

OFFICER DECISION RECORD

For staff restructures, please also complete an RA1 form to update the HR Portal. This is attached at Annex 2.

Decision Ref. No:

RE18 0073

Box 1

DIRECTORATE: R & E

DATE: 10/4/18

Contact Name: Lisa Warren

Tel. No.: 735176

Subject Matter:

41 Hoddesdon Crescent, Duncroft - bungalow extension encroaching onto adopted highway.

Box 2

DECISION TAKEN:

Not to take enforcement action to require the removal of the extension.

Box 3

REASON FOR THE DECISION:

A complaint has been received from a neighbouring resident

On investigation of the complaint it became clear that an extension consisting of a single storey to the front of the building and incorporating a bay window was built in circa 2003 (see the attached photograph). The extension had full planning permission.

Unfortunately the bay window of the extension encroaches into the service strip retained as part of the adopted highway, though within the ownership of the property, and as such is an encroachment onto the public highway.

To remove the part of the property encroaching on the highway would require the demolition of the bay window. The area of encroachment is not used by the public as it is a service strip in the front garden and does not impede the normal passage of highway users. In addition the utilities representatives have visited the property and have confirmed that they are happy for the structure to remain.

This decision has been taken without prejudice and the property owner has been informed that the Council reserves the right to take enforcement action at some future time should the need arise. Utilities have not needed to access the strip, and have visited site.

From a highways asset maintenance position there is no significant detriment to the fabric of the adopted highway or to the safe passage for users of the highway.

In the above circumstances it is considered not proportionate to take enforcement action and to require removal of the bay window.

Box 4**OPTIONS CONSIDERED & REASONS FOR RECOMMENDED OPTION:**

1. Enforce using Highways Legislation consisting of the following options:-
 - a. Request resident to remove structure
 - b. The Council to remove the offending structure using the powers contained in the Highways Act 1980 Section 143. These works would be carried out on a rechargeable basis.
 - c. Remove lower half of bay window and provide an over sail licence
 - d. Resident to apply for a stopping up order under planning
2. Decide not to enforce but would be under scrutiny from complainants – possible Ombudsman procedure – no interruption to the public for use of the adopted highway as it is a service strip.

When reviewing encroachment cases the decision making is based on a case by case basis.

Box 5**LEGAL IMPLICATIONS:**

The Council has a legal duty to enforce the enjoyment of the highway and a failure to do so could lead to the giving of notice by an individual requiring the highway authority to remove the obstruction and to take court action subsequently.

In this instance however the area of encroachment is a service strip within a front garden and the utilities companies have confirmed that they have no objections to the structure remaining nor does it impede the normal passage of highway users. Removal of the extension and the consequent reinstatement of the property that would be required is considered to be a disproportionate response. Informing the property owner that the Council reserves the right to take future enforcement action will protect the Council's interests in this instance.

Name: Karen Winnard _____ **Signature:** _____ **Date:** _11/4/18_
Signature of Assistant Director of Legal and Democratic Services (or representative)

Box 6

FINANCIAL IMPLICATIONS:

There are no financial implications associated with this decision.

Name: _ Richard Taylor **Signature:** _ ____ **Date:** __11/4/18____
Signature of Assistant Director of Finance & Performance
(or representative)

Box 7

HUMAN RESOURCE IMPLICATIONS:

There are no HR implications.

Name: David Knapp **Signature:** _____ **Date:** 13/4/18
Signature of Assistant Director of Human Resources and Communications (or representative)

Box 8

PROCUREMENT IMPLICATIONS:

There are no direct procurement implications associated with this report

Name: Scott Duffield **Signature** _____ **Date:** 13/4/18
Signature of Assistant Director of Finance & Performance
(or representative)

Box 9

ICT IMPLICATIONS:

There are no ICT implications associated with this decision.

Name: Peter Ward (Governance & Support Manager)
Signature: _____ **Date:** 12/4/18
Signature of Assistant Director of Customers, Digital & ICT (or representative)

Box 10

ASSET IMPLICATIONS:

There are no implications arising from the recommendations of this report that impact on the use of DMBC assets beyond the property subject to the report.

Name: David Stimpson, Property Manager

Signature: _____ **Date:** 16th April 2018

Property Manager – on behalf of Assistant Director of Trading & Property Services

Box 11

RISK IMPLICATIONS:

To be completed by the report author

The Council has a legal duty to protect the enjoyment of the highway for all users, therefore representations may be made that the Council has breached this duty. However in determining the level of this risk the Council is satisfied that this encroachment has no material impact on highway users or utility companies' apparatus in the highway.

Box 12

EQUALITY IMPLICATIONS:

To be completed by the report author

There are no Equality implications.

Name: Lisa Warren _____ **Signature:** _____ **Date:** 10/4/18 _____
(Report author)

Box 13

CONSULTATION

Members

Local Ward Members have been advised.

Cllr Derek Smith
Cllr Duncan Anderson
Cllr Linda Curran
Cllr Joe Blackham – portfolio holder

Statutory Utility Companies - a search has been carried out to identify any statutory apparatus that may be affected by this encroachment. Those where there were apparatus in close proximity have been consulted and they have raised no issues.

Box 14

INFORMATION NOT FOR PUBLICATION:

In accordance with the Freedom of Information Act 2000, it is in the public's interest for this decision record to be published in full, redacting only the signatures.

Name: Sarah Greaves_____ Signature: _____ Date: 16/4/18_
Signature of FOI Lead Officer for service area where ODR originates

Box 15

Signed _____ Date: 5 June 2018
Gill Gillies, Assistant Director Environment

Signed: _____ Date: _____
Additional Signature of Chief Financial Officer or nominated representative for Capital decisions (if required)

Signed: _____ Date: _____
Signature of Mayor or relevant Cabinet Member consulted on the above decision (if required).

- This decision can be implemented immediately unless it relates to a Capital Scheme that requires the approval of Cabinet. All Cabinet decisions are subject to call in.
- A record of this decision should be kept by the relevant Director's PA for accountability and published on the Council's website.
- A copy of this decision should be sent to the originating Directorate's FOI Lead Officer to consider 'information not for publication' prior to being published on the Council's website.
- A PDF copy of the signed decision record should be e-mailed to the LA Democratic Services mailbox

