

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 6th December

WARD: Arbury

PLANNING ENFORCEMENT INVESTIGATION REF: EN/0335/15 REPORT FOR:

Address: 83 Searle Street, Cambridge, Cambridgeshire CB4 3DD

**Details of Breach of Planning Control: Unauthorised rear dormer
erected in a Conservation Area**

SUMMARY	A Planning Enforcement Notice was served for the removal of a loft dormer following retrospective refusal of planning permission and subsequent dismissal of an appeal by the Planning Inspectorate. New information has to come to light during the enforcement appeal process that on the balance of probabilities shows the dormer likely to be immune from enforcement action.
RECOMMENDATION	The withdrawal of the enforcement notice and closure of the enforcement investigation
NOTICE TYPE	Enforcement Notice – Material Change of Use

1.0 INTRODUCTION

1.1 83 Searle Street is a residential terraced property in a Conservation Area within Arbury Ward.

2.0 PLANNING HISTORY

2.1 A complaint was received in October 2015 that a rear dormer had been erected in a Conservation Area.

- 2.2 A retrospective application was refused permission under delegated officer powers in June 2016 for the following reason:

The dormer appears overly dominant and bulky at the rear of the property and fails to harmonise with the adjoining terraced properties. It fails to respond positively to its context due to its excessive size and appearance. No other house in this adjoining row of terraced properties along Searle Street have had rear roof extensions and the dormer is at odds with the character of this row in which it relates. The dormer's appearance and excessive size neither preserves or enhances the character and appearance of the Conservation Area and harms views from nearby streets and gardens. The dormer fails to comply with policies 3/4, 3/7, 3/12 and 4/11 of the Local Plan 2006 and the Roof Extension Design Guide 2003.

- 2.3 This decision was appealed against August 2016 and subsequently dismissed by the Planning Inspectorate in September 2016.

3.0 BACKGROUND / TIMELINE OF ENFORCEMENT INVESTIGATION

- 3.1 The retrospective planning application form stated that the date works were completed was on 18th September 2013, and was the date used within the enforcement investigation as being the date of completion of the rear loft dormer.
- 3.2 The relevant section S.171a of The Town & Country Planning Act 1990 states the following:
- (1)Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- 3.3 An enforcement notice was served on 15th August 2017 requiring the removal of the rear loft dormer amongst other actions to be taken.
- 3.4 This notice was appealed against under grounds (d) and (g);

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

4.0 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
3/7 Creating successful places
3/12 The design of new buildings
4/11 Conservation Areas

4.4 Supplementary Planning Documents

Roof Extensions Design Guide (2003)

5.0 CONSIDERATION OF ENFORCEMENT OPTIONS

- 5.1 The appeal against the enforcement notice to the Planning Inspectorate by the owner of the premises under ground (d) was accompanied with evidence not previously seen by this local planning authority. Evidence was provided that although the application form had given one date as the date of completion, the owner now stated that the loft was 'substantially complete' at an earlier date. This evidence is in the form of invoices for work completed by various individuals carrying out works normally associated with finishing internal works of the construction process.
- 5.2 The evidence only now provided has to be treated on face value and a recommendation is being made that on the balance of probabilities, the dormer was substantially completed during the time period of June / July 2013. This results in a time period of more than 4 years passing since the loft dormer was sustainably completed and becomes immune from enforcement action. The council has no evidence to counter this information and relies solely on the date originally stated on the application form in 2016.
- 5.3 The continuation of the appeal could result in a possible claim for costs.
- 5.4 The withdrawal of the enforcement notice will effectively give planning permission to the loft dormer at the premises.

6.0 POLICY CONSIDERATIONS

- 6.1 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.
- 6.2 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.
- 6.3 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.

7.0 RECOMMENDATION

Enforcement Notice

- 7.1 (i) To authorise the withdrawal of the enforcement notice as per withdrawal notice description set out below:

NOTICE IS HEREBY GIVEN that Cambridge City Council, in accordance with its powers contained in Section 173A of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) (and without prejudice to its powers to issue another Enforcement Notice) **HEREBY WITHDRAW** the Enforcement Notice issued on the 15th August 2017 relating to 83 Searle Street, Cherry Hinton, Cambridge, Cambridgeshire, CB4 3DD ("the Premises") which required you within the period of six calendar months from the date when the Enforcement Notice would take effect to: -

- (i) Permanently remove the rear loft dormer erected (outlined in blue on attached plan for identification purposes only) at the Land.
- (ii) Make good the works undertaken and restore the roof to its former condition using matching materials and colour of the existing roof.
- (iii) Remove all resulting materials from the premises.

The said Enforcement Notice was appealed against to the Planning Inspectorate before it came into effect from 14th September 2017. The said Enforcement Notice has no effect as it has been withdrawn due to information received by the local planning authority as part of the said appeal.

Dated this 6th of December 2017

- (ii) To authorise the Head of Planning Services (after consultation with the Head of Legal Services) to draft and issue the withdrawal notice and notify the Planning Inspectorate of the decision.