

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 04/03/15

WARD: Abbey

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

45 Elfleda Road, Cambridge Unauthorised operational development relating to the erection of a roof dormer

SUMMARY	<p>A planning enforcement investigation has identified unauthorised development at the above address, namely the erection of a roof dormer without planning permission.</p> <p>The development is not acceptable because it is considered to be out of keeping with the property and local area.</p>
RECOMMENDATION	<p>That enforcement action is authorised in respect of the breach of planning control to serve an enforcement notice.</p>

1 INTRODUCTION

This report seeks delegated authority to serve an Enforcement Notice to address the unauthorised development at 45 Elfleda Road, Cambridge, namely, "Without planning permission the erection of a roof dormer." See appendix A for site plan.

2 PLANNING HISTORY

Reference	Description	Outcome
13/0265/FUL	First floor side extension	Perm
14/1998/FUL	Loft conversion	Application invalid at time

3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

- 3.1 Officers received a complaint in October 2014 advising that a roof dormer was under construction that may require planning permission.
- 3.2 A site inspection was made in which it was confirmed that the works undertaken failed to benefit from permitted development by virtue of its size and also the materials used which significantly alter the external appearance of the dwelling, and as such requires formal planning permission.
- 3.3 Officers considered that the works as built would be unlikely to be supported if an application were to be submitted. A letter was sent inviting an application for an amended scheme/proposal.
- 3.4 No application was received within the period originally requested and officers therefore contacted the owners to advise that formal action was being considered.
- 3.5 Contact was received from the owners in which they stated that the works had been constructed under permitted development. Advice was given as to why the works failed to benefit from the provisions and an extension was given to allow an application to be made.
- 3.6 An application was received on 13.12.2014 but required further information to validate it. Two letters have been sent chasing the outstanding information.
- 3.7 To date the application remains invalid and the drawings that have been submitted show the dormer as built, which officers have already advised is unlikely to be supported and therefore refused.
- 3.8 Officers have tried to resolve the breach of planning control informally. A number of months have passed and the dormer is substantially complete.
- 3.9 Officers have advised the owner of 45 Elfleda Road that this report has been prepared for members to consider the service of an Enforcement Notice for the unauthorised operational development.
- 3.10 Particular consideration has been given to the steps to comply. The steps require the full removal of the dormer as, by virtue of the

materials used not matching the existing dwelling, it cannot be reduced to comply with permitted development allowances.

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 opinion of planning officers loft dormer by reason of its size, protrusion over the building line and materials is out of keeping with the main dwelling and the locality. The development would therefore be contrary to policies 3/4 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 and the enforcement case would be closed.

5 RECOMMENDATION

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 roof dormer at 45 Elfleda Road 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 roof dormer constructed and return the roof to its original condition.

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.

Planning officers consider that if an application for the operational development was submitted it would not be supported because of its size, protrusion over the building line and materials which are considered to be out of keeping with the main dwelling and the locality. The development would therefore be contrary to policies 3/4 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.

BACKGROUND PAPERS

EN/0311/14- Investigation papers

APPENDICES

- Appendix A** Site plan of the property
Appendix B Photographs of the structure as built.

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

Report file: N:\Development Control\Planning\Enforcement\ Committee Reports\ 45 Elfleda Road EN report March 2015