

# WIRRAL COUNCIL

## Planning Committee

15th August 2019

<b>SUBJECT:</b>	<b>FAILURE TO COMPLY WITH THE REQUIREMENTS OF AN ENFORCEMENT NOTICE AT 1 BELFORD DRIVE, MORETON, WIRRAL</b>
<b>WARD/S AFFECTED:</b>	<b>MORETON WEST AND SAUGHALL MASSIE</b>
<b>REPORT OF:</b>	<b>INTERIM DIRECTOR ECONOMIC AND HOUSING GROWTH</b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b>COUNCILLOR STUART WHITTINGHAM</b>
<b>KEY DECISION?</b> <i>(Defined in paragraph 13.3 of Article 13 'Decision Making' in the Council's Constitution.)</i>	NO

### 1. EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to set out the options available to the Council to resolve a long standing breach of planning control. The breach of planning control consists of the erection of a two storey side extension without the benefit of planning permission and the subsequent failure of the registered owners of the land to comply with an enforcement notice requiring the removal of the first floor element of the extension.
- 1.2 The appendix to this report contains exempt information falling within paragraphs 1 and 3 of Schedule 12A of the Local Government Act 1972. It is considered to be in the public interest to exclude the press and public given that the information contained in the appendix is of a sensitive and personal nature.

### 2.0 RECOMMENDATION/S

- 2.1 It is recommended that the Council take the steps outlined in option C, as set out in the confidential appendix to this report, to exercise its powers under section 178 of the Town and Country Planning Act 1990 to enter the land and carry out the steps required by the notice.

### 3.0 REASON/S FOR RECOMMENDATION/S

- 3.1 The registered owners of the property have not taken the steps required by the enforcement notice despite being afforded numerous opportunities to do so. The registered owners have also declared that they do not have the financial means to take those steps in the foreseeable future. The unauthorised development is causing harm to neighbouring properties.

### 4.0 BACKGROUND AND KEY ISSUES

- 4.1 The Council received a complaint regarding unauthorised building work at 1 Belford Drive on 23rd September 2014.
- 4.2 Upon inspection it was established that planning permission was required for the two storey side extension that was under construction as it exceeded the limitations set out in Part 1 Class A of the Town and Country Planning (General Permitted Development) Order 1995 then in force.
- 4.3 A retrospective planning application was submitted on 14th August 2014 under reference APP/14/01062. The application was refused on 1st April 2015 for the following reason:
- 4.4 "The development is unneighbourly and has resulted in a form of development that has an overbearing impact, overshadowing the rear of the adjoining property, 57 Millhouse Lane, to an unacceptable degree. The extension is detrimental to the amenities that the occupiers of that property could reasonably expect to enjoy. The development conflicts with Policy HS11 of Wirral's Unitary Development Plan, Supplementary Planning Guidelines: House Extensions and the National Planning Policy Framework."
- 4.5 An appeal against the refusal of planning permission was subsequently dismissed.
- 4.6 Following refusal of the planning application, an enforcement notice was issued on 22nd April 2015. No appeal was made against the enforcement notice and it became effective on 29th May 2015 and required the following steps to be taken:
- 4.7 "Permanently remove the first floor element of the two storey side extension within a period of four months from the date on which the Notice takes effect."
- 4.8 The steps required by the enforcement notice were not carried out, which constitutes an offence under section 179 of the Town and Country Planning Act 1990.
- 4.9 On 2nd October 2015 a planning application (reference APP/15/01348) was submitted proposing significant alterations to the two storey extension. The proposal was considered acceptable and planning permission was granted on 23rd November 2015. An opportunity was afforded for the alterations to be made, however, the scheme was not implemented. The planning permission expired on 23rd November 2018.
- 4.10 On 1st December 2016 a further planning application was submitted proposing an amended scheme. The proposal was considered acceptable and planning permission was granted subject to a condition requiring the scheme to be implemented within 6 months. The opportunity was once again afforded for the alterations to be made, however, the scheme was not implemented and the planning permission expired on 1st June 2017.
- 4.11 Various meetings have taken place with the registered owners of the property and formal written requests have been made by the Council for the steps required by the enforcement notice to be carried out, with threat of prosecution.
- 4.12 Following the latest failure to meet the deadline set out by the Council to comply with the enforcement notice, a further planning application (reference APP/18/01068) was submitted on 30th January 2019 proposing a minor alteration to the unauthorised two storey extension. The proposal was not considered to be acceptable and the application was refused on 27th March 2019.

4.13 Throughout the investigation, the Council has made every effort to assist the registered owners of the property to remedy the breach of planning control. However, to date no resolution has been found and the unauthorised, unacceptable form of development remains in situ. Throughout that time the neighbouring property at 57 Millhouse Lane has also endured the effects of the unneighbourly form of development.

4.14 In order to progress the matter, there are a number of options available to the Council, as set out in the appendix to this report.

## **5.0 RELEVANT RISKS**

5.1 Option C involves spending up to £40,000.00, which will only be recouped upon placing a charge on the land and any subsequent sale of the property. The mortgage company would be first in line to receive any money owed if the property were sold. Any unexpected fall in property prices could result in the Council not recouping the money proposed to be spent under option C above.

## **6.0 OTHER OPTIONS CONSIDERED**

6.1 Options A and B should be given full consideration by Members, however neither option is likely to result in the removal of the unauthorised development.

6.2 The Council can choose to take the steps outlined in more than one option. For example, the Council could take the steps outlined in both Option B (pursue a prosecution against the registered owners for their failure to comply with the notice to date) and Option C (take direct action to carry out the steps required by the enforcement notice).

## **7.0 CONSULTATION**

7.1 Consultation with the Council's Legal department has taken place over the processes involved in all 3 options outlined above. Further consultation will take place once the preferred option is decided upon.

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

8.1 None.

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

9.1 There are significant financial implications involved in option C, however it is likely that the money spent will be recouped upon the sale of the property through the imposition of a charge on the land.

## **10.0 LEGAL IMPLICATIONS**

10.1 None.

## **11.0 EQUALITIES IMPLICATIONS**

11.1 None of the options set out above have any human rights implications.

11.2 Equality Impact Assessment (EIA)

- |                                       |     |
|---------------------------------------|-----|
| (a) Is an EIA required?               | No  |
| (b) If 'yes', has one been completed? | N/A |

## **12.0 CARBON REDUCTION IMPLICATIONS**

12.1 None.

## 13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 The development subject of the enforcement notice is unauthorised and is considered to have a detrimental impact on the amenity that the neighbouring property at 57 Millhouse Lane can reasonably expect to enjoy.

**REPORT AUTHOR: Steven Lacey**  
**Principal Planning Enforcement Officer**  
telephone: (0151) 691 8599, email: [stevenlacey@wirral.gov.uk](mailto:stevenlacey@wirral.gov.uk)

## APPENDICES

1. Sensitive information setting out the personal circumstances of the registered owners of the land and the options available to the Council to progress the enforcement case.

## REFERENCE MATERIAL

None.

**SUBJECT HISTORY (last 3 years)- none.**

## SITE PLAN:

