APPEAL BY MR D MORRIS AGAINST AN ENFORCEMENT NOTICE ISSUED RELATING TO AN UNAUTHORISED TWO STOREY EXTENSION AT XJK JAGUAR LIMITED, CROSS HEATH

Enforcement Ref. No **09/00230/207C3 & 14/00002/ENFNOT**

Appeal Decision **Allowed**

Date of Appeal Decision **19th August 2014**

The full text of the appeal decision which followed and Informal Hearing held on 31st July 2014 is available to view on the Council's website (as an associated document to appeal reference 14/00002/ENFNOT) and the following is only a brief summary.

The Inspector sought clarification as to what was unlawful – the extension as a whole or the ground floor works. It was confirmed by representatives of the Council that no material harm arose from the first floor extension sufficient to require enforcement action. The Inspector considered that the enforcement notice could be amended without injustice to relate expressly to the building works at ground floor.

The Inspector went on to consider the two grounds of appeal; that it was too late to take enforcement action (ground (d)) and that planning permission should be granted (ground (a)):

Ground (d)

- The appellants' provided a statement that the work was completed in April 2009 (which was more than 4 years before the notice was issued) was not in the form of a sworn statutory declaration and there was no supporting documentary evidence which confirmed and corroborated the dates on which it was said that the ground floor works were carried out.
- The Council provided contradictory evidence which was a log of a telephone call in December 2009 (less than 4 years before the notice was issued) which stated that the windows were being put into the ground floor area and it looked like they were making it into a room. In addition a written log was provided of a site inspection that took place in January 2010 which indicated that the site manager had confirmed that substantive work was completed during Christmas and New Year.
- The Inspector was faced with two irreconcilable accounts of the date of the ground floor works. The burden of proof is with the appellant and the Inspector considered that the appellants' evidence failed the required tests as the Council's evidence contradicted their account of the date of completion of the works and it was not sufficiently precise and unambiguous to demonstrate the case on the balance of probabilities.
- The Inspector concluded that the ground (d) appeal must fail.

Ground (a)

- The Inspector, following discussions at the Hearing, considered the single main issue to be the effect of the loss of on-site parking on the safety of road users in the vicinity of the site.
- It was highlighted that the appeal premises was tightly-constrained.
- The Inspector considered that the Council's concern about retaining on-site parking was understandable given the tight-knit grain of housing and limited on-street parking capacity per house frontage in the surrounding streets.
- A condition of a planning permission in 1999 required that demarcated parking bays be permanently available for use and such spaces have mostly been lost.
- The Inspector referred to an error in the rebuilding of the workshop which resulted in it increasing in depth and meant that on-site parking is more constrained than the Council may have envisaged. It was agreed that one space had been lost as a result of the unauthorised works which was subject to the Enforcement Notice.

- The Inspector assessed the level of on street parking, acknowledged the good working relations of appellants' with their neighbours and that the majority of staff arrive by foot or by public transport and concluded that no material harm arises to the safety of road users in the vicinity of the site from the loss of a single on-site parking space.
- The Inspector considered that the condition suggested by the Council was reasonable and necessary.
- He therefore concluded that the ground (a) appeal should succeed, that the enforcement notice be quashed and imposed requiring the removal of the building works within 6 months of the date of the failure to meet any one of four requirements as follows:

  (i) Within 3 months of the date of the decision the provision of off-site vehicle storage and parking to be submitted for approval including a timetable for its implementation
  (ii) Within 11 months of the date of the decision if the LPA refuse to approve the scheme or fail to give a decision an appeal shall have been made.
  (iii) If an appeal is made the appeal shall have been finally determined and the submitted scheme approved.
  (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

COSTS APPLICATION IN RESPECT OF THE ABOVE APPEAL

The full text of the cost is available to view on the Council's website (also as an associated document to appeal reference 14/00002/ENFNOT) and, as above, the following is only a brief summary.

- At first glance, the Council's approach to the appeal was beset with errors relating to the estimate of the number of spaces lost and the late decision not to pursue action against the first floor use conveyed at the Hearing which calls into question the expediency of taking action.
- However the actions were in large part a result of the appellants' repeated failure to submit a regularising planning application in respect of works which were plainly unauthorised, even if they did not believe them to be when undertaking them. The Inspector expressed that a number of letters from the Council could not have been clearer in expressing its desire that matters be resolved quickly and helpfully set out what would be needed by way of plans and supporting information.
- No application was forthcoming at any point in the four-year period up to December 2013, after which time, from the Council's records, the works would have become lawful.
- The Inspector considered that it was plainly necessary for the Council to take action to protect its position at that point as the works would otherwise have become immune from enforcement action and saw nothing unreasonable in that.
- The Inspector considered it unbecoming of the appellants' to so severely criticise the Council's practice at the Hearing when a major contributor to the action which ensued was their own failure to properly regularise matters.
- The appellant cited the failure to serve a Planning Contravention Notice as evidence of unreasonable behaviour. The Inspector, however, did not agree as the breach was inspected, a meeting held and the remedy of a regularising planning application agreed upon. He indicated that considerations such as the increased footprint of the workshop and their implications for parking would no doubt have emerged in an application process and faced with such evidence may well itself have granted retrospective planning permission, thus avoiding the need for an appeal.
- As it was the application that the Council sought was made through the appeal process. For all that given the basic geography of the surrounding area, it was understandable that it should have concerns about parking. The Council, in the opinion of the Inspector, needed to look beyond the appellants' exemplary approach

to neighbours to possible future occupiers of the land. For these reasons the Inspector considered it was expedient of the Council to take action.

- The Inspector acknowledged that an Authority is at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have avoided the need to serve the notice in the first place or ensured that it was accurate. The Inspector considered, however, that the need to serve the notice could have been avoided by the regularising application sought, and he saw no need to correct the notice for material inaccuracies
- The Inspector concluded that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process have not been demonstrated and an award of costs, either full or in part, was not justified.

Recommendation

That the appeal and costs decisions be noted.