

## CAMBRIDGE CITY COUNCIL

REPORT OF: Director of Planning and Economic Development  
TO: Planning Committee      DATE: 1<sup>st</sup> November 2017  
WARD: Queen Ediths

### PLANNING ENFORCEMENT REPORT FOR:

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**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	This report is an amended version of the report previously seen at October 2017 committee whereby recommendations were subsequently unanimously approved by members. In the interests of planning clarity the correct version of the report has been re-submitted for members approval at November 2017 committee.
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.

## 1.0 INTRODUCTION

- 1.1 146 Mowbray Road is an extended two storey semi-detached house on the western side of Mowbray Road. Planning permission was granted in 2014 for a first floor side extension on top of the existing garage which had previously been converted internally for ancillary living accommodation.
- 1.2 Information was received in early 2017 that 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 part of the side extension and the original dwelling house and the owner verbally stated that he did not want to change the current situation. The unit has been marked on the external front wall as 146a. 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).

## 2.0 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

## 3.0 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 26<sup>th</sup> January

2017. Shortly afterwards a phone conversation took place where the owner denied the use of the extension as a separate unit of accommodation, however a subsequent site visit by an enforcement officer on 1<sup>st</sup> February 2017 found that a door located on the ground floor of the side extension and shown on plans passed on the 2014 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 18<sup>th</sup> March 2017 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 9<sup>th</sup> February 2017.
- 3.4 Shortly after this, 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 has been received to date despite reminder correspondence being sent at the end of March 2017.
- 3.5 Information gathered during a case review in September 2017 showed the side extension available for let by two different local letting agents. A further site visit was then conducted with the owner and confirmed that there was still no internal functioning link between the original dwelling house and the side extension. Therefore the extension is not built to plans passed showing such a link as part of planning permission 14/1143/FUL and in turn facilitates the use of part of the side extension as a separate unit of accommodation.
- 3.6 A case review has been carried out and identified the following breaches of conditions 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

The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.

Reason: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.

#### Condition 3

The extension shall not be used as a separate unit of accommodation independent from 146 Mowbray Road. There shall remain a functional link at ground floor level with the kitchen, sitting room and dining room of the host property which shall not be partitioned off.

Reason: In order to ensure that the extension operates as part of the host property and because the creation of an independent flat would require separate planning permission and would not necessarily gain the benefit of planning permission (Cambridge Local Plan 2006 policies 3/10, 3/12, 3/14).

- 3.7 As a result of the case review, a Planning Contravention Notice was served on 13<sup>th</sup> September 2017 in order to collect information in relation to the alleged breaches and persons with an interest in the premises.
- 3.8 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 breaches of conditions at the premises at the time of writing this report.
- 3.9 It is noted that the breaches would be immune from enforcement action after 10 years from the date that the breaches occurred. If the decision were taken not to continue with formal enforcement action the unauthorised breaches of conditions and resulting change of use of part of the premises would benefit from planning consent after 10 years.
- 3.10 It is recommended in the interests of planning clarity to serve one breach of condition notice and one breach of condition notice enforcement notice covering the alleged two breaches of conditions which result in a

material change of use at 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 breaches of conditions and resulting change of use at the premises to be rectified. All interested parties are to be served with notice to carry out the requirements of the notice.

#### **4.0 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

3/7 Creating Successful Places  
3/10 Sub-division of Existing plots  
3/12 The Design of New Buildings  
4/13 Pollution and amenity  
5/2 Conversion of Large Properties  
8/6 Cycle Parking

## **5.0 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:
- 5.2 Council Tax Team have been made aware of the creation of an additional separate unit of accommodation which has resulted in a separate Council Tax account and charge levied on the property.

## **6.0 CONSIDERATION OF ENFORCEMENT OPTIONS**

- 6.1 It appears to the Council that the breaches of planning control have occurred within the last 10 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 10 years from the date that the breaches of conditions occurred. If the decision were taken not to continue with formal enforcement action the resulting material change of use would benefit from planning consent after 10 years.
- 6.5 A breach of condition notice should be served to prevent the use of the premises in the event of an appeal against the breach of condition enforcement notice. The breach of condition notice can be served at the same time as the enforcement notice and comes into immediate effect without appeal. The breach of condition notice can be served under delegated powers. This is preferred to serving a material change of use enforcement notice due to the requirements of dealing with breaches of conditions.
- 6.6 The steps to comply in the notices reflect and give planning clarity as to what must be carried out in order for the breaches of conditions to be

rectified. All interested parties are to be served with notice to carry out the requirements of the notice.

## **7.0 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.

## **8.0 OTHER MATTERS**

8.1 N/A

## **9.0 RECOMMENDATION**

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 ten years, involving the breaches of conditions 2 & 3 of planning permission ref: 14/1143/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.

### Steps to Comply

9.2 Permanently cease the use of part of the side extension at the premises as a separate unit of accommodation.

9.3 Revert the internal build to plans passed under planning permission ref no. 14/1143/FUL by way of inserting all shown internal doors at ground floor level.

9.4 Permanently retain a functional link at ground floor level with the kitchen, sitting room and dining room of the host property which shall not be partitioned off.



9.5 Permanently remove the cooking facilities from the first floor side extension.

Period for Compliance:

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

Statement of Reasons:

- 9.7 (i) It appears to the Council that the breach of planning control has occurred within the last ten years (Section 171B(3)). The applicant has undertaken development without the benefit of planning permission.
- (ii) The creation of an additional separate self-contained unit of accommodation within the side extension at the premises in conjunction with the use of the rest of the main dwelling house 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 and insufficient external amenity space. 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 3/7, 3/10 and 5/2 of the Cambridge Local Plan (2006).
- (iii) Insufficient private amenity space has been provided at the premises for the additional unit of residential accommodation created in the side extension at the premises as a result of the breach of planning conditions. This is contrary to policies 3/7, 3/10 and 3/12 of the Cambridge Local Plan (2006).
- (iv) Insufficient details have been received to demonstrate that the provision of refuse and recycling storage would meet the Cambridgeshire and Peterborough Waste Partnership (RECAP): Waste Management Design Guide Supplementary Planning Document (February 2012). This is contrary to policies 3/12, 4/13 and 5/2 of the Cambridge Local Plan (2006) and paragraph 56 of the National Planning Policy Framework (2012).
- (v) Insufficient details have been received to demonstrate that the provision of cycle parking for future occupants would meet the requirements of the guidance within the Cycle Parking Guide for New Residential Developments (2010) as it does not provide a

secure and covered enclosure for the storage of bicycles. This is contrary to policies 3/12, 5/2 and 8/6 of the Cambridge Local Plan (2006) and paragraph 56 of the National Planning Policy Framework (2012).

- (vi) It is considered that planning conditions could not overcome the identified objections with regard to this unauthorised change of use.

9.8 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**

**Planning Permission Decision Notice dated 2 September 2014 for application ref no. 14/1143/FUL  
Associated drawing 20142 – 10058 REV 4**

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