

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Main Planning Committee DATE: 04/03/15

WARD: All

PLANNING ENFORCEMENT CONTROL PROSECUTION REPORT

49 Woodlark Road, Cambridge
Non-compliance with Section 215 notice issued for condition of
land
(Enforcement reference: EN/0047/14)

SUMMARY	A Section 215 (S215) notice requiring improvements to be made to the condition of the land and property at 49 Woodlark Road, Cambridge was served on 19 November 2014. This report is brought before committee to consider what course of action could be taken in light of the notice not being complied with.
RECOMMENDATION	That prosecution proceedings be authorised to for failure to comply with the notice served.

INTRODUCTION

- 1.1 This case relates to a property which is considered to have an adverse effect on the local area as a result of its detrimental impact on visual amenity. The property is considered to be in an extremely poor state of repair and requires improvements. Attempts were made to regularise to situation informally but the owner unfortunately did not make any improvements. This remains to situation to date, despite the service of a formal notice requiring

the improvements. A copy of the notice served under Section 215 of the Town and Country Planning Act 1990 (as amended) has been attached as Appendix A.

- 1.4 There have been no improvements or engagement with the local authority to explain possible reasons for not complying with the notice. The local planning authority consider the current situation is unacceptable for residents of the local area and the Council needs to take appropriate action to ensure the situation is improved and the notice complied with.

2 PLANNING HISTORY

- 2.1 No planning history.

3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

3.1 SITE HISTORY AND CONTEXT

The site is located in an established residential area. The general character of the road is semi-detached properties. A plan detailing to location of the property concerned is attached as Appendix B.

3.2 ENFORCEMENT INVESTIGATION

In February 2014 Officers received a report of a property that was affecting the appearance of the local area.

- 3.3 A site inspection was made in which officers considered that the property and its garden were detrimental to the visual amenity of the local area and as such warranted action by the local planning authority.

- 3.4 A letter was sent to the owner on 01/08/14 requesting for improvements to be made to the property and the garden. Suggestions were made to remove any unrequired vehicles from the property and to cut back overgrown vegetation at the property.

- 3.5 A joint site visit with officers from the environmental health team was made at the end of August in which officers were advised that the owner may not have received the letter that had been sent to

him. It was advised that the letterbox to the property may not be accessible and the owner uses a side door.

- 3.6 The environmental health team have considered the condition of the inside of the property and have also considered the prevention of damage by pests under the environmental protection act legislation. Officers have informally engaged with the owner/ occupier including informing him of potential Grant Funding available via the Home Aid Agency. Written correspondence has generally been pinned to the external door to the left hand side of the property owing to confirmation that the owner occupier enters and exits the property via this route. Environmental Health have been unable to take any formal action to date owing to lack of substantiated evidence.
- 3.7 In line with best guidance two further letters requesting improvements be made were hand served and attached to the side door of the property on 05/09/2014 and 20/10/2014.
- 3.8 A site inspection made on 04/11/2014 noted that no improvements had been made, and further complaints continued to be received which advised that the rear garden was also in a poor overgrown condition.
- 3.9 Officers arranged to visit a neighbouring property to photograph the rear of the site.
- 3.10 A notice was hand served under Section 215 of the Town and Country Planning Act 1990 (as amended) on 19/11/2014. A copy of the notice is attached as Appendix A.
- 3.11 The notice had a right of appeal, but this was not exercised by the owner of the property. The notice therefore came into effect on 17 December 2014.

The notice required:

- “-Remove any unrequired vehicles from the land
- Repair all broken windows on the property
- Repair and replace any damaged guttering and fascia boards on the property
- Cut back and remove all overgrown vegetation from the front side and rear gardens

-Cut back and remove overgrown vegetation from the front of the property.”

The notice required compliance by 14.01.2014.

- 3.12 A site inspection made on 27/01/15 showed that no works had been carried out.
- 3.13 The owner has failed to respond to any requests from the local planning authority and has also failed to engage with officers.
- 3.14 Officers from both the planning and environmental health department have assessed the issues on site and have tried to encourage improvements to be made. Unfortunately the owner has not engaged with the City Council.
- 3.15 This issue has previously been looked at by the planning enforcement section in 2009. At the time of this investigation the condition of the land was not considered to be significantly adverse to the visual amenity of the local area.

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 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.
- 4.5 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.

- 4.6 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 a Section 215 notice are as follows:

- Take no further action
- 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 In considering the options officers have considered which option is most expedient, proportionate and the option which will maintain the integrity of the planning system.

6 CONCLUSIONS

6.1 Officers have spent a long period of time trying to negotiate with the owner to try and improve the situation. This was not successful and a formal notice was therefore served. Failure to comply with the notice is a criminal offence.

7 RECOMMENDATIONS

7.1 To give delegated authority to the Head of Planning and the Head of legal services jointly, to take prosecution action on behalf of the Council for failure to comply with the requirements of the Section 215 Notice.

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

APPENDICES

Appendix A- A copy of the Section 215 Notice served by the planning department

Appendix B- Site plan

Appendix C- Photographs denoting the enforcement issues on the site.

EN/0047/14 – 49 Woodlark Road, Cambridge

To inspect these documents contact Alison Twyford on extension (45)7326

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Report file: N:\Development Control\Planning\Enforcement\ Committee Reports\49 Woodlark Road Prosecution Report

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