

CAMBRIDGE CITY COUNCIL

REPORT OF: Director of Environment

TO: Planning Committee DATE: 26 April 2017

WARD: Petersfield

PLANNING ENFORCEMENT REPORT FOR:

**Address: Citylife House, Sturton Street, Cambridge, Cambridgeshire CB1
2QF**

Details of Alleged Breaches of Planning Control:

Breach of Condition 2 of planning permission ref: 14/1252/FUL – Change of use from the permitted use as a studio/cafe bar/multimedia education centre and community facility (sui generis) granted under planning permission 97/1020 to a Class D1 dance school/studio including limited alterations to the external envelope of the building.

SUMMARY	A Planning Enforcement investigation has been carried out and ascertained that a breach of planning control has occurred at the premises.
RECOMMENDATION	To seek delegated authority from Planning Committee to take enforcement action against the unauthorised flues and cowls installed on the rooftop of Citylife House by serving one Breach of Condition Enforcement Notice dealing with the operational development breach at the premises. Flues and cowls and associated fixtures have been erected without planning permission.
NOTICE TYPE	Breach of Condition Enforcement Notice x1.

1 INTRODUCTION

- 1.1 The site lies adjacent to St Matthew's Piece in the Petersfield area of the City. It is bounded on the east side by York Street, on the north side by New Street, on the west side by Sturton Street, and to the south by the open space of St Matthew's Piece. The areas to the east, south and west of the site are primarily residential, including many small nineteenth-century terraced houses, and small modern houses and flats. The area to the north is a mixed area, which includes light industrial and retail uses as well as dwellings and student accommodation.
- 1.2 The site lies wholly within the City of Cambridge Conservation Area No. 1 (Central). The northern and eastern boundaries of the site also form the boundary of the conservation area.
- 1.3 The trees which stand along the eastern, northern and western boundaries of the site (London planes and one Lime) are protected by Tree Protection Order (TPO) 4/2005. The majority of the site does not have any specific designation in the adopted Cambridge Local Plan of 2006, but a strip of land on the east side of the site, adjacent to York Street, is designated as Protected Open Space. This strip includes a number of Plane trees and includes St Matthew's Piece. Part of the Protected Open Space is currently covered by tarmac and is used as car parking associated with Citylife House.
- 1.4 The site lies outside the Controlled Parking Zone.

2 PLANNING HISTORY

2.1 Recent Planning applications

14/1252/FUL	Change of use from the permitted use as a studio/cafe bar/multimedia education centre and community facility (sui generis) granted under planning permission 97/1020 to a Class D1 dance school/studio including limited alterations to the external envelope of the building.	Granted Permission with conditions
16/1272/FUL	S.73 application vary condition 2 of 14/1252/FUL to permit revised cycle and bin storage locations, revised internal configurations and revised location of	Permission Refused

	plant from the eastern elevation of the roof.	
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2.2 Planning Enforcement

Current Investigation ref: EN/0062/17 and EN/0061/17 – Breach of Condition Enforcement Notice served to remove plant on roof and paths on grass, contrary to condition 2 of 14/1252/FUL to permit revised cycle and bin storage locations, revised internal configurations and revised location of plant from the eastern elevation of the roof.

3 COMMENTS OF ENFORCEMENT INVESTIGATION

- 3.1 The site was referred to the Planning Enforcement Team by City Development Planning Officers in connection with the refusal of 16/1272/S73 - S.73 application vary condition 2 of 14/1252/FUL to permit revised cycle and bin storage locations, revised internal configurations and revised location of plant from the eastern elevation of the roof.
- 3.2 The S73 variation application was refused under delegated powers and as a result a Breach of Condition Notice was served to deal with the unauthorised operational development that was included in the refused S73 application. This concerned the removal of plant and associated fixtures on the roof of the building at the premises and laid paths on grass to the east of the building.
- 3.3 It was noted by Enforcement Officers studying contemporaneous photographs of the site that flues and cowls had also been erected on the roof of the building without planning permission and Planning Officers confirmed that these would not be supported if applied for. Officer's sought clarification from the applicant's agent who advised that they were replacement/upgraded flues and cowls. However a photograph of the rooftop supplied by the agent showed a very small number of small condenser units which did not support the agent's claim of like for like replacement. The flues and cowls are highly visible from most positions around the site and Officers have advised that due to their visibility and appearance they have a harmful visual impact on the character and appearance of the Conservation Area and contrary to Local Plan (2006) policy 4/11.

- 3.4 The flues and cowls were not on the drawings passed under the original planning permission and therefore require planning permission. Neither are they present on the drawings relating to the refused S.73 variation application, and therefore any enforcement action against them requires authority from Planning Committee, as in line with the local planning authority's scheme of delegated powers.
- 3.5 It is noted that the breaches would be immune from enforcement action after 10 years from the date that the breaches occurred. If the decision were taken not to continue with formal enforcement action the unauthorised changes of use would benefit from immunity from enforcement action after 10 years.
- 3.6 All interested parties are to be served with notice to carry out the requirements of the notice.

4 RELEVANT PLANNING POLICIES 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 Cambridge Local Plan 2006

4/11 Conservation Area

p.134 National Planning Policy Framework

5 INVOLVEMENT OF OTHER COUNCIL DEPARTMENTS OR OTHER AGENCIES

5.1 None.

6 CONSIDERATION OF ENFORCEMENT OPTIONS

6.1 It appears to the Council that the breaches of planning control have occurred within the last 10 years as per planning records and photographs of the site.

6.2 The Council has no record that planning permission has been granted for the operational development outlined above.

6.3 It is considered that planning conditions or any subsequent application could not overcome the identified planning harm described within the reasons for service of the Enforcement notice with regard to the unauthorised breach of condition.

6.4 It is noted that the breach would be immune from enforcement action after 10 years from the date that the breach occurred.

7 POLICY CONSIDERATIONS

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

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

7.3 Consideration should be given to the Human Rights Act 1998 and to the Equality 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 Equality 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, marriage and civil partnerships, 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.

- 7.4 Officers consider that the service of the Enforcement Notices, referred to above, 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.

8 OTHER MATTERS

- 8.1 There are no other matters to report.

9 RECOMMENDATION

- 9.1 (i) To authorise an enforcement notice under S172 of the Town and Country Planning Act 1990 (as amended) alleging that there has been a breach of planning control within the last ten years, involving the unauthorised breach of condition 2 of 14/1252/FUL in that flues and

cowls have been erected without planning permission on the roof of the building at the premises, specifying the steps to comply and the period for compliance set out in paragraphs 9.2 and 9.3, for the reasons contained in paragraph 9.4.

- (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.

9.2 Steps to Comply

9.21 Permanently remove the flues and associated cowls and fixings on the roof of Citylife House.

9.22 Permanently remove the resulting materials from the Premises.

9.3 Period for Compliance:

Six [6] month(s) from the date the notice comes into effect.

9.4 Statement of Reasons:

- (i) It appears to the Council that the breach of planning control has occurred within the last ten years (Section 171B(3)).
- (ii) The flues, cowls and associated fittings because of their visibility from surrounding streets and from St Matthew's Piece, appears as incongruous additions to the roof top of the existing building and is of poor design. As such, their installation detracts from the character and appearance of the Conservation Area and surrounding park and open space. This is contrary to Cambridge Local Plan (2006) policy 4/11. The harm is less than substantial to the significance of the Conservation Area as a whole but is not outweighed by any identifiable public benefit arising from its

installation and is therefore contrary to paragraph 134 of the NPPF (2012).

- (iii) It is considered that planning conditions could not overcome the identified objections with regard to this unauthorised change of use.

9.5 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.

BACKGROUND PAPERS

APPENDICES

Plan detailing layout of site

The contact officer for queries on the report is John Shuttlewood on extension 457326.