

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: South Area Committee

DATE: 07/03/2013

WARD: Queen Ediths

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

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

1. INTRODUCTION

This report seeks 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.

Site: 27 Babraham Road, Cambridge.

See Appendix A for site plan

Breach: Breach of conditions and unauthorised change of use

2. PLANNING HISTORY

Reference	Description
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C/93/0133	Garage in front garden (amended by letter dated 26.03.93 and 01.02.95 with accompanying plans)	Approved with conditions
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C/97/0695	The use of the land and buildings at 27 Babraham Road as a dwelling house and for the storage of two ice cream vans used for commercial purposes	Approved with conditions
C/01/0558	Erection of 2bay car port extension to existing garage.	Approved with conditions
05/0603/FUL	Single storey side extension to dwellinghouse with conservatory to rear. Single storey front extension to garage.	Refused
12/1107/S73	Application to vary 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 and condition 4 to allow the parking of 4 ice cream vans within the existing garage block on planning approval C/97/0695/FP.	Withdrawn
12/1438/CLUED	Application for a Section 191 for the storage of four ice cream vans, the stationing of a refrigerated storage unit, acceptance of deliveries in connection with the ice cream business and the mixed use (C3/B1) of the property.	Certificate Not Granted

3. BACKGROUND

3.1 Planning permission C/97/0695 approved the use of land and buildings at 27 Babraham Road as a dwelling house and for the storage of two ice-cream vans used for commercial purposes, with 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 garages 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.
- 3.2 The Planning Enforcement Service has received complaints that each of the four conditions is not being complied with and that the forecourt of the dwellinghouse is being used for B1 business use.
- 3.3 An application for a Certificate of Lawfulness was made in November 2012. The applicant failed to provide sufficient evidence of breach of the conditions and that the change of use of the site had been continuous for ten years proceeding the application. Notification that the Certificate was not granted was given to the applicant on 7th January 2013. The application was determined under delegated powers.
- 3.4 An appeal against the refusal to grant the Certificate has been lodged with the Planning Inspectorate. The Notices would only be served if the appeal against the refusal to grant a Certificate of Lawfulness is dismissed.
- 3.5 A Planning Contravention Notice was served on 29th January 2012.
- 3.6 The response to the Planning Contravention Notice confirms that the breaches of planning control are ongoing. The owner of 27 Babraham Road, Cambridge has advised that he intends to submit a further application for a Certificate of Lawfulness which will include additional evidence. At the time of writing this report a further application has not been received. An update will be provided on the amendment sheet. Given the impact of the unauthorised use on residential amenity, officers are of the view that it is not necessary to delay seeking authority for enforcement action pending the submission of a further application.

4. LEGAL, POLICY AND OTHER MATERIAL CONSIDERATIONS:

4.1 The material change of use of the forecourt of 27 Babraham Road, Cambridge to B1 business use requires planning permission.

4.2 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.’

4.3 Cambridge Local Plan policies

The following policies from the Cambridge Local Plan would apply to the determination of an application of change of use of the forecourt of 27 Babraham Road to B1 business use:

3/4 Responding to context

3/10 Sub-division of existing plots

4/13 Pollution and Amenity

7/2 Selective Management of the Economy

The unauthorised development in question is contrary to development plan policies detailed above, because the change of use is detrimental to the residential amenity of neighbouring occupiers and poorly integrated into the locality.

4.4 Planning Investigation Service Enforcement Policy 2000 Objectives:

- To promote compliance with planning requirements.
- To remedy the undesirable effects of unauthorised development.
- To bring unauthorised activity under control to maintain the credibility and achieve the purpose, of the planning system.

- To strike an acceptable balance between protecting the amenity of the citizens of Cambridge and other interests of acknowledged importance, and allowing development to take place.
- To provide a service that will pursue pro-active initiatives that would improve the environment and built heritage, safeguard the amenities of the area and support the policies of the development plan.

A copy of the policy can be found at:

<http://www.cambridge.gov.uk/public/pdfs/PIS-enforcement-policy.pdf>

- 4.5 Enforcement is a discretionary power. The Committee should take into account the planning history and the other relevant facts set out in this report. In order to issue any Enforcement Notice there must be sound planning reasons to justify taking such action. The unauthorised development, namely the change of use of the forecourt to a commercial use and the breach of all four conditions of C/97/0695, is ongoing.

5. RECOMMENDATIONS

- 5.1 (i) To authorise five enforcement notices under S172 of the Town and Country Planning Act 1990 (as amended) in respect of the breach of all four conditions of C/97/0695 and the material change of use of 27 Babraham Road, specifying the steps to comply, the period for compliance and the statement of reasons set out in the draft notices in appendix B.
- (ii) to authorise the Head of Planning (after consultation with the Head of Legal Services) to draft and issue the enforcement notices.
- (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 notices.

5.2 Statement of Reasons

It appears to the Council that the breach of planning control has occurred within the last ten years. The applicant has undertaken development (in the form of a change of use and non compliance with planning conditions) without the benefit of planning permission.

The intensification of the business use has resulted in a change of use which has given rise to noise and disturbance to neighbours resulting in an unacceptably adverse impact upon their amenities.

The statement of reasons for each of the five enforcement notices are contained in point 4 of the draft Notices which can be found in appendix B.

Mindful of the advice the development plan policies mentioned above and to all other material considerations, the Council consider it expedient to serve the enforcement notices in order to remedy the clear breach of planning control.

- 5.3 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, if a certificate of lawfulness were refused, enforcement proceedings 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.

6. IMPLICATIONS

- (a) **Financial Implications** - None
- (b) **Staffing Implications** - None
- (c) **Equal Opportunities Implications** - None
- (d) **Environmental Implications** - None
- (e) **Community Safety** - None

BACKGROUND PAPERS:

Delegated officer report relating to application reference 12/1438/CLUED

APPENDICES

Appendix A	Site plan
Appendix B	Five draft Enforcement Notices

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

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Date originated: 17 Jan 2013