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**Report of the Chief Planning Officer**

**NORTH AND EAST PLANS PANEL**

**Date: 5<sup>th</sup> February 2015**

**Subject: 14/00927/UHD3 – Unauthorised alterations to dwelling at Reighton House, Moor Lane, East Keswick, Leeds, LS17 9ET**

**APPLICANT**  
N/A

**DATE VALID**  
N/A

**TARGET DATE**  
N/A

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**Electoral Wards Affected:**

**Harewood**

☐ Yes

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

☐

Community Cohesion

☐

Narrowing the Gap

☐

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**RECOMMENDATION:**

**(1) Members to note this report.**

**(2) In light of the advice from Counsel contained within the exempt report Members are request to determine whether it is expedient to take enforcement action.**

**1.0 INTRODUCTION**

1.1 Members will recall that a report was considered at the Plans Panel of 27<sup>th</sup> November 2014 concerning unauthorised works to a dwelling known as Reighton House in East Keswick. A further report was put before the Plans Panel of 8<sup>th</sup> January 2015 picking up on issues raised in November but this was withdrawn from the agenda in light of concerns raised by Councillors John and Rachael Procter about the grant of the Certificate of Proposed Lawful Development (CPLD) for extensions to this house (i.e. the view was taken that the proposed works constituted permitted development and no planning permission was therefore required from the council). Members will recall that at the heart of this case is that in the carrying out works to implement the plans approved under the Certificate the developer demolished more of the house than was shown on the approved drawings.

1.2 Accordingly this report deals with the following matters:

- The grant of the CPLD 13/04348/CLP.
- Consideration of the matter at Panel in November 2014.
- The processing of applications for Lawful Development Certificates.
- Matters to have regard to in deciding whether it is expedient to take enforcement action.

## **2.0 APPLICATION 13/04348/CLP**

- 2.1 A Certificate of Proposed Lawful Development for a part two storey, part single storey rear extension, single storey extension to both sides, porch to front, erection of ancillary outbuilding to rear, re-facing of existing front elevation of dwelling with natural coursed stone and natural stone roof tiles and alterations to existing stables was approved in February 2014.
- 2.2 As part of this application extensive plans and documents were submitted that showed and described the works. These described the extent of new build and demolition. It was clear from these documents that the front and side walls of the existing dwelling would largely be retained. The plans also showed much of the existing roof to be retained although a replacement roof covering was proposed. Sections of roof would be removed to facilitate the rear extensions and alterations to the roof. Much of the internal structure and walls were also shown to be removed although small sections of internal walls were shown as retained.
- 2.3 Since the January Plans Panel the grant of this Certificate has been reviewed. This has revealed that the eaves of two relatively small sections of the rear elevations of the proposed extensions are approximately 60cm higher than would be allowed as permitted development. Accordingly the Certificate should not have been granted. Members should note that a relatively minor alteration to the plans would have brought those works back as permitted development.
- 2.4 Members should note that there are no particular consequences for this case that flow from this decision to grant the Certificate. The developer in carrying out the building works has gone beyond the works permitted by the Certificate and therefore the Certificate falls. The only relevance of the Certificate is that it gives a reference point in respect of the scale of works that could be carried out as permitted development.
- 2.5 The issue of the processing and determination of applications for lawful development certificates are dealt with at section 4.0 below.

## **3.0 NORTH & EAST PLANS PANEL 27<sup>TH</sup> NOVEMBER 2014**

- 3.1 The site is located within the Green Belt and Members were informed at November Panel that extensions that could be carried out as permitted development were often of a size that exceeded that which would be allowed under the terms of the council's planning policies for extensions to houses in the Green Belt. Members raised significant concerns in that there appeared to be a breach of planning control, that the works constituted an abuse of the planning system and that if the development was allowed to continue as planned the resultant dwelling would be significantly larger than would normally be allowed by green belt planning policy. The Panel resolved to obtain Counsel's opinion in respect of:
- Whether there was a breach of planning control at this point in time;
  - If not when would a breach occur; and,

- What remedial actions were available to council.

- 3.2 Members should be aware that this report is accompanied by a separate report relating to the legal advice received. The information contained within the separate report is confidential as it relates to privileged legal advice. It is considered that it is not in the public interest to disclose this information as it would be likely to prejudice the council's position in respect of any enforcement action it may take in the future. It is therefore considered that the report, when issued, should be treated as exempt under Schedule 12A Local Government Act 1972 and Access to Information Procedure Rule 10.4 (3).
- 3.3 In addition to the matter dealt with in the exempt report it is clear that Panel had significant concerns in respect of a number of matters related to this case:
1. That a Certificate of Proposed Lawful Development can be granted for extensions to a dwelling that are in excess of the council's planning policies that operate within the green belt.
  2. That the affected locally community have no or limited input into applications for Certificates of Lawful Development.
  3. That a developer can be in breach of planning control and that officers put a report recommending that it is not expedient to take enforcement action.
- 3.4 Section 4.0 below addresses points 1 and 2. Point 3 is dealt with in section 3.0 save for the issue whether it is expedient to take enforcement action. This is addressed in the exempt report.
- 3.5 Members should also note that since the November Panel the applicant has been written to asking him to clarify his intends to proceed and asking him to submit a planning application for the development of the site. At the time of drafting this report no reply had been received that addressed these issues.
- 3.6 Members are asked to note the content of this report and secondly to reach a view whether it is expedient to take enforcement action against this breach of planning control. In reaching a view on this second issue Members will need to have regard to the legal advice set out in the exempt report.

#### **4.0 CERTIFICATES OF LAWFUL DEVELOPMENT**

- 4.1 These provide a formal procedure for seeking a legal determination on the need for planning permission. In general terms there are two types of certificate, one for existing and one for proposed uses or developments.
- 4.2 An application for a Lawful Development Certificate is used to establish whether:
- an existing use of land, or some operational development, or some activity in breach of a planning condition, is lawful
  - a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over, or under land, would be lawful
- 4.3 A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future development. If granted by the local planning authority, the certificate means that enforcement action cannot be carried out to the development referred to in the certificate. The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the

interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

- 4.4 There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. This may be appropriate when an applicant is seeking to establish that a particular use of land or a building is lawful (i.e. it has been ongoing for 10 years or more). Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application. If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate.
- 4.5 In this case the applicant sought confirmation from the council that the alterations and extensions that they proposed to carry out to the dwelling constituted permitted development. Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application to a local planning authority. Permitted development rights are set out in a government statute, The Town and Country Planning (General Permitted Development) Order 1995, as amended. With regard to extensions this document sets out criteria relating, in the main, to the height, extent of projection, siting and distance to boundaries for a development to constitute permitted development. Accordingly in such cases third parties will have little or nothing to add to a decision as to whether a proposed extension constitutes permitted development and therefore will not be consulted on such applications. For the same reasons this type of application are rarely reported to Plans Panels.

## **5.0 BREACHES OF PLANNING CONTROL**

- 5.1 Guidance on breaches of planning control and effective enforcement action are set out in central government's Planning Practice Guide (PPG). A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:
- the carrying out of development without the required planning permission; or
  - failing to comply with any condition or limitation subject to which planning permission has been granted.
- 5.2 The works carried out at Reighton House fall within the first bullet point. The PPG sets out that local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest. There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.
- 5.3 Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. Accordingly a local planning authority has to first consider whether there has been a breach of planning control and then move on to consider whether the harm (the environmental effects) caused to matters of public interest are such that it warrants the taking of enforcement action to remedy that harm. The taking of enforcement action is not justified by the fact that there has been a breach of planning control or an abuse of the planning process.

- 5.4 The PPG progresses to set out that in deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.
- 5.5 The sister report to this one addresses the issue as to whether it is expedient to take enforcement action in this case.

## **6.0 CONCLUSION**

- 6.1 This report is presented for Members information and provides some context for the consideration of the legal advice received and the decision whether or not it is expedient to take enforcement action. These matters being dealt with in the exempt report. Members are requested to note this report and then to reach a view on the taking of enforcement action.

### **Background Papers:**

Application file: 13/04348/CLP

Site owned by Mr P Fox