

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 1 July 2015

WARD: Castle

PLANNING ENFORCEMENT REPORT FOR BREACH OF PLANNING CONDITION

Address: 213 Huntingdon Road, Cambridge

**Details of breach of planning control: breach of condition
relating to separate use of an annex**

SUMMARY	<p>This case concerns the property at 213 Huntingdon Road, Cambridge. The property comprises a house, annex and gardens. The lawful use of the property is residential. The lawful use of the annex is a residential use, ancillary to the main house. The ancillary use of the annex is preserved by condition 4 of planning permission (reference number 10/0691/FUL) that granted planning permission for development of the annex.</p> <p>Following complaints received, the Council's officers have investigated allegations that the annex has not been being used for ancillary use to the main house. Enforcement officers conclude that the owners of 213 Huntingdon Road, Cambridge have been letting and continue to let, the annex out to tenants who occupy it as a residential unit of accommodation separate to and not ancillary to the main house. The separate use of the annex breaches condition 4 of planning permission (reference number 10/0691/FUL) and forms the subject matter of this enforcement report.</p>
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RECOMMENDATION	That planning committee authorise enforcement action be taken in respect of the breach of condition 4 of planning permission reference number 10/0691/FUL and that the committee authorise the service an enforcement notice to address the breach of condition 4 of on planning permission reference number 10/0691/FUL.
NOTICE TYPE	Enforcement notice for Breach of Condition

1 INTRODUCTION / SITE DESCRIPTION

- 1.1 213 Huntingdon Road is a large two-storey detached dwelling dating from the 1930s which is located on the south western side of Huntingdon Road. The house has been extended following the grant of planning permission in 2004, 2006 and 2010. The property has a large rear garden and large area at the front which is set behind electronic gates.

The neighbouring plots to the north east and south west contain detached dwellings. The Travellers Rest Public House and Premier Inn hotel are located to the north west. There are warehouses and farm land to the south west and north east of the property.

The two storey self-contained annex, which is the subject of this report, is located within the boundary of 213 Huntingdon Road, Cambridge at the western boundary with 215 Huntingdon Road. Originally the annex was a small single storey, studio that did not form self-contained living quarters. However in 2010 planning permission (reference number 10/0691/FUL) was granted for the annex to be developed into a self-contained residential unit subject to conditions, in particular condition 4 that requires the annex be used solely in conjunction with and ancillary to 213 Huntingdon Road, Cambridge and that it shall not be separately used, occupied or let.

- 1.2 The site is not within a conservation area or the Controlled Parking Zone.
- 1.3 Appendix A contains a site plan of 213 Huntingdon Road.

2 PLANNING HISTORY

Reference	Description	Outcome
10/0691/FUL	First floor side extension	Approved with conditions
06/1360/FUL	Front entrance porch, rear conservatory and single storey front /side / rear extensions	Approved
C/04/1025	Single storey front extension, roof extension including two dormer" windows and a rear conservatory	Approved
C/03/1204	Erection of new fence and installation of automatic entrance gates	Approved

2.2 The most recent planning application, reference 10/0691/FUL, was for a first floor side extension of the former garage / studio to create a self-contained annex. It was the applicant's intention that this would house the owners' elderly relative.

2.3 Appendix B contains floor plans of the annex which were submitted with 10/0691/FUL and approved by the planning permission.

2.4 The application, which was approved on 30 September 2010, was subject to conditions. Condition 4 of planning permission reference 10/0691/FUL states:

"The development hereby permitted shall be used solely in conjunction with and ancillary to 213 Huntingdon Road, Cambridge and shall not be separately used, occupied or let.

Reason: To protect the amenity of the adjoining residential properties and to avoid the creation of a separate planning unit. (Cambridge Local Plan 2006 policies 3/4 and 4/13)".

3 BACKGROUND / ENFORCEMENT INVESTIGATION

- 3.1 On 29 August 2014 officers received a complaint alleging that the self-contained annex which had been created at the side of 213 Huntingdon Road was being used and let separately to the main house contrary to condition 4 of planning permission reference number 10/0691/FUL.
- 3.2 Officers contacted the owner and visited the property to view the annex and discuss its use. In September 2014 the owners of the property confirmed that they had recently let the annex out to tenants for separate use to that of the main house; prior to this the annex had remained empty since it was completed, due to changing family circumstances.
- 3.3 The owners were advised by officers that letting the annex out for use as a separate residential unit not ancillary to 213 Huntingdon Road, Cambridge breaches condition 4 of planning permission reference number 10/0691/FUL.
- 3.4 The plans in Appendix B confirm that the annex has all the facilities required for day to day independent living, it has its own front door which provides separate access and there is no inter connecting door between the annex and the main house at 213 Huntingdon Road, Cambridge. The tenants of the annex do not require access to the main house for any facilities. The officer assessment is clear that the annex is used as a separate planning unit and is not used as ancillary accommodation to the main house. The tenants of the annex are a separate family unit and do not access the main dwelling at the site in connection with their day to day living. The owners of the property have confirmed that the tenants live in the annex independently. Whilst the owners have advised that the tenants do have a key and can access the main house as they are personal friends, this arrangement is not necessary to the functioning of the annex. The fact that the annex is let out separately and is registered separately for council tax purposes also supports the officer view that the accommodation is not in ancillary residential use.
- 3.5 From September 2014 to March 2015 the owners of the property corresponded with officers regarding the breach and made a number of submissions relating to the links between the annex and the house and queried the level of planning harm caused by the ongoing breach of condition. The owners argue that the use of the annex by the tenants is not substantially any different from if the

annex had been occupied by an elderly relative which was their intention when the annex was constructed.

- 3.6 On 19 March 2015 officers met with the owners of the property and their planning agent to discuss the ongoing breach. Officers have advised that while planning permission (reference number 10/0691/FUL) granted permission for the annex to be self-contained, the annex must be used solely in conjunction and ancillary to 213 Huntingdon Road.
- 3.7 Following extended discussions about possible ancillary uses for the annex which would not be in breach of condition 4, officers gave a deadline of 28 days to either apply for planning permission for the change of use or to vary the condition, or provide a date when the current tenancy period would cease and the breach could be remedied. Initially the owners indicated that they would submit an application to vary the planning condition which restricts the separate use of the annex however they later advised that they believe the best course of action for them would be to appeal any enforcement action which is lodged against them. The owners of the property have been notified that this report will be considered by the planning committee and advised of their right to address the committee.
- 3.8 Officers have clear written and verbal admissions made by the owners of the property that the annex is let out to tenants and this is a breach of condition 4 of 10/0691/FUL.

Planning Harm

Condition 4 to planning permission (reference 10/0691/FUL) was imposed to protect the amenity of the adjoining residential properties and to avoid the creation of a separate planning unit. The occupation of the annex in conjunction with and ancillary to use of the main house is materially different in planning terms, to the creation of a separate residential unit of accommodation occupied and let independently. Matters such as access, amenity space, cycle parking and bin arrangements require assessment if the annex is to be used for separate residential use. and these issues cannot be assessed or controlled e.g. through the imposition of conditions unless a formal planning application is made. Consequently, it is not possible to conclude that the development would accord with Local Plan Policies 3/4, 3/7, 3/10 and 4/13 and the guidance in the NPPF 2012 in the absence of an

application for change of use or to vary the condition relating to the occupancy of the annex.

Officers consider that an assessment of the impacts of the use of the property as a separate, independent unit of accommodation need to be assessed and relevant conditions imposed to protect the amenity of the adjacent properties.

Although the annex has been registered separately for Council tax since 2011 it was not in use until 2014 and therefore if enforcement action is not taken then the separate residential use of the side annex, in breach of planning condition 4 of planning permission (reference number 10/0691/FUL) would become immune from enforcement action in August 2024.

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 Cambridge Local Plan 2006

3/4 Responding to context

3/10 Subdivision of existing plots
4/13 Pollution and Amenity

5 INVOLVEMENT OF OTHER COUNCIL DEPARTMENTS OR OTHER AGENCIES

- 5.1 There are no issues in respect of this enforcement investigation which have required referral to other agencies or departments.
- 5.2 Council tax valuation records confirm that the annex has been rated separately for council tax since 9 November 2011.

6 CONSIDERATION OF ENFORCEMENT OPTIONS

6.1 The options available for Enforcement are:

- No further action
- Service of a Breach of Condition Notice
- Service of an Enforcement Notice for Breach of Condition

6.2 No further action

If the planning committee decides not to authorise enforcement action in respect of the breach of condition 4, the breach of planning control will not be remedied and the separate residential use of the side annex would potentially become immune from enforcement action in ten years. Officers do not consider this is an appropriate course of action because if the breach of condition is not addressed then the annex will be able to be used as an entirely separate and independent property in its own right.

6.3 Breach of Condition Notice

Under the Council's Constitution, officers have the delegated authority to serve a Breach of Condition Notice. Failure to comply with a Breach of Condition Notice is an offence under section 187A of the Town and Country Planning Act 1990 (as amended). Unlike an enforcement notice, there is no ability to appeal to the Secretary of State. The validity of a breach of condition notice can be challenged by judicial review or as a defence to a prosecution brought against the owner in the Magistrates' Court.

6.4 Enforcement Notice for Breach of Condition

Officers consider that the service of an Enforcement Notice for Breach of Condition 4 to planning permission reference

10/0691/FUL is the most appropriate course of action. It would require the owners to cease breaching condition 4 and use the annex in conjunction with and ancillary to the main house. The owners would have a right of appeal against the enforcement notice to the Secretary of State before whom they could make submissions on the link between the annex and the main house and the level of planning harm caused.

- 6.5 The preferred option in this case is the service of an Enforcement Notice for Breach of Condition because it will afford the owners the opportunity to appeal to the Secretary of State. In the event that the notice is not appealed or any appeal is dismissed, the notice will give a reasonable period for compliance which officers suggest is set at 12 months.

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 would be lawful, fair, proportionate, non-discriminatory, and necessary in the public interest to achieve the objective of upholding national and local planning policies.

8 OTHER MATTERS

- 8.1 The owners of the property have raised the following personal issues relating to the enforcement investigation:

- Their personal circumstances have changed since the grant of permission for the annex
- They would 'vet' potential occupiers of the annex and would only ever let it to someone they were comfortable with.

Consideration has been given to the points raised however, it is concluded that these would not over-ride the need to remedy the breach of planning control in this instance. In addition to this, whilst the comments relating to the suitability of the tenants are noted, planning permission (or lawful uses) relate to the land and are not personal and so in the future, the property could be owned/occupied by someone who did not share the same concerns about the tenants occupying the annex. Also the current willingness of the current occupiers to act in this way is not binding and cannot be insisted upon or enforced. There are significant concerns therefore, that the use of the site could not in the longer term, be controlled in the absence of planning conditions.

8.2 The owners have also raised the following issue:

- A neighbour dispute arose following the grant of planning permission in 2010.

This is a civil matter that is beyond the scope of the planning remit and consequently cannot be addressed by the Council.

9 RECOMMENDATION

Enforcement Notice for Breach of Condition

- 9.1 (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 breach of condition 4 of planning permission reference number 10/0691/FUL specifying the steps to comply and the period for compliance set out in paragraphs 9.2 and 9.3, for the reasons contained in paragraph 9.4.
- (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.

9.2 Steps to Comply

Cease the use of the annex for separate residential use that is not solely in conjunction with and ancillary to 213 Huntingdon Road, Cambridge.

9.3 Period for Compliance:

12 months from the date the notice comes into effect.

9.4 Statement of Reasons:

It appears to the local planning authority that the breach of condition 4 on planning permission reference number 10/0691/FUL has occurred within the last ten years.

Condition 4 to planning permission reference 10/0691/FUL was imposed to protect the amenity of the adjoining residential properties and to avoid the creation of a separate planning unit. The occupation of the annex in connection with the main house is materially different in planning terms, to the creation of a separate residential unit of accommodation, to be occupied and let independently. Issues such as access, amenity space, cycle parking and bin arrangements need to be assessed and if appropriate controlled if the annex is to be used, occupied or let in a way that is not in conjunction with and ancillary to 213 Huntingdon Road. In the absence of a formal planning application to assess these impacts and if necessary, impose conditions relating to these issues it is considered that harm is likely to result from the breach of condition 4. Consequently, it is not possible to conclude that the development would accord with Local Plan Policies 3/4, 3/7, 3/10 and 4/13 and to guidance provided by the NPPF 2012 in the absence of an application to change the use or to vary condition 4 to 10/0691/FUL.

Mindful of the NPPF, Development Plan policy and other material considerations, the local planning authority considers it expedient to serve an enforcement notice in order to remedy the breach of planning control.

BACKGROUND PAPERS

Planning application 10/0691/FUL and supporting documents

APPENDICES

Appendix A Site plan

Appendix B Floor plans submitted with 10/0691/FUL

The contact officer for queries on the report is Debs Jeakins tel 457163.

Report file: N:\Development Control\Planning\Enforcement\Committee reports\213 Huntingdon Road Enforcement Report.docx