

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: East Area Committee

DATE: 10/01/13

WARD: Petersfield

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

142 Tenison Road, Cambridge

Unauthorised change of use from a House in Multiple Occupation (sui generis) to C1 Hotel accommodation

1. INTRODUCTION

- 1.1 This report seeks the authority to serve an Enforcement Notice to address a breach of planning control, namely the unauthorised use of a House in Multiple Occupation as C1 hotel accommodation.

Site: 142 Tenison Road, Cambridge.

See Appendix A for site plan

Breach: Unauthorised change of use of a House in Multiple Occupation (sui generis)

2. PLANNING HISTORY

- 2.1 The breach of planning control at 142 Tenison Road is occurring in connection with the C1 Hotel use of Fenners Hotel, 144 –146 Tenison Road. The planning history detailed in the table below relates to all three properties.

Ref	Site	Description	Outcome
78/0671	146	2-storey extension to dwelling	Refused
80/0417	146	2 nd floor extension to B&B	Refused
83/0395	142	1 st floor extension	Approved with conditions
83/0737	146	Use as guest house	Approved with conditions

83/0738	142	Change of use from residential with bedsitting accommodation to bedsitting accommodation	Approved with conditions
83/0739	144	Change of use from residential unit to residential with lodging accommodation	Refused
85/3381	146	Illuminated pole sign	Refused
88/0251	144	Change of use from dwelling to hotel	Refused Appeal allowed
95/0759	146	Single storey extension at side and two pitched roofs at 2 nd floor level	Approved with conditions
95/0770	146	Demolition of dormers to allow pitched roofs at 2 nd floor level	Approved with conditions
02/0261	142	2-storey rear extension	Refused
03/0811	146	2-storey rear extension, single-storey rear extension and two dormers to guest house	Refused Appeal Dismissed
03/0812	142	Single-storey rear extension and 2 nd floor dormer to HMO	Refused Appeal Dismissed
08/1207	146	Extension to form laundry and kitchen	Approved with conditions
08/1208	146	Demolition of timber structure	Withdrawn
10/0530	142	Retrospective change of use from residential to bed and breakfast accommodation in conjunction with no 144 and 146 Tenison Road.	Refused
12/0162/ CLUED	142	Use of No 142 as a Hotel in Use Class C1	Certificate Not granted

3. BACKGROUND

- 3.1 In 2008 officers investigated the alleged unauthorised planning use of 142 Tenison Road as additional guest accommodation associated with the adjoining Fenners Hotel. The investigation was closed when officers could not find conclusive evidence of a change of use.
- 3.2 In 2010 officers again investigated the alleged change of use of 142 Tenison Road to additional hotel space and as a result of the investigation a retrospective planning application for change of use was submitted.

On 7th February 2011 planning permission reference 10/0530/FUL for 'Retrospective change of use from residential to bed and breakfast accommodation in conjunction with no 144 and 146 Tenison Road' was refused. The reason for refusal was:

'The proposal involves the loss of residential accommodation without any counterbalancing benefit, without strengthening or diversifying the range of short-stay visitor accommodation available in the locality or the city, and without retaining an acceptable unit of permanent residential accommodation on the site. It is therefore contrary to policies 3/7, 5/4 and 6/3 of the Cambridge Local Plan 2006.'

- 3.3 On 23rd May 2011 a letter was sent to the owner of 142 Tenison Road, in the letter officers asked the owner of the property to confirm the intended use of the property in the light of the recent refusal of planning permission. The owner of 142 Tenison Road did not respond to the letter.
- 3.4 On 6th July 2011 officers visited 142 Tenison Road and confirmed that the unauthorised use as additional hotel / bed and breakfast accommodation was continuing.
- 3.5 On 18th July 2011 a Planning Contravention Notice was served on the owner of 142 Tenison Road. The Notice was returned on 12th August 2011. The completed Notice contained an assertion by the owner of the property that 142 Tenison Road had been operating as a Bed and Breakfast since 1977.
- 3.6 A further Planning Contravention Notice was served on 20th October 2011. The Notice sought clarification on when the unauthorised change of use of the C3 dwellinghouse at 142 Tenison Road had begun. The completed Notice, which was returned on 17th November 2011, indicated that the owner of 142 Tenison Road intended to submit evidence proving that the property had been used as bed and breakfast accommodation for 11 years.
- 3.7 On 9th December 2011 an Application for a Certificate of Lawfulness for 'Use of No 142 as a Hotel in Use Class C1' (reference 12/0162/CLUED) was submitted.

On 30th August 2012 the application was refused, the reason given for the refusal was:

It appears to the Local Planning Authority that insufficient evidence has been submitted to demonstrate that the premises has been used as hotel in use class C1 for a continuous 10 year period.

- 3.8 On 23rd October 2012 officers were advised that the owner of 142 Tenison Road intended to appeal the refusal of the Certificate of Lawfulness. There is no time limit for the submission of an appeal of a Certificate to the Planning Inspectorate. No appeal has been submitted to date and the unauthorised use of 142 Tenison Road as additional C1 hotel accommodation continues. Once an Enforcement Notice is served and in force then an appeal against the refusal of the Certificate cannot be made to the Planning Inspectorate.

4. POLICY AND OTHER MATERIAL CONSIDERATIONS:

- 4.1 The material change of use of 142 Tenison Road, Cambridge from C3 dwellinghouse to C1 hotel accommodation requires planning permission. Planning permission has been applied for and refused.

The unauthorised development, namely the change from the lawful planning use took place less than ten years ago and therefore is not immune from enforcement action.

4.2 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.'

4.3 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 use of the property as C1 hotel accommodation involves the loss of residential accommodation without any counterbalancing benefit, without strengthening or diversifying the range of short-stay visitor accommodation available in the locality or the city, and without retaining an acceptable unit of permanent residential accommodation on the site and is therefore contrary to policies 3/7, 5/4 and 6/3 of the Cambridge Local Plan 2006

4.4 Under part 4A of Cambridge City Council's scheme of delegations officers have the delegated authority to serve an Enforcement Notice following the refusal of a retrospective planning application however due to the length of time which has elapsed since the refusal of the planning application officers are referring this matter to members for their approval.

4.5 Having taken into account the Development plan and all other material considerations it is considered expedient to issue an Enforcement Notice.

5. RECOMMENDATIONS

5.1 It is recommended that the Head of Legal Services be authorised to issue an enforcement notice under the provisions of S172 of the Town and Country Planning Act 1990 (as amended), for Material Change of Use from a C3 dwellinghouse to C1 hotel accommodation. 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).

5.2 Steps to Comply:

1. Cease the unauthorised use of 142 Tension Road, Cambridge as C1 hotel accommodation and / or bed and breakfast accommodation.
2. Revert the planning use of 142 Tenison Road, Cambridge to its lawful planning use as a C3 dwelling house.

5.3 Period for Compliance:
6 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 without the benefit of planning permission.

Mindful of the NPPF, the development plan policies mentioned in paragraph 4.3 and to all other material considerations, the Council consider it expedient to serve an enforcement notice in order to remedy the clear breach of planning control.

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.

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:

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

Officers reports on planning application 10/0530/FUL and application for Certificate of Lawfulness reference 12/0162/CLUED.

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\142
Tenison Road 2013.doc

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