

BOROUGH OF KETTERING

Committee	Planning Committee	Item 6.1	Page
Report Originator	Alan Davies	ENFO/2011/00180	
Wards Affected	Loatland	Date: 20/11/2012	
Title	Authorisation for Planning Enforcement Action at: 47 Gold Street, Desborough		

1. PURPOSE OF REPORT

To seek authorisation to issue an Enforcement Notice in respect of a breach of Condition 5 of planning permission KET/2010/0199 at: 47 Gold Street, Desborough, shown in bold outline for identification purposes on the site plan attached to this report.

2. BREACH OF PLANNING CONTROL

Non-compliance with Condition 5 of KET/2010/0199, which required the demolition of a single storey lean-to side extension prior to the first occupation of the newly constructed dwellinghouse situated at the rear of the above site.

3. RECOMMENDATION

That in respect of the breach of planning control described above, the Head of Development Services be authorised to issue an Enforcement Notice pursuant to section 172 of the Town and Country Planning Act 1990 (as amended) requiring the steps to be taken within the specified time period; and for the reasons which are set out below:

3.1 Steps to be taken

1. Permanently demolish the existing lean-to on the west elevation of 47 Gold Street, coloured in green, for identification purposes only.
Time for compliance: 3 months
2. Remove from the land all building materials and rubble arising from compliance with requirement (1) above and hard surface the land to match the surrounding vehicular access to 47C Gold Street.
Time for compliance: 4 months

3.2 Reasons for Issuing the Notice

The breach of planning control has occurred within the last ten years. Planning permission was granted on 27/04/2010 under application KET/2010/0199 for a detached dwelling to the rear of 47 Gold Street. Condition 5 required the existing single storey lean-to on the west elevation to be demolished prior to occupation of 47C Gold Street. This was required to ensure safe vehicular access to the site. The access would measure 5 metres and this

would allow two cars to pass safely. This was considered to be necessary as the visibility splay to the site is lessened by the boundary treatment to the west and the front part of 47 Gold Street. It would also result in cars waiting on Gold Street, causing traffic to queue, whilst they attempt to access the site.

The owner of 47 Gold Street has ignored the condition and has applied for planning permission to alter Condition 5 (KET/2012/0068) to allow for the retention of the single storey lean-to. Permission was refused on highway safety grounds. A subsequent appeal was lodged (APP/L2820/A/12/2175422/NWF) and this was dismissed, also on the basis that the retention of the lean-to would result in an unsafe vehicular access to 47C Gold Street and the rear of 47 Gold Street. The unsafe access remains and 47C Gold Street is now occupied and therefore a breach of planning control has occurred. As such the breach conflicts with the aims and objectives of the following planning policies:

Paragraphs 32 and 69 of the National Planning Policy Framework
Policy 13(n) of the North Northamptonshire Core Spatial Strategy

The Council considers that the lean-to should be removed as it continues to represent a physical barrier to safe access and egress from the site.

4. INFORMATION

Site Description

The subject of this report is effectively now two separate properties 47 Gold Street and 47C Gold Street. 47 Gold Street is the property at the front of the site (south) and is a two storey red brick building with a convenience store at ground floor. It has residential use at first floor and there are various extensions to the building, including a single storey lean-to on the west elevation, the projecting single storey front (south) extension and a further extension on what was formerly the original east elevation, which is located within the gap between 47 Gold Street and 45 Gold Street.

The property at the rear, 47C Gold Street is a 1.5 storey dormer bungalow. This is located over 35 metres back from the highway and is accessed from the tarmac driveway to the west side of 47 Gold Street. The property to the west, 49 Gold Street, has a 1.6 metre high timber boundary fence and mature hedge behind. The boundary treatment abuts the highway to the south and to the east with the boundary of 47 Gold Street. These obscures the visibility splay when exiting the vehicular access to 47C Gold Street. The access to 47C is 5 metres wide, but due to the existing single storey lean-to that narrows to 3.5 metres for a 4.5 metre section.

Planning History

APP/L2820/A/12/2175422/NWF – Appeal against decision of KET/2012/0068 to refuse permission to remove Condition 5 of KET/2010/0199. Appeal dismissed 17/09/2012

KET/2012/0068 – Section 73 application: to remove Condition 5 of KET/2010/0199 in relation to removal of lean-to and vehicular access. Refused 04/04/2012

KET/2010/0199 – Detached chalet style dwelling to the rear of 47 Gold Street, Desborough. Approved 27/04/2010

Planning Policy:

National Policies

Paragraphs 32 and 69 of the National Planning Policy Framework

Development Plan

North Northamptonshire Core Spatial Strategy (CSS)

Policy 13(n): General Sustainable Development Principles

Supplementary Policies

Northamptonshire County Council: Highway Authority Standing Advice for Planning Authorities

5. APPRAISAL

The unauthorised lean-to structure, which is required to be removed by Condition 5 of KET/2010/0199, sits on the original side (west) elevation of 47 Gold Street, 4.5 metres back from the highway and 3.5 metres away from the boundary fence of 49 Gold Street.

On 23/08/2011 a site visit was carried out when officers were informed by the owner that he was looking into complying with Condition 5 of KET/2010/0199, although informally the owner admitted the lean-to was a useful storage area for the convenience shop.

Following several further discussions with the applicant a planning application (KET/2012/0068) was submitted to Kettering Borough Council to remove Condition 5. This was refused on highway safety grounds and because the retention of the existing lean-to would be contrary to national and local planning policies, specifically Paragraphs 32 and 69 of the National Planning Policy Framework and Policy 13(n) of the North Northamptonshire Core Spatial Strategy.

An appeal was lodged which the Planning Inspectorate dismissed on the grounds that retention of the lean-to would result in a deterioration of highway safety. Removal of the lean-to is the only way to resolve the matter.

Circular 10/97 advises how local planning authorities should determine whether or not it is expedient to take enforcement action in respect of a breach of planning control. In particular it advises "*the decisive issue for the local planning authority should be whether the breach of control would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest*".

It is considered that the unauthorised development has an unacceptable adverse impact which conflicts with the Development Plan and therefore it is recommended that enforcement action is authorised.

Human Rights Implications

Service of an enforcement notice in this instance is not a breach of the property owner's human rights. Whilst it does affect their property rights they will have an opportunity to challenge the decision by way of an appeal against the enforcement notice and that

provides adequate safeguards in accordance with the Human Rights Act 1998 incorporating the European Human Rights Convention.

Background Papers:

Title of Document:

Date:

Contact Officer: Alan Davies

Previous Reports/Minutes:

Ref:

Date: