

CAMBRIDGE CITY COUNCIL

REPORT OF: Director of Planning and Economic Development

TO: Planning Committee DATE: 4th October 2017

WARD: Queen Ediths

PLANNING ENFORCEMENT REPORT FOR:

Address: 146 Mowbray Road, Cambridge, Cambridgeshire CB1 7TG

Details of Alleged Breaches of Planning Control:

Breach of conditions 2 and 3 of planning permission reference number 14/1143/FUL for First floor side extension, and internal and external alterations at 146 Mowbray Road; subject to conditions.

SUMMARY	A Planning Enforcement investigation has been carried out and ascertained that a breach of planning control have occurred at the premises.
RECOMMENDATION	Serving one Breach of Condition Enforcement Notice and one Breach of Condition notice directed at remedying the harm caused as a result of the breach occurring. The breaches result in an unauthorised additional separate unit of accommodation being created and the recommendation looks to ensure compliance in the short term and onwards.
NOTICE TYPE	Enforcement Notice Breach of Condition Material Change of Use x1 and Breach of Condition Notice.

1 INTRODUCTION

- 1.1 146 Mowbray Road is a three storey semi-detached house on the western side of Mowbray Road. This is consistent with the character of the road. Planning permission was granted in 2014 for a first floor side extension on top of the existing garage and conversion of the garage to living accommodation.
- 1.2 Information was received in early 2017 that the both floors of the side extension were being used as a separate unit of accommodation at the premises. A site visit in February 2017 confirmed this and the owner was advised to revert to plans passed or to test the acceptability of the additional unit of accommodation through a retrospective planning application. A recent site visit confirmed that there was no functional internal link between the side extension and the dwelling house and the owner verbally stated that he did not want to change the current situation. No retrospective application has been received.
- 1.3 The site is not in a Conservation Area and there are no protected trees, listed buildings or Buildings of Local Interest (BLI) in the vicinity. The site is not in the Controlled Parking Zone (CPZ).

2 PLANNING HISTORY

2.1 Planning applications

C/82/0358	Erection of garage and covered way	Granted Permission
14/1143/FUL	First floor side extension and internal and external alterations.	Granted Permission

2.2 Planning Enforcement

EN/0192/15 – Boundary issues concerning alleged build not in accordance with approved plans

Current Investigation ref:EN/0017/17

3 COMMENTS OF ENFORCEMENT INVESTIGATION

- 3.1 The site was initially referred to the Planning Enforcement Team by officers from the city council Environmental Health Team on 26th January 2017 and a phone conversation took place where the owner denied the

use of the extension as a separate unit of accommodation. A subsequent site visit by an enforcement officer took place on 1st February 2017 where it was found that a door located on the ground floor of the side extension and shown on plans passed on the 21014 planning permission was in fact a wall. This results in a loss of a functional link between the original dwelling house and the two storey side extension. The site visit confirmed that the side extension had the facilities present where it could be used as a separate unit of accommodation. Whilst the use of the separate unit of accommodation is an unauthorised material change of use in itself, it has come about as a result of two breaches of condition attached to the planning condition granted for the extension. Evidence was obtained during this visit in relation to the alleged breaches of planning permission.

- 3.2 A request for information from the owner relating to findings of the site visit was made on 18th March 2016 to which the owner replied that the builder who undertook works at the premises would reply with the information. Council records show that no reply was received.
- 3.3 Council records show that the owner was advised of the breach by letter on 9th February 2017.
- 3.4 Shortly afterwards, after speaking to the builder concerned with the development, council records show that a planning application was invited to test if planning permission could be retrospectively granted for the use of the side extension as a separate unit of accommodation. No such application was received despite correspondence being sent at the end
- 3.5 A case review was initially carried out and no retrospective planning applications have been received for any of the four breaches identified and listed below:

On 2nd September 2014 planning permission was granted by the Council under reference number 14/1143/FUL for First floor side extension, and internal and external alterations at 146 Mowbray Road; subject to conditions.

Two of these conditions were:

Condition 2

Without planning permission, the unauthorised change of use of the Premises to a large scale House in Multiple Occupation (sui generis)

Without planning permission, the unauthorised change of use of part of the ground floor (outlined in blue on attached plan for identification purposes only) of the main dwellinghouse at the Premises as a separate unit of self-contained accommodation.

Without planning permission, the unauthorised erection of an outbuilding (outlined in brown on attached plan for identification purposes only) at the Premises.

Without planning permission, the unauthorised use of the outbuilding (outlined in brown on attached plan for identification purposes only) at the Premises as a separate unit of self-contained accommodation.

- 3.6 It is considered that planning conditions could not overcome the identified planning harm described in the reasons for service of the notice with regard to these unauthorised changes of use and operational development at the premises at the time of writing this report.
- 3.7 It is noted that the breaches would be immune from enforcement action after 4 years from the date that the breaches occurred. If the decision were taken not to continue with formal enforcement action the unauthorised changes of use and operational development would benefit from planning consent after 4 years.
- 3.8 Despite the multiple natures of breaches at the premises it is recommended in the interests of planning clarity to serve one enforcement notice covering the alleged three unauthorised uses at the Premises. This matter was reviewed by Principal Planning Officers on 10th February 2017 and a decision was taken not to serve a notice requiring the demolition of the outbuilding at the premises. It is recognised that a structure approximately of the same dimensions would benefit from permitted development rights if erected for use incidental to the activities at the rest of the premises. The steps to comply in the notice reflect and give planning clarity as to what must be carried out in order for the outbuilding at the premises to be used in such an incidental

manner of use. In relation to each breach, all interested parties are to be served with notice to carry out the requirements of the notice.

4 RELEVANT PLANNING POLICIES 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

- 3/1 Sustainable Development
- 3/4 Responding to context
- 3/7 Creating successful places
- 3/10 Sub-division of Existing plots
- 3/12 The Design of New Buildings
- 3/14 Extending buildings
- 4/3 Safeguarding features of amenity
- 5/2 Conversion of Large Properties
- 5/7 Supported housing/Housing in multiple occupation
- 8/6 Cycle Parking

5 INVOLVEMENT OF OTHER COUNCIL DEPARTMENTS OR OTHER AGENCIES

- 5.1 During the course of the investigation contact has been made with the following agencies/departments to seek to address issues at the site which fall outside of the planning enforcement remit but which other departments may be able to address:
- Environmental Health Officers have been contacted in respect of the living arrangements and have advised that a HMO licence has been granted.
 - Highways stated when consulted on the recent retrospective planning application that additional parking demands at the premises may lead to loss of residential amenity.
- 5.2 The planning enforcement officers have taken into account the parking comments and will work with HMO Licencing Officers to assist where possible as the service of an enforcement notice may lead to a variation of the HMO licence at some point in the future.

6 CONSIDERATION OF ENFORCEMENT OPTIONS

- 6.1 It appears to the Council that the breaches of planning control have occurred within the last 4 years.
- 6.2 The Council has no record that planning permission has been granted for the works outlined above.
- 6.3 It is considered that planning conditions could not overcome the identified planning harm described within the reasons for service of the Enforcement notice with regard to these unauthorised changes of use and operational development.
- 6.4 It is noted that the breaches would be immune from enforcement action after 4 years from the date that the breaches occurred. If the decision were taken not to continue with formal enforcement action the unauthorised changes of use and operational development would benefit from planning consent after 4 years.
- 6.5 Despite the multiple natures of breaches at the premises it is recommended in the interests of planning clarity to serve one enforcement notice covering the alleged three unauthorised uses at the Premises. This matter was reviewed by Principal Planning Officers on 10th February 2017 and a decision was taken not to serve a notice requiring the demolition of the outbuilding at the premises. It is

recognised that a structure approximately of the same dimensions would benefit from permitted development rights if erected for use incidental to the activities at the rest of the premises. The steps to comply in the notice reflect and give planning clarity as to what must be carried out in order for the outbuilding at the premises to be used in such an incidental manner of use. In relation to each breach, all interested parties are to be served with notice to carry out the requirements of the notice.

- 6.6 It is noted in this investigation that the existence of one breach may affect the chances of planning consent being permitted in relation to another breach at the premises. It is also acknowledged that a notice served in relation to the alleged unauthorised erection of the outbuilding at the Premises, would require the demolition of a structure that would likely to be granted planning permission as incidental in use to the activities at the rest of the premises. Such uses include those not normally found inside the main dwelling house at the Premises and therefore the outbuilding if allowed to remain should not contain any cooking facilities, sleeping accommodation or items that can reasonably be expected to be contained within the main building. There are various examples of case law which reflects what is deemed to be incidental. Whilst an enforcement notice stating for such facilities or items to be removed from the outbuilding may seem onerous, it should be seen as an example of where the use of enforcement notices can lead to instances of underenforcement where it is considered practicable and correct to do so.

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 the Enforcement Notices, referred to above, with a reasonable period for compliance 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 following issues have also been raised in respect of the enforcement investigation by the complainant/developer

- Personal circumstances
- Costs

Consideration has been given to the points raised however, it is concluded that these would not override the need to remedy the breach of planning control in this instance.

9 RECOMMENDATION

Without planning permission, the unauthorised change of use of the Premises as a large scale House in Multiple Occupation (Sui Generis), the unauthorised change of use of part of the ground floor (outlined in blue on attached plan for identification purposes only) of the main building at the Premises as a separate self-contained unit of accommodation, and the unauthorised use of the outbuilding (outlined in brown on attached plan for identification purposes only) at the Premises as a separate self-contained unit of accommodation.

- 9.1 (i) To authorise an enforcement notice under S172 of the Town and Country Planning Act 1990 (as amended) alleging that there has been a breach of planning control within the last four years, involving the unauthorised material change of use of the Premises into a large scale House in Multiple Occupation, (Sui Generis), the unauthorised change of use of part of the ground floor of the main building at the premises as a separate self-contained unit of accommodation and the unauthorised use of the outbuilding at the premises as a separate self-contained unit of accommodation, 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

- 9.21 Permanently cease the use of the Premises as a large scale House in Multiple Occupation (sui Generis).
- 9.22 Permanently reduce the number of persons living at the premises to no more than six(6) where the premises are not entirely inhabited by members from one family.
- 9.23 Permanently cease the use of part of the ground floor (outlined in blue on attached plan for identification purposes only) of the main dwelling

house at the Premises as a separate unit of self-contained accommodation.

- 9.24 Permanently cease the use of the single storey outbuilding (outlined in brown on attached plan for identification purposes only) at the Premises as a separate unit of self-contained accommodation.
- 9.25 Permanently remove all but one set of kitchen and cooking facilities from the Premises, including the outbuilding.
- 9.26 Permanently remove all beds and bedding materials not in storage from the outbuilding.
- 9.27 Permanently remove the shower from the outbuilding.

9.3 Period for Compliance:

Four [4] month(s) from the date the notice comes into effect.

9.4 Statement of Reasons:

- (i) It appears to the Council that the breach of planning control has occurred within the last four years (Section 171B(1)). The applicant has undertaken development without the benefit of planning permission
- (ii) The change of use of the Premises into a large scale House in Multiple Occupation includes the provision of accommodation for 12 persons over 8 bedrooms which results in a highly intensive use of the site. This results in an unacceptable living environment for the current and future residents through: cramped living conditions; cramped external amenity space, particularly in the rear garden between buildings; and, noise and disturbance and a poor level of privacy to occupiers of the ground floor rear self-contained unit of accommodation and through the coming and goings of people to and from the bike shed, the outbuilding used as a separate unit of self-contained unit of accommodation and in their use of the garden. This gives rise to conditions unlikely to result in a high quality living environment for the current and future occupiers of the site. This is contrary to Policies 3/1, 3/4, 3/7, 3/10, 3/14, 5/2 and 5/7 of the Cambridge Local Plan 2006.

- (iii) The change of use of the Premises as a large scale House in Multiple Occupation results in an insufficient level of garden space for occupants. Properties in this area generally have much larger gardens and given that the House in Multiple Occupation is occupied by a high intensity of people, adequate garden space is critical to providing a high quality living environment for future occupiers. This results in a failure to provide a high quality living environment for occupiers. This is contrary to Cambridge Local Plan (2006) policies 3/7 and 5/7.

- (iv) The creation of a separate self-contained unit of accommodation to the ground floor rear of the main dwelling house at the premises in conjunction with the use of the rest of the main dwelling house as a large scale HMO results in a highly intensive use of the site. This results in an unacceptable living environment for the current and future residents through: cramped living conditions; cramped external amenity space, particularly in the rear garden between buildings; and, noise and disturbance and a poor level of privacy to occupiers of the ground floor north-east facing self-contained unit of accommodation through the coming and goings of people in their use of the garden in close proximity to bedroom windows. This results in a failure to provide a high quality living environment for current and future occupiers of the site. This is contrary to Policies 3/1, 3/4, 3/7, 3/10, 3/14, 5/2 and 5/7 of the Cambridge Local Plan 2006.

- (v) Insufficient private amenity space has been provided at the premises for the large scale HMO use, the use of part of the ground floor as a separate unit of self-contained accommodation and the use of the outbuilding in the rear garden as a separate unit of accommodation. The outbuilding occupies a large footprint within the rear garden and significantly reduces the amount of amenity space for all three properties, in an area which is characterised by long rear gardens. Residents using the shared rear garden at No.49 Whitehill Road would be able to look into windows of either the main building or the single window serving the retrospective studio dwelling. Occupants of all dwellings would be able to overlook the outdoor amenity space and

therefore it does not provide adequate private amenity space for either dwelling. This is contrary to policies 3/10, 3/7 and 3/12 of the Local Plan (2006).

- (vi) The introduction of the self-contained unit of accommodation in the outbuilding located in the rear garden of the property increases the comings and goings to the property. Occupants and visitors to the self-contained unit of accommodation in the outbuilding walk along the side of the main dwelling of No.49 Whitehill Road and this may give rise to conditions resulting in noise disturbance to the main dwelling and fails to comply with policies 3/10 and 4/13 of the Local Plan (2006).
- (vii) Insufficient details have been received regarding bin and bicycle storage for either the main dwelling of No.49 Whitehill Road, the ground floor separate unit of accommodation or the retrospective studio dwelling. This is contrary to policies 3/7, 3/12 and 8/6 of the Local Plan (2006).
- (viii) The use of the outbuilding at the Premises as a separate unit of self-contained accommodation detracts from the prevailing character and appearance of the area. The nearby properties are characterised by long gardens to the rear that do not contain separate units of self-contained accommodation. The introduction of the use of the outbuilding as a separate unit of accommodation is therefore at odds with the predominant character of the area. This is contrary to policies 3/4, 3/7, 3/10 and 3/12 of the Local Plan (2006).
- (ix) It is considered that planning conditions could not overcome the identified objections with regard to this unauthorised change of use.

9.5 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.

BACKGROUND PAPERS

Site visit site notes 8.7.16

Site visit photographs 8.7.16

APPENDICES

Plan detailing layout of site 'Premises'

The contact officer for queries on the report is John Shuttlewood on extension 457326.

Report file: N:\Development Control\Planning\Committee\Committee Items for Submission to Committee Services\Planning Committee\2017\March 1st 2017