



SHEFFIELD CITY COUNCIL Planning & Highways Committee Report

Report of: Director of Regeneration & Development Services

Date: 24th June 2014

Subject: Enforcement Report

Author of Report: Lee Brook

Summary: Unauthorised installation of external Wall insulation (cladding) to houses, Staniforth Road, Earl Marshal Road and Page Hall Road.

Recommendations:

That the Director of Regeneration and Development Services or Head of Planning be authorised to take any appropriate action including if necessary, enforcement action and the institution of legal proceedings to secure:

- (i) the prevention of further harmful unauthorised external wall insulation to house elevations fronting to a highway,
- (ii) the removal of harmful unauthorised external wall insulation from any house elevation fronting to a highway, (except those listed below)
- (iii) authority to take no further action in relation to external wall insulation at the following addresses:
 - 368, 392, 401, 403, 405, 407, 409, 416, 447, 451, 453, 463, 465, 471, 476, 480, 482, 489, 500 Staniforth Road
 - 397, 399, 403, 405, 409, 415, 423, 427, 429 Earl Marshal Road
 - 107 and 111 Page Hall Road

The Head of Planning is designated to vary the action authorised in order to achieve the objectives hereby confirmed, including taking action to resolve any associated breaches of planning control.

Background Papers:

Category of Report: OPEN

ENFORCEMENT REPORT

UNAUTHORISED INSTALLATION OF EXTERNAL WALL INSULATION (CLADDING) TO HOUSES, STANIFORTH ROAD, EARL MARSHALL ROAD, AND PAGE HALL ROAD

1. PURPOSE OF THE REPORT

The purpose of this report is to inform committee Members of a breach of planning control and to make recommendations on any further action required.

2. LOCATION

- 2.1 So far, at the time of writing, officers are aware of 31 houses that have been fitted with external cladding to insulate external walls, including the front elevations facing the road. There are 19 on Staniforth Road, 10 on Earl Marshal Road, and 2 on Page Hall Road.

3. BACKGROUND

- 3.1 The 'Green Deal' is a Government programme to retrofit homes with measures designed to cut energy usage and reduce the UK's CO² emissions. Sheffield Council is committed to support this scheme in a bid to improve energy efficiency, reduce CO² emissions and reduce fuel poverty. Some of the measures include the addition of external insulation, which involves cladding over the outside of the house walls with an insulation material and then finishing off with a top coat, typically a render material of some sort.
- 3.2 Awareness that external wall insulation, (EWI), cladding has been fitted to the front walls of homes facing the highway came when officers in the Council's Building Standards Service advised some installers that planning consent might be required for such work; planning enforcement was then notified. At that point a number of houses in Darnall and Grimesthorpe had already been completed or substantially completed.
- 3.3 Planning Contravention Notices were served on two companies in connection with these works already carried out to houses in Staniforth Road and Earl Marshal Road to establish the details.
- 3.4 Letters have been sent to all 40 companies listed on the Council's list of potential contractors in this field of work advising that external cladding to the front elevations of houses will need planning permission

if the conditions under 'permitted development' rules are not adhered to, (described at 4.0 to 4.4 below).

- 3.5 Letters have also been sent to householders on Staniforth Road and Earl Marshall Road advising that planning permission is needed for the work carried out on their homes. The letter goes on to say that, on this occasion, enforcement action will only be considered against the installer and the householders will not be facing enforcement action / legal proceedings due to particular circumstances identified. It has transpired, due to feedback obtained, that the installation companies have poorly advised householders and in particular have not informed them about planning permission and building regulations.
- 3.6 Any new breaches at other properties may result in action being taken against home owners and / or installers.
- 3.7 The work is carried out under the Government's Green Deal Oversight and Registration Body (GD ORB), on behalf of the Secretary of State, who manages the authorisation scheme for participants in the Green Deal and is responsible for a number of functions aimed at providing effective administration and oversight of the scheme. The GD ORB is responsible for maintaining a register of all authorised providers, assessors, certification bodies and installers and for maintaining the Green Deal Code of Practice; ongoing monitoring of Green Deal Participants against the Code of Practice; producing an annual Green Deal report; and gathering evidence of non-compliance and referring participants to the Ombudsman or the Secretary of State where appropriate and imposing sanctions when directed.
- 3.8 In addition to writing to the installers directly, officers will consult GD ORB about the quality of some of the installations already carried out on Staniforth Road in particular, which has seen the worst examples so far of poor visual quality. The two installers known to the Local Planning Authority operating in Staniforth Road and Earl Marshal Road in March and April have informed officers that they have no more installations planned for those streets at this time.
- 3.9 Legal advice has been taken in connection with an enforcement strategy in the event that such action is required.
- 3.10 Since April other houses that have come to the attention of officers are 107 and 111 Page Hall Road.
- 3.11 In addition to these there have been a number of pre-application enquiries for external cladding to front elevations, (not implemented) and there are now at least five planning applications to clad front elevations, (decisions pending / not implemented). However, of all the unauthorised works, only 111 Page Hall Road is subject to a planning application, (building regulations application also submitted).

4. LEGISLATION AND POLICY

- 4.1 The Town and Country (General Permitted Development) order 1995, ('GPDO'), sets out a raft of planning permissions for development that can be undertaken without the need to submit a planning application to the Local Planning Authority. This is a range of permissions already deemed to be granted. This is known as 'permitted development' or PD. To benefit from PD the development has to be wholly on land that is within the curtilage of the house. If the EWI or 'cladding' overhangs a neighbouring property or the highway, then PD rights cannot apply.
- 4.2 Government guidance published in January 2013 and since amended in April 2014, (Permitted Development for Householders Technical Guidance'), makes it clear that this insulation is to be treated as an 'improvement' rather than an 'enlargement' or 'extension' to a house, under the GPDO. This guidance gives some flexibility on when a planning application to the Local Authority is required, depending on where the building is located and on the types of materials used. Building Regulations is usually required for such works.
- 4.3 Conditions apply to the exercise of PD rights. The condition that is relevant in respect of EWI requires that the materials used in any external work "be of a similar appearance to those used in the construction of the exterior of the house".
- 4.4 To benefit from PD, it is the view of this Authority that the replacement materials used to finish the EWI at the front need to be of the same or similar colour and style as the existing material on the front elevation of the house. A brick property would need to have a similar brick or brick 'like' finish to it. If the property is a rough cast render to begin with, then the finish of the insulation would need to be a similar rough cast rendered finish to be PD.
- 4.5 The relevant local policies are BE5 of the Sheffield Unitary Development Plan, (UDP) and the Sheffield Development Framework, (SDF), Core Strategy Policy CS74.
- 4.6 UDP policy BE5, Building Design and Siting, states that good design and the use of good quality materials will be expected in all new and refurbished buildings and extensions.
- 4.7 Policy CS74 of the SDF, Design Principles, says that high-quality development will be expected, which would respect, take advantage of and enhance the distinctive features of the city, its districts and neighbourhoods, including amongst other things:

CS74c. the townscape and landscape character of the city's districts, neighbourhoods and quarters, with their associated scale, layout and built form, building styles and materials; and

CS74d. the distinctive heritage of the city, particularly the buildings and settlement forms associated with: CS74d(iii) Victorian, Edwardian and Garden City suburbs.

- 4.8 When assessing planning applications factors such as whether original features like heads and sills, decorative brickwork or stonework are to be lost, how windows and other junctions will be treated and whether the render (or other finish), will look out of character in the street scene, will be considered.
- 4.9 In a lot of cases it will be appropriate to apply non matching external insulation to the side and rear elevations of a property, if it is not visible from the public highway and will not have a significant effect upon the character of the property. However internal wall insulation will be the only option; at least to the front elevation, in some cases.
- 4.10 Where housing is constructed with a render or pebbledash finish, without ornate features, it is likely to be suitable for EWI and, if a material with a similar finish is used, it will likely be PD.
- 4.11 The Council is supporting the Green Deal and wants to work with registered providers, landlords and home owners to ensure work is carried out quickly and where possible within PD rules, not requiring a planning application. It is our intention to assist this by establishing clearer guidance on acceptable solutions. We particularly want to support approaches and standards that seek to retain the quality of the street scene whilst also achieving the large-scale energy efficiency improvements that are clearly needed.
- 4.12 The Planning Service is working with the Council's Sustainable Development Service on this wider agenda, and any positive contribution from installers is welcomed. This may include examples of good practice/innovation developed elsewhere as it is appreciated that this is a fast developing field.

5. ASSESSMENT

- 5.1 The EWI carried out so far on all but one house is considered not to benefit from PD. The exception is 389 Earl Marshall Road, which already had existing cream coloured smooth render finish, in place for many years, which covered the traditional architectural features. That has now been clad over with new EWI and finished in a cream coloured smooth render finish, which is considered to be PD.
- 5.2 There are 28 other addresses in Staniforth Road and Earl Marshal Road that have EWI considered to be a breach of planning control. The attached Appendix A shows a few examples. The EWI carried out here is considered to cause significant visual harm to the character of the individual properties and the character of street scene for the following reasons.

- 5.3 Staniforth Road, Earl Marshal Road and Page Hall Road are examples of Victorian / Edwardian terraced house street scenes that typify the character of many of Sheffield's districts. It is acknowledged that over the years incremental minor changes have occurred to many of the houses, particularly on Staniforth Road, such as the removal of chimneys, addition of roof dormers of varying styles, addition of front porches, painting of brick work, altered bay windows etc however there are major concerns with the EWI work carried out on these properties at a highly visible level that irreversibly alters the character and appearance of the properties in a negative way.
- 5.4 The materials used in all the cases identified are not similar to the traditional existing red brick and stone and therefore planning permission is required as they do not meet the conditions attached to PD, (described at 4. above).
- 5.5 Staniforth Road, (19 houses). Red brick houses have been over-clad and finished in smooth reddish colour render. Stone window sills, window and doorway head stones have been lost as have stone heads and arch features above some passageways and other stone ribbons and name plaques. Bay windows, soil pipes, boiler vents and junctions with railings have also been clumsily boxed around. This is visually unattractive, it looks awkward and spoils the appearance of the properties harming the character of the street. There is also an inconsistent approach to the treatment of stone archways to passageways. Some are clad over and some are clad around, further spoiling the look of the terraces on both streets.
- 5.6 Earl Marshal Road, (9 houses). These previously red brick houses, (except no.415, which had been painted cream), have been similarly treated to those at Staniforth Road with similar results. Traditional features including stone heads / sills / passage archways have been over clad with insulation and cream coloured render finish applied, which contrasts with the majority remaining red brick houses. The results are considered to be visually harmful to the character and appearance of the houses and the street.
- 5.7 No applications for planning permission or building regulations have been submitted for any houses on Staniforth Road or Earl Marshal Road.
- 5.8 107 and 111 Page Hall Road The traditional stone heads and sills detail and the red brick front of both houses has been over clad / lost, giving a blank finish to the front elevation, spoiling the look and character of the property and the wider terrace as a whole. The finish is cream coloured render at 107, which contrasts with the otherwise red coloured brick on the majority of the terrace. No.111 is finished in red colour render. Planning and Building Regulations applications are submitted for no.111. There are no applications for 107.

- 5.9 In each of the cases at Staniforth, Earl Marshal and Page Hall Road, the appearance and character of the houses has been harmed for the reasons stated. This is considered to be contrary to policy BE5 of the Unitary Development Plan and Core Strategy policy CS74 of the Sheffield Development Framework.
- 5.10 Temporary Stop Notices were considered in some cases, but the works were so advanced that it was not considered appropriate under the circumstances. Most were either completed or nearly completed and it is clear that the householders were poorly advised by the installers. Enforcement action would ultimately fall on the house owners and it would appear that they were not being advised about the planning application versus PD position or about the alternative internal insulation method.
- 5.11 In response to PCN's served the two installation companies responsible for 29 of the properties identified, replied by letter explaining that many of the homeowners in Darnall and Grimesthorpe are in fuel poverty and some elderly owners were even without proper central heating at all. These installers are now in no doubt as to the LPA's view on when a planning application is required and when the work already has permission under PD. No further breaches are expected by these two companies.
- 5.12 The Council website has been updated under the 'What's New' section with clear advice about EWI and all the known installation companies have been sent a letter each also advising that a planning application could be required.
- 5.13 Although the work described at Staniforth, Earl Marshal and Page Hall Roads is considered to cause visual harm the recommendation in this report has taken into account the feedback gained so far from six households about how the installation companies advised their clients. It also takes into account the fact that enforcement action is likely to fall upon the householders who were poorly advised by the private installation companies. That said, harmful unauthorised development that further erodes the traditional character of Sheffield streets cannot be allowed to go unchecked and the recommendation reflects the need to balance the effect of the EWI on the appearance of the city's streets with the need for energy conservation. It also takes account of the unfortunate predicament faced by the householders, who appear to have agreed to the work in good faith.

6. REPRESENTATIONS

- 6.1 In response to letters, sent in May, to 29 houses in Staniforth Road and Earl Marshal Road there have been responses from six private home owners, all from Staniforth Road. All have said that the representatives of the installation companies made no mention of the possibility that planning permission or building regulations might be needed.

6.2 No complaints have been received from the public at the time of writing about the visual effect. One of the responders on Staniforth Road has expressed concern about the finished product at his home not being what he was hoping for in terms of quality, texture and colour.

7. ASSESSMENT OF ENFORCEMENT OPTIONS

7.1 Section 171C of the Town and Country Planning Act 1990, ('the Act') provides for the service of a Planning Contravention Notice. The notice requires information about the suspected breach of planning control and about property ownership. It also gives an opportunity for the recipient to meet with officers to make representations.

7.2 Section 171E of the Act provides for the service of a Temporary Stop Notice, which can be used at short notice in order to bring a temporary stop of 28 days, (no more), to work whilst the LPA assesses and decides on an appropriate course of action. Such a notice can only be used once for a particular development.

7.3 Section 172 of the Act provides for the service of an Enforcement Notice (EN). In this case such a notice would require the remedial measures to make good the harm caused by the unauthorised development. In this context it would mean the removal of the unauthorised external materials altogether. There is an appeal process inbuilt to the EN.

7.4 An EN must be served on the owner and any other person with a material interest in the property. In this case the EN would not be served on the installation company as under planning law they would not be considered to have 'a material interest'. This course of action would be solely against the home owner.

7.5 Section 183 of the Act provides for the service of a Stop Notice in conjunction (only) with an enforcement notice (S172). In this case the works at houses identified are already completed, so such a notice isn't proposed for any of the known cases to date. Should new authorised work begin elsewhere a Stop Notice can be considered. Legislation states it can only be served in conjunction with an EN.

7.6 Section 187A of the Act provides for the service of a breach of conditions notice, (BCN), if it is claimed that the development is reliant on planning permission contained with the General Permitted Development Order, (PD described at para.4.0 to 4.4 above). The condition in breach would be the one requiring use of similar materials. There is no right of appeal inbuilt to this type of notice.

7.7 Section 187B of the Act allows the Planning Authority to apply to the Sheffield County Court to restrain a breach of planning control. In this case an injunction would be a last resort if either any stop notice/s served were ignored or if an installer was to disregard clear advice and continue to cause multiple unauthorised developments of a similar

nature. Injunctive action would be a quicker way to stop further unauthorised harmful activity, (than by prosecution for non-compliance with the stop notice).

7 EQUAL OPPORTUNITIES

7.1 There are no equal opportunity implications arising from the recommendation in this report.

8. FINANCIAL IMPLICATIONS

8.1 There are no additional financial implications expected as a result of the recommendations in this report. If an appeal is made against the enforcement notice, costs can be made against the Council if it is shown that it behaved “unreasonably” in the appeal process but this is uncommon. In the unlikely event compensation is paid, it would be met from the planning revenue budget.

8.2 Where an EN and Stop Notice is served, compensation may be payable, following appeal, in respect of a stopped activity only if:

- (a) the EN is quashed on grounds other than the granting of planning permission, (one such example is if the Planning inspector decided that the development was PD),
- (b) the EN is varied so that matters alleged to constitute a breach of control cease to include an activity stopped by the notice,
- (c) the EN is withdrawn by the Council otherwise than in consequence with the grant of planning permission by the Council for the development to which the notice relates; or
- (d) the stop notice is withdrawn

9. RECOMMENDATION

9.1 That the Director of Regeneration and Development Services or Head of Planning be authorised to take any appropriate action including if necessary, enforcement action, the service of stop notices and the institution of legal proceedings to secure:

- (iv) the prevention of further harmful unauthorised external wall insulation to house elevations fronting to a highway,
- (v) the removal of harmful unauthorised external wall insulation from any house elevation fronting to a highway, (except those listed below)
- (vi) authority to take no further action in relation to external wall insulation at the following addresses:

- 368, 392, 401, 403, 405, 407, 409, 416, 447, 451, 453, 463, 465, 471, 476, 480, 482, 489, 500 Staniforth Road
- 397, 399, 403, 405, 409, 415, 423, 427, 429 Earl Marshal Road
- 107 and 111 Page Hall Road

9.2 The Head of Planning is designated to vary the action authorised in order to achieve the objectives hereby confirmed, including taking action to resolve any associated breaches of planning control.

Maria Duffy
Head of Planning

10 June 2014