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Your ref: 15/06189/HSE

Our ref: PEV1-002/RB (rbuxton@richardbuxton.co.uk)

6 December 2015

Dear Sirs

Planning permission 15/06189/HSE for a two storey side extension at 1 Newark Way, London, NW4 4JG

1. We are solicitors instructed by Dr Patricia Evans of 3 Newark Way. This property is the semi-detached dwelling adjacent to 1 Newark Way, the subject of the above application.
2. We also represented her in the quashing of the permission granted under reference 15/04033/HSE which this one in effect replaces, so are well familiar with the extraordinary way the Council has conducted itself in relation to this property.
3. We have seen the Report to Committee for consideration on 9 December 2015.
4. As indicated above, we are concerned by the totality of the Council's conduct in relation to planning at this property. The "rot set in" with the failure to consider enforcement action for the dormer window at the rear of the property which has serious effects on our client's amenity (see at top of p.40 of the officer's report).

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We do not however wish to complicate these submissions over that, which is the subject of consideration of separate complaint for maladministration and possible reconsideration as to whether the lawful development certificate should be revoked.

5. We would however advise that grant of permission for the present application would be unlawful and subject to judicial review.
6. First the report completely fails to acknowledge that the application is in effect retrospective and the extension mostly built. It follows the erroneous grant of permission 15/04033/HSE and its quashing by consent, but the Council making no attempt whatsoever to stop works (which had commenced shortly after permission was granted) continuing while reconsideration was taking place. We attach a recent photograph showing that the works are now nearly complete.
7. It is utterly disingenuous for officers not to bring this to the Committee's attention in the report and amounts to an unlawful failure to take into account material considerations. In summary those would be a full explanation as to why enforcement action was not taken, that the application is in effect a retrospective one, and an explanation to the Committee as to what the built form actually comprises and how it affects planning in the area and neighbours.
8. This deficiency can only sensibly be resolved by a site visit. We would ask that the Committee require explanation of these points and defers further consideration until it has had a proper opportunity to consider the matter on site, including from the perspective of our client's and the adjacent Greyhound Road properties.
9. We do occasionally come across self-serving officer reports like this one. We have to say it is well written in attempting to justify what on any view is extraordinary over-development of the site in question. However there is only so much that words can conceal. The obvious point relates to the policy (see SPD on extensions, p.45, para 14.15) that "Side extensions should not be more than half the width of the original house". This one is more than that width and there is no justification for it. We note that the SPD policy is mis-reported in inserting the word "normally" (see section 5.3 of the officer report) when that is not what the policy says.
10. Going beyond the limit is argued to be justifiable in this case including by reference to the extension not involving the sort of infill between houses that might be objectionable, and concluding in effect that a refusal could not be substantiated. But this is an incorrect approach. Barnet Council has a clear policy on the matter. Indeed in its consideration of the application for prior approval under reference H/02733/14, it was expressly stated that the

extension "would have to adhere to both sets of policies relating to side and rear extensions as set out in the technical guidance".

11. Of course we are well aware that a council can depart from policy if there are material considerations to do so but the officer's report identifies no such considerations. It may be that the result is (in the eyes of some) acceptable. But that is not the same as there being good reason to depart from the Council's published policies.
12. For the above reasons – failure to take into account material considerations and failure to identify departure from policy and the material considerations justifying same – the application should be REFUSED and enforcement action taken in respect of the works carried out.
13. As to enforcement there should be no sympathy for the applicant who has proceeded entirely at his own risk with the extension, the Council itself having made clear by agreeing to consent to the quashing of the earlier permission on 18 September 2015 and the applicant being notified very shortly thereafter that what he was doing was unlawful.

Yours faithfully



RICHARD BUXTON
Environmental and Public Law

