

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 05/11/14

WARD: Petersfield

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

44 Mill Road, Cambridge CB1 2AS The erection of a flue without planning permission

SUMMARY	<p>A planning enforcement investigation has identified unauthorised operational development namely the erection of a flue on a building situated at 44 Mill Road, Cambridge without planning permission.</p> <p>The development is unauthorised and requires planning permission. Without the submission of an application with supporting information relating to an assessment of noise and fumes it cannot be demonstrated that there is no impact on the amenity of local residents from noise or smells caused by the flue.</p>
RECOMMENDATION	<p>That members authorise enforcement action in respect of the breach of planning control.</p>

1 INTRODUCTION

This report recommends the Committee decides how to address the unauthorised development at 44 Mill Road, Cambridge.

Appendix A contains the site plan of 44 Mill Road Cambridge and a photograph of the flue.

2 PLANNING HISTORY

See Appendix B.

3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

- 3.1 The unauthorised development is above the Loco bar, café and restaurant at 44 Mill Road, Cambridge (“the Site”). The Site is situated on the south western side of Mill Road. The surrounding uses are commercial and residential.
- 3.2 The Site is within a Conservation Area and a Controlled Parking Zone. The building at the Site which the flue sits on is adjacent to the Sally Anne shop (former Cinema), which is a Building of Local Interest.
- 3.3 Enforcement officers received a report in October 2013 that a flue had been erected at the Site that may require planning permission. A site visit confirmed that the erection of the flue constitutes unauthorised operational development that requires formal planning permission.
- 3.4 On the 3 December 2013, enforcement officers invited the owner of the premises to submit an application to the City Council for retrospective planning permission for the erection of the flue. Despite repeated written requests sent to the owner on 27 January 2014, 3 February 2014, 7 March 2014, 7 May 2014 and 20 May 2014, no planning application has been submitted for the flue.
- 3.5 On 17 July 2014 a Section 16, Requisition for Information Notice (“the Notice”) was served on the premises requesting information regarding the land ownership. The Notice required completion and return within 14 days. The owner has made contact to discuss the Notice, however it has not been returned. Failure to return a Section 16 Notice is an offence however officers have now confirmed ownership details via a Land Registry search. Officers are not seeking the authority to prosecute for this offence at this time as they consider that the priority is to address the breach of planning control.
- 3.6 Although no planning application has been submitted seeking permission for the erection of the flue, on 18 July 2014 an application for planning permission was submitted for ‘Erection of three maisonettes above the rear of the restaurant at 44 Mill Road’,

reference 14/1181/FUL. The application is due to be determined under delegated authority and the officer recommendation is that the application is approved. If approved, the development will be located where the flue is sited however there is no guarantee that the permission will be implemented. Therefore the Committee is asked to consider whether the ongoing breach of planning control needs to be addressed.

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 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 opinion of planning officers is if an application for the erection of the flue is submitted, it would be likely to be acceptable in terms of the impact on visual amenity. Policy 4/13 of the Cambridge Local Plan (2006) relates to Pollution and Amenity and states that development will only be permitted which can minimise any significant adverse effects through the use of appropriate reduction or mitigation measures. Although officers from Refuse and Environment have not received any complaints regarding noise or fumes from the flue, no technical specifications for the flue have been submitted to the City Council and therefore officers cannot advise on the level of noise or fumes which may emanate from it.

4.3 Enforcement is a discretionary power and the Committee should take into account the planning history, the details of the breach 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, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

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

- 4.7 Members are asked to decide whether the service of an enforcement notice is necessary and in the public interest to achieve the objective of upholding national and local planning policies.
- 4.8 If members choose not to authorise the service of an enforcement notice then the unauthorised operational development (the erection of the flue) will become immune from enforcement action four years after it was erected.

5 RECOMMENDATION

- 5.1 (i) To authorise an enforcement notice under S172 of the Town and Country Planning Act 1990 (as amended) to require the removal of the flue erected at 44 Mill Road which has been erected in breach of planning control and which constitutes unauthorised operational development, specifying the steps to comply with and the period for compliance with the enforcement notice (as set out in paragraphs 5.2 and 5.3, and for the reasons contained in paragraph 5.4 of this report).
- (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 City Council's powers to take further action in the event of non-compliance with the enforcement notice.

5.2 Steps to Comply

Remove the flue erected at 44 Mill Road, Cambridge.

5.3 Period for Compliance:

6 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 owner has undertaken development without the benefit of planning permission.

The erection of the flue without planning permission is contrary to policy 4/13 (Pollution and Amenity) of the Cambridge Local Plan 2006 because without the submission of an application it cannot be demonstrated that there is no impact on the amenity of local residents from noise or smells caused by the flue.

Mindful of the NPPF, Development Plan policy and other material considerations, the City Council considers 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.

- 5.5 If members choose not to authorise the service of an enforcement notice then they are requested to authorise the closure of the Planning Enforcement Investigation.

APPENDICES

- Appendix A** Site plan of the property
Appendix B Property history and photograph of the flue

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\44 Mill Road EN report 2014