

ENFORCEMENT AND POSSIBLE UNAUTHORISED DEVELOPMENT

1. INTRODUCTION

This report considers current matters of enforcement and possible unauthorised development. The taking of planning enforcement action is delegated to the Head of Planning in consultation with the Chairman. Therefore, only a few matters that require Committee decision to take formal action are reported to Committee.

It is not an offence to carry out works without planning permission and PPG18: Enforcing Planning Control states that enforcement action should not be taken solely to “regularise” development that is acceptable on its merits, but for which permission has not been sought. The purpose of this report is normally, therefore, is to report to Committee matters that are breaches of planning control but where it is recommended that it is not expedient to take enforcement action.

2. POLICY

The Council’s Policy on Planning Enforcement is set out in the adopted Planning Enforcement Charter. The essential thrust of the Policy is that We will not condone wilful breaches of planning law but we will exercise our discretion about taking enforcement action if it is considered expedient to do so. The principle enforcement policies are:

POLICY PE2

Immediate planning enforcement action will be taken against any unauthorised development that unacceptably affects public amenity or causes harm to land or buildings.

POLICY PE3

Formal enforcement action will not normally be taken where a trivial or technical breach of planning control has occurred that causes no material harm

POLICY PE24

Where development is being carried out which is considered to be significantly different from the approved plans and the changes cause serious harm to public amenity, immediate enforcement action may be taken, including the issue of a Stop Notice or Enforcement Injunction to stop the unauthorised development. However, where no material harm is being caused or where the works are “de-minimus”, no further action will be taken.

3. ITEMS

Each item contains a full description, details of any investigation, and an assessment of the situation and concludes with a recommendation.

This report relates to:

Item 1 67 Aldwick Close, Farnborough.

Item 2 39 St. Georges Road, Aldershot

All information, recommendations and advice contained in this report are understood to be correct at the time of writing this report. Any change in circumstances will be updated verbally at the Committee meeting. Where a recommendation is either altered or substantially amended between preparing the report and the Committee meeting, a separate sheet will be circulated at the meeting to assist Members in following the modifications proposed.

4. HUMAN RIGHTS

The Human Rights Act 1998 (the Act) has incorporated part of the European Convention on Human Rights into English law. Any recommendation either to take or not to take enforcement action has been assessed to make sure that the decision is compatible with the Act. If there is a potential conflict this will be highlighted in the individual report on the relevant item.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report. However, in the event of an appeal, further resources will be put towards defending the Council's decision. Rarely, and in certain circumstances, decisions on planning enforcement cases result in the Council facing an application for costs arising from a planning appeal. Officers will aim to alert Members where this may be likely and provide appropriate advice in such circumstances.

Keith Holland
Head of Planning

BACKGROUND PAPERS

Rushmoor Local Plan Review (1996-2011)

Planning Enforcement - Policies And Procedures

ITEM 1

| | |
|-----------------------|---|
| SITE LOCATION | 67 Aldwick Close Farnborough |
| ALLEGED BREACH | Lean-to extension type structure built to rear of the property |
| RECOMMENDATION | No further action |

DESCRIPTION

This property is a two-storey terraced house, located on the north side of Aldwick Close on the Prospect Estate. The property fronts an area of open amenity space, has a small front garden and an enclosed rear garden backing onto a footpath.

ALLEGED BREACH

A complaint was received in December 2010 concerning a lean-to extension at the rear of the property, which was indicated to have been erected some years previously. However, the main thrust of the complaint related to a recent dispute concerning the removal and replacement of a section of boundary fence between the site and one of the neighbouring properties adjoining the extension. [Officer note: the neighbour dispute in this respect is a private property matter in which the Council can have no involvement. Furthermore, it is clear Government guidance that the enforcement system should not be used to resolve neighbour disputes].

INVESTIGATION

A site visit revealed that the occupiers of the property had erected a single storey lean-to extension at the rear of the property. This has been constructed using a lightweight timber frame and has a transparent corrugated plastic roof. A black plastic sheet was being used to enclose the southern flank elevation shared with the adjacent property, No.68 Aldwick Close, in lieu of a conventional fence panel.

The occupier of No.67 confirmed that the structure had been erected in November 2007. As a result it is appropriate to consider the work undertaken in respect of the old General Permitted Development Order prior to the October 2008 amendments. In this instance, planning permission would have been required in 2007 because the structure is nearer to a highway that bounds the curtilage of the dwellinghouse than the part of the dwellinghouse nearest to that highway. Furthermore, post the 2008 amendments, planning permission is still required for the extension, now because it exceeds 3 metres in depth from the rear wall of the house and is constructed with materials that do not match those of the existing house.

The occupier of the property was advised that planning permission should have been obtained for the erection of the lean-to in 2007 and it was suggested that a retrospective application be submitted to regularise the situation. However, no such application has been received to date.

COMMENTARY

It is considered that the main determining issues in this case are the impact upon the amenities of the occupiers of adjacent properties and the impact on the character and appearance of the area.

There are many examples in the area of similar sized single storey rear extensions, including some constructed similarly to that of the current case. The lean-to has been constructed using different materials to the existing property, however, it is not readily visible from a publically accessible place. Accordingly it is not considered to materially and harmfully affect the visual character of the area.

The lean-to is single-storey in height with a shallow-pitched corrugated transparent roof. Due to its orientation and relationships with neighbours, it is not considered to cause any material and harmful loss of light or over shadowing issues and no loss of privacy to any neighbouring properties. Indeed, it is clear that the extension itself has given rise to no complaints from neighbours.

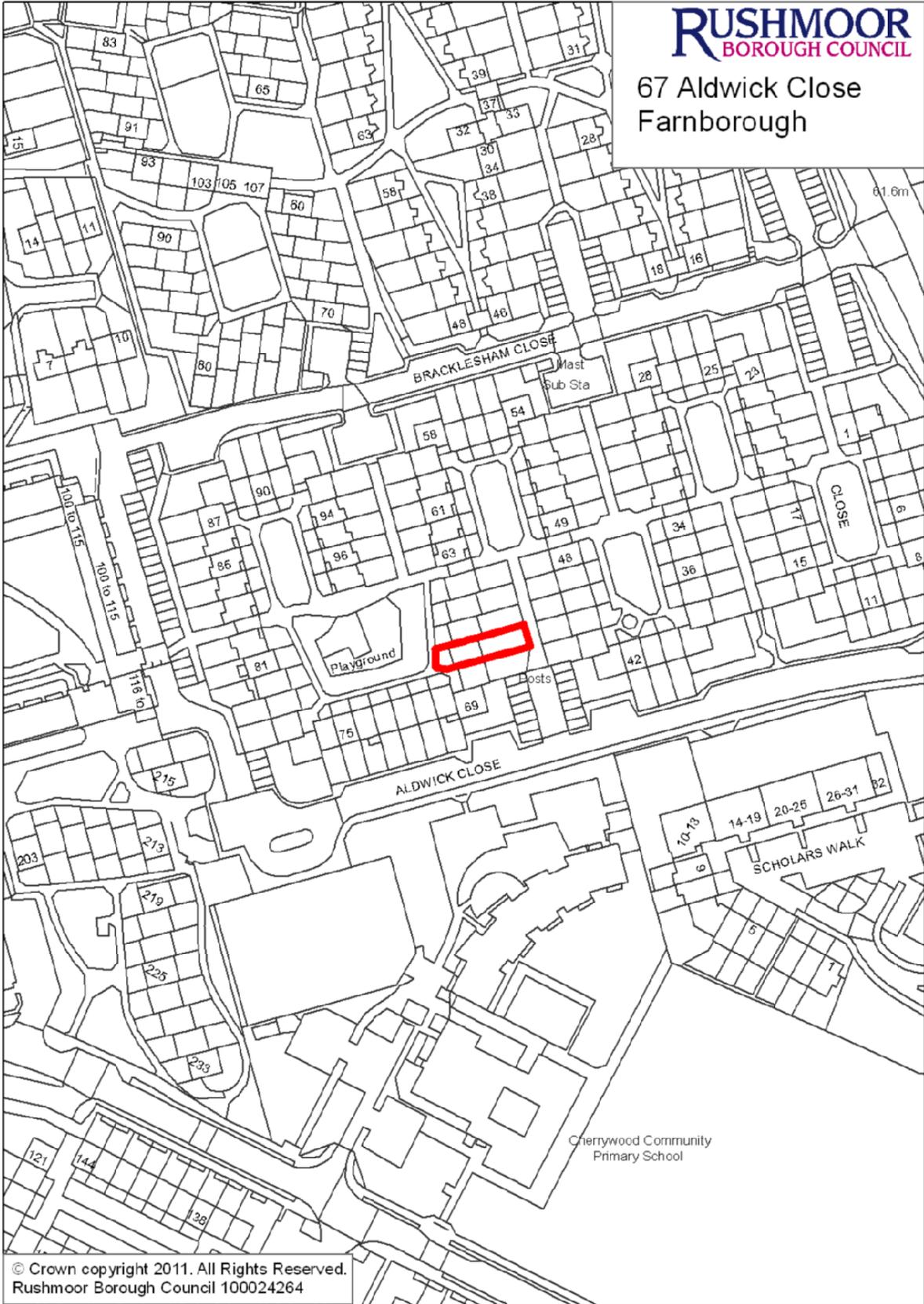
It is understood that the complaint in respect of the extension has occurred due to a recent neighbour dispute arising from the fact that the nearest fence panel to the houses between Nos.67 and 68 Aldwick Close is of open trellis construction, offering the occupiers of No.67 compromised privacy on their patio area. As a result of the refusal of the occupier of No.68 to replace this fence panel with a solid panel, the occupiers of No.67 have resorted to placing a black polythene sheet to cover the gap. It is this action that has prompted the complaint, however the affixing of the sheet is not considered to amount to development and, as such, does not constitute a breach of planning control.

In conclusion, it is considered that the unauthorised extension does not cause any significant material harm to the visual character of the area or to the amenities of neighbours. As such, it is considered that planning permission would be granted by the Council were a planning application to be submitted. Accordingly, in accordance with Policy PE3, it is considered neither expedient nor reasonable for the Council to take enforcement action in respect of the breach of planning control that has taken place.

FULL RECOMMENDATION

It is recommended that **NO FURTHER ACTION** be taken.

67 Aldwick Close
Farnborough





Enf 6

ITEM 2

| | |
|-----------------------|--|
| SITE LOCATION | 39 St. Georges Road, Aldershot |
| ALLEGED BREACH | Unauthorised erection of conservatory to rear |
| RECOMMENDATION | No further action |

DESCRIPTION & RELEVANT HISTORY

The property is an extended end-of-terrace house on the north-west side of St Georges Road approximately 50 metres north-east of the junction with East Station Road and the Wellesey Gate access to Aldershot Railway Station.

Planning permission was granted in June 2008 for erection of a part two storey and part single-storey side extension to create a granny annexe and erection of separate part single storey and part first floor rear extension, 08/00278/FUL refers. These approved extensions were subsequently built and completed.

ALLEGED BREACH

A complaint was received in September 2010 that a conservatory had been erected to the rear of the extended house and there was no record of any correspondence with the Council regarding this matter.

INVESTIGATION

Site inspection revealed that a conservatory had, indeed, been erected to the rear of the property. Despite the 2008 amendments to domestic permitted development, it was concluded that planning permission was required for the conservatory because it projects to the side of the original house and exceeds more than half the width of the original house. This is even though it does not project beyond the side of the 2008 approved side extension

The occupier was advised that planning permission was required and invited to submit a retrospective planning application. However, despite reminders, no application has been submitted to date.

COMMENTARY

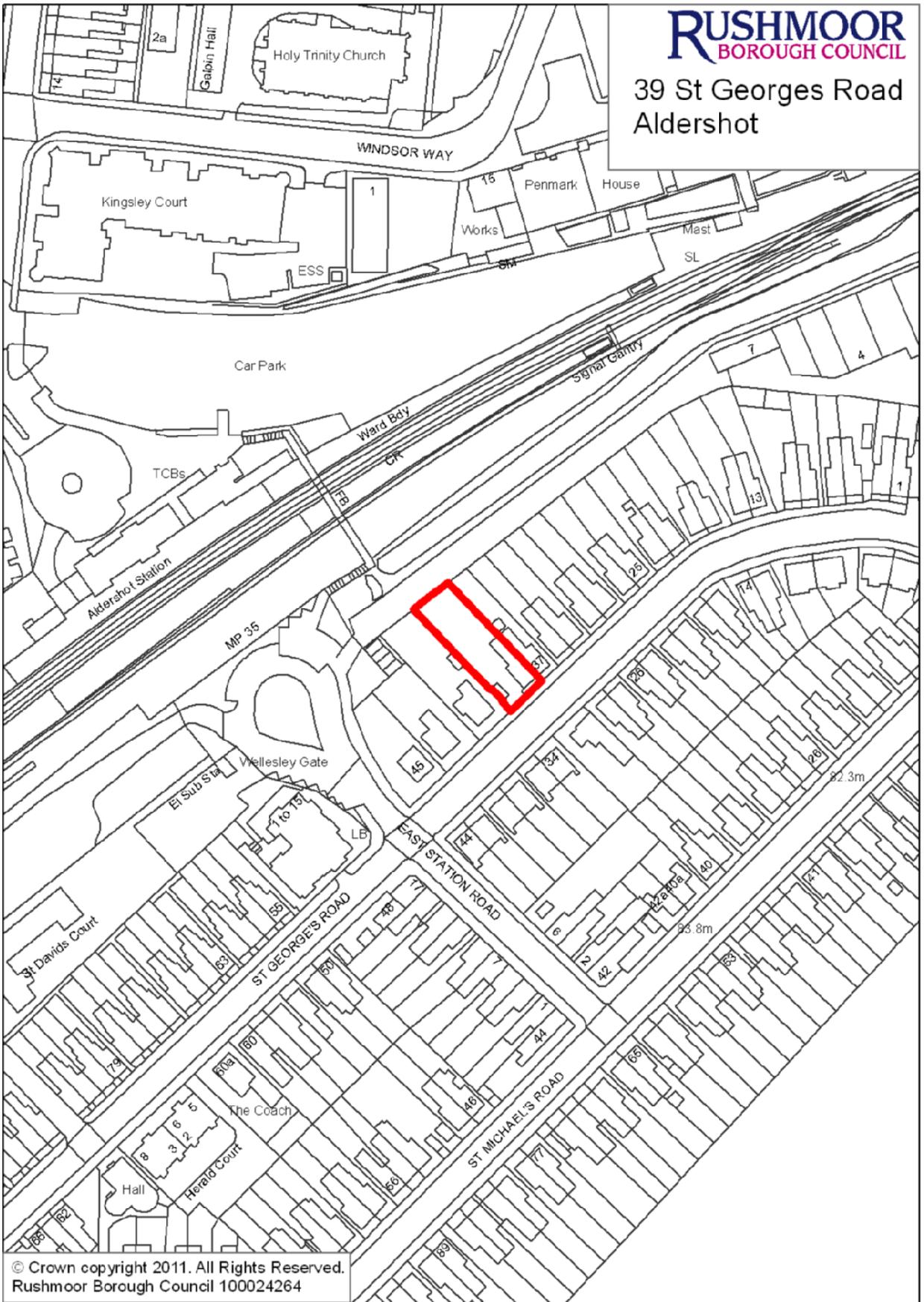
The conservatory in question is of a conventional design and means of construction. It is located to the rear of the property where it is not readily visible from publicly-accessible vantage points. In terms of the impact on the nearest (detached) neighbour to the side at No.41, this is considered to be acceptable in planning terms. It is separated from the shared boundary between the properties by the driveway serving No.39. Further, being of single storey height only, it does not give rise to any material loss of light, outlook or privacy. It is considered that no materially un-neighbourly relationship arises with No.41. The other neighbour at No.37 is not affected by the erection of the conservatory as the house at No.39 lies in-between.

In the circumstances, it is considered that the conservatory does not cause any material harm to the visual character of the area or the amenities of neighbours. As such, it is considered that planning permission would be granted by the Council were a planning application to be submitted. Accordingly, in accordance with Policy PE3, it is considered neither expedient nor reasonable for the Council to take enforcement action in respect of the breach of planning control that has taken place in this case.

FULL RECOMMENDATION

It is recommended that **NO FURTHER ACTION** be taken.

39 St Georges Road
Aldershot



© Crown copyright 2011. All Rights Reserved.
Rushmoor Borough Council 100024264