

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 03/12/14

WARD: Trumpington

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

43 Aberdeen Avenue, Cambridge Unauthorised operational development relating to the erection of a heat source pump and solar panels

SUMMARY	A planning enforcement investigation has identified unauthorised development at the above address, namely the erection of a heat source pump and solar panels without planning permission. The development is not acceptable because it is considered to have a detrimental impact to the visual amenity of local residents.
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 43 Aberdeen Avenue, namely, "Without planning permission the erection of a heat source pump and solar panels." See appendix A for site plan.

2 PLANNING HISTORY

Reference	Description	Outcome
14/1677/NMA	Non material amendment on application 14/0845/FUL for re-siting air source heat pump on roof of dwelling and specify size accurately	Pending Consideration
14/0845/FUL	Erection of a 12 panel solar array and an air source heat pump	Perm

3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

- 3.1 43 Aberdeen Avenue is situated on the award winning (RIBA Stirling Prize) Accordia development.
- 3.2 The surrounding area is predominately residential in character. The Accordia development was included as part of an enlargement to Brooklands Avenue Conservation Area in June 2013. The building is neither Listed nor a Building of Local Interest.
- 3.3 Enforcement officers received a complaint in August 2014 that works applied for under planning reference 14/0845/FUL for “Erection of a 12 panel solar array and an air source heat pump” had not been implemented correctly.
- 3.4 A site inspection was undertaken on 21/08/14 during which officers inspected the works to the roof.
- 3.5 During the initial site inspection it was noted that the heat source pump was larger than shown on the approved plans and was located in a different position than shown on the approved plans. The solar panels were spaced out differently than shown on the approved plans and now covered a wider area of the roof space. The approved drawings of application 14/0845/FUL are attached as Appendix B.
- 3.6 The drawings submitted for application 14/0845/FUL showed the heat source pump unit to measure 70cm in height, 1m in width and 30cm in depth. Officers measured the unit as built at 99cm in height, 1.13m in width and 39cm in depth.

- 3.7 The solar panels also appear on the drawings to be placed in a slightly different position from that approved. The heat source pump unit was shown on the plans to be located 2.6m back from the roof terrace of the property and 6.1m from the rear elevation. This meant that only 15cm should have been visible from the roof terrace elevation, and the thinnest part of the unit would face the neighbouring properties.
- 3.8 The orientation of the unit as installed puts the longest section now facing the neighbouring properties, and is located much closer to the neighbouring boundary wall. A photograph that shows the built form is attached as Appendix C and a drawing showing the approximate new location on the plans is attached as Appendix D.
- 3.9 Officers wrote to the developer requesting that the details on site be amended to reflect the approved plans on 21/08/14. In the correspondence officers noted that the informal view of officers was that the new positioning was materially different from that which was approved.
- 3.10 A response was received by the owner of the property on 22/08/14 in which officers were advised that the approved drawings were not considered to be indicative of size as a note had been placed on the drawings requesting the scale not be used. Officers advised that planning applications require scaled drawings in order to assess details and as such a planning condition (no. 2) was attached to the permission detailing that works should be in accordance with the drawings.
- 3.11 Correspondence continued with the owner in which they advised that the changes had been made to the scheme to reduce any noise that may come from the unit. In addition, they queried if the works may not require formal planning permission and could benefit from Permitted Development rights under Schedule 2 Part 40 of the Town and Country Planning General Permitted Development Order 1995 (as amended.) Officers responded that the permitted development rights for the site were removed as part of the original planning permission for the Accordia development under planning application reference C/00/1175/OP, condition 28, which revoked right for extensions, additions and garages for the properties. The heat source pump and solar panels are considered to be an addition to the roof of the property.
- 3.12 A planning contravention notice was served on 16/09/14 to establish the names and addresses and intentions of the owner and anyone

else with an interest in the land. In the response the owners stated that they did not consider the works to be different from those approved under planning reference 14/0845/FUL and that they did not intend to submit a further planning application for consideration.

- 3.13 The breach of planning control remains on site and officers have confirmed that the owners do not intend to apply for permission, or change the works to comply with the planning permission that has been previously granted. Formal enforcement action is therefore considered to be the next appropriate step to resolve this breach of planning control.
- 3.14 Officers have advised the owner of 43 Aberdeen Avenue that this report has been prepared for members to consider the service of an Enforcement Notice for unauthorised operational development.
- 3.15 Consideration has been given in relation to the steps to comply. The works implemented are fundamentally different from those approved under planning reference 14/0845/FUL. This permission could still be implemented if the applicant wishes to. The development undertaken is not considered acceptable and therefore requires removal.
- 3.16 The applicant has submitted a Non-Material Amendment application under reference 14/1677/NMA. This application is yet to be decided but the informal view of officers is that it is likely to be refused. It is also the informal view of officers that should a planning application be made for the unauthorised development that officers would not support a retrospective application.

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 change in orientation of the heat source pump allows the item to have a greater and detrimental impact on the visual amenity of adjoining properties and the Conservation Area. The development would therefore be contrary to policies 3/4, 4.11 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). 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 unauthorised operational development would become immune from enforcement action after a period of four years (i.e by August 2018) and the enforcement case would be closed.

5 RECOMMENDATION

OPTION 1:

Enforcement Notice

- 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 operational development consisting of the erection of a heat source pump and solar panels at 43 Aberdeen Avenue

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

Remove the heat source pump and solar panels from the property.

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 applicant has undertaken development without the benefit of planning permission.

The informal opinion from planning officers is that if an application for the operational development was submitted it would not be supported because the heat source pump by virtue of its orientation is considered to have negative affect on the visual amenity of neighbouring properties and creates an unacceptable intrusion on the rooftops of the terrace. It is also considered to have an unacceptable effect on the character of the Conservation Area due to its prominent position on the roof top. The development would therefore be contrary to policies 3/4, 4/11 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.

OPTION 2:

5.5 Take no further action

To authorise the Head of Planning Services to instruct officers to close the current enforcement investigation and take no further action regarding this matter.

BACKGROUND PAPERS

EN/0311/14- Investigation papers

APPENDICES

Appendix A	Site plan of the property
Appendix B	Approved plan for application 14/0845/FUL
Appendix C	A photograph showing the built form
Appendix D	A drawing showing the approximate new location on the plans.

The contact officer for queries on the report is Alison Twyford on extension 7326.

Report file: N:\Development Control\Planning\Enforcement\ Committee Reports\ 43 Aberdeen Avenue EN report Dec 2014