

Item No. 5

Enforcement No: E/09/0350

Type:	Unpermitted Building	Date of Complaint:	18 th November 2009
Developer:	Mr and Mrs Earp		
Breach:	Unauthorized construction of childrens' activity area, wooden canopy and smoking shelter in rear garden of public house		
Location:	Ox Lea Hotel, 61 Anson Road, Shepshed, Loughborough, LE12 9PT		
Parish:	Shepshed	Ward:	Shepshed West Ward
Case Officer:	Miss S J Coleman	Extension:	01509 634773

Description of the Unauthorised Development

The unauthorised development consists of three elements, all of which are located within the pubs beer garden, which backs onto residential properties on Griffin Close and a public walkway on the northern and eastern sides of the site.

These are a children's activity centre consisting of a wooden structure attached to the rear of the existing garage which is approx 2 metres high with two swings attached; a wooden smoking shelter located just beyond a paved area leading from the rear door that is approximately 2 metres high and is enclosed on two sides with wooden panelling and a corrugated plastic flat roof. The third element is a wooden canopy with a corrugated plastic flat roof which is attached to the rear of the building and covers an area immediately outside of the rear door; this area is also used as a smoking area. The two latter elements are clearly visible from 'The Parade' which is a public walkway leading to houses and shops from Griffin Close and Anson Road.

It is worthy to note that the two smoking structures replace a shelter which was granted planning permission in 2007 under reference P/07/2337/2. This was removed soon after the current tenants took occupancy. Further details of this permission are provided later in this report under 'Relevant Planning History'.

- **Development Plan Policies**

Borough of Charnwood Local Plan (adopted 12th January 2004)

Policy EV/1 - Design

- **Other Policies**

PPG 18, Enforcing Planning Control, gives advice about planning enforcement. It advises that the decisive issue in considering enforcement action should be whether

the breach of control is unacceptably affecting public amenity or the existing use of land or buildings.

- **Other Material Considerations**

The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the authorisation of enforcement proceedings.

The issue of **human rights** is a material consideration in the determination of planning applications and enforcement issues. Article 8 of the Human Rights Act 1998 requires respect for private and family life and the home while Article 1 of the First Protocol provides an entitlement to peaceful enjoyment of possessions. However, these rights are “qualified”. It is necessary to consider whether refusing planning permission and/or issuing an enforcement notice would interfere with the developer’s human rights. If it would, the Committee must decide whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The impact on the human rights of the developer must be balanced against the public interest in terms of protecting the environment and the rights of other people living in the area. In this case, the balance points to safeguarding the residential amenity of the occupiers of neighbouring properties and protecting the visual amenity of the surrounding area.

Relevant Planning History

Planning permission was granted in October 2007 under reference P/07/2337/2 for the erection of a rear door, installation of timber decking, fencing, gate and relocation of metal shelter to rear of public house.

Originally this smoking shelter was positioned to the front of the building without planning permission but our intervention resulted in the above application and the structure was relocated.

Responses of Statutory Consultees

Environmental Health – they state that they are currently investigating a number of issues raised by local residents about noise and disturbance at the premises. They go on to state that as the premises are in close proximity to a number of residential properties there is potential for increased disturbance to these residents from customers congregating outside of the premises when using the smoking shelters, especially late in the evening or at weekends.

It should be noted that these complaints also include the use of the beer garden and the car park as an outside seating area/children’s play area which is part of the lawful use of the premises and have already been investigated and it has been concluded that this activity is not a breach of planning control.

Consideration of the Planning Issues

In regard to the children's swings it must be noted that these are within the existing beer garden and as such this use is in association with the lawful use of the building. Therefore any noise and disturbance caused to occupiers to neighbouring properties from this structure is not considered to be discernibly different to the existing lawful use of the land as an outside area for users of the public house. As far as the structure is concerned it is also considered that it complies with Policy EV/1 as it is of a design and scale that it compatible with the locality and any neighbouring buildings and spaces. Furthermore the structure is not visible from any public vantage points and cannot therefore be considered to be detrimental to the visual amenity of the area and so for these reasons it is recommended that no further action is taken.

With regard to the two smoking shelters it is considered that by reason of their location, design and use of materials they are incompatible with the locality, do not provide positive and attractive built frontages to the existing public walkway 'The Parade' and are detrimental to the visual amenity of the occupiers of neighbouring residential properties. Furthermore the shelter attached to the rear of the building appears as an incongruous feature on the building itself. For these reasons it is considered that both structures do not comply with Policy EV/1 and it is recommended that formal action is taken to ensure their removal from the site.

RECOMMENDATION:

Authorise Enforcement Notice

It is **RECOMMENDED** that the Committee:

authorise the Director of Development and the Director of Governance and Procurement to take enforcement action under the Town and Country Planning Act 1990 and the Director of Governance and Procurement to institute and conduct any legal proceedings necessary to secure compliance with the enforcement notice;

give the following reasons why it is expedient to authorise enforcement action:

- a) It appears to the Council that the above breach of planning control has occurred within the last 4 years.
- b) It is considered that by reason of their design, location and materials, the two smoking shelters are incompatible with the locality, do not provide positive and attractive built frontages to the existing public walkway 'The Parade' and are detrimental to the visual amenity of the occupiers of neighbouring residential properties. Furthermore, the shelter attached to the rear of the building appears as an incongruous feature on the building itself. In these ways the developments conflict with saved Policy EV/1 of the Borough of Charnwood Local Plan.
- c) The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections.

confirm that the notice will require the following steps to be taken:

1. demolish the two wooden structures, their location approximately indicated by a 'X' on the attached plan 'SCI'
2. remove all resulting debris from the land

give the following period for compliance with the notice:

1 month

for the purposes of any appeal proceedings, resolve that, had a planning application been received in relation to the unauthorised development described above, permission would have been refused for the reasons set out in the preceding section of this report.

'SCI'



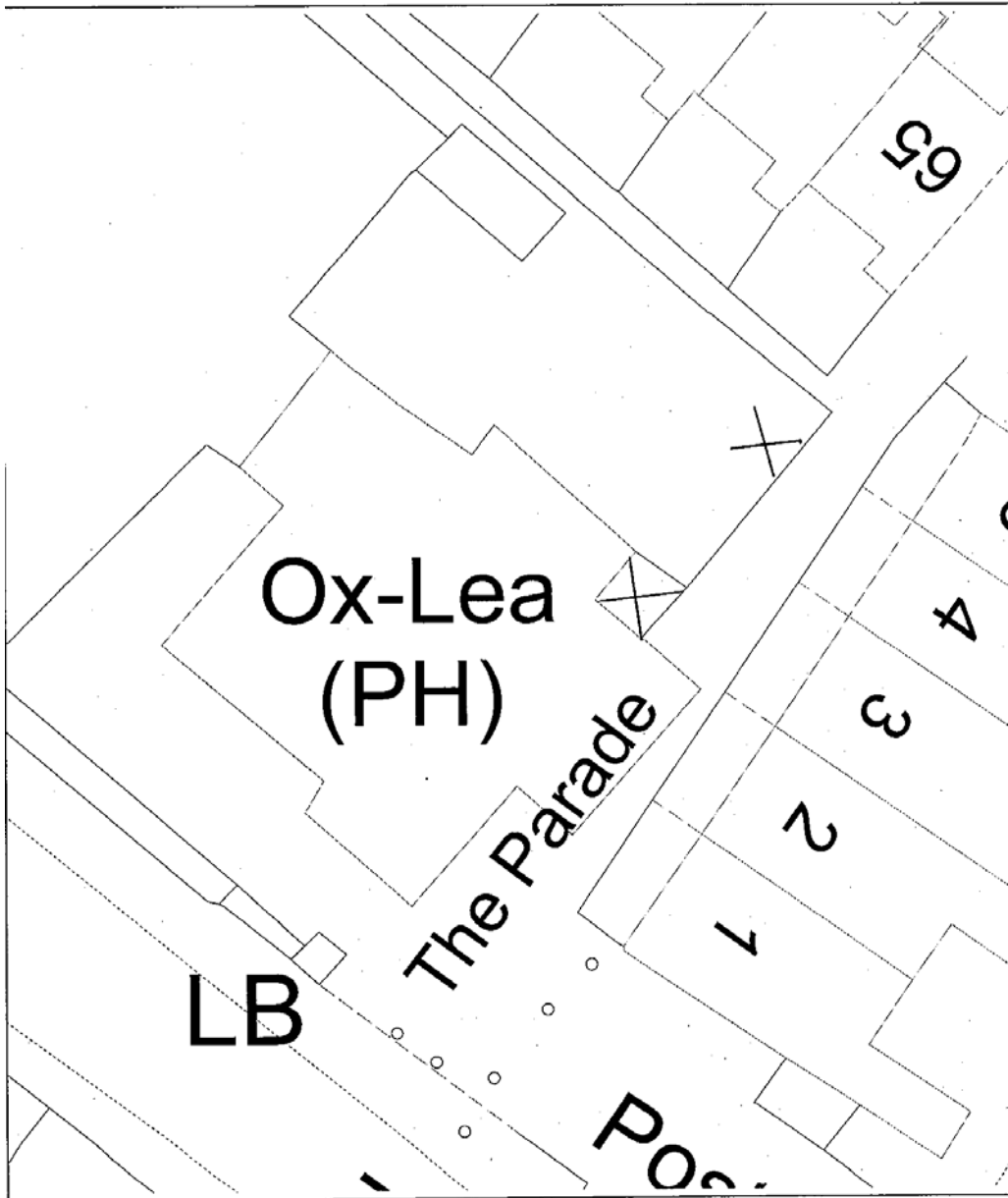
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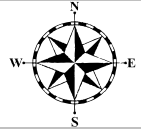
Enforcement No:
Location:
Scale:

E/09/0350
Ox Lea Hotel, 61 Anson Road, Shepshed, Loughborough, LE12 9PT
1:250





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