

## CAMBRIDGE CITY COUNCIL

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REPORT OF: Head of Planning Services

TO: Main Planning Committee DATE: 03/06/15

WARD: All

### **PLANNING ENFORCEMENT CONTROL UPDATE REPORT AND REVIEW OF AUTHORISED ENFORCEMENT ACTION**

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

<b>SUMMARY</b>	<p>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. The notice was not complied with as required and a report requesting authority to prosecute for non-compliance with the notice was granted at the Planning Committee in March 2015.</p> <p>Significant improvements have been made at the property which shows that the original Section 215 Notice has now largely been complied with. In light of the improvements officers consider that it would not be in the public interest to pursue a prosecution at this time and therefore request authority to allow a discretionary period to continue to undertake works required by the notice with a view to serve a simple caution as an alternative if the notice is fully complied with.</p>
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RECOMMENDATION	The Committee agrees to not pursue the prosecution proceedings previously authorised at present, and that authorise a 3 month discretionary period to allow works required by the notice to be completed with a view to serve a simple caution as an alternative if the notice is fully complied with
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## **INTRODUCTION**

- 1.1 This case relates to a property which was considered to have an adverse effect on the local area as a result of its detrimental impact on visual amenity.
- 1.2 Enforcement action was pursued in the form of a Section 215 Notice which required improvements to be made to the property. The notice was not complied with during the required period, but significant improvements have since been made, following the grant of authority to prosecute for non-compliance with the notice. In light of the improvements made Officers consider that an alternative enforcement approach may now be more appropriate.

## **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 A.

### **3.2 ENFORCEMENT INVESTIGATION**

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

3.3 A notice was hand served under Section 215 of the Town and Country Planning Act 1990 (as amended) on 19<sup>th</sup> November 2014. A copy of the notice is attached as Appendix B.

3.4 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<sup>th</sup> January 2015.

3.5 A site inspection made on 27<sup>th</sup> January 15 showed that no works had been carried out.

3.6 An enforcement report seeking authority to prosecute for non-compliance with the Section 215 Notice was brought before the Planning Committee on the 4th March 2015. Concerns were discussed at the meeting regarding the choice of action recommended by Officers, and it was questioned if direct action would be more appropriate to achieve the goal originally required by the Section 215 Notice. Officers advised that prosecution for non-compliance with the notice was the next appropriate enforcement step at that time. Authority to prosecute was subsequently granted.

3.7 Prior to the March Committee no contact had been received from the owner of the property.

3.8 On 11<sup>th</sup> March 2015 the owner visited Officers at the Guildhall and advised that he intended to undertake works at the property and would be making improvements. Officers advised that authority had been granted to prosecute but encouraged any improvements that could be made. It was agreed that a visit would be made at the end of the month to see the improvements the owner had made.

3.9 On 31<sup>st</sup> March a site visit was made to the property. Significant improvements were noted on site. Photographs showing the property “before and after” are attached as Appendix C to illustrate

the works undertaken. Officers advised the owner to continue with the improvements he was intending and confirmed that the case would be reviewed by senior officers.

3.10 A further visit was made on 15 May 2015 in which officers noted that some further progress had been made on the rear garden, but that momentum appeared to have slowed slightly. The outstanding works still required as detailed in the Notice were:

“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 ....rear garden”

3.11 In light of the improvements made officers consider that the original objective of improving the condition of the land has been achieved in part, but that further works are required which include repairs to broken windows, fascias and guttering and the property and the removal of overgrown vegetation from the rear garden.

3.12 Whilst it is vitally important to maintain the integrity of the planning regime officers are also mindful that enforcement action is discretionary and should be proportionate. Consideration has also been given as to whether prosecution proceedings would remain in the public interest.

3.13 In this particular situation officers consider that an alternative enforcement approach may now be more appropriate. This report therefore asks the Committee to consider an alternative approach to the original enforcement action proposed which will allow the steps taken to remain proportionate.

#### **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 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 under S.149 of the Equality Act 2010. 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 Committee should reconsider 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.
- 5.2 Significant improvements have been made since authority to prosecute was granted. There is still some improvement to be made, and this authority may still be required.
- 5.3 Officers are aware that the owner is carrying out the work in his free time, and the weather and lighter evenings over the coming months is likely to provide an opportunity to complete the outstanding parts that were detailed in the original notice. The owner has verbally confirmed to officers that he intends to carry out further works during the site visit of 31 March 2015.

- 5.4 Officers consider that a Simple Caution could be offered in the future, should the original notice be complied with in full, instead of the prosecution. This may be a more suitable course of action if all of the required improvements are made to the property and the owner agrees to accept it. A Simple Caution can remain on file and used in evidence for the next two years, should any future action be required.
- 5.5 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. This has included continuing with prosecution proceedings and taking no further action.

## 6 CONCLUSIONS

- 6.1 The initial issues that were of concern have now been resolved in part. Significant improvements have been made but some work is still required. Enforcement action should be proportionate and not merely punitive in its approach. A period to allow further works to be carried out, followed by a Simple Caution (which will require an admission of guilt from the owner and his acceptance) could be considered more appropriate if all of the improvements required in the original S215 Notice are made. If the improvements are not fully achieved then officers could continue with prosecution proceedings as already authorised.

## 7 RECOMMENDATIONS

- 7.1 To give delegated authority to the Head of Planning to issue a Simple Caution for failure to undertake works required by a Notice issued under Section 215 of the Town and Country Planning Act 1990 (as amended) within the required timescale if all of the improvements have been made by 3 September 2015. (If the improvements are not made or if an admission of guilt and acceptance of the simple caution are not forthcoming, the prosecution proceedings authorised at the March Committee could still be taken forward if required.)

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

## APPENDICES

**Appendix A-** Site plan

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

**Appendix C-** Photographs showing the situation on site “before and after”.

EN/0047/14 – 49 Woodlark Road, Cambridge

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

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

Report file: N:\Development Control\Planning\Enforcement\ Committee Reports\UPDATE report for 49 Woodlark Road requesting simple caution.

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