

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 05/11/14

WARD: Trumpington

**PLANNING ENFORCEMENT CONTROL
ENFORCEMENT NOTICE REPORT**

**7 Morland Terrace, Brooklands Avenue, Cambridge
Use of a 'studio' / annex as a separate residential unit**

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| SUMMARY | A planning enforcement investigation has identified unauthorised development at the above address, namely the creation of an independent residential unit without planning permission. The development is not acceptable because it conflicts with national and local planning policies and there is insufficient amenity space for the occupants of the studio. |
| 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 7 Morland Terrace, 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 7 Morland Terrace is situated on the southern side of Brooklands Avenue at the entrance the award winning RIBA Stirling Prize Accordia development.
- 3.2 The surrounding area is residential in nature. The site was encompassed as part of an enlargement to Brooklands Avenue Conservation Area in June 2013. The building is neither listed nor of local interest.
- 3.3 Enforcement officers received a report in January 2014 that the studio / annex at the rear of the property was being let via an agency and was used separately from the main house.
- 3.4 Investigations revealed that the Valuation Office had rated the annex separately for Council Tax in 2013 but this was later re assessed and the separate banding was removed.
- 3.5 On 27 February 2014 officers visited the annex and established that the studio / annex is located above the garage at the rear which is separated from the main house by an open courtyard. The studio can be accessed from Gilmour Road without the need to enter the main house at 7 Morland Terrace. The tenant in the annex does not access the main house for any reason.
- 3.6 The annex has its own access from Gilmour Road, the tenant uses the door to the garage at the property and then goes upstairs to the studio which comprises a living room / bedroom area, a bathroom and a kitchen with fridge, sink, worktops and cupboards. At the time of the visit refurbishment was taking place and there were no cooking facilities in the kitchen area however the owner has confirmed that the tenant of the annex is not granted access to the kitchen or any facilities in the main house.
- 3.7 Although the annex was not let at the time of the site visit, on the day of the visit officers were sent a link to a 'Rightmove' webpage advertising the annex for let. The photographs in appendix C show that when the annex was advertised it contained cooking facilities.
- 3.8 On 13 and 27 February 2014 the owner of the property submitted information in writing to support his assertion that the use of the annex was not separate. On 24 March 2014 officers sought advice from legal services on the planning status of the studio, with specific

reference to whether its separate use is a breach of planning control regardless of the fact that no cooking facilities are provided for the occupant. Copies of the correspondence which relates to the investigation can be found the confidential background papers for the report.

- 3.9 On 28 May 2015 the Council's solicitor advised that officers needed to consider whether the annex is being used in a way which is ancillary to the main dwelling house or whether it is being used as a separate dwelling house. In each case this is a matter of fact and degree. Although cooking facilities do not appear to have been provided, in the past there have been cupboards, worktops, fridge and a sink included in the annex. According to information provided by the owner, past occupants have used the washing facilities located in the garage. But other than this, occupants do not appear to be granted access to the main part of the house for use of the kitchen, sitting room or any other facility. The studio appears to be self-contained and occupied separately and as such there is no functional link between the studio and the main house. The Council's solicitor's view was that, on balance, the annex appeared to be in use as a separate dwelling house rather than accommodation which was part of or ancillary to the main dwelling house.
- 3.10 On 6 June 2014 a letter was sent to the owner of the property summarising the advice from legal services, asking whether studio was currently let and offering a meeting to discuss the breach of planning control. The letter also advised the owner of the property to take his own legal advice on the planning status of the studio.
- 3.11 On 20 June 2014 the owner of the property sent a letter containing further information about the use of the annex and asked for it to be taken into account. A copy of the letter can be found in the background papers.
- 3.12 On 22 July 2014 a Planning Contravention Notice was served to establish all those with an interest in the land and gather further evidence relating to the breach of planning control. The Notice and the response to the Notice are contained in the confidential background papers to this report.
- 3.13 No building works have been undertaken to create the separate unit at the rear of 7 Morland Terrace. Officers note that there is nothing to prevent the owners of the property from having a lodger who has access to the main house so that the annex forms part of or is ancillary to the main dwelling house. That is not a material change of

use. However, advice from legal services supports the officer view that the way that the studio / annex is let and used constitutes a material change of use which requires planning permission.

3.14 Officers note that the owner of the property has stated that he and his wife are distressed by the planning enforcement investigation, however, officers have followed the usual procedures and consider that they have always acted fairly and reasonably.

3.15 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.”

3.16 Officers consider that this matter should be addressed and that it is expedient and proportionate to take enforcement action to prevent the separate use of the annex becoming lawful through the passage of time. It is true that the annex could be occupied by a lodger who has access to and uses the facilities in the main house and this would not be a material change of use. However, officers consider that the continued separate use of the would have a negative impact on surrounding residents and could set a precedent for the sub division of properties across the Accordia site.

3.17 Officers have advised the owner of 7 Morland Terrace that this report has been prepared for members to consider the service of an Enforcement Notice for material change of use.

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 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 informal opinion from planning officers is that the design of the rear studio areas of Morland Terrace was intended to animate both sides of Gilmour Road and support communal living with the Accordia development and therefore the principle of development in itself is not harmful. Therefore if a planning application for the material change of use of the studio to create a separate residential unit was submitted it would be unlikely to be supported because there is insufficient private external amenity space for the occupants and the noise from the use of the lower floor garage would be detrimental to their amenity. In addition, there is insufficient information on the facilities for waste and cycle storage to support an application. The development would therefore be contrary to policies 3/4, 3/7 and 3.10 of the Cambridge Local Plan 2006 and to guidance provided by the NPPF 2012.

4.4 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.

4.5 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, marriage and civil partnerships, 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.

- 4.7 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.
- 4.8 Consideration has been given to Human Rights including 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). One consideration is that a tenant is currently occupying the property, who would have to find accommodation elsewhere. However, it is considered that taking necessary and appropriate action would be lawful, fair, non-discriminatory, and necessary in the general public interest to achieve the objective of upholding local planning policies.
- 4.9 If members choose not to authorise the service of an Enforcement Notice the separate use of the annex would become immune from enforcement action after a period of four years.

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 the unauthorised material change of use of the studio / annex at the rear of 7 Morland Terrace, 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 separate residential use of the studio at the rear of 7 Morland Terrace.

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 informal opinion from planning officers is that if an application for the material change of use of the studio to create a separate residential unit was submitted it would not be supported because there is insufficient amenity space for the occupants of the outbuilding and the access arrangements and facilities for waste and cycle storage are not adequate. The development would therefore be contrary to policies 3/4, 3/7 and 3.10 of the Cambridge Local Plan 2006 and to 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 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.

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 plan of the property
- Appendix B** Property history
- Appendix C** Advert from Rightmove

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

Report file: N:\Development Control\Planning\Enforcement\ Committee Reports\7 Morland Terrace EN report 2014