

PLANNING COMMITTEE – 1 NOVEMBER 2006

Report of the Chief Solicitor

Miscellaneous Item

15 EASTBOURNE GATE TAUNTON

Background

1. In 1998 a dormer window was installed into the rear roof of 15 Eastbourne Gate Taunton. The facts of the matter were and remain disputed, with the owner of the property believing that he did not require planning permission and that he had been told he did not by a Council employee. In fact, he did require permission as the property backed onto and was within 20 metres of a highway. A retrospective application was received and refused. The refusal was upheld on appeal.
2. An enforcement notice was subsequently served. This was also subject to appeal which was again dismissed. When the time for compliance with the notice was close to expiry an offer was made to the owner to extend the time for compliance with the notice but this was not accepted. In 2000 proceedings were brought in the Magistrates Court for failure to comply with the enforcement notice and the owner was found guilty.
3. There were subsequent discussions with the Building Control Section as to how the building could be modified but it was found impossible to identify a solution which did not require the retention of the dormer to provide adequate headroom over the staircase.
4. Discussions continued including a proposal by the Council to provide interim finance to enable the dormer to be removed, but this offer was declined and the dormer remained in place
5. In an attempt to resolve the matter the owner made a further application in 2004 to retain the dormer with cladding. The application was refused and a subsequent appeal dismissed.

Injunction Application.

6. Earlier this year the Council instituted injunction proceedings seeking a Court Order that the dormer be removed. The application was heard on the 18 September and in a reserved judgment the application was refused.
7. The reasons for refusing to make the order were that the Court considered that the owner had genuinely thought that he did not need planning permission and that the cost to the owner of carrying out the work and the consequent

loss would be almost £40,000 which it found disproportionate given the owner was a householder of modest means. The Court also took into account the time that had elapsed since the original infringement.

The current position

8. The decision of the Court as to whether to grant an injunction is a discretionary one and an appeal on the merits of the decision is unlikely to be successful. The Enforcement Notice however remains as a local land charge registered against the property and would be disclosed if the property is sold.

RECOMMENDATION

It is **RECOMMENDED** that the outcome of the injunction proceedings be noted.

Chief Solicitor

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