

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: East Area Committee DATE: 31/07/14

WARD: Coleridge

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

24 Chalmers Road, Cambridge Unauthorised Development (Enforcement reference: CE/5922)

SUMMARY	Planning enforcement investigations have identified an unauthorised extension to the garage at the rear of the above property and the change of use of the garage to create a separate and independent residential unit in the garden. The change of use is unacceptable because there is insufficient amenity space for the occupants of the outbuilding and the access arrangements and facilities for waste and cycle storage are not adequate.
RECOMMENDATION	That enforcement action be authorised in respect of the change of use of the garage.

1 INTRODUCTION

This report seeks delegated authority to serve an Enforcement Notice to address the Material Change of Use of an outbuilding (the former garage) at the C3 dwellinghouse. See Appendix A for site plan.

2 PLANNING HISTORY

See Appendix B.

3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

- 3.1 In August 2013 Planning Enforcement received a complaint regarding an extension being added to the existing outbuilding / garage at the rear of 24 Chalmers Road, Cambridge.
- 3.2 On 20 September 2013 officers visited the property and confirmed that the outbuilding had recently been converted to a separate residential unit and let as 'The Flat, 24 Chalmers Road' and that this building was in the process of being extended. The flat was first registered as a separate annex for Council tax purposes on 5 September 2012.
- 3.3 The owner of the property was advised that the use of the outbuilding as a separate and independent residential unit required planning permission and that planning approval was unlikely to be granted because the development is in conflict with the Cambridge Local Plan 2006. Officers also advised that planning permission would be required for extending the outbuilding / former garage and that any works undertaken without permission were done at his own risk.
- 3.4 On 26 September 2013 a letter was sent to the owner of the property confirming that planning permission was required for the extension to the outbuilding and inviting the submission of a retrospective planning application within 28 days. The letter also requested that the owner advise of the length of the current tenancy of the independent outbuilding and his intentions in relation to the use of the outbuilding.
- 3.5 On 10 October 2013 the owner advised officers that he would not be proceeding with extension to the outbuilding or submitting a planning application for the creation of a separate residential unit because the outbuilding had been used separately for over four years. The owner was reminded that during previous discussions with officers on site he stated that the separate use of the outbuilding was recent.
- 3.6 During a further site visit on 29 October 2013 the Planning Enforcement Officer repeated the advice given that planning permission was unlikely to be granted for the separate use of the outbuilding and suggested that at the end of the current tenancy period (April 2014) the kitchen was removed from the outbuilding to reinstate the functional link with the main house and remedy the breach of planning control. The extension to the outbuilding had been completed and the owner was advised again that this extension required planning permission. The owner was also advised again that

a Certificate of Lawfulness was not likely to be granted for the separate use of the outbuilding as he had previously given officers information that he had not let the unit separately for over four years.

- 3.7 On 16 December 2013 an application for a Certificate of Lawfulness, reference 13/1732/CLUED, was received with the description: 'Application for a certificate of lawfulness under Section 191 to convert garage to granny flat'.

Planning officers met with the owner of 24 Chalmers Road to advise that insufficient evidence had been submitted with the application to prove, on the balance of probabilities, that the outbuilding has been used as a separate flat for four years and suggested what further information might support an application.

On 10 February 2014 a decision was taken under delegated powers not to grant the Certificate of Lawfulness, for the following reason:

It appears to the Local Planning Authority that because there is insufficient evidence to demonstrate that the garage has been used as a granny flat for more than four years from the date of the application, therefore the change of use is not lawful.

- 3.8 On 8 May 2014 a Planning Contravention Notice was served on the owner of 24 Chalmers Road. The Notice was returned on 28 May 2014 and in it the owner advised that he intended to apply for a new Certificate of Lawfulness for the separate use of the former garage and that he did not intend to apply for planning permission for the extension to the garage.
- 3.9 At the time of writing this report, the refusal to grant the Certificate of Lawfulness has not been appealed to the Planning Inspectorate, no new application for a Certificate of Lawfulness has been submitted and no planning application for the extension to the outbuilding has ever been submitted. Therefore the two breaches of planning control remain outstanding.

4 ASSESSMENT AGAINST PLANNING POLICY AND OTHER MATERIAL CONSIDERATIONS

- 4.1 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.'

4.2 National Planning Policy Guidance states:

Para 17b-003: 'There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.'

4.3 Enforcement is a discretionary power and the Committee should take into account the planning history, the details of the breaches of planning control and the other relevant facts set out in this report.

4.4 The unauthorised development at the property consists of the extension to an outbuilding and the material change of use of the outbuilding, both aspects of development took place less than four years ago and so they are not immune from enforcement action.

4.5 Officers investigating the 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.

4.6 Consideration should be given to the Human Rights Act 2000 and to the Equalities Act 2010. In terms of human rights, 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 considerations. The Council must also have regard to its public sector equality duty (PSED) under S.149 of the Equalities Act. The duty is to have due regard to the need (in discharging its functions) to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

- Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing, minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
- Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Officers do not consider that the recommendation in this report would have a disproportionate impact on any protected characteristic.

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 and that human rights and equalities considerations do not outweigh the reasons for proceeding with planning enforcement in this instance.

4.7 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.

4.8 Assessment against Cambridge Local Plan 2006:

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 if an application for the material change of use of the outbuilding to create a separate residential unit was submitted it would not be supported because there is insufficient amenity space for the occupants of the outbuilding and the access arrangements and facilities for waste and cycle storage are not adequate. The development would therefore be contrary to policies 3/4, 3/7 and 3.10 of the Cambridge Local Plan 2006 and to guidance provided by the NPPF 2012.

- 4.9 Officers have also advised that if an application for the extension to the former garage (the operational development) were submitted it might be supported however this assessment cannot be made unless such an application is submitted.
- 4.10 It is not proposed to request that this Committee authorise the service of an Enforcement Notice for the unauthorised extension because officers cannot adequately demonstrate that the additional size is harmful to amenity. If no action is taken in respect of the extension, this unauthorised operational development would become immune from enforcement action four years after it was completed (October 2016).

5 RECOMMENDATIONS

- 5.1 (i) To authorise an enforcement notice under S172 of the Town and Country Planning Act 1990 (as amended) in respect of the Material Change of Use, specifying the steps to comply and the period for compliance set out in paragraphs 5.2 to 5.3, for the reasons contained in paragraph 5.4.
- (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.

5.2 Steps to comply

Permanently cease using the outbuilding marked on the attached plan as a separate unit of residential accommodation.

5.3 Period for compliance

Within six months of the date that the Notice comes into effect.

5.4 Statement of Reasons for inclusion on the Notices:

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 to policies 3/4, 3/7, 3/10 and 3/12 of the Cambridge Local Plan 2006, and to government guidance in Paragraphs 53, 58, 61 and 64 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 Act 2000 and to the duty under Section 149 of the Equalities Act 2010. 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) have been taken into consideration. It is not considered that the service of an enforcement notice would have a disproportionate impact on any protected characteristic pursuant to the Equalities Act 2010.

The Council consider that the service of an enforcement notice with a reasonable period for compliance is 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 protect the character of local street scenes, the City of Cambridge Conservation Area No.1 (Central) and the city as a whole.

BACKGROUND PAPERS: None

APPENDICES

Appendix A Site Plan
Appendix B Planning History

The contact officers for queries on the report is Debs Jeakins on ext 7163.