

REPORT OF: Head of Planning Services

TO: South Area Committee DATE: 23/06/14

WARD: Queen Ediths

**PLANNING ENFORCEMENT CONTROL  
ENFORCEMENT NOTICE REPORT**

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**27 Babraham Road, Cambridge  
Unauthorised storage of a hot potato cart and use of a car port  
garage extension for the storage of ice cream vans**

SUMMARY	<p>Planning enforcement investigations have identified an unauthorised storage of a hot potato cart and use of a car port garage extension for the storage of ice cream vans.</p> <p>The storage of the hot potato cart is ancillary to the use of the premises as a dwelling house.</p> <p>The use of the car port garage extension for the storage of ice cream vans represents an unacceptable expansion of the lawful non-residential use of the site and has an adverse impact on residential amenity.</p>
RECOMMENDATION	<p>That enforcement action be authorised in respect of the unauthorised change of use of a car port garage extension for the storage of ice cream vans.</p>

**1 INTRODUCTION**

- 1.1 This report seeks delegated authority to serve an Enforcement Notice to address the unauthorised change of use of a car port garage extension for the storage of ice cream vans at 27 Babraham Road (see appendix A for site plan).

## **2 PLANNING HISTORY**

See Appendix B.

## **3 THE INSPECTORS DECISION AND THE TERMS OF THE CERTIFICATE OF LAWFUL USE OR DEVELOPMENT ('THE CERTIFICATE')**

3.1 A copy of the Inspector's Decision letter is attached at Appendix C. The Inspector allowed the appeal and in doing so issued a Lawful Development Certificate which is embedded in the Decision letter. The Certificate allows for the following:

- The storage of up to three ice cream vans for commercial purposes in the garage referred to in conditions 2 and 4 of planning permission reference C/97/0695/FP and shown hatched on an attached plan but with the garage doors open in breach of conditions 1, 2 and 4 of the 1997 permission. (The plan identifies the original garage only and not the car port extension)
- The acceptance of deliveries in connection with the ice cream business in breach of condition 3 of the 1997 permission
- The stationing of a refrigerated storage unit, of a size equivalent to or smaller than the unit stationed on the site in November 2012 located between the dwelling and the garage as extended.

## **4 PLANNING STATUS OF 27 BABRAHAM ROAD NOTE**

4.1 It is the view of officers that the Inspectors decision is clear; however for the avoidance of doubt a Note has been prepared which sets out the Council's position regarding the Planning Status of 27 Babraham Road. A copy of the Note is attached at Appendix D. A copy of the Note has been sent to the appellant and the neighbours either side of 27 Babraham Road who have raised concerns about the way in which 27 Babraham Road is used.

4.2 The certificate has confirmed that certain planning uses of the site are lawful but it only relates to those uses that were the subject of the application. The planning permission taken with the certificate determines the lawful uses of the site. In the opinion of officers neither the use of the car port extension for the storage of ice cream

vans nor the storage of the hot potato cart are covered by the planning permission or the certificate.

## **5 BACKGROUND/TIMELINE OF ENFORCEMENT INVESTIGATION**

- 5.1 An enforcement investigation has remained open throughout the determination of the application for a Certificate of Lawful Use or Development and the related appeal. The view of officers is that planning permission reference C/97/0695/FP as modified by the certificate clearly establishes which activities can lawfully be carried out at 27 Babraham Road. The certificate only covers those uses that were part of the lawful development certificate application. The certificate does not cover all the activities that are being carried out at the premises. It is for the Council to assess whether or not other activities being carried out at the premises can be considered a lawful use of the C3 dwelling. The purpose of the Note on the Planning Status of 27 Babraham Road was to set out the Council's position in detail following the outcome of the Appeal.
- 5.2 Since the production of the Note, officers have been contacted by local residents who have raised concerns about the activities which are currently being undertaken at 27 Babraham Road. In addition to the concerns regarding the planning use of the property their concerns include issues such as noise nuisance which fall outside planning control and a joint investigation by Planning Enforcement officers and Environmental Health officers has been initiated.
- 5.3 A joint site visit was carried out by Planning Enforcement officers and Environmental Health officers on 1 April 2014. In respect of the storage of the hot potato cart and the use of the car port garage extension for storage of ice cream vans the following observations were made:
- The hot potato cart is stored between the refrigeration units and the house frontage beside the boundary with 25 Babraham Road. It is stored in the open, on the forecourt and not in a garage.
  - Two ice cream vans were being stored in the garage extension.
  - The garage approved by C/97/0695/FP is being used for storage of domestic vehicles and for the storage of goods associated with the ice cream business.

- 5.4 Since the production of the Note there has been on-going correspondence between officers and the site owner's legal representative. The issues raised and the officer position is set out below:

Use of site for storage of hot potato cart

*Operator's Legal representative's view*

- 5.5 The storage of the hot potato cart could be regarded as an ancillary use to the main use of the property as a dwelling.

*Officer's view*

- 5.6 The lawful use of 27 Babraham Road is as a dwelling with storage of ice cream vans permitted in the garage. The storage of the hot potato cart is not ancillary to the storage of ice cream vans but could be regarded as ancillary to the use as a dwelling. In order to establish that it is an ancillary use the Council would need to be convinced that the storage of the hot potato cart does not conflict with the use as a dwelling and is not out of character with that use.
- 5.7 The storage of the hot potato cart results in some additional comings and goings to the premises and could be visible from beyond the boundaries of the site. The Food Team within the Environment and Refuse service has advised that the food premises registration form gives 27 Babraham Road as the address where the cart is stored whilst not trading and that the cart is cleaned at the premises. It would be difficult to demonstrate that these impacts differ from those normally associated with any operation of a business from home for example a painter and decorator storing his van overnight, cleaning it and loading it up.
- 5.8 In order to justify the service of an Enforcement Notice the Council would need to produce evidence to demonstrate that the storage of the hot potato cart is not an ancillary use to the principal use as a dwelling. It is the view of officers that it would be difficult to produce evidence of this in the event that an Enforcement Notice is served and an appeal submitted. This could result in the Enforcement Notice being quashed and would leave the Council open to a claim for costs.
- 5.9 The current position which is adopted by officers in relation to the storage of the hot potato cart differs from that set out in the Planning Status Note. The Note states that 'There is no permission or lawful

use for the storage/stationing of a hot potato cart at the property and this is not considered to be an ancillary storage activity so it not lawful'. The reason for the change of view is that in the light of comments made by the applicant and his legal representative and on reflection it is not going to be possible to provide evidence to demonstrate that the hot potato cart is not ancillary to the use as a dwelling. The fact that the storage of the hot potato cart is not referred to in the planning permission as modified by the certificate does not make it an unlawful use.

5.10 At the time of the preparation of the Status Note officers were considering whether the storage of the hot potato cart is ancillary to the commercial activity at 27 Babraham Road. However, as raised by the operator's legal representative, there is an argument for saying that the current use of land for storage of a hot potato cart is ancillary to the use as a dwellinghouse. At present officers cannot disagree with this argument. However if the storage of hot potato cart use intensified, for example through the storage of additional carts, then the ancillary test would need to be re-applied.

5.11 It is the view of officers that the storage of the hot potato cart is an ancillary and lawful use and that it is not expedient to pursue enforcement action to secure cessation of the use.

#### Use of car port garage extension for storage of ice cream vans

##### *Operator's Legal representative's view*

5.12 The use of car port garage extension for storage of ice cream vans is lawful because either condition 2 of the 1997 permission which permits 3 ice cream vans to be stored on the premises could be regarded as applying to the premises as a whole or that the extension has acquired its own immunity by use for more than ten years.

##### *Officer's view*

5.13 The car port garage extension was permitted in 2001. There are no conditions restricting the use of the garage extension or permitting the use for storage of ice cream vans. The use of the garage extension for storage of ice cream vans creates space in the original garage which is used for the storage of stock and this has resulted in an expansion of the ice cream van storage use over a greater part of the property. The original intention of the conditions attached to

planning permission reference C/97/0695/FP was to limit the impact of the non-residential use. The certificate granted at appeal does not change this approach and the appellant did not seek to establish the lawful use of the garage extension as part of the appeal.

- 5.14 It is considered expedient to pursue enforcement action to secure cessation of the use to ensure that the restrictions placed on a non-residential use within a residential area are effective in the interests of the protection of residential amenity.

## **6 ASSESSMENT AGAINST PLANNING POLICY AND OTHER MATERIAL CONSIDERATIONS**

- 6.1 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.’

- 6.2 It is the view of officers that the principle of taking enforcement action is appropriate in this case and in investigating the breach of planning control and setting out recommendations, officers have been mindful of and complied with the Planning Investigation Service Policy and the City Council’s Enforcement Concordat.

- 6.3 Consideration has also been given to the Human Rights Act 2000 and to the Equalities Act 2010. 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. 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. The protection afforded by the Human Rights Act 2000 and the Equalities Act 2010 do not outweigh the reasons for proceeding with planning enforcement.

- 6.4 An Enforcement Notice carries with it a right of appeal to the Planning Inspectorate and the Inspectorate have the power to vary the Notice to amend the steps to comply.
- 6.5 In reaching the view that enforcement action is necessary, Officers have assessed the unauthorised change of use of the car port garage extension for the storage of ice cream vans against Local Plan Policy and central government policy/guidance as follows.

*Assessment against Cambridge Local Plan 2006*

- 6.6 The relevant policy in the Local Plan is policy 4/13:

4/13 Pollution and Amenity

Development will only be permitted which:

- a. does not lead to significant adverse effects on health, the environment and amenity from pollution; or
- b. which can minimise any significant adverse effects through the use of appropriate reduction or mitigation measures.

Proposals that are sensitive to pollution, and located close to existing pollution sources, will be permitted only where adequate pollution mitigation measures are provided as part of the development package.

- 6.7 The use of the car port garage extension for storage of ice cream vans generates noise and disturbance over and above that associated with the lawful use of the site as a dwellinghouse and for the storage of three ice cream vans in the garage permitted under planning application reference C/97/0695/FP. In particular the use of the garage extension allows the garage to be used for storage associated with the storage of ice cream vans thereby expanding the area of the site given over to the business use. The degree of disturbance is such that it has an adverse impact on the amenities enjoyed by the occupiers of neighbouring properties. If an application for change of use of a car port garage extension for the storage of ice cream vans was to be submitted, officers would recommend refusal on the grounds of conflict with policy 4/13 of the Local Plan.

*Assessment against central government guidance*

- 6.8 Paragraph 123 of the NPPF provides the following guidance:

Planning policies and decisions should aim to:

- 1 avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
- 2 mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;
- 3 recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established and
- 4 identify and protect areas of tranquility which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

6.9 Point 4 is not relevant in this case. The site is bounded on each side by private gardens and could not be categorised as a protected area. Point 3 is also not relevant because nearby land uses have not changed. Points 1 and 2 are relevant.

6.10 The lawful use of 27 Babraham Road already has an adverse impact on the health and quality of life of nearby residents as reflected in comments made by them in correspondence with the Council. Continued use of the car port for storage of ice cream vans will exacerbate this impact. Whilst it may be possible to mitigate the impact of the use of the car port through conditions, in combination with other activities on at 27 Babraham Road this additional activity is not acceptable in terms of its impact on residential amenity. There is clear conflict with guidance provided by the NPPF.

6.11 Planning Practice Guidance offers the following advice in terms of how noise impact can be mitigated which is as follows:

How can the adverse effects of noise be mitigated?

This will depend on the type of development being considered and the character of the proposed location. In general, for noise making developments, there are four broad types of mitigation:

- engineering: reducing the noise generated at source and/or containing the noise generated;
- layout: where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings;
- using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;
- mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.

6.12 The dwellings close to 27 Babraham Road constitute 'sensitive receptors'. The conditions that were originally imposed on the use of the site were intended to control the use to a level that was acceptable in a residential area. This was achieved by conditions to restrict the number of ice cream vans, the location where they could be stored and limiting the use of the garage to storage for two ice cream vans only. The Certificate has broadened the lawful use of 27 Babraham Road by for example allowing three vans to be stored lawfully and storage in the garage with the doors open and allowing storage of a refrigeration unit. Officers are of the view that it would not be possible to satisfactorily control the impact of the use of the car port for storage of ice cream vans via conditions/obligations to a level that would not have harmful effect on residential amenity given the cumulative effect that these additional activities generate.

#### *Material Considerations*

6.13 It could be argued that to take enforcement action in this case would not be appropriate because it would have an adverse impact on the operation of a small business. However in this case the business is being conducted in a residential area and the need to protect the residential amenity of neighbours outweighs this material consideration. There are no other material considerations that would lead officers to conclude that enforcement action would not be appropriate.

## 7 RECOMMENDATIONS

7.1 The Committee is requested to consider the details of this report and any relevant representations made to them at this Committee, and approve the following:

1. To authorise the Head of Planning and the Head of Legal Services to prepare and serve 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 material change of use of the car port garage approved under planning reference C/01/0558/FP at 27 Babraham Road to business use for storage of ice cream vans specifying the steps to comply and the period for compliance set out in paragraphs 7.2 and 7.3, for the reasons contained in paragraph 7.4.
2. To delegate authority to the Head of Planning (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 notices

### Enforcement Notice – Use of the car port garage extension for storage of ice cream vans

#### 7.2 *Steps to comply*

Cease the use of the car port garage extension for storage of ice cream vans.

#### 7.3 *Period for compliance*

28 days after the date on which the Enforcement Notice takes effect.

#### 7.4 *Statement of Reasons for inclusion on the Notice:*

It appears to the Council that the breach of planning control namely the material change of use of the car port garage approved under planning reference C/01/0558/FP at 27 Babraham Road to business use for storage of ice cream vans, has occurred within the last 10 years.

The change of use of the car port garage extension for the storage of ice cream vans has given rise to additional noise and disturbance to neighbours over and above that associated with the storage of ice cream vans within the garage permitted under planning reference

C/97/0695/FP and an expansion of the extent of the business activities on the site resulting in an unacceptably adverse impact on their amenities.

The material change of use of the car port garage approved under planning reference C/01/0558/FP at 27 Babraham Road to business use for storage of ice cream vans has been undertaken without the benefit of planning permission and is contrary to policy 4/13 of the Cambridge Local Plan 2006, and to government guidance in Paragraph 123 of the National Planning Policy Framework 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 2000 and the Equalities Act 2010. 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). 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 protect which seek to protect residential amenity.

## **APPENDICES**

Appendix A	Site location plan
Appendix B	Planning History
Appendix C	Inspectors Decision (12/1438/CLUED)
Appendix D	Note on the Planning Status of 27 Babraham Road

The contact officer for queries on the report is Sarah Dyer on ext 7153.