

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: West/Central Area Committee DATE: 09/01/2014

WARD: Newnham

PLANNING ENFORCEMENT CONTROL

10 Millington Road, Cambridge

Consideration of the way forward with unauthorised development

1 INTRODUCTION

- 1.1 This report seeks the area committee's authority to cease any further activity in relation to an outstanding enforcement matter. This case involves minor development which technically requires planning permission. The council believes the development that has been undertaken requires planning permission. The property owner believes it does not. There is an outstanding complaint in relation to the development that has been undertaken.

Site: 10 Millington Road, Cambridge.
See Appendix A for site plan.

Breach: Unauthorised Development: erection of a 2.5m high wall and with trellis attached up to a total height of 3.2m and a sloping timber structure

2 SUMMARY

- 2.1 In March 2011 officers received an enquiry about works that were being carried out at 10 Millington Road. A site visit was carried out which revealed that works were on-going to the rear of the house which included a wall in excess of 2 metres in height. Officers were advised that the wall was intended to form part of a larger structure

which in the view of the householders would constitute 'permitted development'.

- 2.2 The works had not been completed at the time of the site visit in March 2011 and therefore it was not possible to ascertain whether or on planning permission would be required for the development once it had been completed.
- 2.3 In order for the development to be classed as permitted development under Class E (outbuildings) it would not be able to be attached to the host dwelling. At a second site visit in July 2012 officers found that the development remained attached to the house and an application for retrospective planning permission was invited.
- 2.4 No further site visits have been carried out. It is understood that what remains on site is the wall and a sloping timber structure which runs between the wall and the boundary fence for a distance of approximately 2 metres.
- 2.5 The current Scheme of Delegation does not permit officers to close enforcement investigations that have an outstanding breach of planning control. A decision therefore needs to be taken as to whether formal action should be taken forward or if the particular details of the case concerned are such that it should not be pursued.
- 2.6 All parties connected to this investigation have been made aware that this report is being put before members for consideration and of the opportunity to make representations to the Committee.

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.

The need for Planning Permission – Permitted Development

- 3.3 The breach of planning control concerned relates to a wall situated in a rear garden. The wall is not on the boundary and is 2.37m away from the boundary with 12 Millington Road. The brickwork element is 2.5 metres high. The trellis is attached to timber/metal posts which are fixed to the top of the wall. The trellis has horizontal format and is 0.7 metres high making the total height of the wall 3.2 metres high. Between the wall and the boundary to 12 Millington Road is a sloping timber structure which is attached to two of the uprights which support the trellis element.
- 3.4 The view of officers is that the works that have been carried out are not permitted development. There are two classes within the General Permitted Development Order which are relevant. They are Class E of Part 1 (Development within the curtilage of a dwellinghouse) and Class A of Part 2 (Minor Operations).
- 3.5 Class E allows for the erection of a building or enclosure which can be up to 2.5 metres high within 2 metres of the boundary. Class A allows for the erection of a wall up to 2 metres in height. There are three elements to the works that have been carried out which can be assessed against these Classes:
- Wall adjacent and attached to the existing house – this should be considered under Class A and as a result of its height which exceeds 2 metres it cannot be regarded as permitted development under this Class.
 - Wall and sloping timber structure – this should be considered under Class E and as a result of its proximity to the boundary and height which exceeds 2.5 metres it cannot be regarded as permitted development.
 - Wall adjacent to timber structure - this should also be considered under Class A and as a result of its height which exceeds 2 metres it cannot be regarded as permitted development under this Class.

Site Context and Visual Impact

- 3.6 The wall/timber sloping structure is not readily visible from the street and its appearance is compatible with the character of the house and other boundary features. The development therefore accords with policies 3/4 (Responding to Context) and 3/11 (The Design of External Spaces) of the Cambridge Local Plan 2006.

Impact on Residential Amenity

- 3.6 The wall/timber sloping structure is visible from the neighbouring house, 12 Millington Road but it is set off the boundary. As a result of its orientation to the north of 12 Millington Road it will not result in overshadowing. The height of the wall is such that it does result in a degree of enclosure and loss of outlook from windows within 12 Millington Road which face towards the boundary. However, in my view the impact on the occupiers of 12 Millington Road is not such that refusal of planning permission could have been justified had a retrospective application been made.
- 3.7 The occupiers of 12 Millington Road are aware that this report is being presented to West/Central Committee and have sent in comments which they wish Members to take into consideration. These comments are attached at Appendix B and photographs that they have provided are attached at Appendix C. The views expressed by the neighbours do not change my view that the impact of the wall/timber sloping structure is not so harmful as to justify a refusal of planning permission had a retrospective application been made.
- 3.9 Officers do not consider that it would be expedient to pursue formal action in this instance because the degree of harm of the wall/sloping timber structure is significantly mitigated by the distance between it and the boundary of the property and it sits to the north of the neighbouring dwelling

4 CONCLUSION

- 4.1 Officers are aware that the process of the planning enforcement investigation has been the cause of much anxiety to the parties involved in this case. The matter has come to a stage where the local planning authority needs to conclude its position in relation to the unauthorised works. Your officer's view is that the works are development that needs planning permission. There is no application for planning permission to retain these works but were one submitted it is likely that officers would recommend approval to it.

4.2 Enforcement is a discretionary power and councils have to use this power where expedient in the public interest. In these situations, it is not appropriate to pursue enforcement action to regularise development that is otherwise acceptable. Although no planning application has been forthcoming the council has the discretion to recognise the unauthorised development exists but to opt to take no further action.

5 **RECOMMENDATIONS**

5.1 It is recommended that the Head of Planning Services be authorised to close the investigation into unauthorised operational development at 10 Millington Road on the grounds that it is not expedient to pursue the matter further.

6. **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 to pursue formal enforcement action in this case is not necessary or in the general public interest to achieve the objective of upholding national and local planning policies, which seek to restrict new development.

BACKGROUND PAPERS:

No background papers were used in the preparation of this report:

APPENDICES

Appendix A	Site plan
Appendix B	Comments from occupiers of 12 Millington Road
Appendix C	Photographs from occupiers of 12 Millington Road

The author and contact officer for queries on the report is Sarah Dyer on extension 7153.

Date originated: