

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 29/04/15

WARD: Petersfield

PLANNING ENFORCEMENT CONTROL ENFORCEMENT NOTICE REPORT

22 Kingston Street, Cambridge Unauthorised operational development: Erection of a loft dormer

SUMMARY	<p>A planning enforcement investigation has identified unauthorised development at the above address, namely the erection of a loft dormer without planning permission.</p> <p>The development is not acceptable because it is considered to have a detrimental impact on the visual amenity of the Conservation Area.</p>
RECOMMENDATION	<p>That enforcement action is authorised in respect of the breach of planning control.</p>

1 INTRODUCTION

This report seeks delegated authority to serve an Enforcement Notice to address the unauthorised development at 22 Kingston Street, Cambridge namely, "The erection of loft dormer without planning permission"

See appendix A for site plan and photographs of the loft dormer as seen from Mill Road.

2 PLANNING HISTORY

- | 2.1 Reference | Description | Status |
|----------------------|-------------------------------|---------------|
| 14/1379/FUL | Rear dormer with raised ridge | Refused |
- 2.2 The refusal of application reference 14/1379/FUL is the subject of an appeal to the Planning Inspectorate. This refusal related to a revised dormer design and not the dormer which had already been constructed and which is the subject of this report. Consequently, should the appeal be allowed it would not regularise the dormer as currently constructed.
- 2.3 No planning application has been received for the loft dormer which has been constructed at 22 Kingston Street.

3 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

- 3.1 22 Kingston Street is a terraced Victorian property. The site falls within the Conservation Area. The area is characterised by residential development, but is close to local amenities such as shops, restaurants etc. situated along Mill Road. The site falls within a Controlled Parking Zone. The rear elevation of properties on Kingston Street are highly visible from vantage points on Mill Road.
- 3.2 In June 2014 Enforcement Officers received a complaint that a loft dormer had been constructed at 22 Kingston Street without the necessary planning permission.
- 3.3 Building Control officers provided enforcement officers with photographs of the loft dormer at 22 Kingston Street which were taken in connection with their investigation into unauthorised works / contraventions.
- 3.4 Planning officers advised that the dormer that has been constructed is highly visible from the public domain and out of keeping with the Conservation Area and therefore a retrospective planning application would be unlikely to gain support.
- 3.5 Enforcement officers advised the owner's agent that a retrospective planning application for the current dormer was very unlikely to gain officer support and therefore officers would be seeking an application for a revised and reduced design of dormer.

- 3.6 On 11 September 2014 application reference 14/1379/FUL was submitted for a revised dormer design. The application was refused on 4 December 2014 and an appeal has been lodged with the Planning Inspectorate.
- 3.7 If the appeal against the refusal of 14/1379/FUL is upheld by the Inspectorate there is no guarantee that the permission for the revised dormer design will be implemented. Therefore officers are seeking the authority to serve an enforcement notice to address the unauthorised loft dormer and remedy the breach of planning control. As previously stated, this application does not reflect what has been built at the site and so if an appeal is allowed it would not regularise the breach of planning control.
- 3.8 The service of a notice can be appealed to the Planning Inspectorate and, provided that the appeal against the refusal of planning permission is still being determined, the appeals can be dealt with in tandem.
- 3.9 Officers have advised the owner of 22 Kingston Street and all interested parties that this report has been prepared for members to consider the service of an Enforcement Notice for unauthorised operational development.
- 3.10 The works implemented are different from those refused under planning reference 14/1379/FUL. The development undertaken is not considered acceptable and therefore requires removal.

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 rear elevation of the terrace is highly visible from the public domain (from the access to the City Council's Mill Road depot) and the informal opinion from planning officers is that the loft dormer has a detrimental impact on the visual amenity of adjoining properties and the Conservation Area. The development is therefore contrary to policies 3/4, 3/7 and 3/14 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 Enforcement Policy and the City Council's Corporate Enforcement Policy.

4.6 Consideration should be given to the Human Rights Act 1998 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 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 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

- 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 rear loft dormer at 22 Kingston Street 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 loft dormer extension from the property and reinstate the roof to the condition prior to the unauthorised development taking place.

5.3 Period for Compliance:

12 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 due to the highly visible location of the loft dormer and its unacceptable effect on the character of the Conservation Area. The development is therefore contrary to policies 3/4, 3/7 and 3/14 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 Act 1998 and the Council has also had regard to its public sector equality duty (PSED) under S.149 of the Equality Act 2010.

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.

BACKGROUND PAPER: Planning application 14/1379/FUL

APPENDIX A: Site plan of the property and photograph of the dormer

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