

# CAMBRIDGE CITY COUNCIL

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REPORT OF: Head of Planning Services

TO: East Area Committee

DATE: 21/06/12

WARD: Petersfield

## **PLANNING ENFORCEMENT CONTROL ENFORCEMENT REPORT**

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**Sweet and Spicy, 102 Mill Road, Cambridge**

### **Unauthorised change of use**

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#### **1 INTRODUCTION**

1.1 Members are asked to consider whether to authorise enforcement proceedings for unauthorised use.

Site: Sweet and Spicy, 102 Mill Road, Cambridge.  
See Appendix A for site plan.

Breach: Unauthorised change of planning use from A1(shop) to A3 (café/restaurant).

1.2 On 18<sup>th</sup> August 2011 this Committee resolved to grant planning permission reference 11/0255/FUL for 'Change of use from A1 to mixed Use Class A1/A3 and single storey rear extension at 102 Mill Road'.

1.3 The 11/0255/FUL decision notice (see Appendix B) was dated 12<sup>th</sup> September 2011 and issued 17<sup>th</sup> February 2012, the delay enabled officers to facilitate discussions regarding conditions attached to the permission.

1.4 There is an ongoing breach of planning control at 102 Mill Road in that there is an unauthorised A3 use of the premises. Officers have previously investigated the same unauthorised use in 2003 and 2005. The current investigation was opened in November 2010.

- 1.5 Condition 1 of 11/0255/FUL provides: 'The development hereby permitted shall be begun before the expiration of three years from the date of the permission.' The permission has yet to be implemented, were permission 11/0255/FUL implemented the breach of planning control would be discontinued.
- 1.6 On 23<sup>rd</sup> April 2012 the Council was forwarded a copy of a letter dated 23 March 2012 addressed to the occupier of 102 Mill Road from his planning agent. (see Appendix C) The letter sets out a programme which the occupier would need to follow in order to comply with the conditions attached to permission 11/0255/FUL. The agent concludes that the earliest the building work could start on site is 'tentatively' 1<sup>st</sup> May 2013.

## 2 PLANNING HISTORY

<b>Reference</b>	<b>Description and outcome</b>
C/97/0466	Change of use from shop with ancillary residential flat over (A1/C3) to hotfood takeaway use (A3) and self-contained flat (C3). REFUSED
C/98/0524	Change of use from class A1 to class A3 (takeaway) and change of use from class A1 to residential (part ground floor). REFUSED Appeal dismissed
C/01/1382	Continuation of existing mixed Class A1 (shops) and Class A3 (food and drink) use without compliance with condition 8 of planning permission C/01/1382/FP. APPROVED SUBJECT TO CONDITIONS
C/04/0351	Change of use from Class A1 shop to a mixed Class A1 shop and Class A3 food and drink use. REFUSED
11/0255/FUL	Change of use from A1 to mixed Use Class A1/A3 and single storey rear extension. APPROVED SUBJECT TO CONDITIONS

### 3 BACKGROUND

3.1 On 17th November 2010 officers received a complaint alleging that the planning use of Sweet and Spicy at 102 Mill Road, Cambridge had changed from Class A1 (shop) to Class A3 (restaurant and café). Observations undertaken by officers confirmed that the premises had increased the seating for customers from 8 to 28 and the menu and website confirmed that 102 Mill Road was operating as a restaurant.

3.2 Application C/01/1382/FUL which granted permission for 'Change of Use of ground floor from (Class A1) to mixed shop (Class A1) and hot food takeaway use (Class A3). (Upper floors to be retained as self contained flat Class C3 use)' was subject to conditions including conditions 2 and 8 which stipulated:

Condition 2: 'The use hereby permitted shall be discontinued and the land restored to its former condition in accordance with a scheme of works submitted to and approved in writing by the local planning authority, on or before 19 June 2003'.

Reason: to enable the local planning authority to assess the impact on the amenity of the surrounding area.

Condition 8: 'At no time shall the sale of hot food for consumption either on or off the premises become the predominant use.'

Reason: to protect the retail vitality of this part of the Mill Road shopping centre in line with Policy SH18 of the Cambridge Local Plan 1996 and guidance set out in PPG6 Town Centres and Retail Development 1996.

This permission has expired.

3.3 In 2003 a complaint was made regarding the intensification of hot food consumption on the premises, and on 23rd June 2003 an application (reference C/03/0688) for 'Continuation of existing mixed Class A1 (shops) and Class A3 (food and drink) without compliance with condition 8' was submitted. This application was later withdrawn.

3.4 Officers continued to monitor the use of the premises and in 2004 a application C/04/0351/FP was submitted for 'Change of use from Class A1 shop to a mixed Class A1 shop and Class A3 food and drink use' which was refused on 17th August 2004.

3.5 Throughout 2005 officers undertook monitoring of the premises which established that the premises was being used for A1 use only and so the investigation was discontinued.

- 3.6 In November 2010 a further complaint alleging unauthorised use of the premises was received. On 23rd December 2010 a letter was sent to the occupier of the premises inviting him to contact officers to arrange a site visit to enable an assessment of the current use.
- 3.7 The occupier sought pre application advice from the Local Planning Authority and was informed by letter dated 21<sup>st</sup> January 2011 that the current permitted use of the premises was Class A1. Advice was given that an application for change of use was likely to be refused because the property was situated within the Mill Road West District Centre to which policy 6/7 (Shopping Development and Change of Use in District and Local Centres) of the Cambridge Local Plan (2006) applied. The advice stated: 'This policy provides that change of use from Class A1 to Classes A2, A3, A4 and A5 in District and Local Centres will only be permitted provided the percentage of Class A1 uses does not fall below 60% (measured by number of units). The Mill Road West District Centre currently has only 58% of units in Class A1 use, and, therefore, the threshold set out in the Local Plan has already been exceeded and the change of any further unit, including 102, from Class A1, would not be acceptable'.
- 3.8 On 2<sup>nd</sup> February 2011 a Planning Contravention Notice was served on the occupier of 102 Mill Road which was returned completed on 18<sup>th</sup> February 2011.
- 3.9 Planning permission 11/0255/FUL for 'Change of use from A1 to mixed Use Class A1/A3 and single storey rear extension' was not retrospective because the A3 restaurant use at the premises prevails, not the proposed mixed A1 (shop)/A3 (restaurant) use. It is essential that the A1 (shop) element at 102 Mill Road is not lost for the reasons set out in paragraph 3.7 above.
- 3.10 The letter of 23<sup>rd</sup> March 2012 outlines a proposed schedule for actions needed to implement planning permission 11/0255/FUL. The timetable suggests that the first step towards implementation would be an application to discharge condition 5 of 11/0255/FUL (a pre commencement condition) which would be received by the end of April 2012. To date, no application to discharge condition 5 of 11/0255/FUL has been received.

## **4 POLICY AND OTHER MATERIAL CONSIDERATIONS:**

### **4.1 National Planning Policy Framework states:**

'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 In order to issue an Enforcement Notice there must be sound planning reasons to justify taking such action.**

### **4.3. Until such time as permission 11/0255/FUL is implemented the unlawful use continues. Although the planning agent estimates that at best and "tentatively" the works could not start until 1<sup>st</sup> May 2013 the first stage of the programme has passed its target date and no indication has been provided as to how long the building works will last. The decision to approve the application was made at Committee on 12<sup>th</sup> September 2011, the owner was aware of the grant of permission on that date however to date he has not taken any steps to implement the permission.**

### **4.4 The view of officers is that the work necessary to implement the permission does not require the 13 months suggested in the proposed timetable and that such works could be undertaken in 3 to 4 months.**

## **5 RECOMMENDATIONS**

### **5.1 It is recommended that:**

An Enforcement Notice is served on the owner and tenant of 102 Mill Road, Cambridge] to address the breach of planning control namely the unauthorised change of use of 102 Mill Road Cambridge from A1 to A3 and that the Head of Legal Services is authorised by this Committee to issue such a notice under the provisions of S172 of the Town and Country Planning 1990 (as amended).

5.2 If the Committee authorises enforcement proceedings the Enforcement Notice would include the following details:

5.2.1 Steps to Comply:

Cease the unauthorised A3 use of the premises

5.2.2 Period for Compliance:

1 month from the date the notice comes into effect.

5.2.3 Statement of Reasons:

It appears to the Council that the breach of planning control has occurred within the last ten years and the Council consider it expedient to serve enforcement notices in order to remedy the clear breach of planning control.

5.2.4 Right of appeal

There is a right of appeal against an Enforcement Notices to the Planning Inspectorate.

## 6 IMPLICATIONS

(a) **Financial Implications** - None

(b) **Staffing Implications** - None

(c) **Equal Opportunities Implications** - None

(d) **Environmental Implications** - None

(e) **Community Safety** - None

(f) **Human Rights Considerations** - 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 enforcement notices in this case would be lawful, fair, 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. The time for compliance will be set as to allow a reasonable period for compliance.

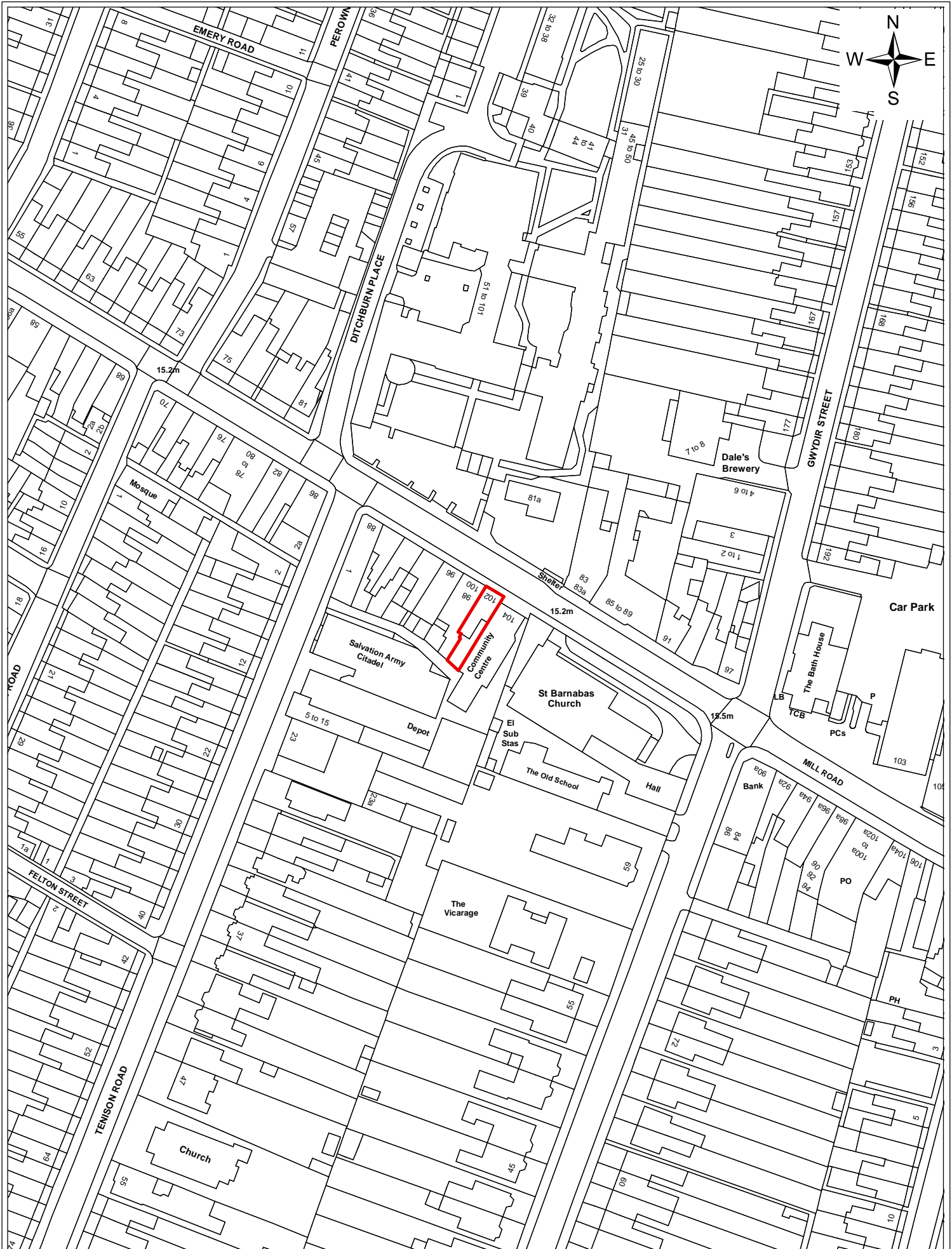
## **APPENDICES**

- Appendix A      Site plan
- Appendix B      Decision notice for application reference 11/0255/FUL
- Appendix C      Letter outlining proposed works

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\102 Mill Road 2012.doc

Date originated: 30 April 2012      Date of last revision:



# 102 Mill Road, Cambridge

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Date:	01 June 2012
Produced by:	Timothy Cliff
Section/Department:	Information Systems, Environment Dept
Scale:	1:1,250 @ A4





## CAMBRIDGE CITY COUNCIL

The Guildhall, Cambridge, CB2 3QJ

TOWN AND COUNTRY PLANNING ACTS 1990

### FULL PLANNING PERMISSION

SUBJECT TO CONDITIONS

Ref: **11/0255/FUL**

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Mr Z Durrani  
Studio 11 Development Ltd  
1 Ethelbert Gardens  
Ilford  
Essex  
IG2 6UL

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The Council hereby grant full planning permission for

**Change of use from A1 to mixed Use Class A1/A3 and single storey rear extension.**

at

**102 Mill Road Cambridge Cambridgeshire CB1 2BD**

in accordance with your application received 8th March 2011 and the plans, drawings and documents which form part of the application, subject to the conditions set out below:

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)

3. The applicant is advised that the site has been used as a dry cleaners and there is a potential for solvents to be present in the ground. The applicant must contact the Local Planning Authority should any potential contamination be discovered as a result of this development.

4. The predominant use of the premises must be A1.

Reason: To ensure that the proposal does not impact upon the number of A1 units in the local centre (Cambridge Local Plan 2006 Policy 6/7).

5. Before the development/use hereby permitted is commenced, details of equipment for the purpose of extraction and/or filtration of fumes and or odours shall be submitted to and approved in writing by the local planning authority. The approved extraction/filtration scheme shall be installed before the use hereby permitted is commenced.

Reason: To protect the residential amenity of the occupiers of the first floor flats (Cambridge Local Plan 2006 Policy 3/7).

### **Reasons for Approval**

Having heard petitions both in support of, and objecting to the application, and comments from a Member representing the ward, East Area Committee questioned the principal planning officer and then discussed the proposal and its implication for the area (particularly those concerning its impact on the viability and vitality of the local centre). East Area Committee resolved to approve the application because, while acknowledging that the current percentage of Class A1 uses within the local centre was below 60%, it considered that the introduction of a subsidiary Class A3 use within this Class A1 unit would not cause significant harm to the vitality and viability of the local centre, and would be in accordance with the stated objective of Chapter 6 of the local plan, namely 'To ensure that Cambridge is vibrant and thriving with a range of leisure, tourism and shopping facilities in accessible locations to meet the needs of residents of the City and Sub-region.' In addition, East Area Committee considered that the guidance in the written ministerial statement 'Planning for Growth' (23 March 2011) that local planning authorities should support enterprise and economic development, consider the range of likely economic and social benefits of proposals (including increased consumer choice and more robust local economies) and give appropriate weight to the need to support economic recovery, lent significant weight to the case for approval of the change of use.

This decision notice relates to the following drawings: **LOCATION PLAN, 102/(01)01 and 102/(02)02.**

It is important the development is carried out fully in accordance with these plans. If you are an agent, please ensure that your client has a copy of them and that they are also passed to the contractor carrying out the development. A copy of the approved plans are kept on the planning application file.

It is important that all conditions particularly pre-commencement conditions are fully complied with, and where appropriate, discharged prior to the implementation of the development. Failure to discharge such conditions may invalidate the planning permission granted. The development must be carried out fully in accordance with the requirements of any details approved by condition.

This decision notice does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Your attention is specifically drawn to the requirements of the Chronically Sick and Disabled Persons Act 1970, the Disabled Persons Act 1981, to the British Standards Institution Code of Practice for Access for the Disabled to Buildings (BS 5810 1979), to Part M of the Building Regulations 1991, and to BS 5588 Part 8 1988 (Code of Practice for means of escape for disabled persons). The development should comply with these requirements.

Please note: On-street parking controls, including residents' parking schemes, are in operation in several parts of the City of Cambridge. There are restrictions on eligibility for residents' parking permits, even for residents within the areas covered by schemes. Implementing a planning consent can remove eligibility for a permit. The County Council can advise whether or not properties qualify for a Residents' Parking Permit. If in doubt, please contact Cambridgeshire County Council, Cambridgeshire Parking Services by telephoning (01223) 727920 or by e-mailing [parkingpermits@cambridgeshire.gov.uk](mailto:parkingpermits@cambridgeshire.gov.uk), mentioning this planning consent. Please also be aware that the criteria for granting parking permits may change from time to time.

For further information please go to [www.cambridge.gov.uk/planning](http://www.cambridge.gov.uk/planning).

Dated: 12 September 2011



Guildhall, Cambridge, CB2 3QJ

Head of Planning  
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SEE NOTES ATTACHED

## PLANNING PERMISSION

### 1. Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development' or to grant permission subject to conditions, then you can appeal to the First Secretary of State under section 78 of the Town & Country Planning Act 1990.

If you want to appeal then you must do so within 6 months of the date of this notice or within 12 weeks of the date of the decision notice against a refusal of any householder planning application that was valid on or after 6<sup>th</sup> April 2009, using a form which you can get from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or from [www.planningportal.gov.uk/pccs](http://www.planningportal.gov.uk/pccs)

The Secretary of State can allow for a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, he does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

### 2. Purchase Notices

If either the local planning authority or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been, or would be permitted. In these circumstances, the owner may serve a purchase notice on the council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town & Country Planning Act 1990.

## LISTED BUILDING CONSENT, CONSERVATION AREA CONSENT

### 3. Notification of Demolition

If listed building consent has been granted and any demolition is to take place, you must in accordance with Section 8(2)(b) of the Planning (Listed Building and Conservation Areas) Act 1990 complete a Final Notice of Demolition Form and send it to English Heritage at least one month before demolition occurs.

### 4. Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority to refuse listed building or conservation area consent, or to grant either subject to conditions then you may appeal to the Secretary of State for the Environment in accordance with sections 20 and 21 of the Planning (Listed Building and Conservation Areas) Act 1990. Appeals must be made within 6 months of the date of the decision (see notes under 1 above).

### 5. Purchase Notice

If listed building or conservation area consent is refused, or if either is granted subject to conditions, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council in which the land is situated a purchase notice requiring the council to purchase his interest in the land in accordance with section 32 of the Planning (Listed Building and Conservation Areas) Act 1990.

### 6. Compensation

In certain circumstances a claim may be made against the local planning authority for compensation as provided for under Section 27 of the Planning (Listed Building and Conservation Areas) Act 1990.

## CONSENT TO DISPLAY AN ADVERTISEMENT

### 7. Appeals to the Secretary of State

If you are aggrieved by the decision of the local planning authority to refuse consent to display an advertisement, or to grant consent subject to conditions then you may appeal to the Secretary of State for the Environment under Regulation 15 of the Town and Country Planning (Control of Advertisements) Regulations 1992. Appeals must be made within 8 weeks of the date of the decision (see notes under 1 above)

# Studio11Development

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1 Ethelbert Gardens Ilford Essex IG2 6UL  
Tel 0794 0593742 Fax: 0871 266 4177  
Email. Studio11Development@yahoo.co.uk

Zarar Arshad  
Sweet n Spicy  
102 Mill Road  
Cambridge  
CB1 2BD

23<sup>rd</sup> March 2012

Dear Mr Arshad,

**Re: Proposed works at 102 Mill Road Cambridge**

We have now received full planning permission of 'Rear extension, internal alterations and change of use for A1 to A3' for above premises.

Here is a programme for your consideration.

1. **Planning:** Condition 5 of Planning approval ref: 11/0255/FUL is a pre-commencement condition and therefore it needs to be released prior to works starting on site. We are preparing documentation with details of extraction etc. for submission of Release of Condition application by end of April 2012. Decision Due by early July 2012.

2. **Building Control:** A full plans application for Building Regulation application will be prepared and submitted following release of condition by end of July 2012. Building Regulation approval due by early October 2012.

3. **Landlord's Consent:** Since you are the leaseholder of the property and the works involve structural alterations and rear extension, you will required Freeholder's consent for the alterations. We will prepare necessary documents and send it to the freeholder together with planning and Building control approval by end of October 2012. The Freeholder may appoint his own surveyor to assess the impact on the property and may take between 2-3 months for issuing consent. We will be aiming to obtain Landlord's Consent by end of Jan 2013.

4. **Tendering:** We will prepare Schedule of Work and Working Drawings for the Tender package and obtain prices from three contractors. The negotiations and selection of contractor may take 2-3 months. We should have a contractor appointed by end of April 2013.

Therefore the earliest the building work can start on site is tentatively 1<sup>st</sup> of May 2013.

Please do not hesitate to contact me if you wish to discuss any of the above.

Yours sincerely,



**Zaheer Durrani** BArch MSc