

REPORT OF: Head of Planning Services

TO: East Area Committee                      DATE: 11/09/14

WARD: Petersfield

**PLANNING ENFORCEMENT CONTROL  
ENFORCEMENT NOTICE REPORT**

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**35 Collier Road, Cambridge**

**The erection of an outbuilding for use as separate residential unit**

SUMMARY	A planning enforcement investigation has identified unauthorised operational development at the rear of the above address, namely the creation of an independent residential unit without planning permission.  The development is not acceptable because there is insufficient amenity space for the occupants of the outbuilding and due to the location of the building in a Conservation Area.
RECOMMENDATION	That enforcement action is authorised in respect of the breach of planning control.

**1 INTRODUCTION**

This report seeks delegated authority to serve an Enforcement Notice to address the unauthorised development at 35 Collier Road, namely, "Without planning permission the creation of a separate residential unit." See appendix A for site plan.

**2 PLANNING HISTORY**

See Appendix B.

### **3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION**

- 3.1 35 Collier Road is situated on the northern side of Collier Road and comprises a two storey, end of terrace dwelling, constructed of red brick with rear access between it and neighbouring end of terrace dwelling 33 Collier Road to the west.
- 3.2 The site falls within Conservation Area No.1 (Central). The building is neither listed nor of local interest.
- 3.3 Enforcement officers received a report in October 2010 that an outbuilding was under construction at the rear of the property that may require planning permission. A site visit on 4 October 2010 confirmed that the outbuilding exceeded the permitted development limits on size and so required formal planning permission.
- 3.4 Officers invited a retrospective planning application for consideration for the outbuilding on 20 October 2010.
- 3.5 An application was submitted for the outbuilding in November 2010 but it was incomplete and unable to be validated. The application was eventually returned to the applicant.
- 3.6 A further planning application was received in February 2011 for a “Retrospective garden outbuilding” but this was also not able to be validated. Officers made several unsuccessful attempts to attain the required additional information but the application was returned on 4 August 2011.
- 3.7 In November 2011 an “Application for a certificate of lawfulness under a Section 191 for an outbuilding ancillary to main dwelling house for use as studio” was submitted but this was also incomplete and unable to be validated and was returned in January 2012.
- 3.8 Senior officers arranged a site inspection with an agent acting on the owner’s behalf to reassess the situation in October 2012. The visit confirmed that the outbuilding was being used domestically as a separate residential unit and that this had been the initial use of the outbuilding. The size of the outbuilding had also increased since the original site visit.
- 3.9 The owner’s agent and the Head of Planning Services met in January 2013 to discuss the planning status of the outbuilding. Officers provided advice on the breaches of planning and building regulations and how to address the issues. The agent was advised that if valid

applications were not submitted, the local authority would need to consider formal action.

3.10 In November 2013 an 'Application for a Certificate of Lawfulness under Section 191 for the outbuilding ancillary to main dwellinghouse for use as studio' (reference 13/1535/CLUED) was submitted. Officers confirmed that the application does not accurately reflect the use of the outbuilding and the certificate was not granted. The decision notice was issued on 19 August 2014.

3.11 This is a long running case, on a site with a history of persistent breaches of planning control. Officers have spent a significant period of time trying to negotiate a resolution but have not been able to remedy the breach of planning control.

3.12 Section 171 B(2) of the 1990 Act provides:

“Where there has been any breach of planning control consisting in the change of any building to use as a single dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.”

It is approaching four years since the date of completion of the building works and therefore officers consider that the matter must be addressed. Ample time has been given to the owner and his agent to resolve this and the council must now act to prevent this unacceptable development from becoming lawful.

#### **4 ASSESSMENT AGAINST PLANNING POLICY AND OTHER MATERIAL CONSIDERATIONS**

4.1 The National Planning Policy Framework states:

‘Para 207 Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.’

#### 4.2 National Planning Policy Guidance states:

Para 17b-003: 'There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. 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'.

4.3 Enforcement is a discretionary power and the Committee should take into account the planning history, the details of the breaches of planning control and the other relevant facts set out in this report.

4.4 Officers investigating the breach of planning control and setting out their recommendations have been mindful of, and complied with the Planning Investigation Service Policy and the City Council's Enforcement Concordat.

4.5 Consideration should be given to the Human Rights Act 2000 and to the Equalities Act 2010. In terms of human rights, officers have noted Article 1 Protocol 1 (protection of property), Article 6 (a right to a fair hearing within a reasonable time), Article 8 (right to respect for private family life) and Article 14 (prohibition of discrimination) as being relevant considerations. The Council must also have regard to its public sector equality duty (PSED) under S.149 of the Equalities Act. The duty is to have due regard to the need (in discharging its functions) to:

Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing, minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Officers do not consider that the recommendation in this report would have a disproportionate impact on any protected characteristic.

- 4.6 Officers consider that the service of an enforcement notice with a reasonable period for compliance would be lawful, fair, proportionate, non-discriminatory, and necessary in the public interest to achieve the objective of upholding national and local planning policies and that human rights and equalities considerations do not outweigh the reasons for proceeding with planning enforcement in this instance.
- 4.7 Consideration has been given to Human Rights including Article 1 Protocol 1 (protection of property), Article 6 (a right to a fair hearing within a reasonable time), Article 8 (right to respect for private family life) and Article 14 (prohibition of discrimination). It is considered that taking necessary and appropriate action would be lawful, fair, non-discriminatory, and necessary in the general public interest to achieve the objective of upholding local planning policies.

## **5 RECOMMENDATION**

- 5.1 (i) To authorise an enforcement notice under S172 of the Town and Country Planning Act 1990 (as amended) in respect of a breach of planning control, namely unauthorised operational development at land to the rear of 35 Collier Road, specifying the steps to comply and the period for compliance set out in paragraphs 5.2 and 5.3, for the reasons contained in paragraph 5.4.
- (ii) to authorise the Head of Planning Services (after consultation with the Head of Legal Services) to draft and issue the enforcement notice.
- (iii) to delegate authority to the Head of Planning Services (after consultation with the Head of Legal Services) to exercise the Council's powers to take further action in the event of non-compliance with the enforcement notice.

### **5.2 Steps to Comply**

Demolish the building which was been erected at the rear of 35 Collier Road.

### 5.3 Period for Compliance:

8 months from the date the notice comes into effect.

### 5.4 Statement of Reasons:

It appears to the Council that the breach of planning control has occurred within the last four years. The applicant has undertaken development without the benefit of planning permission.

The creation of a residential building without planning permission is contrary to policies 3/1, 3/4, 3/7, 3/10, 3/12 and 4/11 of the Cambridge Local Plan 2006, and to government guidance in Paragraphs 53, 58, 61, 64, 131 and 135 of the National Planning Policy Framework 2012.

Mindful of the NPPF, Development Plan policy and other material considerations, the Council consider it expedient to serve an enforcement notice in order to remedy the breach of planning control.

Consideration has been given to the Human Rights of the current tenants of the building, officers have noted Article 1 Protocol 1 (protection of property), Article 6 (a right to a fair hearing within a reasonable time), Article 8 (right to respect for private family life) and Article 14 (prohibition of discrimination). The Council has also had regard to its public sector equality duty (PSED) under S.149 of the Equalities Act.

Officers consider that the service of an enforcement notice with a reasonable period for compliance would be lawful, fair, proportionate, non-discriminatory, and necessary in the general public interest to achieve the objective of upholding national and local planning policies, which seek to restrict such forms or new residential development.

## **BACKGROUND PAPERS**

A separate schedule of sensitive, confidential information is available for members. The information in the schedule is exempted pursuant to paragraph 1 of Schedule 12A of the Local Government Act 1972.

## **APPENDICES**

<b>Appendix A</b>	Site plan of the property
<b>Appendix B</b>	Property history
<b>Appendix C</b>	A plan denoting the enforcement issues on the site.

The author and contact officer for queries on the report is Deborah Jeakins on extension 7163.

Report file: N:\Development Control\Planning\Enforcement\ Committee Reports\35 Collier Road EN report 2014