

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 11/09/14

WARDS: ALL

PLANNING ENFORCEMENT REPORT SIX MONTHLY UPDATE

SUMMARY	Planning Enforcement update
RECOMMENDATION	That the Committee notes the information contained in the report and approves the recommendations detailed in paragraph 6 of the report.

1 INTRODUCTION

- 1.1 This report provides an update on the work of Planning Enforcement team and includes information on the status of planning enforcement cases where enforcement action has been approved and / or actioned.

2 BACKGROUND

- 2.1 Officers investigating breaches of planning control and setting out any recommendations are mindful of, and comply with the Planning Investigation Service Policy and the City Council's Enforcement Concordat which are available on our website.
- 2.2 A review of the current Planning Enforcement policy is the subject of a separate report to this committee.

3 STATISTICS RELATING TO PERFORMANCE TARGETS

3.1 All complaints and enquiries received by the Planning Enforcement team are categorised as immediate, urgent or non-urgent according to the priorities agreed in the Planning Investigation Service's Enforcement Policy 2000.

3.2 The targets for the team to assess whether there is a breach and advise the complainant of their intended actions are:

5 working days for immediate complaints
10 working days for urgent complaints
15 working days for non-urgent complaints.

3.3 Statistics for 2013

3.3.1 1 January to 30 June 2013

Total number of complaints received: 100

Officer response within agreed targets:

Immediate – 50%
Urgent – 88%
Non Urgent – 82%

3.3.2 1 July to 31 December 2013

Total number of complaints received: 136

Officer response within agreed targets:

Immediate – 90%
Urgent – 93%
Non Urgent – 76%

3.5 Statistics for 2014

In January 2014 Planning Enforcement changed the software used to record, monitor and manage complaints.

The reports which produce performance targets are not available in the same format however the following figures have been compiled:

3.5.1 1 January 2014 to 30 June 2014

Total number of complaints received: 228

3.5.2 1 July 2014 to 31 October 2014

Total number of complaints received: 208

3.6 Appendix A contains a table showing the number of cases where officers responded to complainants within agreed targets between 1 January and 31 October 2014.

4 UPDATE ON ENFORCEMENT CASES

4.1 The following case summaries have been compiled to provide members with information and updates on investigations where formal enforcement action has been initiated.

4.2 Breach of condition at Citygate, Woodhead Drive

In November 2010 planning approval reference 10/0367/FUL was granted for 'Erection of four one bed and four two bed flats and works to parking area at Citygate, Woodhead Drive, Cambridge'. The approval was subject to a number of conditions. Condition 14 of 10/0367/FUL required a brick wall to be built along the boundary with 56 Robert Jennings Close.

The developer failed to comply with the condition and an application to vary condition 14 of 10/0367/FUL to allow for a wooden fence as the boundary treatment reference 13/0262/S73 was refused under delegated authority in April 2013.

On 3 June 2013 an appeal against the refusal of 13/0262/S73 was lodged with the Planning Inspectorate. The Planning Inspectorate dismissed the appeal on 17 October 2013.

On 28 August 2014 members of the North Area Committee authorised the preparation and service of an enforcement notice for Breach of Condition 14 of 10/0367/FUL.

On 19 September 2014 the boundary wall with 56 Robert Jennings Close was completed meaning that the planning condition had been complied with and the breach remedied before the enforcement notice had been served.

4.3 Operational Development at 8 Richard Foster Road

On 16 September 2013 members of the South Area Committee refused a retrospective planning application to 'Provide roof and roof lights over upper floor terrace, convert car port to playroom and provide storage in entrance lobby (retrospective)' at 8 Richard Foster Road on the Accordia site.

The Council's scheme of delegations (part A4) provides the Planning Enforcement Service with delegated authority to serve an enforcement notice in relation to works which have failed to gain approval by means of a retrospective application for Planning Permission.

On 7 May 2014 a Notice was served on the owners of the property, the Notice was appealed to the Planning Inspectorate and the appeal was due to be determined by way of a Public Inquiry. The Inquiry date was set for April 2015.

While preparing for the Public Inquiry officers noted that there had been an error made in relation to the process followed in issuing the planning enforcement notice and so on 15 October 2014 the Notice was withdrawn by the Council.

Officers are working with Legal services to confirm authorisation for enforcement action and to draft and issue new enforcement notice(s) relating to the works at 8 Richard Foster Road.

4.4 Operational Development at land to the rear of 91/93 Burnside

On 28 November 2013 members of the East Area Committee authorised the service of an enforcement notice requiring the demolition of the residential outbuilding which had been constructed at the rear of 91/93 Burnside.

The notice was served and an appeal against it was lodged with the Planning Inspectorate.

The Inspectorate dismissed the appeal but varied the enforcement notice to allow 12 months for the demolition of the building, the notice requires compliance by 12 September 2015.

Officers intend to arrange a visit to the site soon after 12 September 2015 to check compliance with the enforcement notice.

4.5 Material change of use of car part at 27 Babraham Road

On 26 June 2013 members of the South Area Committee authorised the service of an enforcement notice for the unauthorised use of a car port garage extension for the storage of ice cream vans.

On 3 July 2013 the enforcement notice requiring the unauthorised use of the car part for the storage of ice cream vans to cease was served.

The enforcement notice is the subject of an appeal to the Planning Inspectorate. The appeal will be determined by way of a Public Inquiry. The Inquiry date is set for 17 March 2015.

4.6 Breach of planning conditions at 107 Darwin Drive

In August 2006 planning approval was granted for 'Change of use from single family residential space to community house for the Bangladeshi community, including residential space for key worker.' Reference 06/0473/FUL.

The approval was subject to a number of planning conditions. Key conditions included the following:

Condition 5:

The community house shall not be occupied by more than 20 people at any one time, unless otherwise agreed in writing by the local planning authority.

Condition 7:

The ground floor of the premises shall only be in operation between the hours of 09.00 and 21.00 Monday to Sunday and 09.00 and 22.30 Monday to Sunday throughout the months of June and July unless otherwise agreed by the local planning authority.

Planning Enforcement received allegations that condition 5 of was not being complied with and following confirmation of the breach of condition a Breach of Condition Notice was served on 23 June 2010.

Officers have undertaken monitoring of the Community House during key periods throughout 2011, 2013, 2013 and 2014 to check compliance with condition 5 and the other conditions attached to the planning permission for the property.

Officers have also held regular meetings with representatives from the Shah Jalal Community House and provided advice on the drafting and implementation of a management plan for the house. After a number of drafts a management plan for the Community House is now in place and is reviewed regularly.

The complainant continues to report alleged breaches of condition to Planning Enforcement. However, officers have not witnessed any breaches of condition that would warrant formal enforcement action.

As offices continue to receive complaints, the investigation into breaches of planning conditions attached to 06/0473/FUL remains open.

4.7 Material change of use of 4 Laburnum Close

On 10 September 2012 an enforcement notice was served relating to the erection of a residential mobile home on garden land at 4 Laburnum Close.

The notice, which was varied at appeal, required the removal of the residential caravan that was brought onto the site on 20 August 2010 permanently from the Land by a revised compliance date of 26 September 2014.

The requirements of the notice were not met and on 5 November 2014 Committee authorised 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.

4.8 Material change of use of 102 Mill Road

Officers have investigated the unauthorised change of use of 102 Mill Road (Sweet n Spicy) from and A1 (shop) to an A3 (café/ restaurant)

in 2003 and 2005. The current investigation was opened in November 2010.

A previous application to change the use of the premises from an A1 shop to a mixed A1 shop and A3 restaurant use (reference C/04/035) had been refused because the property is situated within the Mill Road West District Centre to which policy 6/7 (Shopping Development and Change of Use in District and Local Centres) of the Cambridge Local Plan (2006) applied.

In January 2011 the occupier of 102 Mill Road sought advice on change of use of the property. The advice given was that policy 6/7 restricts change of use from Class A1 to Classes A2, A3, A4 and A5 in District and Local Centres where the percentage of Class A1 uses has fallen below 60% (measured by number of units). At the time the Mill Road West District Centre had only 58% of units in Class A1 use, and, therefore, the threshold set out in the Local Plan has already been exceeded.

In 18 August 2011 members of the East Area Committee granted approval for 'Change of use from A1 to mixed Use Class A1/A3 and single storey rear extension at 102 Mill Road' reference 11/0255/FUL. The decision notice was issued on 12^h February 2012.

The permission was not implemented immediately and due to the delay in implementing the permission, and the ongoing breach of planning control, officers asked the East Area Committee for authorisation to serve an enforcement notice requiring the cessation of the A3 use of the premises. On 21 June 2012 the Committee authorised the service of a notice with a 12 month compliance period. The notice was served on 27 August 2012 and required compliance by 27 August 2013. The notice is extant.

Works to implement the change of use from A1 to mixed A1/A3 were completed in summer 2014 and a site visit took place on 10 November 2014. Officers confirmed that the premises has seating for 40 customers and the menu and website confirm that 102 Mill Road is operating as a restaurant with a small ancillary A1 shop element.

Officers' assessment is that 11/0255/FUL has not been fully implemented, that the planning use of 102 Mill Road is as an A3 restaurant and that the extant enforcement notice is not being complied with,

In May 2013 The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 came into effect and granted temporary permitted development rights for the change of use of Class A1 (shops) to Class A3 (restaurants and cafes) for a single continuous period of up to two years beginning on the date the building. A condition of the permitted development right is that the Local Planning Authority receives prior notification of the intended change of use before the change takes place.

In the light of the extended permitted development rights to change the use of an A1 shop to an A3 café officers do not consider that it would be reasonable or expedient to pursue compliance with the extant enforcement notice at this time.

Members are asked to approve the recommendation that officers do not pursue compliance with the notice at this time and to review the case in two years, in line with the temporary permitted change of use.

The recommendation can be found in paragraph 6 of this report.

5 PLANNING POLICY, LEGAL AND OTHER CONSIDERATIONS

5.1 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.’

5.2 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’.

5.3 All interested parties who have had involvement with the investigations detailed in paragraph 3 of this report have been advised of the content of this report and that the Planning Committee is a public meeting which they can attend.

6 RECOMMENDATIONS

6.1 That the Committee note the contents of this report.

6.2 That the Committee instruct officers not to pursue compliance with the extant enforcement notice relating to the change of use of 102 Mill Road (as detailed in paragraph 4.4 of this report) for a period of two years.

7 IMPLICATIONS IN RELATION TO THE RECOMMENDATION

(a) **Financial Implications** - None

(b) **Staffing Implications** - None

(c) **Equal Opportunities Implications** - The Council has had 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.

- (d) **Environmental Implications** - None
- (e) **Community Safety** - None
- (f) **Human Rights** - 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).

APPENDICES

Appendix A: Table showing performance targets for 2014

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