

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: East Area Committee

DATE: 25/07/13

WARD: Petersfield

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

435 Newmarket Road, Cambridge

Unauthorised Development

1 INTRODUCTION

1.1 This report seeks the authority to serve an Enforcement Notice to address a breach of planning control.

Site: 435 Newmarket Road, Cambridge.
See Appendix A for site plan.

Breach: Unauthorised Development: Without planning permission the use of the single dwelling house at 435 Newmarket Road, Cambridge as use as two or more separate dwellinghouses (flats).
See Appendix B for photographs.

2 BACKGROUND (Timeline of Enforcement Investigation)

2.1 In January 2012 officers were advised that the property, a single dwelling house at 435 Newmarket Road, Cambridge, had been sub divided into two flats that were occupied as two separate dwellings.

2.2 Planning records showed that no applications had been submitted or granted for the change of use of the property from its lawful use as a

single dwelling house to use as two separate dwellinghouses, namely flats.

- 2.3 On 31 January 2012 a letter was issued to the owner of 435 Newmarket Road, Cambridge inviting a retrospective planning application for change of use of the property as a single dwelling house to use of the property as two separate dwellinghouses (flats).
- 2.4 No application or response was received from the owner by March 2012 so officers sent a further letter to the owner requesting that the owner contact the Local Planning Authority (the City Council) to discuss how to regularise the breach of planning control.
- 2.5 On 5th April 2012 officers visited the property and spoke with a tenant of one of the flats. The tenant advised that the single dwelling house had been subdivided into two separate flats occupied as separate dwellings, one of which was occupied by the tenant. The tenant advised that he did not have a contact address for the owner but provided a name and mobile telephone number. Unfortunately, when officers attempted to contact the owner the telephone number given was found to be incorrect.
- 2.6 In June 2012 officers served a Planning Contravention Notice on the owner / occupier of the property to try and establish further information in relation to the breach of planning control and the owner of the property.
- 2.7 The Planning Contravention Notice served failed to be completed or returned.
- 2.8 In November 2012 a Land Registry search revealed the owner of the property to be a Cambridge resident.
- 2.9 In February 2013 a further Planning Contravention Notice was served on both the property concerned and the owner.
- 2.10 The owner returned the Planning Contravention Notice and when asked if they intend to make a retrospective planning application for the material change of use of the single dwelling house to use as two separate dwellinghouses (flats) they answered "no".
- 2.11 Officers consulted with Planning Case Officers as to whether a retrospective planning application would be likely to have been supported if one had been submitted. Officers were advised that in accordance with national and local plan policies, such an application

would be likely to have been acceptable in principle. However, although the change of use of the property as a single dwelling house to use as two separate dwellings (in this case flats) may be acceptable in principle, a number of factors would require assessment if an application was submitted, including residential amenity of future and neighbouring properties, amenity space, cycle and bin storage, car parking and the requirements of the Local Planning Authority's Planning Obligations Strategy.

3 POLICY AND OTHER MATERIAL CONSIDERATIONS:

3.1 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 Enforcement is a discretionary power. The Committee should take into account the planning history and the other relevant facts set out in this report. Officers only recommend the service of an Enforcement Notice when all attempts at negotiating a resolution to remedy the breach of planning control have failed.

3.3 In order to issue an Enforcement Notice there must be sound planning reasons to justify taking such action. The change of use of the property from use as a single dwelling house to use as two separate dwellinghouses (flats) constitutes a material change in the use of the building and of each part of it which is so used.

3.4 If a planning application for change of use was submitted officers think that it is likely to be considered acceptable in principle subject to the completion of a Section 106 Obligation imposing obligations on persons with a legal interest in the land to mitigate the impact of the development. However, without a planning application to consider officers are unable to assess the matter fully.

- 3.5 Without the details of a planning application to consider officers are unable to assess the following material considerations:

Residential amenity of adjoining occupiers

The change of use of the property previously used as a single dwellinghouse to use as two or more separate dwellinghouses (flats) is considered by planning officers to be likely to intensify the use of the site by increasing the number of occupiers of, and visitors to, the property and associated traffic movements, which might also raise noise levels. This is likely to have a material impact on the residential amenity of the adjoining occupiers, which, if not appropriately controlled would contradict policy 5/2 (Conversion of Large Properties) of the Cambridge Local Plan 2006.

Residential amenity of occupiers of the flats

Without receiving an application for planning permission, the Local Planning Authority is unable to determine whether the level of living accommodation and amenity space including ancillary provisions such as bin storage, car and cycle parking are compliant with policy 5/2 (Conversion of Large Properties) of the Cambridge Local Plan 2006.

Amenity space, cycle and bin store provision and car parking

Whilst it was noted on site that there was space for some provision of these requirements, it was unclear if the space provided was sufficient to accommodate all of the requirements.

Planning Obligation Strategy

Planning Obligations for open space and community facilities provisions would need to be provided through a S106 Obligation and in accordance with policy 3/8 (Open Space and Recreation Provision Through New Development) of the Cambridge Local Plan 2006.

4 RECOMMENDATIONS

- 4.1 (i) To authorise the service of an enforcement notice under S172 of the Town and Country Planning Act 1990 (as amended) in respect of a planning control, namely without planning permission the material change of use of a single dwelling house to two separate flats, specifying the steps to comply and the period for compliance set out in paragraphs 4.2 and 4.3, for the reasons contained in paragraph 4.4.

- (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.

4.2 Steps to Comply:

1. To discontinue the use of the property as two or more separate dwellinghouses.

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 planning permission.

Mindful of the NPPF 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.

There is insufficient information to assess if the development has adequate sound insulation to prevent undue transmission of noise between the living accommodation of the proposed first-floor flat and the bedrooms of the adjoining house and between the two flats. For these reasons the proposal does not comply with policies 3/4 or 3/10 of the Cambridge Local Plan (2006).

The use of the single dwelling house as two or more separate dwellinghouses, is likely to intensify the use of the site by increasing the number of occupiers and visitors to the site and associated traffic movements, and raised noise levels. The change of use is likely to have a material impact on the residential amenity of the adjoining occupiers, which, if not appropriately controlled would contradict policy 5/2 (Conversion of Large Properties) of the Cambridge Local Plan 2006.

There is insufficient information to assess if adequate provision has been made for amenity space, cycle and bin storage or car parking. Therefore the proposals are contrary to policies 3/4, 3/7, 8/6 and 8/10 of the Cambridge Local Plan (2006).

In the absence of a Section 106 Obligation, the development does not make appropriate provision for public open space, community development facilities, waste facilities and monitoring in accordance with Cambridge Local Plan 2006 policies 3/7, 3/8, 3/12, 5/14 and 10/1, Cambridgeshire and Peterborough Structure Plan 2003 policies P6/1 and P9/8 and as detailed in the Planning Obligation Strategy 2010, and the Open Space Standards Guidance for Interpretation and Implementation 2010.

5 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** - 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: None.

APPENDICES

- Appendix A Site plan
- Appendix B Photographs of unauthorised extension

The author of the report is Alison Twyford and the contact officer for queries is Deborah Jeakins on extension 7163.

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