

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Main Planning Committee DATE: 05/11/14

WARD: All

PLANNING ENFORCEMENT CONTROL PROSECUTION REPORT

4 Laburnum Close, Cambridge
**Non-compliance with enforcement notice issued for “Without
planning permission, the erection of a residential mobile home on
garden land.”**
(Enforcement reference: CE/4812)

SUMMARY	An Enforcement Notice was served on 10 September 2012 following development being undertaken without the benefit of planning permission at 4, Laburnum Close, Cambridge. This report is brought before committee to consider what course of action could be taken.
RECOMMENDATION	That prosecution proceedings be authorised to secure compliance with the Enforcement Notice.

INTRODUCTION

- 1.1 This case is also linked to an additional Enforcement Notice, a copy of which has been attached as Appendix A for reference. This enforcement notice, dated 22/02/2002, also related to caravan that had been brought onto site and was being used as a separate residential unit. The notice required the owners to stop using the caravan for residential accommodation and to remove a dividing

fence in the garden of 4 Laburnum Close. The caravan was vacated but to date remains on site. As it is no longer occupied in a residential manner it is considered part of this notice has been complied with. The fence remains in place but would be permitted under permitted development rights and it was therefore not considered in the public interest to pursue this point.

- 1.2 The requirements of the most recent enforcement notice, issued on 10/09/2012, as altered at appeal are “To remove the residential caravan that was brought onto the Land on 20/08/10 permanently from the Land.”
- 1.3 The time for compliance, as granted at appeal was 1 year.
- 1.4 This matter has a long planning history. The local planning authority has determined that this is development that is unacceptable and the Council needs to take appropriate action to ensure the situation is resolved

2 PLANNING HISTORY

- 2.1 See Appendix B.

3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

- 3.1 In February 2012 a report was presented to the Main Planning Committee which sought delegated authority for an Enforcement Notice to address the breach of planning control concerning an additional caravan that had been brought onto the site that was being used as a separate residential unit. A copy of this report is attached as Appendix C and gives a detailed account of the site history.
- 3.2 The requirement of the Enforcement Notice (as varied at appeal) was to “To remove the residential caravan that was brought onto the Land on 20/08/10 permanently from the Land”.
- 3.3 The period for compliance allowed by the appeal decision letter was varied to allow a period of 1 year. (A period that expired on 26 September 2014)
- 3.4 Officers visited the site on 29 September 2014, but were unable to gain full access. It was noted however that the caravan brought onto to the Land on 20/08/2014 remained on site and had not been

removed. A calling card was left in the mail box of the site referred to as "4A" with a request to contact the planning enforcement team.

- 3.5 The owner of the land referred to as "4A Laburnum Close" called officers on 30/09/14. Officers tried to arrange a site inspection with the owner but this was later cancelled. During the telephone conversation the owner advised that he had not complied with the Enforcement Notice served on 10/09/2012.

SITE HISTORY AND CONTEXT

- 3.6 The site is located in an established residential cul-de-sac of 8 semi-detached dwellings in moderately large plots off Elizabeth Way (see location plan marked Appendix D). The site now known on land registry as 4A Laburnum Close has been created by the subdivision of the curtilage of 4 Laburnum Close. The residual curtilage of 4 Laburnum Close abuts the site to the north and north-west. The entire site adjoins the former Chesterton Hospital site (from which it is screened by a tall conifer hedge) to the south-east, and the residential property of 5 Laburnum Close to the south. The entrance to the site from Laburnum Close is to the west.
- 3.7 The site of 4A Laburnum Close is separated from the curtilage of 4 Laburnum Close by a 1.8m close-boarded timber fence, with double gates of the same height and material forming the entrance. There are currently two mobile homes within the site. A plan attached as Appendix E identifies the enforcement issues on the site.

ENFORCEMENT INVESTIGATION

- 3.8 Officers have been seeking to resolve the breach of planning control for a number of years. This has included supporting the occupants of the mobile home to register for housing through the City Council. To date there are no signs that the occupants of the mobile home intend to comply with the Enforcement Notice.
- 3.9 It is of note that the occupancy of the mobile home in question contributes to a further breach of planning control in relation to the number of occupants at the site.
- 3.10 A letter was issued to all interested parties in February 2014 advising of the need to comply with the enforcement notice and outlining the current position.
- 3.11 Officers from both the planning and housing departments have tried to assist the occupants of the caravan in finding new accommodation

through the Council. Unfortunately the occupants have not chosen to engage with the bidding process.

- 3.12 This issue has affected local residents for many years. The addition of the mobile home has resulted in extra movements to and from the site and an increase in disturbance for neighbouring properties. The people living at the property have been given considerable support and appropriate recognition of their personal circumstances. However that commitment was for a limited period and the Council now needs to secure compliance.

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 It is considered that the owner of the property has had adequate time and opportunity to remove the mobile home from the site by the date for compliance. This is not development that would normally be supported on a permanent basis and runs counter to local plan policy

as it does not provide adequate vehicular access arrangements which would result in unacceptable harm to the residential amenity of the occupiers of 4 Laburnum Close from vehicle noise, lights and movement, contrary to policy 3/10 of the Cambridge Local Plan (2006). For this reason such a proposal would also involve poor relationships between buildings, routes and spaces, and be poorly integrated into the locality. A mobile structure in design would be inappropriate in its context, and would fail to take the opportunities available for improving the character and quality of the area and the way it functions. It would be contrary to policies 3/4 and 3/7 of the Cambridge Local Plan (2006) and to government guidance in the NPPF.

- 4.6 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.
- 4.7 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.

- 4.8 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). 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.

5 RECOMMENDATIONS/OPTIONS

- 5.1 Enforcement is a discretionary power and Members of Committee need to consider an appropriate way forward given the planning history, the impact of the development upon the neighbouring properties, and what weight should be given to the personal circumstances of the owner.

The key range of enforcement powers available to the Council following a failure to comply with an enforcement notice are as follows:

- Prosecution
- Simple Caution (in place of prosecution)
- Injunction
- Entry on to the site by the Council to carry out the works required and recovery of the costs of doing so from the owners.

Officers have set out below the main options that the Committee needs to consider.

5.2 Option 1

“Take no further action”

To do nothing and not take the matter further is an option for the Council. This would in effect require withdrawing the Enforcement

Notice. The Council as local planning authority has already considered that this is inappropriate development through the service of the earlier enforcement notice. Taking no further action would allow a long standing unacceptable breach of planning control to persist.

5.3 Option 2

To give delegated authority to the Head of Planning and the Head of legal services jointly, to take action on behalf of the Council in the event of failure to comply with the requirements of the Enforcement Notice. This option requires a detailed examination of how the case might be taken forward and empowers the Heads of Planning and Legal Services to exercise the appropriate enforcement powers on behalf of the Council. This may include prosecution proceedings or direct action in due course.

6 CONCLUSIONS

- 6.1 This is a long running case, on a site with a history of persistent breaches of planning control. Development has proceeded without the requisite planning permission and Officers have spent a long period of time negotiating with the owner to try and regularise the situation. This has not been without successful in resolving the breach of planning control.

7 RECOMMENDATIONS

- 7.1 It is recommended that the Committee authorise Option 2 above in advance so that officers can seek compliance with the Enforcement Notice.

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

APPENDICES

Appendix A- Additional enforcement notice that is extant on the site

Appendix B- Property history

Appendix C- The report authorised at Area Committee which gave authority to serve a second Enforcement Notice on the site.

Appendix D- A site plan of the area

Appendix E- A plan denoting the enforcement issues on the site.

P700/C – 5662- 4/4A Laburnum Close

To inspect these documents contact Alison Twyford on extension (45)7163

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Report file: N:\Development Control\Planning\Enforcement\ Committee Reports\4 Laburnum Close Prosecution Report

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