

CAMBRIDGE CITY COUNCIL

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REPORT OF: Head of Development Services

TO: East Area Committee      DATE: 17 December 2009

WARDS: Abbey, Coleridge, Petersfield, Romsey

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**PLANNING INVESTIGATION SERVICE**  
**THE FORUM (FORMERLY TIVERTON HOUSE)**

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**1. SITE**

Tiverton House, Tiverton Way, Cambridge

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**2. PURPOSE OF REPORT**

- 2.1 To inform members of the action taken to date by the Planning Investigations Team
- 2.2 To advise members that on the information currently available to the Council the use of Tiverton House as flats for the accommodation of students does not constitute a material change of use that would require planning permission and,
- 2.2 to consider whether the carrying out of internal and external works to provide additional bed spaces within some of the residential flats, the installation of roof lights, the provision of cycle storage racks and minor changes to the external fenestration of the fabric of the building constitutes operational development that would require planning permission.
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**3. PLANNING HISTORY**

C/0010/82 – Erection of grouped housing scheme with wardens flat - Approved

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**4. RECOMMENDATION**

- 4.1 To note the contents of this report
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**5. REPORT**

- 5.1 In 1982, deemed planning permission was granted to the City Council for the erection of a group dwelling scheme. The scheme provided for 24 one-bedroom flats, 8 two-bedroom flats, one 3-bedroom visitor flat, an office and ancillary communal facilities. Each flat was separately rated between Bands A, B and C by the Valuation Officer for council tax purposes.
- 5.2 Approximately two years ago, the property was sold to a private developer and internal and external works were undertaken to improve the property and to create additional accommodation within the flats.
- 5.3 The works included the provision of additional rooms in two flats on the ground floor and additional rooms in the loft space of some of the first floor flats, the creation of roof lights within the existing roof of each of the flats that had been extended into the roof space and the replacement of two existing ground floor external access doors with windows.
- 5.4 In addition, it was proposed to convert the warden's flat into two residential flats and erect a bicycle store. At that time, provisional assessment of the proposed use and works was made. The informal opinion given, after advice received from the Council's legal officer, was that the proposed use and works did not constitute development requiring planning permission apart from the conversion of the wardens flat and provision of the bicycle store. It was stated however, that further assessment would be required once the property was occupied.
- 5.5 A planning application was subsequently submitted to create the additional flat and provide a bicycle store (09/0595/FUL). This application has not yet been determined.
- 5.6 Following completion of the works early in September 2009, the individual flats have been let and are now occupied by students from Anglia Ruskin University.
- 5.7 The planning investigation officers carried out an inspection of the property on Friday 2<sup>nd</sup> October 2009 accompanied by the owner. The purpose of the inspection was to identify the number of flats that currently exist within the property, to identify the number of bed spaces provided in each flat and to note what physical works had been undertaken to the building and within its curtilage.
- 5.8 This inspection would enable a further assessment to be made as to whether a material change in the use of the building had occurred and whether the physical works undertaken were sufficiently significant to constitute development requiring planning permission.

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## 6. FINDINGS

6.1	Ground Floor	Fourteen	x 2 bed flats
		One	x 3 bed flat
		One	x 4 bed flat

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|-----|------------------------------------|----------------|---------------|
|     |                                    | One            | x 5 bed flat  |
|     |                                    | Total 17 Flats |               |
| 6.2 | First Floor (including roof space) | Two            | x 2 bed flats |
|     |                                    | Two            | x 3 bed flats |
|     |                                    | Three          | x 4 bed flats |
|     |                                    | Eight          | x 5 bed flats |
|     |                                    | One            | x 6 bed flat  |
|     |                                    | Total 16 Flats |               |
- 6.3 One flat (Flat 10) is linked from the ground floor to the first floor. Sixteen flats on the first floor have links to bedrooms in the roof.
- 6.4 External alterations to the building have been undertaken that includes the installation of roof lights to serve the flats in the roof space, two existing doors have been replaced by UPVC windows and security fencing has been erected. In addition, three-cycle parking shelters have been erected, two shelters at the rear and side of the building and one shelter adjacent to the main entrance served from Tiverton Way.

## 7. LEGAL FRAMEWORK

- 7.1 Legal advice has been sought upon the evidence available and the following assessment has been made:
- 7.2 Material Change of Use
- 7.3 Subject to certain exceptions, planning permission is required for the development of land. Development is defined by Section 55 of the Town and Country Planning Act 1990 as including a material change of use. Section 55(2)(f) however, provides that use for any other purpose within the same “class” specified in an order by the Secretary of State shall not be taken to involve development. The relevant class is Class C3 of the 1987 Use Classes Order, which relates to:
- “Use as a dwelling house (whether or not as a sole or main residence) –
- (a) by a single person or by people living together as a family, or
  - (b) by not more than six residents living together as a single household (including a household where care is provided for residents).”
- 7.4 When planning permission was granted in 1982 for the erection of a group-housing scheme, the proposal involved the erection of 33 self-contained flats. Most group housing developments will fall within Class C3 use because they normally comprise a group of individual dwelling houses.
- 7.5 Section 75 of the Town and Country Planning Act 1990 states that if planning permission does not specify by condition the permitted use of the building, it shall be used for the purpose for which it was designed. No conditions were imposed on the original planning permission for the group housing scheme

that restricted use or numbers of occupants. Accordingly the purpose for which the building may lawfully be used is residential flats.

- 7.6 No additional flats have been created and as the present use continues as separate self-contained flats that fall within the Class C3 use, no material change has occurred.
- 7.7 Creation of additional rooms. Works have been undertaken to extend some of the flats both at ground floor level and within the roof space to create additional bedrooms. Under the provisions of Section 55(2)(a) of the Town and Country Planning Act 1990 as amended, the carrying out of internal works does not constitute development requiring planning permission provided such works do not materially affect the external appearance of the building. The question of works undertaken to the external fabric of the building is addressed below.
- 7.8 The internal works undertaken to some of the flats to create additional bed spaces does not constitute development because no new separate flats have been created.
- 7.9 In addition, the total number of occupants within each flat does not exceed more than six and with shared communal facilities available within each flat, the use remains within Class C3 dwelling house use.
- 7.10 Intensification of Use. Consideration has been paid as to whether the creation of additional rooms within some of the flats by increasing the number of bed spaces in total has resulted in an intensification of use.
- 7.11 Intensification of use that requires planning permission will only occur if such intensification takes the current use as residential flats (Class C3 dwelling house) into a different Planning Use Class. Intensification of use, which does not take the use of the building outside its Planning Use Class, is not, in law, a material change of use requiring planning permission. In this case, the current lawful use as individual flats remain as Class C3 dwelling houses irrespective of the number of additional rooms created and therefore it is concluded a material change of use by intensification has not occurred.
- 7.12 Use as student accommodation. Concern has been expressed that intensification of use resulting from the sub division of the flats has changed the use of the building to that of a student hostel. There is no planning definition of "hostel" within Planning Law. However, ODPM Circular 03/2005 does offer some guidance that states a hostel usually provides overnight or short term accommodation which may be supervised, where people (including sometimes the homeless) can usually stay free or cheaply. Hostels may provide board, although some may provide facilities for self catering.
- 7.13 The question of whether a premises is a hostel or another use is a matter of judgement to be determined on a fact and degree basis. A high court judgement argued that the presence and use of some of the following features were sufficient to distinguish the use as a hostel:
- The presence of dormitories and/or communal or shared facilities.

- The use of the premises in accommodating specific categories of people, e.g. the young or homeless.
- Whether the premises are serviced or supervised.
- Whether payment is made on a nightly basis.
- Whether the residents are transient in the sense that they are “placed” in the accommodation whilst awaiting accommodation elsewhere.

7.14 As the units at Tiverton House are self contained residential flats they do not have the features of a hostel (albeit proposed for the use of students) and therefore no material change of use of the premises to use as a student hostel has occurred.

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## **8. EXTERNAL ALTERATIONS**

8.1 External alterations that materially affect the external appearance of a building constitute development requiring planning permission.

8.2 From the inspection of the premises carried out on the 2<sup>nd</sup> October 2009, roof lights had been installed in the roof space to serve those flats that had been extended at first floor level. Case law has established that in order to establish if external works materially affect the appearance of the building, the works must clearly be visible from several vantage points. In the case of roof lights these are not readily visible from ground level and therefore it is considered that the works do not affect the external appearance of the building.

8.3 The replacement of two rear doors with windows, using matching materials and brickwork is not considered to be sufficiently significant to affect the appearance of the building.

8.4 Metal security fencing has been installed within parts of premises that were considered to be vulnerable access points to the rear and side garden areas. These works do not exceed a height greater than 2 metres above ground level and are considered to fall as permitted development under Part 2, Class A of the General Permitted Development Order 1995.

8.5 The construction of three cycle parking bays, would affect the appearance of the building, particularly in relation to the cycle parking bay erected at the Tiverton Road main entrance to the premises.

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## **9 NON-PLANNING ISSUES**

9.1 Under the provisions of the Building Act, conversion works including the provision of adequate fire precautions and provision for the disabled is the responsibility of an Approved Inspector appointed by the owner of the premises. The Council’s building control surveyors do not therefore have any control over these matters.

9.2 The Council’s Housing Standards department address accommodation issues.

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## 9. CONCLUSIONS

- 10.1 From the evidence available it is considered that the use of the premises at The Forum (formerly Tiverton House) as residential flats for the accommodation of students is lawful for planning purposes.
- 10.2 With regard to the external works undertaken, the provision of cycle parking bays constitute development requiring planning permission and this is being pursued with the owner with a view to securing the submission of a retrospective planning application.

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10. CONSULTATIONS                      Head of Legal Services

11. OPTIONS                                N/A

## 12. IMPLICATIONS

(a)	Financial Implications	None
(b)	Staffing Implications	None
(c)	Equal Opportunities Implications	None
(d)	Environmental Implications	None
(e)	Community Safety	None

## BACKGROUND PAPERS

The following are the background papers that were used in the preparation of this report:

P700/C/Tiverton House  
Advice Note – Legal Services

To inspect these documents contact W B Viles on extension 7154

The author and contact officer for queries on the report is W B Viles on Cambridge 457154