

<b>Application Number</b>	10/0019/FUL	<b>Agenda Item</b>	
<b>Date Received</b>	8th January 2010	<b>Officer</b>	Mr Marcus Shingler
<b>Target Date</b>	5th March 2010		
<b>Ward</b>	Petersfield		
<b>Site</b>	42 St Barnabas Road Cambridge Cambridgeshire CB1 2DE		
<b>Proposal Applicant</b>	Single storey rear extension. Mr & Mrs David Steel 42 St Barnabas Road Cambridge Cambridgeshire CB1 2DE		

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## 1.0 **SITE DESCRIPTION/AREA CONTEXT**

- 1.1 42 St Barnabas Road is a mid-terrace, two-storey dwelling and its associated front and rear garden areas, situated on the east side of St Barnabas Road. The dwelling is finished in Cambridge stock brickwork under a slate roof and has an existing part single and part two-storey rear wing that is a characteristic feature of many of these late Victorian terraced properties. To the rear garden and close to the existing rear wing is a mature pear tree that abuts the common boundary with No. 40 St Barnabas Road.
- 1.2 The area is largely residential in character containing mainly terraced two-storey dwellings. The attached neighbouring dwelling to the south, 40 St Barnabas Road has a two-storey rear wing of its own, but has not been extended within its rear courtyard area. The attached neighbouring dwelling to the north, 44, has its own part single, part two-storey rear wing abutting the common boundary with the subject dwelling.
- 1.3 The site falls within Conservation Area No. 1 (Central) and within the controlled parking zone. The building forms part of a terrace (No's 28 to 62) that is included on the register of Buildings of Local Interest.

## 2.0 THE PROPOSAL

- 2.1 The application follows the earlier withdrawal of an application seeking planning permission for a single storey rear extension (09/0467/FUL) and the grant of a Certificate of Lawful Development for a single storey rear extension (09/0901/CL2PD); it again seeks permission for a single storey rear extension to the existing dwelling. The proposed extension wraps around the existing rear wing of the property; it extends 11.7 metres along the common boundary with No. 40, infilling the 'tunnelback', and projecting about 4.9 metres beyond the existing two-storey element of the rear wing. It projects 3 metres beyond the lean-to at the rear of No.44. Beyond the extension a 2 metre high wall is shown extending a further 3m out into the garden along the common boundary.
- 2.2 The maximum width of the extension is the full width of the garden, 5.4 metres. The proposed extension has a shallow pitch roof, which rises to a maximum height of 3.15m. The eaves height is 2.46m for the first 4m long section closest to the main two-storey with rooms in the roof element of the house, after which it steps down and is, thereafter, 2.2m on the common boundary with No.40. The extension provides for an extended lounge and kitchen/dining area.
- 2.2 The application is accompanied by the following supporting information:
1. Design & Access Statement
- 2.3 The application is brought to Committee given the previous planning history of the site, when applications that were to be determined at Committee, have subsequently been withdrawn.

## 3.0 SITE HISTORY

Reference	Description	A/C,REF,W/D
09/0901/CL2PD	Single storey rear extension	
	Certificate of Lawfulness issued.	
09/0467/FUL	Single storey rear extension.	W/D
08/0444/FUL	Single storey rear extension.	W/D
08/0088/FUL	Dormer window to rear.	A/C
06/0357/FUL	Erection of wooden outbuilding	A/C

A copy of the Certificate of Lawfulness is attached to this item.

#### **4.0 PUBLICITY**

- 4.1 Advertisement: Yes  
Adjoining Owners: Yes  
Site Notice Displayed: Yes

#### **5.0 POLICY**

##### **5.1 Central Government Advice**

###### **PPS1 Delivering Sustainable Development (2005):**

Paragraphs 7 and 8 state that national policies and regional and local development plans (regional spatial strategies and local development frameworks) provide the framework for planning for sustainable development and for development to be managed effectively. This plan-led system, and the certainty and predictability it aims to provide, is central to planning and plays the key role in integrating sustainable development objectives. Where the development plan contains relevant policies, applications for planning permission should be determined in line with the plan, unless material considerations indicate otherwise.

**PPG13 Transport (2001):** This guidance seeks three main objectives: to promote more sustainable transport choices, to promote accessibility to jobs, shopping, leisure facilities and services, by public transport, walking and cycling, and to reduce the need to travel, especially by car. Paragraph 28 advises that new development should help to create places that connect with each other in a sustainable manner and provide the right conditions to encourage walking, cycling and the use of public transport.

**PPG15 Planning and the Historic Environment (1994):** This guidance provides advice on the identification and protection of historic buildings, conservation areas and other elements of the historic environment.

###### **Circular 11/95 – The Use of Conditions in Planning**

**Controls:** Advises that conditions should be necessary, relevant to planning, relevant to the development permitted,

enforceable, precise and reasonable in all other respects.

## **5.2 East of England Plan 2008**

ENV6 The historic environment

ENV7 Quality in the built environment

## **5.3 Cambridge Local Plan 2006**

3/1 Sustainability

3/4 Responding to context

3/14 Extending buildings

4/4 Trees

4/11 Conservation Areas

4/12 Buildings of Local Interest

## **5.4 Supplementary Planning Documents**

**Cambridge City Council (May 2007) – Sustainable Design and Construction:** Sets out essential and recommended design considerations of relevance to sustainable design and construction. Applicants for major developments are required to submit a sustainability checklist along with a corresponding sustainability statement that should set out information indicated in the checklist. Essential design considerations relate directly to specific policies in the Cambridge Local Plan 2006. Recommended considerations are ones that the council would like to see in major developments. Essential design considerations are urban design, transport, movement and accessibility, sustainable drainage (urban extensions), energy, recycling and waste facilities, biodiversity and pollution. Recommended design considerations are climate change adaptation, water, materials and construction waste and historic environment.

## **5.5 Material Considerations**

**Cambridge Historic Core – Conservation Area Appraisal (2005):** Provides an appraisal of the Historic Core of Cambridge.

## **6.0 CONSULTATIONS**

### **Cambridgeshire County Council (Engineering)**

6.1 No objections.

#### **Arboricultural Officer**

6.2 Comments are awaited and will be reported on the amendment sheet or verbally at the meeting.

#### **Conservation Officer**

6.3 This application relates to Building of Local Interest (BLI) in the Central Conservation Area. The Mill Road and St Matthews Conservation Area Appraisal is relevant to this application. The concern is the impact of the proposed development on the character and appearance of the conservation area.

6.4 The application is for the erection of a single storey extension to the rear of this mid terrace property. It is not clear from the application whether the loft conversion is already in place. The drawings of the existing building show a dormer window on the rear elevation, but the photograph in the Design and Access Statement does not show it as existing. I am presuming this application is not dealing with that element of the building.

6.5 There are no objections to this application. Although the proposed extension is rather heavy, given that it is single storey only and that there are an enormous number of other extensions of essentially similar character to this throughout the City, many of which are in conservation areas, I do not consider there to be good conservation grounds for objecting to this application. Due to the nature and position of the proposed single storey development, it will not be visible from the public highway and therefore will not be detrimental to the character and appearance of the conservation area. The proposed works will not be detrimental to the character of the building and will not detract from the fact that it is a BLI.

## 7.0 REPRESENTATIONS

- 7.1 At the time of compiling this report, the consultation period had not expired. The consultation period will however have lapsed by the time the application is heard at Committee. A decision has been made to bring it to this Committee, despite the relatively short time between the end of the consultation period and the date of Committee, because otherwise the application might be the subject of a non-determination appeal which would take the matter out of the hands of Committee and the Council entirely.
- 7.2 Initial comments regarding the procedure for dealing with the application have been received from the neighbour at 40 St Barnabas Road. Formal comments regarding the proposals have been received from only two parties to date. It is anticipated that comments from other neighbouring occupiers will be received and these will need to be included in the amendment sheet or verbally at the meeting.
- 7.3 An objection has been received from Cambridge Past, Present and Future (formerly the Cambridge Preservation Society). The issues raised are summarised as follows: -

*The extension would impact adversely on light to neighbouring properties, which in turn would force them to extend in a similar manner, which would lead to incremental change and impact adversely on the character and appearance of the conservation area and damage the appearance of these Buildings of Local Interest.*

Comments received to date from local residents:

46 St Barnabas Road

- 1) The proposed extension is out of proportion with the scale of these terraced houses. The scheme sets a precedent to supersize the built street at the expense of green space, important for the city's biodiversity, which should not be permitted if the character and integrity of the street is to be maintained.

2) The extension of a highly glazed, fenestrated space with multiple exits will inevitably lead to an increase in noise and loss of privacy for neighbours, and not just close neighbours.

40 St Barnabas Road - 2 letters

Letter 1.

A smaller development was recommended for refusal on the grounds of scale, length, height and position hard up against our property; this is larger and must surely have an even greater impact and an increased dominance over our property, with consequent adverse effect on our amenity. The previously reduced length of boundary wall has been re-instated.

No consultation with us - our constant plea for reduction in size has met with an increase the size.

The design and access statement makes repeated comparison to a permitted development as though it already exists, which it does not. Any comparison is misleading and should not be taken into account, particularly when an officer has acknowledged permitted development can have a greater impact on neighbours than an application made through the planning permission process.

42 St Barnabas Road has recently been extended to provide further accommodation in the house's second storey and what the agent calls the long rear garden, has been significantly reduced by a large garden room.

The length of the new gable roof will extend to 4.85 metres from the original double storey rear elevation and be entirely out of keeping with the other houses in a terrace, designated as worthy of protection by the Council. The claim that this is similar in volume to many existing rear extensions on the same street, fails to mention that these are not extensions in the same terrace, but to larger semi-detached houses with side access on the opposite side of the street, where the greater scale of the houses and gardens lessens the effect of the difference in volume. On this side of the street the very few extensions added are confined to the side of the property and do not extend beyond the original two-storey Victorian wing. This extension does not respect the character and context of the site and surrounding area.

The characteristic, vital space between the rear wings, which preserves privacy and amenity for the neighbour will be completely lost - the length and bulk of the extension means it will be seen from every rear window in 40.

Noise and disturbance, light pollution and smells of cooking from the ten velux windows in the roof, and the rear French windows at the rear of the extension – something likely to be more pronounced in the summer our windows are open or we are enjoying our garden.

Letter 2- to which photographs are attached

There is no in principle objection to our neighbour extending, but this third application seems to have been drawn little from the previous process and concerns of neighbours and other interested parties. There has been little notice and no consultation.

An apparent concession to our residential amenity in the lowering of a section of the side boundary wall is countered by almost half the original length of wall remaining at the former proposed height and all other changes intensifying the detrimental impact - the development extends a further metre into the garden area, where it reverts to full-width; the side boundary wall extends from 8.4 m to 11.45 m; and the number of roof lights facing 40 is doubled from 5 to 10, with an attendant increase in pollution from light, noise and odours (cooking smells). The result is that the new proposals would have at least as great a detrimental impact on our residential amenity as the proposal recommended for refusal on the grounds of detriment to residential amenity in 2009.

The detrimental impact on the character and appearance of the building, and the terrace, by infilling the plot and increasing the scale, would be greater than the last proposal; the threat to the viability and stability of our pear tree would be increased by building hard up against its trunk; the newly-proposed garden wall, extending an additional 3 m, would infringe the root protection area of our weeping ash, not marked on the plans.

The current proposals would set an undesirable precedent, which could lead to the eradication, at the rear, of qualities that have led the buildings making up the terrace to merit listing as



## Buildings of Local Interest.

It is recognised that much of this criticism can apply equally to the proposals of the Lawful Development Certificate application 09/0901/CLUPD, which maintains the higher boundary wall height throughout, extends the further metre into the garden area, reverts to full-width, extends the development with a 3 m garden wall, and threatens both trees.

Under each area of objection, the proposed development conflicts with planning principles and policy, in particular policies 3/4, 3/14, 4/4, 4/11, and 4/12 of the *Cambridge Local Plan 2006*, and for this reason consider that the planning application should be refused.

There is also concern at encroachment into garden space, and implications for maintenance if the proposals are mirrored elsewhere.

The object to this proposed extension is on three grounds:

1. that by virtue of its scale, length and height, and its position hard up against our property, the extension would give rise to a loss of light to, and outlook from, the rear and rear garden area with the consequence that it would unduly dominate our house, and the property at No 44, causing us to suffer an undue sense of enclosure and significant loss of residential amenity;
2. that the proposed extension is out of keeping with and does not respect the context of the original building, site, and surrounding conservation area; would degrade the character and appearance of the building, garden areas, and of the terrace (of Buildings of Local Interest); and remove site features which positively contribute to its character; and
3. that it would threaten the viability and stability of two valued mature trees by disturbance or partial destruction of their root systems.

The letter goes on to make very extensive comment under three headings, with the first described as the principal concern:

- 1. The dominating impact that would lead to a significant loss of residential amenity;**
- 2. Character and appearance**
- 3. Threat to pear tree and weeping ash**

Members are encouraged to read the full argument.

## **8.0 ASSESSMENT**

8.1 From the consultation responses and representations received and from my inspection of the site and the surroundings, I consider that the main issues are:

1. Context of site, design and external spaces
2. Residential amenity
3. Third party representations

### **Context of site, design and external spaces**

8.2 The proposed extension fills the gap between the side of the existing rear wing and the common boundary with 40, and then projects a further 3 metres out into the garden, wrapping around the existing rear wing of the dwelling and filling the full width of the site. The extension will not be visible in the street scene and in my view, will cause no harm to the character and appearance of the local townscape of the Conservation Area. I consider that while the extension is undoubtedly of significant scale, and its roof pitch rather shallow relative to most other roof slopes in the area, its design is satisfactory and would integrate suitably with the existing dwelling as a harmonious addition to it, subject to the use of matching materials.

8.3 It is noted that Cambridge Past, Present and Future object to the development from the visual perspective, concerned that the proposals will cause harm to the area and to this terrace of Buildings of Local Interest. While the extension would undoubtedly alter the appearance of the dwelling in the rear garden environment, I do not consider that the appearance would be unacceptably harmed. The extension is deeper than the general 'building line' of this section of terraced dwellings, but there are numerous examples of extensions that project beyond the original building line in the locality, more particularly on the opposite side of St Barnabas Road, and given that many such extensions can be carried out without the requirement for planning permission, I do not consider that an objection on this basis is reasonable or sustainable. The building is included on the Local List but is not of sufficient quality to merit statutory listing as such and thus I do not therefore consider it appropriate to be unreasonably prescriptive in respect of the design of development in this instance.

- 8.4 Additionally, while the extension is of significant depth, it is single storey only and the property benefits from a rear garden that is circa 40m deep. In this context, I do not consider that the rear garden environment would be harmed by the development, or that it would represent an overdevelopment of the plot.
- 8.5 In my opinion and from the visual perspective only, the proposal is compliant with East of England Plan (2008) policies ENV6 and ENV7, and Cambridge Local Plan (2006) policies 3/4, 3/14, 4/11 and 4/12.

### **Residential Amenity**

- 8.6 The proposed extension will abut the common boundary with both of the attached neighbouring dwellings, 40 and 44 St Barnabas Road and it is these properties that are, in my view, the most potentially significantly affected by the development. In this respect the extension is deeper than that proposed in the earlier, withdrawn schemes, both of which were proposals that Officers would have been minded to recommend for refusal.
- 8.7 Since the submission and subsequent withdrawal of those schemes, however, an application for a Certificate of Lawfulness has been submitted and a Certificate issued by the Local Planning Authority (09/0901/CL2PD). That being the case, Officers have felt that it is necessary to consider the potential impact of the current application, relative to what, it has been agreed, could be built without any requirement for planning permission. The lawful scheme comprised:
- a 3m deep, 2.46m to the eaves addition, attached to the rear of the two-storey with rooms in the roof element of the main house, filling that part of the gap between the rear wing and the common boundary with 40.
  - a further single storey extension to the rear wing, 4.955m deep overall on the boundary with 40, but projecting 3m only beyond the end of the existing building where it spans the full width of the plot, rising from 2.46m high eaves to 3.424m at the ridge.
  - The 3.6m length of wall along the boundary between the two extensions will be raised to 2m; and a wall continued out into the garden for a distance of 3 metres beyond the extension, also at 2m height.

This left a small courtyard adjacent to the boundary with 40.

- 8.8 The current scheme infills this courtyard and creates in effect an extra 8 square metres of development that will abut the boundary with 40. To 'compensate' for building all the way along the boundary the eaves height at the boundary with No. 40 is 2.46m for a distance of 4m from the two-storey element of the main house, before stepping down to 2.2m for the rest of the depth of extension. The net overall impact on 40, compared with what officers have advised could be built without permission, would be an additional metre with a 2.46m eaves height to the rear of the house but with the rest of the boundary at 2.2m, 0.2m higher than that which could be built without the requirement for planning permission. The 'advantage' would be that the rearmost element of what is proposed would be lower, 2.2m above natural ground level, rather than the 2.46 that could, in the opinion of officers, be erected without permission. On balance I consider the additional impact is not so great as to justify refusal of permission.
- 8.9 The extension will have a reduced eaves height on the common boundary with No. 44, compared with what was applied for via the Certificate (2.2m in comparison with 2.46m) and thus the impact on this property will be less great than what could be built without the requirement for permission. I do not consider that permission could be withheld by reason of its impact on this dwelling and I do not consider that any other neighbouring properties are adversely affected by the proposals.
- 8.10 The concerns expressed about the implications for the amenity of the occupiers of 40 arising out of the additional rooflights shown in the roof, I do not share. I think that the rooflights are proposed to allow further light into the darker element of the proposed extension and even into the original dwellinghouse. While more than one may, on occasion, be opened at the same time as another, I do not consider the smells, noise or light spillage would be so acute, or necessarily so much worse than what could happen at present if all windows doors in the existing building were opened at the same time for this to be a reason for refusal.
- 8.11 In my opinion the proposal is compliant with East of England Plan (2008) policies ENV6 and ENV7, and Cambridge Local Plan (2006) policies 3/4 and 3/14.

## **Third Party Representations**

- 8.12 Although much of the extensive third party comment expected has not yet been received, the neighbour from 40 St Barnabas Road has taken legal advice and the opinion given is that the interpretation by the City Council of the relevant section of the Town and Country Planning (General Permitted Development) Order 1995 (as amended 2008), has not been properly undertaken and that if it had been, the Certificate should not have been issued. The difference of opinion about the interpretation of the new legislation introduced in 2008 is no more than that – I am not aware that interpretation of the legislation has yet been tested in the Courts. The Council remains of the opinion that the Certificate was properly issued.
- 8.13 The issues raised in third party correspondence received to date are generally addressed above but I feel that I should make comment on a other points raised:
- 8.14 The wall proposed out into the garden does not require permission. The foundations of the wall can have implications for the roots of the tree, but that cannot be safeguarded other than by refusing permission if the tree is considered of such merit as to warrant such action. I am not aware that is the case, but will report further on the advice of the Arboricultural officer at Committee. The same advice applies to the pear tree in the garden of 40, close to the boundary with proposed rear extension. The plans suggest a bridging beam and pad foundation and hand digging, but there is no guarantee that this can ensure retention of the pear tree at this stage any more than if the extension agreed by the Certificate of Lawfulness was to be implemented.
- 8.15 While concern about the adequacy of consultation with neighbours in advance of a submission is understood, there is no formal requirement that it is undertaken.
- 8.16 Given the extent of the garden, I do not consider that the extent of the extension, which could be built under the permitted development limitations, can be considered to cause such damage to biodiversity as to justify refusal.

- 8.17 The frequent reference to the Certificate of Lawfulness that has been issued is not done to imply that the work has already been undertaken. It has not. It is however a useful marker of what can be done without the need for permission, and as a gauge against what is now proposed can be set.
- 8.18 The other matters are generally considered above. Any further correspondence received will be addressed on the amendment sheet or verbally at the meeting.

## **9.0 CONCLUSION**

- 9.1 This is not a straightforward matter and has previously resulted in a great deal of concern being expressed. What is now proposed is greater in volume than what could be built without the need for planning permission and is more substantial than what I considered should be recommended for refusal previously. However, I do see that there are benefits from this approach, particularly in the extension having, beyond its first section, a consistent, lower eaves line, rather than it stepping up again at the garden end of what is proposed. For these reasons, I consider, that the proposals are acceptable and, on balance, approval is recommended.

## **10.0 RECOMMENDATION**

### **1. APPROVE subject to the following conditions:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In accordance with the requirements of section 51 of the Planning and Compulsory Purchase Act 2004.

2. The extension hereby permitted shall be constructed in external materials to match the existing building in type, colour and texture.

Reason: To ensure that the extension is in keeping with the existing building. (East of England Plan 2008 policy ENV7 and Cambridge Local Plan 2006 policies 3/4, 3/12 and 3/14)

## **Reasons for Approval**

1. This development has been approved, conditionally, because subject to those requirements it is considered to generally conform to the Development Plan, particularly the following policies:

East of England plan 2008: ENV7

Cambridge Local Plan (2006): 3/4, 3/14, 4/11, 4/12

2. The decision has been made having had regard to all other material planning considerations, none of which was considered to have been of such significance as to justify doing other than grant planning permission.

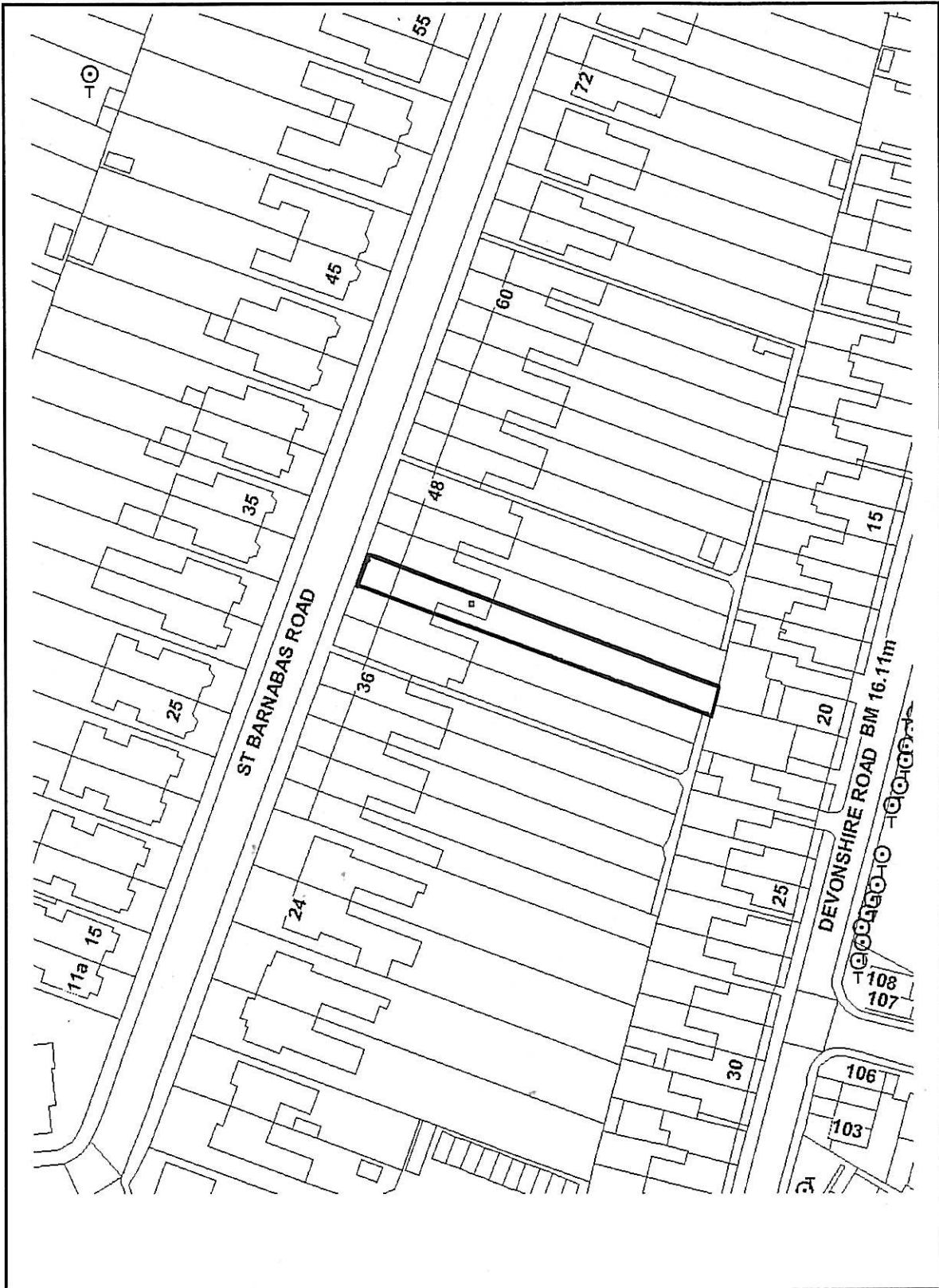
These reasons for approval can be a summary of the reasons for grant of planning permission only. For further detail on the decision please see the officer report by visiting the Council Planning Department.

## **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

Under Section 100D of the Local Government Act 1972, the following are “background papers” for each report on a planning application:

1. The planning application and plans;
2. Any explanatory or accompanying letter or document from the applicant;
3. Comments of Council departments on the application;
4. Comments or representations by third parties on the application as referred to in the report plus any additional comments received before the meeting at which the application is considered; unless (in each case) the document discloses “exempt or confidential information”
5. Any Structure Plan, Local Plan or Council Policy Document referred to in individual reports.

These papers may be inspected by contacting John Summers (Ext.7103) in the Planning Department.



10/0019/FUL

42 St Barnabas Road Cambridge Cambridgeshire CB1 2DE





# CAMBRIDGE CITY COUNCIL

The Guildhall, Cambridge, CB2 3QJ

## CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Town and Country Planning Act 1990. Section 192 (as amended by S10 of the Planning and Compensation Act 1991)

Town and Country Planning (General Development Procedure) Order 1995: Article 24

Ref: 09/0901/PL2PD

Freeland Rees Roberts  
25 City Road  
Cambridge  
CB1 1DP

NOTED IN	SIG + DATE
STATUTORY REGISTER	
COUNTY	
RENEWAL DATE ON COMPUTER	

The Cambridge City Council hereby certify that on 28 September 2009 the use/operations/matter described in the First Schedule in respect of the land specified in the Second Schedule hereto and outlined/edged/hatched/coloured in **RED** on the plan attached to this certificate would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason(s):

### Reason For Lawfulness:

1. It appears to the Local Planning Authority that the property benefits from having two rear elevations. The proposed works include the provision of single storey extensions to a depth not exceeding three metres from each of the rear elevations of the original dwelling. As such, the proposed works, as shown on Plan Number PO1 Rev D, will fall within the tolerance limits imposed within Class A of the Town and Country Planning (General Permitted Development) (Amendment) (No.2)(England) Order 2008 and therefore be considered lawful for planning purposes. The erection of two side boundary walls, as shown on Plan Number PO1 Rev D, will fall within the tolerance limits imposed within Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995 and therefore be considered lawful for planning purposes.

This decision notice relates to the following drawings: PO1, PO2

Dated: 6 October 2009

Guildhall, Cambridge, CB2 3QJ

Director of Environment & Planning 

Simon Payne  
Director of Environment & Planning  
Cambridge City Council The Guildhall Cambridge CB2 3QJ  
Telephone 01223 457000 Minicom (non-speaking phone) 01223 457050



## **FIRST SCHEDULE**

The erection of single storey rear extensions and erection of side boundary walls

## **SECOND SCHEDULE**

42 St Barnabas Road, Cambridge as identified outlined in RED on the location plan attached to this Certificate

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### Notes

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/operations/matter specified in the First Schedule taking place on the land described in the Second Schedule would be lawful on the specified date and, thus would not have been liable to enforcement action under section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use/operations/matter described in the First Schedule and on the land in the Second Schedule and identified on the attached plan. Any use/operations/matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of this certificate is also qualified by the proviso in S192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.