

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: South Area Committee

23/04/2014

WARDS: Queen Ediths

**PLANNING ENFORCEMENT CONTROL
ENFORCEMENT NOTICE REPORT**

**Breach of planning conditions and material change of use of
27 Babraham Road, Cambridge**

**Update following outcome of Appeal decision against the Council's
decision to refuse to grant a Certificate of Lawful Use or Development
(application reference 12/1438/CLUED)**

1 INTRODUCTION

- 1.1 In March 2013 a report was brought before this Committee which recommended that enforcement action be authorised for non-compliance with conditions and a material change of use at 27 Babraham Road (see Appendix A for site plan). The recommendation was accepted but the Committee determined that the Enforcement Notices be issued following the conclusion of the pre-existing appeal against the Council's refusal to grant a certificate of lawful use and development. A copy of the report is attached at Appendix B.
- 1.2 The appeal has been allowed and the outcome impacts on the enforcement action that has been authorised by Committee. In summary, the appeal allows the site to be used for the storage of up to three ice cream vans in the garage that was approved under planning reference C/97/0695/FP, deliveries to be accepted in connection with the ice cream business and the stationing of a refrigeration unit. The purpose of this report is to provide an update to the Committee. Each Enforcement Notice is reviewed and the Committee is asked to authorise either that the Notice not be issued or that the Notice be issued as previously agreed or as amended.

- 1.3 There is a further report on this Agenda which requests authorisation for the service of a further Enforcement Notice for the unauthorised change of use of the garage extension to storage of ice cream vans.

2. **BACKGROUND**

- 2.1 In March 2013 a report was presented to South Area Committee which sought delegated authority to serve five Enforcement Notices to address the breach of four planning conditions attached to the planning permission (reference C/97/0695) at 27 Babraham Road and for the unauthorised change of use of the forecourt of the C3 Dwellinghouse to B1 business use. At the time of that report an Appeal was outstanding in respect of an application for a Certificate of Lawful Use or Development. The Appeal was subsequently allowed and this has altered the position with regard to which activities amount to a breach of planning control.

Planning History of 27 Babraham Road

- 2.2 In April 1993 planning permission was granted for a detached three-bay garage in the front forecourt of 27 Babraham Road. In 1997 permission was granted to allow 27 Babraham Road to be used as a dwelling house and for the storage of two ice cream vans. This was subject to the following conditions:
1. The number of ice-cream vans stored at the premises shall not exceed two vehicles.
Reason: To protect the residential amenity of adjacent residential occupiers.
 2. The ice-cream vans, when not in use, shall be stored within the existing garage at all times with the doors closed.
Reason: To protect the visual amenity of the area.
 3. There shall be no deliveries to the premises associated with the ice-cream business.
Reason: To protect the amenity of adjacent residential properties.
 4. The garage shall be used for the parking of no more than two ice-cream vans and the parking of domestic vehicles only and for no other purpose without express consent to be given in writing by the local planning authority.
Reason: To protect the residential amenity of adjacent residential properties.

- 2.3 In 2001 an application for a 2 bay car port extension to the 3 bay garage was permitted. There were no conditions regulating the use of the car port but an informative stated that the car port may not be used for the storage of commercial vehicles without the express permission of the local planning authority.
- 2.4 In August 2012, following a planning enforcement inquiry into allegations that the conditions attached to planning permission reference C/97/0695/FP were not being complied with, an application was made to vary the conditions attached to the permission for the garage. The application sought the following variations to conditions:
- Condition 1 to include a maximum of 4 ice cream vans
 - Condition 2 so that vans not in use shall be stored in the existing garage but not behind closed doors
 - Condition 3 to allow deliveries to the site
 - Condition 4 to allow the parking of 4 ice cream vans within the existing garage block on planning approval C/97/0695/FP

The application was withdrawn

- 2.5 In November 2012 an application was submitted for a Certificate of Lawful Use or Development. This sought to confirm the lawfulness of the following:
- The storage of four ice cream vans
 - The stationing of a refrigerated storage unit
 - Acceptance of deliveries in connection with an ice cream business
 - Mixed C3/B1 use

The application was refused under delegated powers on the basis that the applicant had not demonstrated on a balance of probabilities that the use has continued for 10 years.

- 2.6 In March 2013 an Appeal was submitted in response to the Council's decision. This was heard by way of an Informal Hearing in June 2013 and the Inspector allowed the appeal.

The Inspectors Decision and the terms of the Certificate of Lawful Use or Development ('The Certificate')

- 2.7 A copy of the Inspector's Decision letter/Certificate of Lawfulness is attached at Appendix C. The Inspector allowed the appeal, decided that the time limit for enforcement had expired and certified that the

following uses were lawful within the meaning of section 191(2) and (3) of the Town and Country Planning Act 1990:

- The storage of up to three ice cream vans for commercial purposes in the garage referred to in conditions 2 and 4 of planning permission reference C/97/0695/FP and shown hatched on an attached plan but with the garage doors open in breach of conditions 1, 2 and 4 of the 1997 permission. (The plan identifies the original garage only and not the car port extension)
- The acceptance of deliveries in connection with the ice cream business in breach of condition 3 of the 1997 permission
- The stationing of a refrigerated storage unit, of a size equivalent to or smaller than the unit stationed on the site in November 2012 located between the dwelling and the garage as extended.

Planning Status of 27 Babraham Road Note

- 2.8 It is the view of officers that the Inspectors decision is clear; however for the avoidance of doubt a Note was prepared which sets out the Council's position regarding the Planning Status of 27 Babraham Road. A copy of the Note is attached at Appendix D. A copy of the Note has been sent to the appellant and the neighbours either side of 27 Babraham Road who have raised concerns about the way in which 27 Babraham Road is used.
- 2.9 Following his receipt of the Note the Appellant's Agent sought clarification about the use of the car port extension to the garage and the storage of a single hot potato cart at the premises. This is addressed in the other report relating to 27 Babraham Road on this agenda.
- 2.10 The certificate has confirmed that certain planning uses of the site are lawful but it only relates to those specific uses that were the subject of the application. The planning permission taken with the certificate provides confirmation of the lawful uses of the site. In the opinion of officers neither the use of the car port extension for the storage of ice cream vans nor the storage of the hot potato cart are covered by the planning permission or the certificate.

Implications of the Inspector's decision on the draft Enforcement Notices

2.11 The draft Enforcement Notices that were authorised by Committee in March 2013 addressed the following:

- 1 Breach of condition 1 of C/97/0695 (The number of ice cream vans stored at the premises shall not exceed two vehicle)
- 2 Breach of condition 2 of C/97/0695 (The ice cream vans, when not in use, shall be stored within the existing garages at all times with the doors closed)
- 3 Breach of condition 3 of C/97/0695 (There shall be no deliveries to the premises associated with the ice cream business)
- 4 Breach of condition 4 of C/97/0695 (The garage shall be used for the parking of no more than two ice cream vans and the parking of domestic vehicles only and for no other purpose without express consent to be given in writing by the local planning authority)
- 5 The material change of use of the area of the Land marked with green hatching on the attached plan of 27 Babraham Road Cambridge to a B1 business use.

I have considered the implications of the Inspector's decision on each of the Notices.

1. *Breach of condition 1 of C/97/0695 (The number of ice cream vans stored at the premises shall not exceed two vehicles)*

2.12 The storage of up to three ice cream vans is lawful. Officers visited the site on 1 April 2014 and observed three ice cream vans on site. There is no breach of condition 1 and no justification for issuing an enforcement notice.

2. *Breach of condition 2 of C/97/0695 (The ice cream vans, when not in use, shall be stored within the existing garages at all times with the doors closed)*

2.13 The storage of ice cream vans in the garage with the doors open is lawful. On 1 April 2014 officers observed that two ice cream vans were being stored in the car port extension when not in use and a third ice cream van was on the forecourt. This is in breach of condition 2 as modified by the certificate. Officers recommend that

an Enforcement Notice be served to address the ice cream vans stored on the forecourt.

3. Breach of condition 3 of C/97/0695 (There shall be no deliveries to the premises associated with the ice cream business)

2.14 Deliveries in connection with the ice cream business are lawful; there is no breach of condition 3 and no justification for issuing an enforcement notice.

4. Breach of condition 4 of C/97/0695 (The garage shall be used for the parking of no more than two ice cream vans and the parking of domestic vehicles only and for no other purpose without express consent to be given in writing by the local planning authority)

2.15 The storage of up to three ice cream vans in the garage is lawful; there is no breach of condition 4 and no justification for issuing an enforcement notice.

5. The material change of use of the area of the Land marked with green hatching on the attached plan of 27 Babraham Road Cambridge to a B1 business use

2.16 The Inspector noted that the appellant only sought to establish a mixed use which includes a commercial element and that this element is strictly controlled and limited by condition, the appellant did not seek to establish a more general and extensive use.

2.17 During the site visit the ice cream machines within the vans were being cleaned. This involves flushing out the machine and requires the vehicle engine to be switched on. This activity takes around 10-15 minutes and is carried out daily on each of the three ice cream vans. Three members of staff are employed who are responsible for each of the ice cream vans. The operator also advised that he uses the forecourt for washing the exterior of the ice cream vans and for changing the oil/filter/belt when necessary.

2.18 In the opinion of officers these activities represent ancillary uses associated with the use of the garage approved under reference C/07/0695/FP for storage of ice cream vans. These uses do not amount to a more extensive B1 Business use than that which is permitted by planning permission C/97/0695/FP as modified by the

certificate. On the basis of the way in which the premises are currently being used there is no justification for issuing an enforcement notice in relation to change of use to B1 business use.

3 **CONSULTATIONS**

- 3.1 I have consulted with the Council's legal officers and taken their advice in drafting this report.

4 **OPTIONS**

- 4.1 There are three options:

Option 1

Agree the recommendation that the Enforcement Notices in respect of breaches of conditions 1, 3 and 4 not be served. The effect of the certificate is to make to the current compliance with the conditions as amended by the certificate, lawful

Agree the recommendation that the Enforcement Notices in respect of the breach of condition 2 be amended to remove reference to doors remaining closed and then served.

Option 2

That none of the authorised Enforcement Notices be served.

I would not recommend Option 2 because unless strictly controlled the business use has adverse impacts on the residential amenities of occupiers of neighbouring house. Part of this control is the storage of the ice cream vans in the garage when not in use.

- 4.2 In assessing these options and recommending that enforcement action be pursued to secure compliance with condition 2 I have given consideration to the Human Rights Act 2000 and to the Equalities Act 2010, I have also 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. I 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 and that these considerations do not outweigh the reasons for proceeding with planning enforcement.

- 4.3 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.

5 CONCLUSIONS

- 5.1 In my view it is appropriate to review the authorisation for enforcement action in the light of the outcome of the appeal against refusal of the Certificate of Lawful Use or Development. I have recommended that the breach of condition 2 of permission reference C/97/0695/FP as modified by the certificate is pursued because the Certificate does not permit the following activities which are taking place on the site: the storage of ice cream vans on the forecourt and in the car port garage extension.
- 5.2 It is no longer necessary to serve the other four enforcement notices that relate to breaches to conditions 1, 3 and 4 of planning permission reference C/97/0695/FP as modified by the certificate and to change of use to B1 business use.

6 RECOMMENDATIONS

- 6.1 That the following actions be agreed in respect of each of the five Enforcement Notices authorised by Committee in March 2013:

- 1 Breach of condition 1 of C/97/0695 (The number of ice cream vans stored at the premises shall not exceed two vehicle)

Enforcement notice not to be issued.

- 2 Breach of condition 2 of C/97/0695 (The ice cream vans, when not in use, shall be stored within the existing garages at all times with the doors closed)

Enforcement notice to be served but amended to remove reference to 'with the doors closed'.

- 3 Breach of condition 3 of C/97/0695 (There shall be no deliveries to the premises associated with the ice cream business)

Enforcement notice not to be issued.

- 4 Breach of condition 4 of C/97/0695 (The garage shall be used for the parking of no more than two ice cream vans and the parking of

domestic vehicles only and for no other purpose without express consent to be given in writing by the local planning authority)

Enforcement notice not to be issued.

- 5 The material change of use of the area of the Land marked with green hatching on the attached plan of 27 Babraham Road Cambridge to a B1 business use.

Enforcement notice not to be issued.

7 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 are the background papers that were used in the preparation of this report:

Planning decision notices refs. C/01/0558, 12/1107/S73, 12/1438/CLUED

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APPENDICES

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| Appendix A | Site location plan |
| Appendix B | Report to SAC of 7 March 2013 |
| Appendix C | Inspectors Decision (12/1438/CLUED) |
| Appendix D | Note on the Planning Status of 27 Babraham Road |