

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: North Area Committee

DATE: 22/11/12

WARD: East Chesterton

PLANNING ENFORCEMENT CONTROL **Unauthorised change of use at 70 Green End Road, Cambridge**

1. INTRODUCTION

This report seeks delegated authority to serve an Enforcement Notice in the event that a Certificate of Lawfulness is refused. The enforcement notice would be to address a breach of planning control, namely the unauthorised change of use of 70 Green End Road from its lawful planning use as part residential and part bed and breakfast accommodation.

Site: 70 Green End Road, Cambridge.

See Appendix A for site plan

Breach: Unauthorised change of use

2. PLANNING HISTORY

Reference	Description
C/86/0643	Erection of two storey and single storey extension to existing dwelling house. (amended by drawings dated 14/8/86, 12/12/86, 20/07/87 and 05/10/90). APPROVED

- C/87/1104 Change of use from single dwelling house to part residential/part bed and breakfast accommodation.
APPROVED
- C/01/0105/FP Two storey and single storey rear extension to Guest House providing 3 additional guestrooms.
REFUSED
- C/01/1021/VC Section 73 application to allow use of 70 Green End Road without compliance with condition 03 of the Planning Permission C/1104/87, namely as a guest house with 7 guest bedrooms rather than as part residential part bed and breakfast accommodation with the maximum of four guest bedrooms previously allowed
REFUSED
Appealed, APPEAL DISMISSED
- C/01/1025/FP Single storey rear extension to Guest House to provide residential accommodation for the owner/manager; conversion of existing building from four guest bedrooms to 7 guest bedrooms.
REFUSED
Appealed, APPEAL DISMISSED

3. BACKGROUND

- 3.1 The Planning Enforcement Service has received a complaint that up to nine rooms are used as guest accommodation at 70 Green End Road, Cambridge and that this is a breach of planning control.
- 3.2 Planning permission reference C/87/1104 provides the current lawful planning use of 70 Green End Road as 'part residential/part bed and breakfast accommodation.' Condition 3 of C/87/1104 states: 'The maximum number of guest bedrooms shall not exceed four'.
- 3.3 In August 2001 the Enforcement Service investigated the change of use of 70 Green End Road to a Hostel (sui generis). Officers did not find substantial evidence that a change of use had occurred but did establish that a breach of Condition 3 of C/87/1104 was occurring and a Breach of Condition Notice was served on the property. A file note from 10th January 2002 indicates that the Breach of Condition Notice was being complied with.

- 3.4 New allegations that a breach of condition and change of use of 70 Green End Road had occurred were received in the summer of 2012 and a Planning Contravention Notice was served on the owner of the property on 27th September 2012. The completed notice was returned on 12th October 2012.

The notice stated that there has been a change of use of the property and that the use changed to a House in Multiple Occupation 'around 2001'.

- 3.5 On 16th October 2012 officers sent a letter to the owner of 70 Green End Road requesting the submission of a planning application for change of use or an application for a Certificate of Lawfulness for consideration within 28 days. This is the legal mechanism under planning legislation where the 'lawfulness' of a potentially unauthorised use can be proven. A Certificate of Lawfulness application has now been received.

4. LEGAL, POLICY AND OTHER MATERIAL CONSIDERATIONS:

- 4.1 Section 171B of the Town and Country Planning Act (amended) provides:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, 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.

(2) Where there has been a breach of planning control consisting in the change of use 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 of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

- 4.2 The material change of use of 70 Green End Road, Cambridge from part residential/part bed and breakfast accommodation to a guest house with more than four letting rooms or as a house in multiple Occupation (mixed or sui generis use) requires planning permission.

4.3 If the owner of 70 Green End Road can prove that the change of use of the property from the lawful planning use permitted by C/87/1104 occurred more than ten years ago and has been continuous then no enforcement action can be taken in respect of the breach.

4.3 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.’

4.4 Cambridge Local Plan policies

The following policies from the Cambridge Local Plan would apply to the determination of an application of change of use of a 70 Green End Road to a House in Multiple Occupation:

3/4 Responding to Context

5/4 Loss of Housing

5/7 Supported Housing / Housing in Multiple Occupation

The unauthorised development in question is considered to be contrary to development plan policies detailed above, because the change of use would be detrimental to the residential amenity of neighbouring occupiers, poorly integrated into the locality and would result in the unacceptable loss of an existing residential dwelling (Cambridge Local Plan 2006)

4.5 Planning Investigation Service Enforcement Policy 2000 Objectives:

- To promote compliance with planning requirements.
- To remedy the undesirable effects of unauthorised development.
- To bring unauthorised activity under control to maintain the credibility and achieve the purpose, of the planning system.

- To strike an acceptable balance between protecting the amenity of the citizens of Cambridge and other interests of acknowledged importance, and allowing development to take place.
- To provide a service that will pursue pro-active initiatives that would improve the environment and built heritage, safeguard the amenities of the area and support the policies of the development plan.

A copy of the policy can be found at:

<http://www.cambridge.gov.uk/public/pdfs/PIS-enforcement-policy.pdf>

- 4.5 Enforcement is a discretionary power. The Committee should take into account the planning history and the other relevant facts set out in this report. In order to issue an Enforcement Notice there must be sound planning reasons to justify taking such action. The unauthorised development, namely the change from the lawful planning use as part residential and part bed and breakfast accommodation is understood to be ongoing.

5. RECOMMENDATIONS

- 5.1 The Certificate of Lawfulness application will need to be determined. The evidence put forward to support the claim that the use is lawful will be scrutinised by both planning and legal services. In the event that the certificate is refused, delegated authority to proceed with the preparation and service of an enforcement notice is requested.
- 5.2 It is recommended that such delegated authority authorises the Head of Legal Services to issue an enforcement notice under the provisions of S172 of the Town and Country Planning Act 1990 (as amended), for a material change of use from a part C3 dwellinghouse and part C1 bed and breakfast accommodation guest house to use in its entirety as a guesthouse within class C1 or as a House in Multiple Occupation (sui generis). Currently, it is expected that the enforcement notice would contain the wording set out in paragraphs 5.2 to 5.4 of this report (with such amendments as may later be requested by the Head of Legal Services).
- 5.3 Steps to Comply:
- 5.3 1. Cease the unauthorised use of 70 Green End Road, Cambridge as C1 guesthouse use or as a house in multiple occupation (sui generis use).

2. Revert the planning use of 70 Green End Road, Cambridge to its lawful planning use as a part C3 dwelling house and part C1 bed and breakfast accommodation, consisting of no more than four letting rooms.

5.3 Period for Compliance:

3 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 ten years. The applicant has undertaken development (in the form of a change of use / non compliance with a condition) without the benefit of planning permission.

The intensification/change of use has given rise to noise and disturbance to neighbours resulting in an unacceptably adverse impact upon their amenities through noise and general disturbance

Mindful of the advice the development plan policies mentioned above and to all other material considerations, the Council consider it expedient to serve enforcement notices in order to remedy the clear breach of planning control.

5.5 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, if a certificate of lawfulness were refused, an enforcement notice 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.

6. **IMPLICATIONS**

(a) **Financial Implications** - None

(b) **Staffing Implications** - None

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

(d) **Environmental Implications** - None

(e) **Community Safety** - None

BACKGROUND PAPERS:

No background papers were used in the preparation of this report

APPENDICES

Appendix A Site plan

To inspect these documents contact Deborah Jeakins on extension 7163

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\70 Green End Road 2012.doc

Date originated: 29 Oct 2012 Date of last revision: 13 Nov 2012