

REPORT OF: Head of Planning Services

TO: South Area Committee DATE: 15/07/13

WARD: Queen Ediths

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

28 Almoners Avenue, Cambridge Unauthorised Development

1 INTRODUCTION

1.1 On 9 May 2013 South Area Committee considered a report detailing development that had taken place at 28 Almoners Avenue which was not in accordance with the approved plans (application reference 11/0781/FUL). A copy of the report is attached at Appendix B.

1.2 The Committee resolved as follows:

1. To reject the officer recommendation that the Head of Planning Services be authorised to close the investigation into unauthorised operational development at 28 Almoners Avenue on the grounds that is not expedient to pursue the matter further.
2. That a report authorising enforcement action be brought back to the next South Area Committee for consideration.

Correction to Previous Report

1.3 It should be noted that there was an error in the report that was presented to South Area Committee on 9 May 2013. The agent representing the occupiers of 28 Almoners Avenue have picked this up and made a formal complaint to the Head of Planning Services.

1.4 Paragraph 2.3 of the 9 May report reads as follows:

Whilst the balcony screens have the effect of screening the balcony and removing the possibility of direct overlooking, their position

nearer the edge of the balcony increases the potential for looking around the screen and this has a significantly detrimental effect on neighbour amenity.

- 1.5 The underlined section of this paragraph is incorrect and inconsistent with the rest of the report and the recommendation. The revised position of the screens does allow for wider views from the balcony but this will not have a significant impact on residential amenity. The photographs provided by the agent demonstrate that the wider view is obscured by single storey structures close to the boundary on each side.

2 BACKGROUND

- 2.1 Planning reference 11/0781/FUL granted approval for: 'Part two storey, part single storey rear extension, erection of carport and erection of front porch.' On 19th December 2012 officers received an allegation that the position of the balcony screening erected as part of planning application 11/0781/FUL was not as shown on the approved plans.
- 2.2 Officers confirmed that the position of the balcony screening was not as approved and that the increase in distance between the two balcony screens (in width) affords a greater potential for overlooking. Photographs of the development can be found in Appendix B.
- 2.3 The previous report to this Committee contained informal officer advice that, whilst mindful of the comments made by the neighbours on either side of the site, if a retrospective application was to be made for the new position of the balcony screens, it would be likely to be supported. This is because, in the view of officers, the relocation of the balcony screens does not result in significant overlooking and the screens do not visually dominate the neighbours outlook to such a degree that a refusal of planning permission could be justified at appeal.
- 2.4 The South Area Committee requested that a report be brought back to them to authorise enforcement action to address the breach of planning control at 28 Almoners Avenue.
- 2.5 Officer opinion is that the service of an Enforcement Notice is the most appropriate action to address the breach of planning control.

- 2.6 All parties connected to this investigation were advised this report is being put before members for consideration and were made aware that they could make representations to this Committee.

3 PLANNING POLICY AND OTHER MATERIAL CONSIDERATIONS

- 3.1 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.’

- 3.2 The operational development at 28 Almoners Avenue is not as approved by planning reference 11/0781/FUL and therefore it requires planning permission. The unauthorised development took place less than four years ago and therefore is not immune from enforcement action.
- 3.3 Enforcement is a discretionary power and 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 informal opinion from planning officers is that the impact of the development on the amenities of neighbours is not significantly greater than the approved development and a retrospective application would have been likely to be approved under delegated powers.
- 3.4 At the meeting in April, the Committee indicated that it does not support the view of officers and considers that it may be expedient to pursue enforcement action to secure compliance with the approved plans. If enforcement action is pursued it will be necessary for the Committee to determine that the development that has been carried out is contrary to Development Plan policies. In this case the relevant policy is policy 3/14 of the Cambridge Local Plan 2006. This policy relates to extensions to building and states that ‘The extension of existing buildings will be permitted if theyb) do not

unreasonably overlook, overshadow or visually dominate neighbouring properties....'. In the light of discussions at the April meeting, officers consider that the Committee may wish to refer to both overlooking and visual domination as the reasons why enforcement action is necessary. These reasons have been included in the statement of reasons set out below for approval by the Committee.

- 3.5 If members do not authorise the service of an Enforcement Notice, the unauthorised operational development in question would become immune from enforcement action after a period of four years.

4 RECOMMENDATIONS

- 4.1 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 unauthorised operational development at 28 Almoners Avenue, Cambridge. 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).

4.2 Steps to Comply:

Relocation of the side screens on the balcony to a position that aligns with the window frame of the window serving the balcony in accordance with the details shown on approved drawing no. Artek/McPhee-Lindsey/001C.

4.3 Period for Compliance:

6 months from the date the notice comes into effect.

4.4 Statement of Reasons:

It appears to the Council that the breach of planning control has occurred within the last four years. The applicant has undertaken development without the benefit of planning permission.

The current location of the side screens to the balcony facilitate an unreasonable degree of overlooking of the gardens to 26 and 30 Almoners Avenue and due to their location close to the site boundary visually dominate the outlook from the gardens serving 26 and 30

Almoners Avenue. In so doing the development is contrary to policy 3/14 of the Cambridge Local Plan 2006.

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.

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.

BACKGROUND PAPERS: Report to South Area Committee 09/05/13.

APPENDICES

Appendix A Site Plan

Appendix B Report to South Area Committee 09/05/13 and photographs of unauthorised development

The contact officer for queries on the report is Debs Jeakins on ext 7163.