

UNAUTHORISED DEVELOPMENT, POPPYBANK COTTAGE (FORMERLY ROWLEE COTTAGE), NETHERTOWN

Lead Officer:

To consider a course of action in respect of unauthorised development at Poppybank Cottage, Nethertown.

Recommendation: That an enforcement notice be issued to secure the installation of translucent glazing in the first floor gable window of Poppybank Cottage, Nethertown.

Resource Implications: The cost of planning enforcement action from the Development Control budget.

1.0 SUPPORTING INFORMATION

1.1 In October 2003 planning permission was granted to erect a dormer bungalow on the site of the former Rowlee Cottage (4/03/1206/0 refers). When the development was nearing completion a complaint was received from the adjoining property owner expressing concerns regarding the development.

1.2 An inspection of the property on 21 October 2004 revealed the development to be at variance with the planning permission as follows:-

- (a) The garage is sited at variance with the approved plan.
- (b) Inclusion of a conservatory.
- (c) The dwelling has been sited at variance with the approved plan. This particularly relates to the eastern boundary of the site which adjoins other residential property.

These variations are considered to exceed what could reasonably be considered as "minor amendments". Accordingly, a fresh planning application has been requested.

1.3 In the absence of a planning application the Council issued a Planning Contravention Notice on 1 December 2004. In response to the Planning Contravention Notice the developer agreed to submit a planning application. Eventually an incomplete planning application was submitted on 21 February 2005. This application could not be registered due to inadequate plans and the absence of a fee. Since this time the developer has been reminded of the need to regularise the matter. Although assurances have been given a planning application has still not been submitted.

1.4 The adjoining property owner expresses the following concerns:-

- (1) The repositioning of the dwelling results in the gable end being closer to the objector's property, so blocking out light.

- (2) The window positioned centrally in the gable end is an invasion of privacy.
- (3) Fencing protrudes into the narrow private road obstructing access for emergency vehicles.

In response to these concerns I would comment as follows:-

- (a) The obstruction of the road is a civil matter between the respective property owners. This cannot be a material planning consideration.
- (b) The resiting of the dwelling does result in the gable end being marginally closer to the adjoining property. This in itself is not considered to cause demonstrable harm. However, this has resulted in the first floor gable window being re-orientated to a position which increases the risk of overlooking.

2.0 PROPOSED COURSE OF ACTION

- 2.1 In the absence of a grant of planning permission there is no way in which all the unauthorised works can be regularised. This seriously disadvantages the property owner. The Planning Contravention Notice would be revealed as part of any Local Land Charges Search. The Council is obliged, on enquiry, to reveal the existence of the Notice to any potential purchaser or lender.
- 2.2. Formal planning enforcement must only be taken against the elements which would either:-
 - (a) not be granted planning permission, or
 - (b) not be granted planning permission without the imposition of conditions.

It is considered that the repositioned window falls with category (b). The window in its new position increases the risk of overlooking to the neighbouring property. However, the installation of translucent glazing would overcome the harm. An enforcement notice can be issued to remedy the harmful element of the unauthorised works.

- 2.3 This approach to remedy the breach of planning control is considered to be proportionate and its use encouraged by "The Enforcing Planning Control : Good Practice Guide for Local Planning Authorities" which accompanies DETR Circular 10/97. The remaining unauthorised works would not be regularised. The property owner has been advised of the implications of not securing a planning permission.

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Background Papers: Planning application file 4/03/1206/0F1