

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 04/03/15

WARD: Trumpington

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

26 Bishops Road, Cambridge Non-compliance with condition requiring outbuilding to remain ancillary to main property.

SUMMARY	<p>A planning enforcement investigation has identified the non-compliance with a planning condition that specifically required an outbuilding to remain used in connection with 26 Bishops Road, Cambridge. The outbuilding and land where it is situated has been bought by the owner of Flat 1, 24 Bishops Road, Cambridge and the outbuilding and the outbuilding (which lawful use is ancillary to number 26) is now being used as a separate residential unit.</p> <p>Recently a planning application was made to assess the current separate residential use of the outbuilding and this was refused.</p> <p>Planning enforcement officers believe that the outbuilding continues to be used as a separate residential unit and in breach of condition 3 of planning permission 13/1654/FUL.</p>
RECOMMENDATION	<p>That enforcement action is authorised in respect of the breaches of planning control to serve two enforcement notices to remedy (a) the unlawful material change of use of the outbuilding and (b) the breach of condition 3.</p>

1 INTRODUCTION

This report seeks delegated authority to serve two enforcement notices; one to address the failure to comply with condition 3 of planning permission reference 13/1654/FUL (which required a self-contained studio to be used solely in conjunction with and ancillary to 26 Bishops Road, Cambridge and not separately used, occupied or let), and the other to remedy the material change of use to use as a separate residential unit.

Planning permission was granted to erect a studio at 26 Bishops Road, subject to conditions, one of which stated:

“3. The development hereby permitted shall be used solely in conjunction with and ancillary to 26 Bishops Road and shall not be separately used, occupied or let.”

Reason: To protect the amenity of the adjoining residential properties and to avoid the creation of a separate planning unit. (Cambridge Local Plan 2006 policies 3/4 and 4/13)”

The self-contained studio and the land immediately surrounding it used to form part of the property at 26 Bishops Road, however it has recently been sold to the owner of Flat 1, 24 Bishops Road and is registered at the land registry under a separate title number to that for 26 Bishops Road. Planning enforcement officers have visited the site and believe that the studio is being used separately from 26 Bishops Road which contravenes the planning condition 3, as detailed above. The first enforcement notice proposed would require compliance with the above condition.

To use the studio as a separate unit is considered to be a material change of use of the building from ancillary to a separate planning unit. This material change of use would be the subject of the second enforcement notice proposed.

2 PLANNING HISTORY

As the site in question is directly connected through a change in ownership details to a neighbouring property, both planning histories have been included for reference.

2.1 PLANNING HISTORY for 26 Bishops Road

Reference	Description	Outcome
C/95/0383	Two storey side and rear extension to existing house (C3),,	RC
C/95/0684	Two storey side and rear extensions to existing house (C3) - Resubmission of C/0383/95	Allowed at appeal
C/00/0407	Erection of a single storey rear conservatory to existing dwelling	APC
13/1654/FUL	Construction of a self contained studio in the rear garden	PERM

2.2 PLANNING HISTORY for 24 Bishops Road

Reference	Description	Outcome
C/03/0660	Erection of 2 storey side extension, single storey rear extension and front porch.,	APC
08/0439/FUL	Conversion of existing house into two self contained flats and erection of two storey side and rear extension, single storey rear extension and front porch.	WDN
08/0966/FUL	Conversion of existing house into two self contained flats and erection of two storey side and rear extension, single storey rear extension and front porch.,	PERM
12/1449/FUL	Erection of a lean-to conservatory to the rear of the property	PERM
14/1771/FUL	Retrospective application for a self contained studio in the rear garden (application previously approved under planning reference 13/1654/FUL),	REF

3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

3.1 In August 2014 officers received a report that a planning condition had been breached. The condition in question was condition 3 of planning permission 13/1654/FUL which stated:

“3.The development hereby permitted shall be used solely in conjunction with and ancillary to 26 Bishops Road and shall not be separately used, occupied or let.

Reason: To protect the amenity of the adjoining residential properties and to avoid the creation of a separate planning unit. (Cambridge Local Plan 2006 policies 3/4 and 4/13)”

3.2 Officers left a card at the property on 28/08/14 requesting contact from the owner. On 29/08/14 a telephone call was received from the owner’s son who advised officers that the outbuilding was occupied by a family friend who also used the main house. Officers advised the owner’s son during their telephone conversation of 29/08/14 that condition 3 on planning permission 13/1654/FUL remained in place and must be complied with.

3.3 The investigation was closed as a result of the above information, but was subsequently re-opened at the end of August 2014 when a further complaint was received.

3.4 A telephone call was made a member of the public reporting that 26 Bishops Road was for sale excluding the studio at the rear. Enquiries of the estate agent selling number 26, confirmed that the rear garden area had been subdivided in ownership and the studio had been officially separated in title and linked to a neighbouring flat owned by the previous owner’s son.

3.5 Officers contacted the owner of Flat 1, 24 Bishops Road, who submitted a planning application for consideration to see if the studio would be acceptable as a separate residential unit. The planning application 14/ 1771/FUL was refused under delegated powers on 02.01.2015. The reasons for the refusal are detailed in paragraph 4.3 below. The applicant may appeal this decision if he wishes to.

3.6 The breach of planning control continues to the present day.

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 enforcement notices there must be sound planning reasons to justify taking such action. A planning application 14/1771/FUL to link the studio to Flat 1, 24 Bishops Road, was considered and refused for the following reasons:

1. Due to the poor positioning of the studio, which locates the entrance to behind a fence in the back corner of the plot, it means that it will provide little surveillance and puts users at risk from crime and disorder as there are no additional means for escape for residents. In doing so, the development constitutes poor design and fails to respond positively to the site context and its constraints. The development is contrary to policies 3/4, 3/7 and 3/14 of the Cambridge Local Plan 2006 and guidance in the National Planning Policy Framework (2012).

2. The development fails to make adequate provision for the storage of waste. In so doing, the development fails to provide a satisfactory level of amenity for the future occupiers of the studio and has the potential to have an adverse impact on the amenity of occupiers of neighbouring dwellings. The development is contrary to policy 3/14 of the Cambridge Local Plan 2006 and guidance in the National Planning Policy Framework (2012).

3. The creation of a separate residential unit on this constrained backland site served by a long narrow access, is unacceptable in that it introduces a development form that is not in harmony with the residential garden character of the immediate area. The proposed dwelling by virtue of its position on the plot would result in an unacceptable invasion of privacy currently enjoyed by adjacent occupiers and future occupants and would therefore have a significantly detrimental impact on the residential amenity of the adjoining neighbour such that it would be contrary to Policies 3/4, 3/7 and 3/12 of the Local Plan.

4.4 Enforcement is a discretionary power and the Planning 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 Enforcement Policy and the City Council's Enforcement Concordat.

4.6 Consideration should be given to the Human Rights Act 2000 and to the Equality 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 Equality 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 two enforcement notices referred to above, 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 the enforcement notices the unauthorised operational development would become immune from enforcement action after a period of four years and the enforcement case would be closed. This would allow a new planning unit which officers consider to be unacceptable and contrary to the Cambridge Local Plan (2006).

5 RECOMMENDATION

Officers consider Option 1 below is the most appropriate, proportionate and expedient option in order to regularise the breaches of planning control.

Option 1:

Enforcement Notices

- 5.1 (i) To authorise the service of enforcement notices under S172 of the Town and Country Planning Act 1990 (as amended) in respect of the breaches of planning control, namely the failure to comply with planning condition 3 of planning permission reference 13/1654/FUL, and the material change of use of the ancillary studio to a separate unit, at 26 Bishops Road, Cambridge, 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 notices.
- (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 notices.

5.2 Steps to Comply

Cease the breach of condition 3 on planning permission 13/1654/FUL;

Cease the unauthorised material change of use of the studio as a separate unit from 26 Bishops 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 applicant has undertaken development without the benefit of planning permission.

The development, due to the poor positioning of the studio, which locates the entrance to behind a fence in the back corner of the plot, means that it provides little surveillance and puts users at risk from crime and disorder as there are no additional means for escape for residents. In doing so, the development constitutes poor design and fails to respond positively to the site context and its constraints. The development is contrary to policies 3/4, 3/7 and 3/14 of the Cambridge Local Plan 2006 and guidance in the National Planning Policy Framework (2012).

The development fails to provide sufficient waste storage space in accordance with standards on site for residential use. In so doing, the development fails to provide a satisfactory level of amenity for the future occupiers of the studio and has the potential to have an adverse impact on the amenity of occupiers of neighbouring dwellings. The development is contrary to policy 3/14 of the Cambridge Local Plan 2006 and guidance in the National Planning Policy Framework (2012).

The creation of a separate residential unit on this constrained backland site served by a long narrow access, is unacceptable in that it introduces a development form that is not in harmony with the residential garden character of the immediate area. The proposed dwelling by virtue of its position on the plot would result in an unacceptable invasion of privacy currently enjoyed by adjacent occupiers and future occupants and would therefore have a significantly detrimental impact on the residential amenity of the adjoining neighbour such that it would be contrary to Policies 3/4, 3/7 and 3/12 of the Local Plan.

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 Equality 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/0382/14- Investigation papers

APPENDICES

- Appendix A** Site plan of the properties concerned.
- Appendix B** Planning decision notice for planning permission 13/1654/FUL
- Appendix C** A drawing showing the new land ownership details.

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

Report file: N:\Development Control\Planning\Enforcement\ Committee Reports\ 26 Bishops Road EN report March 2015