

REPORT OF: Head of Planning Services

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

WARD: Romsey

**PLANNING ENFORCEMENT CONTROL
ENFORCEMENT NOTICE REPORT**

**1 Hemingford Road, Cambridge
Breach of conditions 1, 2 and 3 of planning approval 11/0066/FUL**

SUMMARY	Planning Enforcement have confirmed that the conditions relating to bicycle storage, the number of people occupying the property and the submission of a management plan for the House in Multiple Occupation have not been complied with. The failure to comply with each of the planning conditions attached to 11/0066/FUL has an adverse impact on both residential amenity and the amenity of the area.
RECOMMENDATION	Enforcement action be authorised to address the breach of conditions 1, 2 and 3 of 11/0066/FUL.

1 INTRODUCTION

1.1 This report seeks delegated authority to serve three Enforcement Notices to address the breach of the following conditions of 11/0066/FUL:

Condition 1:

Within 1 month of the date of the permission hereby granted details of facilities for the covered, secured parking of bicycles for use in connection with the development hereby permitted shall be submitted to and approved by the local planning authority in writing. The

approved facilities shall be provided in accordance with the approved details before use of the development commences.

Reason: To ensure appropriate provision for the secure storage of bicycles. (Cambridge Local Plan 2006 policy 8/6)

Condition 2:

The House of Multiple Occupation hereby approved shall not be let out to more than 7 tenants at any one time.

Reason: To restrict the intensity of the use in the interests of neighbouring amenity, Cambridge Local Plan 2006 policy 5/7.

Condition 3:

Within 1 month of the date of the permission hereby granted a Management Strategy shall be submitted to and approved in writing by the Local Planning Authority.

The Management Strategy shall more particularly but not exclusively include:

- I. Management and maintenance of the hard surfaced areas and green (garden) space.
- II. External building maintenance including cleaning regimes.
- III. The management of rubbish, litter waste and recycling.

The management strategy shall be carried out as agreed.

Reason: In the interests of neighbouring amenity, Cambridge Local Plan policy 5/7.

1.2 Appendix A contains a site plan.

2 PLANNING HISTORY

See Appendix B.

3 BACKGROUND/TIMELINE OF ENFORCEMENT INVESTIGATION

3.1 In February 2012 the Planning Enforcement team received a complaint alleging that conditions 1 and 3 of 11/0066FUL relating to bicycle storage and a management plan for the House in Multiple Occupation (HMO) had not been discharged.

- 3.2 On 8 January 2013 officers attended a meeting with the planning agent dealing with the property portfolio and were advised that the details required to discharge conditions 1 and 3 would be submitted by the end of March 2013.
- 3.3 No application to discharge the conditions was received. The agent for the application later advised he was no longer involved with this property and so officers needed to pursue formal action in respect of the failure to discharge the conditions.
- 3.4 On 21 May 2013 a Planning Contravention Notice was served to gather further evidence in relation to the breach of planning control at the property and establish all those with an interest in the land. The Notice required completion and return by 11 June 2013. The Notice was not returned. Failure to comply with a Planning Contravention Notice is an offence contrary to Section 171 of the Town and country Planning Act 1990 (as amended). It is not proposed to take further action in respect of this offence at this time.
- 3.5 No management plan for the property has been submitted and officers from Planning Enforcement and Refuse and Environment have continued to receive complaints concerning the increasingly poor condition of the land around 1 Hemingford Road and the failure to manage the House in Multiple Occupation.
- 3.6 Officers from Refuse and Environment have confirmed that eight tenants occupy 1 Hemingford Road which is a breach of condition 2 of 11/0066/FUL which restricts the number of occupants to seven.
- 3.7 A Land Registry Search undertaken on 14 August 2013 revealed the relevant owner of the property and correspondence relating to the breaches was addressed to the person identified on the Land Registry Search.
- 3.8 On 27 September 2013 a Section 16 Notice in relation to the House in Multiple Occupation licence issued by Environmental Health was completed and a different owner was stated. In the light of this, it appears to Officers that there is conflicting information relating to the ownership of the property. Since the conflicting information has become apparent, all parties with a known interest in the land have been contacted concerning the breach of conditions

- 3.9 Although the land ownership details of 1 Hemingford Road are not clear, if members authorise the service of a Notice officers intend to serve it on all parties with a known interest in the land.

4 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 It is the view of officers that the principle of taking enforcement action is appropriate in this case. In investigating the breach of planning control and setting out recommendations, officers have been mindful of, and complied with the Planning Investigation Service Policy and the City Council’s Enforcement Concordat.

- 4.3 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.

- 4.4 In reaching the view that enforcement action is necessary, officers have taken into account the effect of the increase in the number of tenants in the House in Multiple Occupation combined and the failure to submit and adhere to a management plan for the house which has had a detrimental effect on the residential amenity of neighbours and resulted in the condition of the land affecting the amenity of the local area.
- 4.5 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.
- 4.6 There are no other material considerations that would lead officers to conclude that enforcement action would not be appropriate.

5 RECOMMENDATIONS

- 5.1 The Committee is requested to consider the details of this report and any relevant representations made to them at this Committee, and approve the following:
 - (i) To authorise three enforcement notices under S172 of the Town and Country Planning Act 1990 (as amended) in respect

of the breach of conditions 1, 2 and 3 of 11/0066/FUL specifying the steps to comply and the period for compliance set out in paragraphs 5.2.1, 5.2.2 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 notices.
- (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 notices.

5.2 Enforcement Notices for Breach of condition

5.2.1 Notice for breach of condition 1 of 11/0066/FUL

Steps to comply

1. Submit, in writing, details of facilities for the covered, secured parking of bicycles for use in connection with the House in Multiple Occupation for written approval by the Council.
2. Provide the bicycle storage facilities in accordance with the approved details and retain them thereafter.

Period for compliance

1. 28 days after the date on which the Enforcement Notice takes effect.
2. 28 days after the date on which the Council approves the bicycle storage facilities in writing.

5.2.2 Notice for breach of condition 2 of 11/0066/FUL

Steps to comply

1. Permanently reduce the number of tenants occupying the property to 7 or fewer.

Period for compliance

1. Within 6 months of the date on which the Enforcement Notice takes effect.

5.2.3 Notice for breach of condition 3 of 11/0066/FUL

Steps to comply

1. Submit, in writing, a Management Strategy for approval by the Council which particularly but not exclusively includes:
 - Management and maintenance of the hard surfaced areas and green (garden) space.
 - External building maintenance including cleaning regimes.
 - The management of rubbish, litter waste and recycling.
2. Comply with the Management Strategy once it has been approved.

5.3 *Period for compliance*

1. 28 days after the date on which the Enforcement Notice takes effect.
2. 28 days after the date on which the Council approves the Management Strategy in writing.

5.4 *Statement of Reasons for inclusion on the Notices:*

It appears to the Council that the breach of planning control namely the failure to comply with condition [insert 1, 2 or 3] of 11/066/FUL at 1 Hemingford Road has occurred within the last 10 years.

Notice 1: The failure to provide details of secure, covered cycle storage facilities is contrary to policy 8/6 of the Cambridge Local Plan (2006).

Notice 2: The increase in the number of occupants in the property is contrary to policy 5/7 of the Cambridge Local Plan (2006) and has given rise to disturbance to neighbours resulting in an unacceptably adverse impact on their amenities.

Notice 3: The failure to submit and adhere to a suitable management plan for the house is contrary to policy 5/7 of the Cambridge Local Plan (2006) and has given rise to disturbance to neighbours resulting in an unacceptably adverse impact on their amenities.

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 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 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 protect which seek to protect residential amenity.

BACKGROUND PAPERS

A separate schedule of sensitive, confidential information is available for members. The information in the schedule is exempted pursuant to paragraph 1 of Schedule 12A of the Local Government Act 1972.

APPENDICES

Appendix A Site location plan
Appendix B Planning history

The contact officer for queries on the report is Deborah Jeakins on ext 7163.