

Agenda Item

CAMBRIDGE CITY COUNCIL

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REPORT OF: Head of Planning Services

TO: Planning Committee

06/08/2014

WARDS: Market

**DEVELOPMENT AT 14 VICTORIA STREET CAMBRIDGE  
(PLANNING PERMISSION REF: C/14/0342/FUL)  
CONSIDERATION OF REVOCATION OF PLANNING PERMISSION**

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**1.0 INTRODUCTION**

- 1.1 In April this year a planning application was considered by West/Central Area Committee. The application was for a two storey rear extension to 14 Victoria Street. The application was approved but subsequently it has come to light that there were errors in the handling of the application, specifically that a material issue was not drawn to the committee's attention.
- 1.2 This report asks members to consider whether the decision taken and the planning permission issued should stand or be considered for formal revocation.

**2.0 RECOMMENDATIONS**

- 2.1 That the Committee notes the contents of this report and the investigation that has taken place.
- 2.2 That after due consideration of the issues and advice contained within this report, that the Local Planning Authority confirms it will not be seeking the formal revocation of planning permission C/14/0342/FUL.

**3.0 BACKGROUND**

- 3.1 The background to this situation is outlined in the following chronology of and summary of key events.

<b>EVENT</b>	<b>DATE</b>
Submission of first planning application for a rear two storey extension at 14 Victoria Street	9 October 2013
Withdrawal of first planning application	4 February 2014
Submission of second planning application	7 March 2014
West Central Area Committee date –	24 April 2014

approval of second planning application	
First Complaint to Council's Director of Environment	25 April 2014
Planning Permission issued	28 April 2014

*West Central Area Committee (April 2014)*

- 3.2 Planning application ref. 14/0342/FUL was submitted in March 2014 following the withdrawal of an earlier application. The development involved a rear two storey extension/single storey extension to the terraced dwelling to accommodate a platform lift for wheelchair use and small conservatory at ground floor. The application underwent the normal process of neighbourhood consultation and a number of third party representations were made.
- 3.3 The application was called into West Central Area Committee by Councillor Bick for the following reason: 'Given the purpose of the application, it is important to all parties that there is full transparency and understanding about the relevant criteria to be used in its determination.'
- 3.4 The application was reported to the West Central Area Committee on 24 April 2014 (Appendix 1 – Copy of Committee report). The occupier of 15 Victoria Street addressed the Committee as did the applicant. A third speaker (the occupier of 35 Earl Street) was unable to attend and her concerns were contained in a statement read aloud by the Head of Property Services. The application was approved.
- 3.5 After the committee complaints were received about the way in which the application was dealt with at the meeting and the contents of the committee report. One complaint also raised specific concerns about the consideration of the status of 14 Victoria Street as a Building of Local Interest. These matters have now also been investigated by the Local Government Ombudsman.
- 3.6 In the response to the first letter of complaint advice was given that 14 Victoria Street was not a Building of Local Interest (BLI). This information was provided by planning officers and was unfortunately incorrect. When this point was checked later against the definitive list of BLI's this established that 14 Victoria Street is actually designated as a BLI. This designation had unfortunately not been identified when the application was registered or through the process of determination.
- 3.7 The lack of clarification of the status of 14 Victoria Street as a Building of Local Interest throughout the decision making process has implications for the council decision to approve the application.
- 3.8 The failure to highlight this formal designation means that the assessment that was carried out by officers and subsequently presented to members at West Central Committee was incomplete. There is no reference to the status of the building as a BLI in the committee report and Local Plan policy 4/12 is not

reported as being of relevance to the case (the original committee report is appended to this report). The BLI status as a heritage asset as defined by the National Planning Policy Framework (NPPF) 2012 document is also not highlighted. The Committee did not therefore have the full information before them when making their decision.

- 3.9 The Council's Legal Services have reviewed the case. Their advice is that if the BLI designation was not a matter taken into account in the officer's report (including with reference to policy 4/12 in the Cambridge Local Plan 2006 (CLP 2006) and the National Planning Policy Framework para 135), and the Committee did not consider its significance as a BLI in making the decision to approve planning permission, then the Committee has effectively failed to have regard to all relevant material considerations.
- 3.10 Section 70(2) of the Town and Country Planning Act (TCPA) 1990 requires Local Planning Authorities in making the decision whether or not to grant planning permission to have regard to the development plan and any other material considerations. Under section 38(6) of the Planning and Compulsory Purchase Act 2004 an application for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 3.11 The NPPF is a material consideration in determining applications for planning permission. Para 11 of the NPPF confirms that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Para 13 explains that the NPPF constitutes guidance for Local Planning Authorities and decision takers in drawing up plans and as a material consideration in determining planning applications. It advises that development plans adopted prior to publication of the NPPF are to be given weight in accordance with the degree of consistency with the Framework.
- 3.12 Para 135 of the NPPF on non-designated heritage assets is also relevant because the Council's list of BLI's is a list of non-designated heritage assets. Para 135 advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 3.13 The Council's Legal Officer is of the view that the failure to assess the planning application for 14 Victoria Street against policy 4/12 CLP 2006 and have regard to para 135 NPPF is a material error in the determination of the application. Planning permission has been granted and a decision letter issued therefore the option for officers to take the application back to Committee is not available. The 6-week period for seeking Judicial Review has also now expired. The option available to the Council in this situation is to consider whether formal revocation of the planning permission is appropriate.

- 3.14 Councils can decide to revoke a planning permission using powers under section 97(1) TCPA 1990 if it considers it expedient to do so. In exercising this power the Council, as Local Planning Authority, must have regard to the development plan and any other material considerations. If a revocation or modification order is made compensation is payable by the Council for expenditure incurred in carrying out work that is rendered abortive and for any other loss or damage attributable to the revocation or modification (section 107 TCPA 1990). Case law confirms that Councils can take account of the cost of having to pay compensation when deciding whether or not to pursue revocation of planning permission. Consideration may be given to the cost to the council tax payer in pursuing revocation and if the steps to be taken are proportionate in the public interest when balanced against the specific circumstances involved.
- 3.15 The Local Government Ombudsman has been advised that these issues will be considered by the Council's Planning Committee. The Area Committees do not have delegated powers to decide on revocation matters and it is appropriate that the Planning Committee reviews this situation and determines the way forward.

#### **4.0 ISSUES FOR THE LOCAL PLANNING AUTHORITY WHERE THE REVOCATION OF PLANNING PERMISSION IS BEING CONSIDERED**

- 4.1 The Council can decide to revoke the planning permission using powers under section 97(1) TCPA 1990 if it considers it expedient to do so. In exercising this power the Council, as Local Planning Authority, must have regard to the development plan and any other material considerations. If a revocation or modification order is made, compensation is payable by the Council for expenditure incurred in carrying out work that is rendered abortive and for any other loss or damage attributable to the revocation or modification (section 107 TCPA 1990). The power must be exercised before the completion of any permitted operations or change of use (section 97(3) TCPA 1990), and the revocation or modification order has no effect against any operations already carried out (section 97(4) TCPA 1990). Case law confirms that compensation can be taken into account when deciding whether to revoke or modify a planning permission.
- 4.2 The procedure for revoking a planning permission includes making an order and submitting this to the Secretary of State for confirmation or in unopposed cases advertising the order before it takes effect and providing a copy to the Secretary of State.
- 4.3 In assessing whether it is appropriate to revoke the planning permission there are four key questions which need to be considered:
- 1 Would officers have made the same recommendation on the understanding that 14 Victoria Street is a BLI?
  - 2 Is there any harm to the amenities of neighbours that has not already been duly considered?

3 Would the Committee have reached the same decision had they been aware of the status of 14 Victoria Street as a BLI?

4 Is the revocation of planning permission in the public interest?

1. Would officers make the same recommendation on the understanding that 14 Victoria Street is a BLI?

4.4 Had the status of 14 Victoria Street as a BLI been recognised at the time of writing the report it have would resulted in the following textual additions to the committee report:

- Paragraph 1.4: SITE DESCRIPTION/AREA CONTEXT 14 Victoria Street is a Building of Local Interest
- Paragraph 5.2: POLICY Relevant Development Plan policies – Policy 4/12, Material Considerations - Buildings of Local Interest (2005)
- Paragraph 8.7: ASSESSMENT - Context of site, design and external spaces – additional paragraph to discuss impact on BLI.

4.5 In terms of the assessment of the application of Policy 4/12 of the Cambridge Local Plan 2006 to this case, the policy reads as follows:

*“Although not statutorily listed, Buildings of Local Interest merit protection from development which adversely affects them. The demolition of such a building will only be permitted if the building is demonstrably incapable of beneficial use or reuse or there are clear public benefits arising from redevelopment. Applications for planning permission to alter such buildings will be considered in the light of the Council’s Approved Guidance on Alterations and Improvements to Buildings of Local Interest.”*

4.6 The officer assessment of the interpretation of this policy in this case would have been: It is not proposed to demolish 14 Victoria Street therefore the relevant consideration is whether the proposed alterations in the form of the extension are acceptable in the light of advice contained within the Council’s Approved Guidance on Alterations and Improvements to Buildings of Local Interest.

4.7 The Council’s guidance provides the following advice. The underlined sections are the most applicable:

*“Buildings of Local Interest have no statutory protection. The list is advisory only and does not provide the Council with extra powers. However, existing powers will be used to preserve these buildings when considering applications for planning permission. Many alterations and developments require planning permission and proposals relating to these buildings should pay special attention to preserving features that contribute to their character, maintaining proportions, preserving the setting and using appropriate materials. This is not*

to say the building must be preserved exactly as it is, but that any alterations should be carried out in a sympathetic manner. Advice can be obtained from the Council's Conservation Officers or from one of the amenity societies."

- 4.8 The list of BLI's includes a description of the building which is a good starting point for understanding the features that contribute to their character, proportions, setting and materials. The BLI's in 14 – 17 Victoria Street are noted for the following characteristics:

*"No's 14 to 17 (consec) (Victoria Street. Two storey, gault brick with slate tiled roofs. Sash windows, one to ground and one to first floor. Archway framing entire door, with semi-circular panels above doorways. No 14 has shutters to ground floor window, and decorative iron detailing forming mock balcony at first floor window. Rubbed brick flat arch over windows"*

- 4.9 The characteristics which are referred to in the BLI listing for 14 Victoria Street all relate to the front elevation of the house and the contribution that it makes to the terrace. There is no reference to the rear of the house.

- 4.10 The planning application was limited to works to the rear of the house and the front elevation was not affected. To the rear of the terrace and on other terraces such as Earl Street which are also BLI's there are an eclectic mix of styles of extension as noted by the case officer in his original report. The proportions of existing window and door openings on the rear elevation are of modern proportions and do not match the historic vertical sash windows on the front elevation. The proposed extension encloses the rear elevation and adopts a vertical proportion of glazing bars. The choice of mainly glazing for the extension does not have a widespread precedent in the surrounding area but this in itself is not a reason to reject the use of this material on the basis of policy 4/12.

- 4.11 The BLI guidance highlights the importance of seeking advice from the Council's Conservation Officer. The view in this case was:

*"Existing: A typical terraced house in the Kite Area. Gault brick, slate roof, two storeys with an existing rear extension. Many of the terraced houses around here have a great variety of rear extensions.*

*Proposed: This application differs somewhat from the last version but in Conservation Area terms is similar; the same minor concerns of reflectivity of the glass and visual intrusiveness of garish colours in the framing system remain. These can be addressed by Conditions on the Notice of Decision. The overall shape is rather more angular than the usual run of rear extensions but there are plenty of existing examples of unconventional designs in the locale.*

*Conclusion: Support subject to Conditions. "*

- 4.12 The Conservation Officer did not raise any concerns about the proposed development on the basis of it having any adverse impact on the

Conservation Area, the BLI itself or the setting of other BLI's. The case officer considered the design and impact of the extension in detail in his report which included his views on its impact on the character and appearance of the Conservation Area. Had the status of 14 Victoria Street as a BLI been highlighted correctly when the report was written it would however have made no difference to the recommendation of approval.

2. Is there any harm to the amenities of neighbours that has not already been duly considered?

- 4.13 The occupier of 15 Victoria Street and other local residents made objections to the application which were recorded in the Committee Report and on the Amendment Sheet that was circulated before the meeting. The occupier of 15 Victoria Street also took the opportunity to address the Committee under the council's public speaking rules. Her comments are recorded in the Committee minutes.
- 4.14 The concerns raised by local residents related to the design of the proposed development and its impact on the character of the area and the impacts on residential amenity through matters such as noise, overshadowing and dazzle from use of large areas of glazing.
- 4.15 Members of the Committee had visited the site prior to the Committee meeting and had experience of dealing with an extension to 17 Victoria Street in September 2013.
- 4.16 Accepting that the Committee were unaware of the fact that 14 Victoria Street is a BLI, all other relevant issues relating to residential amenity have been considered. The issues raised via third party representations such as noise, overshadowing and dazzle were also the subject of detailed discussions at the Committee meeting. All issues that would properly be considered to be amenity considerations have been taken into account by the committee.

3. Would the Committee have reached the same decision had they been aware of the status of 14 Victoria Street as a BLI?

- 4.17 Officers can only speculate on whether the Committee decision would have been the same if members had been aware of the status of 14 Victoria Street as a BLI. The impact of the design of the extension on the character of area/Conservation Area was addressed in detail in the report and was the subject of debate during the committee meeting. Members of the Area Committee had visited the site and were therefore well aware of the character and appearance of the area and the mix of styles of extensions to similar properties. Viewed objectively against the range of issues already taken into consideration, and the BLI designation relating specifically to the front of the property, the assessment of the impact upon the BLI should not have tipped the balance of acceptability of the proposal in this case from approval to a refusal.

4. Is revocation of planning permission 14/0342/FUL in the public interest?

- 4.18 The council has to consider whether the error in this case means that planning permission would never have been granted for this development. Your officers have set out the additional policy and material considerations that should have been taken into account and the weight that would be given to those differences in the decision making process. In overall terms there is little practical difference between the considerations that were actually taken into account and those that would additionally apply with the confirmation of the status of 14 Victoria Street as a BLI.
- 4.19 Case law has demonstrated that it is appropriate for Council's to take into account the need for compensation to be paid to the applicant in reaching a decision to revoke planning permission. In this case the applicant is aware of the circumstances of the case and has not commenced work on site. However that does not mean that there will be no claim for compensation as compensation can also be sought in relation to offer costs such as preparation of detailed drawings, structural engineer's costs and costs arising from delayed contractual arrangements with builders.
- 4.20 The applicant has been invited to make comments and he has provided a letter to this effect. A copy of his letter is attached to this report. Any further representations received after the circulation of the agenda papers will be sent out with the amendment sheet.

## 5.0 **CONCLUSION**

- 5.1 The history of this case and the matters that should have been taken into consideration as part of the previous decision making process have been outlined in detail. The weight to be given to the BLI status as a material consideration is important however members will need to consider whether the earlier decision had in effect sufficiently considered these issues as part of the discussion about the design of the extension and its impact on the existing property and the wider Conservation Area.
- 5.2 For the reasons set out in the preceding paragraphs the officer recommendation would not have changed if the BLI status of 14 Victoria Street had been acknowledged. The issues raised by the neighbours, with the exception of the BLI status, were previously considered by the Committee.
- 5.3 Compensation is likely to be due to the applicant if planning permission is revoked but in this case the relevant consideration is not whether it is in the public interest to avoid a compensation claim but more importantly whether revocation is necessary and appropriate.
- 5.4 Given all of the above, the pursuit of formal revocation proceedings in relation to planning permission ref: C/14/0342/FUL is not considered to be necessary, proportionate or in the public interest. The council should confirm its intention not to pursue this course of action. The extant planning permission should remain.



5.5 Members are advised that there has been a full investigation of the planning computer system and associated procedures as a result of this situation arising. Changes have been made to the database and internal processes and procedures to avoid this happening in future. There has also been full co-operation with the Local Government Ombudsman's investigation and the applicant and interested third parties have been advised that this report was being prepared. The Head of Planning Services has written and apologised to the parties involved.

## 6.0 **CONSULTATIONS**

6.1 The City Council's Legal Officer has been consulted and her advice is embedded in this report.

## 7.0 **OPTIONS**

### Option 1

7.1 To seek to revoke the planning permission granted under reference 14/0342/FUL.

This could involve the payment of compensation to the applicant for the costs of delay to the project and any works that have been carried out to date which are required to be removed in the event that a subsequent planning application is refused. The council would need to be satisfied that the development should not have been granted planning permission.

### Option 2

7.2 Not to revoke the planning permission granted under reference 14/0342/FUL and to confirm the Council is satisfied it should not be revoked.

This would allow the development to proceed as approved.

## 8.0 **IMPLICATIONS**

- (a) **Financial Implications** – Costs of compensation payments
- (b) **Staffing Implications** – Staff time in delivering planning process changes (already undertaken).
- (c) **Equalities and Poverty 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 application file ref. 14/0342/FUL  
Appendix 1 – Copy of the previous committee report and plans  
Appendix 2 – Letter from the applicant.

To inspect these documents contact Sarah Dyer on extension 7153

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

Report file:

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