

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: North Area Committee DATE: 28/08/14

WARD: Kings Hedges

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

Citygate, Woodhead Drive, Cambridge Breach of Planning Condition (Enforcement reference: CE/5854)

SUMMARY	<p>A planning enforcement investigation has identified a breach of condition, namely the failure to complete the brick boundary wall which is required by condition 14 of 10/0367/FUL.</p> <p>The failure to complete the wall is unacceptable because it fails to protect the amenity of the occupiers of 56 Robert Jennings Close.</p>
RECOMMENDATION	<p>That enforcement action be authorised in respect of the breach of planning condition.</p>

1 INTRODUCTION

This report seeks authority to serve an Enforcement Notice to address the Breach of Condition 14 of 10/0367/FUL which requires a brick boundary wall of a minimum height of 1.8 metres on the boundary with 56 Robert Jennings Close. See Appendix A for site plan.

2 PLANNING HISTORY

See Appendix B for relevant planning history.

3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

- 3.1 In November 2010 planning approval 10/0367/FUL was granted for Erection of four one bed and four two bed flats and works to parking area at Citygate, Woodhead Drive, Cambridge.
- 3.2 The approval of 10/0367/FUL was subject to a number of conditions. Condition 14 of 10/0367/FUL states:

Notwithstanding the details shown on the approved plans and unless otherwise agreed in writing by the local planning authority, the boundary treatment to the rear of the building hereby approved on the boundary with 56 Robert Jennings Close shall take the form of a brick boundary wall of a minimum height of 1.8 metres.

Reason - To protect the amenity currently enjoyed by the occupiers of 56 Robert Jennings Close. (Cambridge Local Plan policies 3/4 and 3/12).

- 3.3 In June 2012 Planning Enforcement were notified of a concern that the developer did not intend to build a brick wall along the boundary of 56 Robert Jennings Close as required by condition 14 of 10/0367/FUL.
- 3.4 In October 2012 officers noted that the development at Citygate was substantially complete. The brick wall required by condition 14 had not been constructed.
- 3.5 In November 2012 officers contacted the agent for the application regarding the failure to construct the wall and were advised that he had asked the case officer for the application whether it would be acceptable to construct a fence in place of the wall.
- 3.6 On 5 December 2012 a letter was sent to the agent for the application advising that a fence would not be an acceptable boundary treatment to satisfy condition 14.
- 3.7 In December 2012 the agent for the application lodged a complaint with the Independent Complaints Investigator (ICI) regarding the delay in dealing with the application to discharge the conditions attached to 10/0367/FUL. The agent advised officers that he

considered that Condition 14 is unenforceable because it does not include any time scale for the erection and completion of the wall. The agent advised that he wished to wait for the ICI response before submitting an application to remove or vary condition 14. The ICI response to the agent's complaint was sent on 8 February 2013.

3.8 On 26 February 2013 an application to vary condition 14 of 10/0367/FUL to allow for a wooden fence as the boundary treatment was submitted for consideration, reference 13/0262/S73.

3.9 On 24 April 2013 application 13/0262/S73 was refused under delegated authority, the reason for the refusal was:

The purpose of condition 14 of planning permission 10/0367/FUL is to protect the neighbouring property, 56 Robert Jennings Close, from noise and air pollution experienced from the neighbouring car park. The proposed close-boarded fence would not achieve this aim to the same degree and therefore the proposal is unacceptable as it does not comply with policies 3/7 or 4/13 of the Cambridge Local Plan (2006)

3.10 On 3 June 2013 an appeal against the refusal of 13/0262/S73 was lodged with the Planning Inspectorate. The Planning Inspectorate dismissed the appeal on 17 October 2013.

Paragraph 10 of the Inspector's decision states:

'The appellant considers condition 14 to be unenforceable because it does not state when the wall needs to be erected or how long it should be. However, I find condition 14 to be precise and satisfactory in this regard – it clearly states that the wall should be erected along the boundary with No. 56 Robert Jennings Close and as a condition imposed on the development, it needs to be discharged as part of the development.'

A copy of the Inspector's decision can be found in Appendix C.

3.11 Following receipt of the Inspectorate decision, the agent for the application continued to raise queries regarding both the requirements and the enforceability of condition 14 of 10/0367/FUL.

3.12 A solicitor from Legal Services has reviewed the planning history of the site and advised that Cambridge City Council is fully justified in

starting enforcement proceedings for failure to comply with Condition 14 of 10/0367/FUL.

- 3.13 On 10 June 2014 the agent for the application advised that work on building the brick boundary wall was due to start and that it would take up to four days to complete.
- 3.14 On 18 June 2014 a photograph provided by the agent confirmed that half of the required boundary wall had been built but in brick and the remainder of the boundary with 56 Robert Jennings Close had a wooden fence.
- 3.15 The agent for the application has been advised repeatedly that the Council considers the condition relating to the brick wall to be both necessary and enforceable and that failure to comply with the condition could result in enforcement action being initiated. The agent and the owner have been advised that members are considering this report today and have been made aware of their speaking rights.

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 breach of condition at Citygate has not been ongoing for ten years and so this breach of planning control is 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 full implementation of the brick boundary wall is considered necessary to protect the amenity of the occupiers of 56 Robert Jennings Close in line with Cambridge Local Plan policies 3/4 and 3/12 and the guidance provided by the NPPF 2012.

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 Breach of Condition, 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

Complete the construction of the brick wall along the whole of the boundary with 56 Robert Jennings Close to comply with condition 14 of 10/0367/FUL.

5.3 Period for compliance

Within 28 days of the date that the Notice comes into effect.

5.4 Statement of Reasons for inclusion on the Notice:

It appears to the Council that the breach of planning control has occurred within the last ten years. The applicant has failed to comply with planning condition 14 of approval 10/0367/FUL relating to boundary treatment.

The failure to comply with condition 14 of 10/0367/FUL has a detrimental effect on the amenity of the occupants of 56 Robert Jennings Close and the full implementation of the brick boundary wall is in line with Cambridge Local Plan policies 3/4 and 3/12 and the guidance provided by the NPPF 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

Appendix C Planning Inspectorate decision

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