

REPORT OF: Head of Planning Services

TO: East Area Committee DATE: 28/11/13

WARD: Romsey

**PLANNING ENFORCEMENT CONTROL
ENFORCEMENT NOTICE REPORT**

**Land to the rear of 91 and 93 Burnside, Cambridge
Unauthorised Development**

1 INTRODUCTION

1.1 Breach: Operational Development,
Erection of a residential building

Site: Land to the rear of 91 and 93 Burnside, Cambridge
See Appendix A for a site plan.

1.2 Members are requested to consider the breach of planning control detailed in this report and any relevant representations made to them at this Committee, and approve the following:

1. Authorise the Head of Planning and the Head of Legal Services to prepare and serve an Enforcement Notice for unauthorised operational development.
2. Authorise the Head of Planning and the Head of Legal Services to pursue further action to secure compliance with the Notice, in the event that it is not complied with within the timescale given.

1.3 Full details of officer recommendations can be found in paragraph 8 of this report.

2 PLANNING HISTORY

2.1 No planning applications relating to 91 Burnside, Cambridge have been submitted.

2.2 Planning applications for 93 Burnside, Cambridge.

10/0470/FUL Erection of a one-bed bungalow (following demolition of existing garage)
Permission Refused. Appeal dismissed.

11/0421/FUL Construction of dwellinghouse to replace former garage.
Permission Refused. Appeal dismissed.

3 PERMITTED DEVELOPMENT RIGHTS / LEGISLATION

3.1 The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 1995 (as amended) concerns permitted development rights for outbuildings. Class E allows for:

‘The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool **required for a purpose incidental to the enjoyment of the dwellinghouse as such**, or the maintenance, improvement or other alteration of such a building or enclosure’ without the need for express planning permission.

(subject to certain conditions and limitations).

3.2 A general note to Class E of the General Permitted Development Order 1995 advises that the term ‘purpose incidental to the enjoyment of the dwellinghouse as such’ includes “the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse”.

3.3 The courts have considered a number of cases concerning the meaning and application of the term ‘incidental’. Case law has established that additions to the normal basic domestic living accommodation of a dwellinghouse, such as bedrooms, would not be expected to be regarded as being ‘incidental to the enjoyment of a dwellinghouse as such’ because they are generally an integral part of the ordinary residential use as a dwellinghouse. So for example, a building which contains a bedroom or a study cannot usually be built under Class E. Whether a building is for a purpose which is incidental is a matter of fact and degree in each case.

3.4 Under the provisions of section 55(2)(d) of Town and Country Planning Act 1990 (as amended), if an ‘incidental’ outbuilding has been lawfully constructed under Class E and an incidental use has

been genuinely implemented, it is possible for the owner or occupier to convert the building for use as ancillary living accommodation (such as an additional bedroom, or a study used in connection with the main dwelling).

4 BACKGROUND / ENFORCEMENT INVESTIGATION

- 4.1 On 29 August 2012 Planning Enforcement Officers received notification from an officer in Building Control that building works were taking place at the rear of 91/93 Burnside.
- 4.2 Appendix B to this report contains a statement from a Building Control Officer. The statement confirms that during a visit to the site in August 2012, whilst the building was under construction, the owner's builder and property manager stated that the new building was intended to be used as a new and separate residence with no connection with either 91 or 93 Burnside.
- 4.3 Enforcement Officers contacted Mr Anthony Waite, the owner of 91 and 93 Burnside, to query the intended use of the building being constructed. On 3 September 2012 Mr Waite stated that no breach of planning control was being proposed and described the intended use of the outbuilding variously as a 'music room' or 'summerhouse'.
- 4.4 A site visit made on 4 June 2013 confirmed that the building was a self-contained residential unit within the curtilage of 91 Burnside, with land from 93 Burnside being utilised for amenity space. The building had all the facilities required for day to day living, had its own access and no physical or functional connection with either 91 or 93 Burnside. Appendix C contains photographs from the site visit.
- 4.5 Members are asked to note that the photographs in Appendix C and the site plan in Appendix A both indicate that land which was formerly part of 93 Burnside has been fenced off and is now used in connection with the new residential building.
- 4.6 Once officers had confirmed that an independent, self-contained residence had been built at the rear of 91 and 93 Burnside they notified the owner of the properties that the construction of a self-contained residence was a breach of planning control that officers intended to pursue. Following the site visit on 4 June 2013 the kitchen in the building was removed and items from it were placed in a pre-existing outbuilding located in the garden of 91 Burnside See Appendix D for photographs.

- 4.7 The removal of the kitchen from the building altered the self-contained nature of the new residential accommodation. The owner contends that the use of the building is as ancillary accommodation connected with 91 Burnside and that the tenants use the kitchen in the main house.
- 4.8 The owner of the properties contends that the new building provides ancillary accommodation connected with 91 Burnside and that he has utilised his permitted development right to change the use of 91 Burnside from a C3 Dwellinghouse to a House in Multiple Occupation (Class C4).
- 4.9 There are no permitted development rights for the construction of a building for ancillary accommodation associated with either a C3 dwellinghouse or a C4 HMO.
- 4.10 Despite repeated requests from officers, including questions put formally on a Planning Contravention Notice, the owner of the land has not provided evidence of the implementation of an incidental use of the building by an occupant of 91 Burnside.
- 4.11 The size of the building at the rear of 91/93 Burnside is within permitted development limits for outbuildings. However, in the officer's view, the building does not appear to have been constructed for or genuinely used for any purpose which is incidental to 91 Burnside. Rather, the building appears to have been constructed and used as a separate dwelling house. As such, the building was not lawfully constructed within Class E of the GPDO. If the building had been constructed and used for purposes which were incidental to the main dwelling house – such as a music room – it would then be possible after a period of time to implement a lawful change of use of the building for accommodation in connection with the main dwelling house. However, such a change is not possible if the building was not lawfully constructed within the terms set out in Class E of the GPDO.
- 4.12 Appendix E contains additional information relevant to the breach of planning control submitted by officers from Council Tax and Refuse and Environment along with statements from residents of Natal Road. These documents provide evidence that the building at the rear of 91 and 93 Burnside was not constructed for an 'incidental' use and that the residential use was the only use ever genuinely implemented.

- 4.13 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.

5 SUMMARY OF INVESTIGATIONS BY THE CITY COUNCIL

5.1 Council Tax / Valuation Office

A Property Inspector from Council Tax, Revenues and Benefits inspected the building at the rear of 91 and 93 Burnside in March 2013 and took photographs confirming it was a self-contained residence referred to by the owner and his builder/property manager as 'the bungalow'. Appendix D contains a photograph of the kitchen taken on 1 March 2013.

On 16 July 2013 a Valuation Officer visited 91 Burnside and inspected the main house and the new building but they did not view the relocated kitchen.

5.2 Refuse and Environment / Housing Standards

On 15th April 2013 a Senior Technical Officer in the Residential section of Environmental Health visited the rear of 91 and 93 Burnside and viewed the garden bungalow that was in the process of being plastered and fitted out. Mr Kelly, the owner's builder and property manager, stated that the bungalow would be let to a couple and would be self-contained. A kitchen was in the process of being fitted.

A pre-arranged return site visit on 19th July 2013 confirmed that all kitchen facilities had been removed from the bungalow and placed in a brick outhouse to the rear of the main house at 91 Burnside with the addition of a working toilet positioned against the rear wall within the kitchen. Mr Kelly advised that the kitchen was available to the three persons now occupying the garden bungalow.

During a further pre-arranged return site visit on 9th September 2013 the officer noted that some of the kitchen facilities and the toilet had been removed from the outhouse. Mr Kelly advised that the outhouse was now a laundry room available to all tenants and the occupiers of the garden bungalow were using the kitchen facilities within the main house.

5.3 Planning Enforcement and Development Control.

The size of the building at the rear of 91 and 93 Burnside is within permitted development limits for outbuildings however the building

was not constructed for purposes incidental to the enjoyment of the dwellinghouse and therefore does not benefit from permitted development rights.

There are no permitted development rights to construct outbuildings to provide ancillary accommodation in connection with the main dwelling house.

The new residential building at the rear of 91 and 93 Burnside requires planning permission and previous applications for similar schemes have been refused planning permission and dismissed on appeal.

Advice from officers from Development Control is that planning permission is very unlikely to be granted for an independent residential building in this location.

6 ADVICE FROM LEGAL SERVICES

- 6.1 Officers from Legal Services have been fully briefed on the investigation into the breach of planning control and agree that the service of an Enforcement Notice is the most appropriate course of action to remedy the breach of planning control.
- 6.2 An Enforcement Notice carries with it a right of appeal to the Planning Inspectorate and the Inspectorate have the power to vary the Notice to amend the steps to comply.

7 PLANNING POLICY AND OTHER MATERIAL CONSIDERATIONS

- 7.1 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.'

- 7.2 The provision of primary living accommodation in an outbuilding cannot be classed as a use which is incidental to the enjoyment of the main dwelling house. A purpose incidental to the enjoyment of the dwellinghouse is distinct from activities which constitute actually living in a dwelling house. Therefore the residential building erected on land to the rear of 91 and 93 Burnside is unauthorised operational development which requires planning permission. The unauthorised development took place less than four years ago and therefore is not immune from enforcement action.
- 7.3 Enforcement is a discretionary power and the Committee should take into account the planning history, the details of the enforcement investigation, and the other relevant facts set out in this report.
- 7.4 Officers investigating the alleged breach of planning control and setting out their recommendations, have been mindful of and complied with the Planning Investigation Service Policy and the City Council's Enforcement Concordat.
- 7.5 Consideration should be given to the Human Rights of the current owner and tenants of the building, and to the Equalities Act 2010, officers have noted 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) as being relevant. Officers consider that the service of an enforcement notice with a reasonable period for compliance would be lawful, fair, proportionate, 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 of new residential development and that human rights considerations do not outweigh the reasons for proceeding with planning enforcement.
- 7.6 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 development is poorly integrated with the immediate locality, having failed to use the characteristics of this part of the conservation area to inform its siting, massing, design or materials, a failure which results in a negative impact on its setting. It also fails to provide an attractive, high-quality and stimulating living environment, and has a significantly detrimental impact on the amenities of neighbours, making it an inappropriate development in a residential garden. For these reasons, the erection of the building is contrary to policies 3/1, 3/4, 3/7, 3/10, 3/12 and 4/11 of the Cambridge Local Plan 2006, and to government guidance in

Paragraphs 53, 58, 61, 64, 131 and 135 of the National Planning Policy Framework 2012.

- 7.7 If a Notice is served and merely required the use of the building to be 'incidental' the owner could use his permitted development right to convert it to ancillary accommodation at a later date. Therefore, officers recommend that the Notice should require the demolition of the building.
- 7.8 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 from when it was substantially complete.

8 RECOMMENDATIONS

- 8.1 (i) To authorise an enforcement notice under S172 of the Town and Country Planning Act 1990 (as amended) in respect of a breach of planning control, namely unauthorised operational development at land to the rear of 91 and 93 Burnside, specifying the steps to comply and the period for compliance set out in paragraphs 8.2 to 8.4, for the reasons contained in paragraph 8.5.
- (ii) to authorise the Head of Planning (after consultation with the Head of Legal Services) to draft and issue the enforcement notice.
- (iii) to delegate authority to the Head of Planning (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.

8.2 Steps to Comply

- i) Demolish the building which was been erected at the rear of 91 Burnside.

8.3 Period for Compliance:

8 months from the date the notice comes into effect.

8.4 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 creation of a residential building without planning permission is contrary to policies 3/1, 3/4, 3/7, 3/10, 3/12 and 4/11 of the Cambridge Local Plan 2006, and to government guidance in Paragraphs 53, 58, 61, 64, 131 and 135 of the National Planning Policy Framework 2012.

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 the Human Rights of the current tenants of the building, officers have noted 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). Officers consider that the service of an enforcement notice with a reasonable period for compliance would be lawful, fair, proportionate, 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.

BACKGROUND PAPERS: None

APPENDICES

Appendix A	Site Plan
Appendix B	Statement from Building Control Officer
Appendix C	Photographs taken 04 June 2013
Appendix D	Photographs of kitchen within existing outbuilding
Appendix E	Information from Council Tax and Refuse and Environment Officers and statements from residents of Natal Road

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