

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 5 August 2015

WARD: Castle

PLANNING ENFORCEMENT UPDATE REPORT

Address: 213 Huntingdon Road, Cambridge

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

SUMMARY	<p>On 1 July 2015 Planning Committee authorised the service of an enforcement notice for breach of condition 4 of 10/0691/FUL relating to the separate use of the annex at 213 Huntingdon Road.</p> <p>Since Members authorised the notice, further legal advice has been received which indicates that the breach of a planning condition relating to the separate residential use of the annex is not subject to the usual ten year immunity rule for breach of conditions, but would become immune from enforcement action after four years in line with the immunity period for residential dwellings.</p>
RECOMMENDATION	<p>That planning committee note the four year immunity rule applies in relation to this breach of condition relating to separate residential occupation, confirm their authorisation to draft and serve the enforcement notice (referred to in the report from 1 July 2015) and approve the alteration in the wording of the reasons for issue of the notice to refer to four years instead of ten years.</p>

1 INTRODUCTION

- 1.1 On 1 July 2015 members of the planning committee authorised the service of an enforcement notice for breach of condition 4 of 10/691/FUL relating to the separate residential use of an annex at 213 Huntingdon Road. Appendix A contains a full copy of the report.
- 1.2 Officers had taken legal advice during the preparation of the committee report however a more detailed legal review took place during the drafting of the notice which highlighted a stated case which alters the period after which this specific breach of planning condition becomes immune from enforcement action.
- 1.3 Section 171B of the Town and Country Planning Act 1990 (as amended) provides the time limits after which a breach of planning control becomes immune from enforcement action.

In the case of a breach of planning condition, no action enforcement action can be taken after the end of a period of ten years beginning with the date of the breach.

However, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

The Court of Appeal case of First Secretary of State v Arun District Council (10 August 2006) established that the legislative intention was clear that householders who changed the use of a building to a single dwellinghouse should only be vulnerable to enforcement action if it was instituted within four years and therefore it would be illogical for there to be a different period of enforcement depending on whether the breach of planning control involved a failure to comply with a condition.

- 1.4 Officers have noted the Human Rights Act 1998 and the Equality Act 2010 and consider that the alteration in the wording of the 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.
- 1.5 As far as Officers are aware, the annex at 213 Huntingdon Road has only been let separately since August 2014. Consequently the

breach is well within the revised four year period for enforcement action to be pursued and the use has not become immune from enforcement action.

2 RECOMMENDATION

- 2.1 (i) Confirm their authorisation of the drafting and service of an enforcement notice (as set out in the Planning Committee Report of the 1st July 2015) and approve the alteration in the wording of the reasons for issue of the notice to refer to four years instead of ten years.

BACKGROUND PAPERS

Planning application 10/0691/FUL and supporting documents
Summary of Court of Appeal case of Arun DC v First Secretary of State from August 2006

APPENDICES

Appendix A Committee report from 1 July 2015

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\Committee report update 5 Aug 15.docx