

# CAMBRIDGE CITY COUNCIL

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REPORT OF: Head of Planning Services

TO: Planning Committee      DATE: 10<sup>th</sup> January 2018

WARD: Market

## **PLANNING ENFORCEMENT REPORT FOR: EN/0087/17 and EN/0088/17**

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**Address: Florian House and Roman House, Severn Place,  
Cambridge, Cambridgeshire**

**Details of Alleged Breaches of Planning Control: Without planning permission, the unauthorised change of use from C3 dwellinghouses to short-term visitor accommodation (sui generis) at the premises**

SUMMARY	This report has regard to an alleged unauthorised change of use of 13 lawfully permitted residential apartments (C3) within Florian House and Roman House to commercial short-term visitor accommodation letting use.
RECOMMENDATION	Serving one change of use Enforcement Notice directed at remedying the harm caused as a result of the breach occurring for each apartment (13 enforcement notices). The recommendation looks to ensure compliance in the short-term and onwards for each apartment.
NOTICE TYPE	Enforcement Notice Material Change of Use

### **1.0 INTRODUCTION**

- 1.1 Florian House and Roman House are both located on Severn Place, which is a central location close to Newmarket Road and adjacent to the car park access to the Grafton Centre. Roman House (formerly Marino House) was granted planning permission

on 04 March 2010 under application 09/0292/FUL for 11 one-bedroom studio apartments all for class C3 use. Florian House was granted planning permission on 14 August 2012 under application 12/0113/FUL for 8 apartments (comprising 4x1-bed studios, 2x1-bed flats and 2x2 bed flats) all for class C3 use.

- 1.2 The locality is mixed use comprising residential, retail and office development. Opposite and adjacent to the apartment buildings is the site 64 Newmarket Road which has planning permission for 84 dwellings under 14/1905/FUL granted on 13 September 2017.
- 1.3 The City Council's Council Tax team first highlighted an issue on 18 May 2017 with regard to the commercial use of the premises for short-term let without planning permission. This followed business rates being paid for the first time for some of the properties in both apartment blocks from 1 February 2017. Before this Council Tax was being paid on the apartments. Subsequent to contact from the Council Tax team, the case officer for the development of 64 Newmarket Road was contacted by the owners of Florian House and Roman House. He raised concerns regarding the potential impact of the 64 Newmarket Road development site on his commercial letting business.
- 1.4 A planning enforcement investigation has been undertaken which included the service and completed return of a Planning Contravention Notice (PCN) on 18 November 2017.
- 1.5 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 within the Controlled Parking Zone (CPZ).

## **2.0 PLANNING HISTORY**

### **2.1 Planning applications**

12/0113/FUL	Erection of 8 apartments with associated infrastructure (Florian House)	Granted Permission, 14 August 2012
09/0292/FUL	Erection of 11 one-bed studio apartments (following demolition of nissen hut). (Roman House)	Granted Permission, 04 March 2010

## 2.2 Planning Enforcement

EN/0088/17, Alleged change of use of the premises to a short term let / Air B&B. (Current Investigation)

## 3.0 ENFORCEMENT INVESTIGATION AND ASSESSMENT

3.1 The site was initially referred to the Planning Enforcement Team by the City Council's Council Tax team on 18 May 2017. The case officer for the adjacent development site subsequently came across the issue in correspondence with the owner regarding the development impact of 14/1905/FUL on his business on 11 September 2017.

3.2 A Planning Contravention Notice was served on 26 October 2017 and was returned on 18 November 2017. This sets out the following.

- Of the 19 apartments granted planning permission, six of these involve assured short hold tenancies (AST's). Five of the AST's are within Roman House (flats 1, 2, 4, 5 and 10) and one of the AST's is within Florian House (flat 8). The owner claims that these flats are being used for permanent residential use under use class C3.
- The remaining 13 apartments – six within Roman House and seven within Florian House – are all being used as short-stay serviced accommodation. These properties are subject to business rates which have been paid from 1 February 2017.
- The owner states that the flats are typically let from 3-4 nights per week (as a minimum) up to approximately 10 nights. In some other cases the apartments are rented for longer periods.
- On average, the flats are occupied 80% of the time.
- The flats within Roman House which have been used as short-stay serviced accommodation have been in such use since November 2011, with some (unspecified) intervening longer-term residential occupation. This ties-in to a period shortly after which the apartments could have been completed given the March 2010 planning permission date

and when the owner claims a leasing arrangement was entered into with Nobleo Ltd.

- The flats within Florian House, which were granted planning permission in August 2012, were subject to a similar leasing arrangement to Roman House in July 2015.
- All of the short-term serviced accommodation is currently let through Lux Living Ltd following Nobleo Ltd going into administration.
- The owner has stated that for all of the flats used as short stay accommodation, the scheme managers (Lux Living) provide a basic welcome pack, with linen and towels changed over on a weekly basis. Neither approved apartment block has any form of communal facility (e.g. check-in desk, communal lobby, restaurant etc.)

3.3 It is an offence to knowingly make a false or misleading statement within a PCN and the information submitted should therefore be taken at face value and assessed accordingly.

3.4 A search on the Booking.Com website for the premises shows 102 reviews for 2017 for Roman House and 120 reviews for Florian House since February 2017 with short stay accommodation available to book. The website states for both properties:

*'Situated in the centre of Cambridge, 0.6 miles from University of Cambridge, Lux Living Apartments - Roman House offers accommodation with free WiFi and a fully equipped kitchen with a dishwasher and a washing machine. Each of units has a private bathroom with a shower and free toiletries. Popular points of interest near the apartment include Cambridge Museum of Technology and Centre for Computing History. The nearest airport is London Stansted Airport, 22 miles from the property. Couples particularly like the location — they rated it 8.2 for a two-person trip. We speak your language! Show me more*

*The property joined Booking.com on 17 Feb 2017.'*

- 3.5 Every apartment used for short-term visitor accommodation has the facilities required for day-to-day living. The provision of facilities is no different to what one might expect of a residential apartment operating under a C3 consent.
- 3.6 The Booking.com website provides an opportunity for guests to review their stay. The following three reviews for Roman House in terms of considering harm to amenity as a reason to serve an enforcement notice are set out below:

*23 May 2017, 'The surrounding apartments were incredibly noisy and the apartment was situated in an area I would not feel safe returning to alone'*

*21 August 2017, 'Very noisy in the building. Sound of the heavy front doors slamming. Could hear every footstep thudding through ceiling from apartment above and voices and extremely squeaky bed! These guest arrived in at 2am so this noise was even more annoying.'*

*24 August 2017, 'Noise from other apartments very bad. Smokers smoke came in window.'*

The following two reviews for Florian House in terms of considering harm to amenity as a reason to serve an enforcement notice are set out below:

*1 October 2017, 'So very noisy guests next door ruined our nights sleep before I dropped my son off at university. So very disappointed...Everything was ok except for noisy guests next door all night long.'*

*3 May 2017, 'The noise levels from other guests was unbearable. Not so much them making excess noise as such but the entrance to the apartments was opposite our front door along with the lift and stairs so the hall was in constant use at all hours of the day and night. We were kept awake by this both nights til around 5am. Had we known this we would not have stayed there...'*

- 3.7 None of the residents of either building have contacted the planning enforcement team as a result of what they feel to be harm to their amenity resulting from noise and disturbances arising from the short-term visitor accommodation use. However, what is clear

is that some guests themselves have raised concern from noise and disturbance from other guests. The apartments were not designed for this particular use and, unlike some hotel buildings, will not be subject to enhanced noise insulation and are not subject to an on-site management team to deal with amenity issues as and when they occur.

3.8 It is clear from the PCN return and from the investigation that the apartments are let for a short-term visitor accommodation use. Whilst the properties contain all of the facilities to enable a C3 use to occur, the typical rental periods, frequency of turn-over of the accommodation and associated impact of use means that the character and use of the premises is not, in my view, a C3 use. I explain the reasoning for coming to this conclusion in the paragraphs below.

3.9 Consideration of when/if a dwelling has undergone a change of use if it is occupied for short periods of time has been legally uncertain for some time and has been considered in a number of cases by the courts. In the case of ***Moore v Secretary of State for Communities and Local Government [2012]*** the Court of Appeal determined that:

*'It was not correct to say either that using a dwelling for commercial holiday lettings would never amount to a material change of use or that it would always amount to a material change of use. Rather, in each case it would be a matter of fact and degree and would depend on the characteristics of the use as holiday accommodation.'*

3.10 This means that the circumstances of each case will be critical to the determination of the matter. In order to ensure a consistent and robust approach to such assessments, officers have given some thought to providing a working definition to assist in considering when a change of use is likely to have occurred in the majority of cases. It must be stressed that this is to be regarded as guidance only on the technical matter of determining if the use amounts to development and is not to be regarded as definitive in every case or having any weight when considering the merits of any proposal.

3.11 The working definition is as follows:

*A material change of use of a dwelling from Class C3 to a sui generis use of short-term visitor accommodation is likely to have occurred where all, or the majority of, the bedrooms within a dwelling are used as short-term visitor accommodation and:*

- *The frequency of the short-term visitor uses exceeds 10 in any calendar year; or*
- *The cumulative duration of short-term visitor use exceeds 6 months in any calendar year*

*Short-term visitor accommodation is defined as accommodation of less than 90 days duration provided for paying occupants.*

3.12 The key issues are considered to be the frequency of the arrivals and departures, since it is this that can cause noise and disturbance and change the character and impact of the use of the property; and the length of time the property is available for let throughout the year, which can impact on amenity and the permanent nature of the residential occupation.

3.13 Permanent residential occupation may involve occasional changes in occupation such as when a lease expires and new tenants move in but it is considered that there is a fundamental difference between this and the, for example, daily or weekly change in occupation that occurs with an Airbnb type use. The figure of 10 occasions in the working definition was arrived at having regard to the likely maximum frequency of change in occupation that may occur for a permanent residential use and the frequency at which such changes may start to impact on neighbouring amenity. The 6 months figure was arrived at having regard to the fact that where a permanent residential use persists for most of the year it is likely that the overall permanent residential use of the dwelling has not been lost.

3.14 In relation to both Florian House and Roman House, the PCN response indicates that the use of the particular apartments within both properties would greatly exceed both the frequency and the cumulative duration parameters. The typical length of stay in the apartments can also be defined as short-term (i.e. less than 90 days). This character of use is therefore well in excess of the

working definition and officers consider that a change of use has occurred.

- 3.15 For it to be expedient to consider taking formal enforcement action there has to be material planning harm identified. In this case this is identified as the loss of permanent residential accommodation and potential unacceptable impact on the amenity of existing occupiers of neighbouring apartments. The loss of a lawfully permitted C3 residential use of the apartments is a matter of principle that is resisted under adopted policy 5/4 of the Cambridge Local Plan (2006)
- 3.16 As such, it is considered that there has been a change in character of the use of the premises for short term visitor accommodation which is unacceptable in principle. In terms of amenity impact, whilst the use of the apartments as visitor accommodation in this case is likely to be from individuals or couples and less likely to involve larger groups whose impact would be more greatly felt – noting the recent report for 17 Richmond Road - it is prudent to be cautionary in terms of an assessment of the impact on amenity. This is because the impact is likely to be largely internalised to each apartment block itself and is dependent on the number of units within each apartment block in short-term visitor accommodation use and the location of the C3 apartments in relation to them. Clearly, if issues have arisen in terms of visitor-to-visitor impact, it seems unlikely that a more permanent residential occupier is not going to have similar cause for concern.
- 3.17 Short-term visitor accommodation use generates an increased likelihood of early morning and late evening arrivals/departures compared to the pattern of these events when an owner may be resident. The transitory nature of the use will result in visitors having no investment in the local community or neighbourhood. Whilst the amenity impact of this is by no means certain, I consider it likely that in some instances visitors may demonstrate less respect and consideration to neighbours than might be exhibited by more permanent residents because they are staying for a short period only. This is of course speculation but the frequency of the change in occupiers will bring a range of different people to the apartments with a range of motives for booking their stay. In my opinion this increases the risk that some of those occupiers will be inconsiderate to the amenities of other users of the apartments, especially if they are in high spirits. I note that the site, no. 64



Newmarket Road opposite, is shortly to be developed for 84 residential apartments, many of which would be accessed from Severn Place. This adds to my concern regarding the possible residential impact on the wider area.

- 3.18 In my view the frequency of changes in occupation has changed the character of the use and has resulted in a sui generis use for short-term visitor accommodation that represents the loss of the lawful use of the apartments as permanent residential accommodation and introduces a potentially unacceptable level of harm to the amenity of occupiers of neighbouring apartments and those permitted for no. 64 Newmarket Road.
- 3.19 It is considered that planning conditions could not overcome the identified planning harm described in the reasons for service of the notice in respect of the premises at the time of writing this report.
- 3.20 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 resulting change of use of the premises would effectively benefit from planning consent after 10 years from the commencement of the use.
- 3.21 It is recommended in the interests of planning clarity to serve one enforcement notice for each apartment covering the alleged breach of planning control. The steps to comply in the notice reflect and give planning clarity as to what must be carried out in order for the breaches to cease and be rectified. All interested parties are to be served with a copy of the notice.

## **4.0 RELEVANT PLANNING POLICIES**

- 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
- 4/13 Pollution and Amenity
- 5/4 Loss of Housing
- 6/3 Tourist Accommodation

4.4 Policies 3/4, 3/7 and 4/13 are relevant to the concerns regarding the impact of the development on the amenity of occupiers of neighbouring properties.

4.5 Policy 5/4 states:

*"The redevelopment of existing dwellings or the change of use of residential accommodation to other uses will not be permitted unless it can be demonstrated that:*

- a. the property is unfit for human habitation and cannot be rehabilitated;*
- b. it is a subsidiary part of a non-residential property without any practical means of separate access being provided;*
- c. it is a Listed Building which can best be preserved through change of use;*
- d. it is necessary for the provision of community facilities for which there is a need in Cambridge; or*
- e. the lost accommodation is replaced by at least an equivalent amount of new residential floorspace. Such provision will be made on site unless otherwise agreed."*

4.6 It is considered that the development results in the change of use of residential accommodation to a sui generis commercial short-term visitor accommodation use and that none of the exception criteria are met. The development therefore represents the unacceptable loss of residential accommodation.

4.7 Policy 6/3 states:

*“Development which maintains, strengthens and diversifies the range of short-stay accommodation will be permitted. Provision should be made for disabled visitors. In the case of change from residential use, part of the accommodation must be retained as permanent residential accommodation.”*

*Development will not be permitted which would result in the loss of existing short-stay tourist accommodation unless the change is to permanent residential accommodation or community facilities for which there is a need in Cambridge.”*

4.8 The change of use is considered to represent the loss of permanent residential accommodation.

## **5.0 INVOLVEMENT OF OTHER COUNCIL DEPARTMENTS OR OTHER AGENCIES**

5.1 During the course of the investigation no contact has been made with 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.

## **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 development 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.

- 6.4 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 resulting material change of use would effectively benefit from planning consent after 10 years.
- 6.5 The steps to comply in the notice reflect and give planning clarity as to what must be carried out in order for the breach 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 enforcement notices for each apartment 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, namely without planning permission:

-the unauthorised change of use from C3 dwelling house to short-term visitor accommodation lets (sui generis) at flats 3, 6, 7, 8, 9 and 11 of Roman House.

-the unauthorised change of use from C3 dwelling house to short-term visitor accommodation lets (sui generis) at flats 1, 2, 3, 4, 5, 6 and 7 of Florian House,

Specifying the steps to comply and the period for compliance for each apartment set out in paragraphs 9.2 to 9.4, for the reasons contained in paragraph 9.5.

- (ii) To authorise the Head of Planning Services (after consultation with the Head of Legal Services) to draft and issue the enforcement notices.
- (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 each apartment for short-term let visitor accommodation of less than 90 days duration provided for paying occupants.
- 9.3 Permanently cease and remove all forms of advertising for each apartment for let in relation to the short-term let visitor accommodation use.

#### Period for Compliance:

- 9.4 Two [2] month(s) from the date the notice comes into effect.

#### Statement of Reasons:

- 9.5
  - (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 use of the apartments for commercial short-term visitor accommodation use results in the permanent loss of the lawful C3 use of the apartments as permanent residential accommodation. This is contrary to policy 5/4 of the Cambridge Local Plan (2006).
  - (iii) The use of the apartments for short-term visitor accommodation lettings is likely to give rise to conditions resulting in increased noise and disturbance. In particular, the increased frequency of turnover of arrivals and departures to and from the premises, especially at the weekend may give rise to a resulting loss of amenity. This is

contrary to policies 3/4, 3/7 and 4/13 of the Cambridge Local Plan (2006).

- (iv) The use of the apartments for short-term visitor accommodation lettings is likely to give rise to conditions resulting in increased noise and disturbance. In particular, the nature of the visitors not having a permanent investment in the neighbourhood and the timing of the late night arrivals and early morning departures of arrivals and departures to and from the premises, especially at the weekend may give rise to a resulting loss of amenity. This is contrary to policies 3/4, 3/7 and 4/13 of the Cambridge Local Plan (2006).
- (v) It is considered that planning conditions could not overcome the identified objections with regard to this unauthorised change of use.

9.6 Mindful of the NPPF, Development Plan policy and other material considerations, the Council consider it expedient to serve enforcement notices in order to remedy the breach of planning control.

The contact officer for queries on the report is John Shuttlewood on extension 457326 or Toby Williams 457312