 20<sup>th</sup> November 2012 to rectify non compliance with the Enforcement Notice before 20<sup>th</sup> February 2013.

Council Meeting	Date