

# CAMBRIDGE CITY COUNCIL

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REPORT OF: Head of Planning Services

TO: East Area Committee      DATE: 11/09/14

WARD: Abbey

## **PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT**

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### **591 Newmarket Road, Cambridge The material change of use of an outbuilding to a separate residential unit**

SUMMARY	A planning enforcement investigation has identified the unauthorised material change of use of an outbuilding at the rear of the above address, namely the creation of an independent residential unit without planning permission.  The development is not acceptable because it has a harmful effect on the amenity of neighbours and the character of the area.
RECOMMENDATION	That enforcement action is authorised in respect of the breach of planning control.

## **1 INTRODUCTION**

This report seeks delegated authority to serve an Enforcement Notice to address the unauthorised development at 591 Newmarket Road, namely, "Without planning permission the creation of a separate residential unit." See appendix A for site plan.

## **2 PLANNING HISTORY**

See Appendix B.

### **3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION**

- 3.1 591 Newmarket Road is a double-fronted, detached, two-storey property, with extensive additions at the rear, situated on the north side of road about 500 metres east of (and opposite) the junction with Whitehill Road. Newmarket Road is a main arterial road into the city centre, and this part of the road is predominantly residential in character. The site does not fall within a Conservation Area.
- 3.2 Enforcement officers received a report in June 2013 that an outbuilding at the rear of the property was being used as a separate residential unit. A site visit on 31 July 2013 confirmed that the outbuilding contained all the facilities required for day to day living and was being let and used separately from the main house. Officers also found that the main house was in use as a House in Multiple Occupation (sui generis) and there was a second self contained annex in separate use at the side of the property.
- 3.3 On 7 August 2013 officers invited a retrospective planning application for the change of use to a House in Multiple Occupation and the use of the summerhouse at the rear. Officers confirmed that the separate use of the annex at the side of the property had ceased.
- 3.4 In December 2013 planning application reference 13/1734/FUL was submitted for 'Change of use of property from a residential dwelling (Use Class C3) and associated garden house to a House in Multiple Occupation (Sui Generis) (Retrospective Application). Erection of new cycle store at front'.

The application was later withdrawn.

- 3.5 In March 2013 planning application reference 14/0444/FUL was submitted for 'Change of use of property from a residential dwelling (use Class C3) to a large house in multiple occupation (sui generis) (retrospective application)'. The application was approved on 26 June 2014, subject to conditions.
- 3.6 In addition, planning application 14/0445/FUL for 'Change of use of a garden building from ancillary residential use (Use Class C3) to provide living accommodation ancillary to the main dwelling, including cycle storage' was submitted for the use of the outbuilding. The application was refused on 22 May 2014 for the following three reasons:

1. The change of use of the garden building to living accommodation would have a harmful effect on the residential amenity of neighbours in terms of noise, light pollution and reduced privacy because of the comings and goings associated with this use, contrary to policy 3/4 of the Cambridge Local Plan 2006.
  2. The change of use of the garden building to living accommodation would have a harmful effect on the character of the area. Living accommodation in this position within the curtilage is not characteristic of the area, and the proposal fails to respond to this and would therefore be poorly integrated with, the immediate locality, contrary to Policy 3/7 of the Cambridge Local Plan 2006.
  3. The proposed living accommodation would be separated from the main building and its communal facilities such as bin store and kitchen by a considerable distance. This space would be exposed to the weather and unlit. As a consequence, the proposal would not provide attractive, high-quality, safe and convenient living environment, as required by policy 3/7 of the Cambridge Local Plan 2006.
- 3.7 The agent for the application has advised that he intends to lodge an appeal against the refusal of 14/0445/FUL with the Planning Inspectorate.
- 3.8 The agent for the application has also advised that following the refusal of 14/0445/FUL in May 2014, the owner has re let the summerhouse as a separate residential unit for a further year. The new tenancy period runs until July 2015.
- 3.9 Section 171 B(2) of the 1990 Act provides:
- “Where there has been any breach of planning control consisting in the change of any building to use as a single dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.”
- 3.10 Officers consider that the continued separate use of the summerhouse needs to be addressed by the service of an Enforcement Notice. The refusal of 14/0445/FUL prevents the continued use of the summerhouse at the rear as ancillary accommodation.

- 3.11 An Enforcement Notice carries with it a right of appeal to the Planning Inspectorate.
- 3.12 If appeals against the refusal of 14/0445/FUL and the service of the Enforcement Notice are lodged with the Inspectorate, it is likely that they would be determined at the same time.

#### **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 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.
- 4.5 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.

- 4.6 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 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.

## **5 RECOMMENDATION**

- 5.1 (i) To authorise an enforcement notice under S172 of the Town and Country Planning Act 1990 (as amended) in respect of a breach of planning control, namely unauthorised material change of use of the summerhouse to the rear of 591 Newmarket Road, specifying the steps to comply and the

period for compliance set out in paragraphs 5.2 and 5.3, for the reasons contained in paragraph 5.4.

- (ii) to authorise the Head of Planning Services (after consultation with the Head of Legal Services) to draft and issue the enforcement notice.
- (iii) to delegate authority to the Head of Planning Services (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

Cease the use of the summerhouse at the rear of the property for residential accommodation.

## 5.3 Period for Compliance:

8 months from the date the notice comes into effect.

## 5.4 Statement of Reasons:

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 3/1, 3/4, 3/7 and 3/10 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 of the current tenants of the building, 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). The Council has also had regard to its public sector equality duty (PSED) under S.149 of the Equalities Act.

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, which seek to restrict such forms or new residential development.

## **APPENDICES**

**Appendix A** Site plan of the property

**Appendix B** Property history

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

Report file: N:\Development Control\Planning\Enforcement\ Committee Reports\591 Newmarket Road EN report 2014