

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 1 July 2015

WARD: Queen Ediths

PLANNING ENFORCEMENT REPORT FOR:

Address: 27 Babraham Road, Cambridge Details of Breach of Planning Control: Material change of use

SUMMARY	<p>In June 2014 members of the South Area Committee authorised the service of two enforcement notices for material change of use of 27 Babraham Road for the storage of ice cream vans.</p> <p>Notice 1: for unauthorised change of use of a car port garage extension for the storage of ice cream vans.</p> <p>Notice served and appealed. Appeal dismissed 30 April 2015</p> <p>Notice 2: for breach of condition 2 of C/97/0695 which states, 'The ice cream vans, when not in use, shall be stored within the existing garages at all times with the doors closed'.</p> <p>Notice not served.</p>
RECOMMENDATION	<p>That members note the content of this report accept the recommendation of officers not to serve the outstanding enforcement notice for Breach of Condition 2 of C/97/0695 that was authorised in June 2014.</p>

1 INTRODUCTION

- 1.1 27 Babraham Road is a large semi-detached property located on the north west side of the Babraham Road. The house is situated within a large plot and set back from the road behind a brick boundary wall and electronic gates. At the front of the property there is a paved forecourt area with a large three bay garage and a two bay car port extension.

Appendix A contains a plan of the site and an aerial photograph showing the extent of the garages and forecourt.

- 1.2 The area surrounding 27 Babraham Road is characterised by similar detached houses in large plots. Babraham Road (A1307) is an arterial road which provides access to Cambridge from the south-east. The adjacent dwelling at 29 Babraham Road is the last property on the on the edge of the built up area, beyond which is agricultural land which is designated as Green Belt.
- 1.3 The property is not within a Conservation Area or a Controlled Parking Zone.

2 PLANNING HISTORY

- 2.1 A summary of the relevant planning history can be found below and **Appendix B** contains a full planning history for the property.

- 2.2 In April 1993 planning permission was granted for a detached three-bay garage in the front forecourt of 27 Babraham Road. In 1997 permission was granted to allow the property to be used as a dwelling house and for the storage of two ice cream vans. This was subject to the following conditions:

1. The number of ice-cream vans stored at the premises shall not exceed two vehicles.
Reason: To protect the residential amenity of adjacent residential occupiers.
2. The ice-cream vans, when not in use, shall be stored within the existing garage at all times with the doors closed.
Reason: To protect the visual amenity of the area.

3. There shall be no deliveries to the premises associated with the ice-cream business.

Reason: To protect the amenity of adjacent residential properties.

4. The garage shall be used for the parking of no more than two ice-cream vans and the parking of domestic vehicles only and for no other purpose without express consent to be given in writing by the local planning authority.

Reason: To protect the residential amenity of adjacent residential properties.

2.3 In 2001 an application for a 2 bay car port extension to the 3 bay garage was permitted. There were no conditions regulating the use of the car port but an informative stated that the car port may not be used for the storage of commercial vehicles without the express permission of the local planning authority.

2.4 In August 2012, following a planning enforcement inquiry into allegations that the conditions attached to planning permission reference C/97/0695/FP were not being complied with, an application was made to vary the conditions attached to the permission for the garage. The application was withdrawn

2.5 In November 2012 an application was submitted for a Certificate of Lawful Use or Development relating to the use of 27 Babraham Road. The application sought to confirm the lawfulness of the following:

- The storage of four ice cream vans
- The stationing of a refrigerated storage unit
- Acceptance of deliveries in connection with an ice cream business
- Mixed C3/B1 use

The application was refused under delegated powers in January 2013 on the basis that the applicant had not demonstrated on a balance of probabilities that the breach of conditions and use had continued for 10 years.

2.6 The breaches of the conditions attached to C/97/0695/FP were ongoing and so in March 2013 a report recommending the service of enforcement notices to address each of the breaches of planning conditions and the increased business use of the property

was put before members of the South Area Committee. The Committee authorised the service of five enforcement notices for breaches of the planning conditions attached to C/97/0695/FP. The Committee agreed that the service of the notices would be dependent on the result of an Appeal against the refusal to issue the Certificate of Lawfulness which had been submitted to the Planning Inspectorate and was pending determination. On 23 July 2013 the Inspector allowed the appeal and granted the Certificate of Lawfulness.

Appendix C contains a copy of the Inspector's Decision letter/Certificate of Lawfulness.

3 ENFORCEMENT BACKGROUND

- 3.1 Following the grant of the Certificate of Lawfulness the Council continued to receive complaints from the occupiers of the houses on either side of 27 Babraham Road about the unacceptable and unauthorised level of business activity on the site. The complaints concerned the 'very noisy business activities' taking place at the site and queries were raised as to whether these activities fell into the scope of the Lawful Development Certificate.
- 3.2 The Certificate confirmed that certain specific planning uses of the site are lawful but it only relates to those specific uses that were the subject of the application and the complainants were concerned about the expansion of the business use over a greater part of the property and the effect that it had on their amenity.
- 3.3 The Head of Planning Services prepared a Position Statement which was intended to clarify the Council's position with regard to the lawful use of the site. The statement set out that the appellant had only sought to establish a limited mixed use of the site and although this included a commercial element, this element was strictly controlled and limited by condition. The Council's opinion was that the appellant had not sought to establish a more general and extensive business use of the site which would have included the use of the car port extension for the storage of ice cream vans or the storage of ice cream vans on the forecourt of the property.

Appendix D contains a copy of the Position Statement from November 2013.

- 3.4 Officers from Environmental Services also investigated the complaints regarding noise caused by the business activities at 27 Babraham Road. Officers from Planning and Environmental Services visited the site together to assess harm to amenity caused by the business use and discussed the running of the engines of the ice cream vans, the cleaning of the vans, the general and mechanical maintenance of the vans and the slamming of the doors of the refrigeration unit.
- 3.5 In April 2014 officers took two enforcement reports to the Council's South Area Committee in respect of ongoing breaches of planning condition at 27 Babraham Road and the business use of the property. The consideration of the reports was postponed until June 2014 because one of the complainants who attended the meeting was taken very ill and collapsed.

Appendix E contains copies of the enforcement reports.

3.6 **Enforcement notice for Breach of Condition 2 of C/97/0695**

One enforcement report provided an update on the effect that the grant of the Certificate had on the authorisation to serve five enforcement notices. In the light of the grant of the Certificate of Lawfulness officers recommended that only one of the notices be served.

In June 2014 the South Area Committee approved the recommendation to serve an enforcement notice for Breach of condition 2 of C/97/0695 to address the ice cream vans stored on the forecourt.

Condition 2 states: The ice cream vans, when not in use, shall be stored within the existing garages at all times with the doors closed.

In the light of the grant of the Certificate of Lawfulness, the officer recommendation was that the wording of the notice would not require the doors of the garages to be closed.

3.7 **Enforcement notice for Material Change of Use of the car port**

The second report requested the authority to serve an enforcement notice for the material change of use of the car port extension for the storage of ice cream vans.

The recommendation to serve this notice was based on comments made by the Inspector on paragraph 14 of his decision which stated:

.....condition 2 of the 1997 permission restricted the use of the property as a whole. When it limited storage of ice cream vans to storage within the "existing garage", that meant the existing 3 bay garage shown on the application plan. The Council would have to consider whether it would be expedient to enforce against the storage of ice cream vans within the 2 bay extension.

In June 2014 the South Area Committee approved the service of the notice to address the storage of ice cream vans in the two bay extension.

3.8 Both enforcement notices were intended to address the planning harm caused by the expansion of the business use of 27 Babraham Road. The reasons given for the service of the notices was that, unless the business use of 27 Babraham Road is strictly controlled, the additional noise and disturbance to neighbours, over and above that associated with the storage of ice cream vans, has adverse impacts on the residential amenities of occupiers of neighbouring house.

3.9 The enforcement notice for material change of use of the car port was served in July 2014. The service of the notice was appealed to the Planning Inspectorate who determined the appeal by way of a Public Inquiry. On 30 April 2015 the appeal was allowed. The Inspector's decision was that the mixed use of 27 Babraham Road, allowed by the 1997 permission, applies to the whole site and therefore the use of the car port to store ice cream vans is not a material change of use. The notice was quashed and so the car port at 27 Babraham Road can continue to be used to store ice cream vans.

Appendix F contains a copy of the Appeal decision.

- 3.10 The notice for Breach of condition 2 of C/97/0695 was not served. In the light of the Inspectorate's view that the 1997 permission and the Certificate of Lawfulness authorise a mixed business use of the site that does not restrict how and where the ice cream vans are stored officers are seeking the authority not to serve this notice.

Paragraph 8 of this report contains the detailed recommendation.

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 The Inspector who granted the Certificate of Lawfulness gave a clear indication in his decision (at paragraph 14) as to where the ice cream vans should be stored, this was the reason that enforcement action was pursued in relation to the use of the two bay garage.

- 4.4 In contrast, the Inspector who determined the appeal against the enforcement notice did not give significant weight to the supplementary plan issued with the Certificate of Lawfulness which related to the original garage or the previous Inspector's comments regarding enforcement action relating to the use of the two bay extension for the storage of ice cream vans.
- 4.5 Officers have received repeated complaints about the breaches of planning control at 27 Babraham Road over a number of years and as a result of investigations, enforcement action has been authorised by members. However, the Inspectorate's decisions to allow the appeal relating to the Certificate of Lawfulness and to quash the Enforcement notice for material change of use has clarified the Inspectors' view of the planning status of the property which officers have noted.
- 4.6 The Inspectorate's view that 27 Babraham Road has a lawful mixed business and residential use across the whole of the planning unit outweighs the consideration and application of local plan policies.

5 INVOLEMENT OF OTHER COUNCIL DEPARTMENTS OR OTHER AGENCIES

- 5.1 During the course of the investigation contact has been made with Environmental Services to seek to address issues at the site which fall outside of the planning enforcement remit. Environmental Services did not establish that there was a statutory noise from the business activities at 27 Babraham Road however in September 2014 the owner of the property signed a voluntary agreement regarding steps required to reduce the disturbance emanating from 27 Babraham Road.

6 CONSIDERATION OF ENFORCEMENT OPTIONS

6.1 OPTIONS

Option 1: The service of the notice for breach of condition

Members can instruct officers to serve the outstanding enforcement notice. Officers consider that if the service of the enforcement notice for breach of condition 2 of C/97/0695/CP is served, it is likely that the service would be appealed to the Planning Inspectorate. The two previous appeals relating to the use of 27 Babraham Road have been upheld and established the Inspectors' view of the scope of the 1997 permission and Certificate of Lawfulness. Therefore officers consider that if the notice is served and appealed the Inspectorate is likely to allow the appeal and quash the notice on the grounds that there is no breach of planning control. This would also put the Authority at risk of costs being awarded to the appellant in the light of the clear planning background to this site.

Option 2: That the enforcement notice for breach of condition 2 of C/97/0695 is not served.

Members can instruct officers not to serve the enforcement notice that had been authorised in June 2014. Officers do not consider that the decision not to serve this notice will have any additional impact on the residential amenity of the occupants of neighbouring properties and therefore it is not considered expedient to pursue this course of action.

6.2 Officers recommend that members choose to pursue Option 2.

7 POLICY CONSIDERATIONS

7.1 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.

7.2 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.

7.3 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 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.

7.4 Officers consider that the service of an Enforcement Notice is not appropriate in this instance.

8 RECOMMENDATION

8.1 That members instruct officers not to serve the enforcement notice for Breach of condition 2 of C/97/0695 that was authorised in June 2014.

BACKGROUND PAPERS

Planning application reference C/97/0695/FP

APPENDICES

Appendix A	site plan and aerial photograph
Appendix B	planning history of 27 Babraham Road
Appendix C	Inspector's decision and Certificate of Lawfulness
Appendix D	Planning position statement
Appendix E	Enforcement reports: South Area Committee June 14
Appendix F	Appeal decision relating to Enforcement notice

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

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