

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: Planning Committee DATE: 10th January 2018

WARD: Kings Hedges

PLANNING ENFORCEMENT REPORT FOR: EN/0164/17

Address: 60 Nuns Way, Cambridge, Cambridgeshire CB4 2NR

Details of Alleged Breaches of Planning Control: Without planning permission, the unauthorised change of use from C3 dwellinghouse to three separate units of residential accommodation at the premises.

SUMMARY	This report has regard to an alleged unauthorised change of use of a domestic residential dwellinghouse into three separate units of residential accommodation at the premises.
RECOMMENDATION	Serving one change of use Enforcement Notice directed at remedying the harm caused as a result of the breach occurring. The recommendation looks to ensure compliance in the short term and onwards.
NOTICE TYPE	Enforcement Notice Material Change of Use x1

1.0 INTRODUCTION

- 1.1 60 Nuns Way is located on the north-eastern side of Nuns Way. It borders No.58 Nuns Way to the south-east. No.62 Nuns Way adjoins the property to the north-east. There is a car parking area to the north-west of the site.
- 1.2 I note that the site falls outside a Conservation Area. The building is not a Listed Building or a Building of Local Interest. There are no

tree preservation orders on the site and is outside a controlled parking zone.

2.0 PLANNING HISTORY

2.1 Planning applications

17/0062/S73	Section 73 application to remove condition 4 of ref: 14/1315/FUL (Bicycles shall be stored in the garage but shall not be suspended).	Granted Permission
14/1315/FUL	Single storey front/side extension with flat roof.	Granted Permission

2.2 Planning Enforcement

EN/0164/17– Alleged use of former garage as separate flat (Current Investigation)

EN/0096/17 - Alleged use of garage roof as a domestic dwelling habitable space (Closed case)

EN/0247/16 - Breach of condition 4 of 14/1315/FUL (Closed case)

EN/0075/16 – Alleged breach condition 4 of 14/1315/FUL, HMO without permission (Closed case)

EN/0092/16 - Works not in accordance with approved plans (Closed case)

3.0 ENFORCEMENT INVESTIGATION AND ASSESSMENT

3.1 The site has been referred to the Planning Enforcement Team by a local resident concerned with the conversion of the garage, extension to the main dwelling and the subsequent use of the property.

3.2 A recent site visit of 28 September 2017 was undertaken to the property. This confirms that the property includes three bedrooms upstairs and three bedrooms downstairs. Two of the downstairs bedrooms are considered to be micro-flats that are capable of independent use with their own separate access, separate kitchen facilities (sink, microwave, cupboard space, washing machine),

with a poor outlook on to a side passage with brick wall from the bedroom windows. They lack outdoor space as the majority of the garden space has been taken up by a previously approved extension (14/1315/FUL) and are internally cramped in terms of layout and space provision. As such, there are three separate units of accommodation at the property: two micro-flats and the rest of the dwelling in small scale C4 HMO use.

- 3.3 A Planning Breach letter was issued on 17th October 2017, which gave the applicant 2 months to insert an internal connection from the bedroom in the converted garage part of the dwelling to the shared kitchen in the main part of the house. The applicant was also asked to remove all kitchen facilities from the two micro-flats.
- 3.4 A Section 73 application was approved on 7th December 2017 for the removal of condition 4 of planning permission 14/1315/FUL (Bicycles shall be stored in the garage but shall not be suspended).
- 3.5 The deadline to carry out the required works in the breach letter has now passed (18/12/2017).
- 3.6 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.
- 3.7 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 resulting change of use of the premises would effectively benefit from planning consent after 4 years from the commencement of the use.
- 3.8 It is recommended in the interests of planning clarity to serve one enforcement notice covering the alleged breach of planning control which results 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 breach 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

3/7 Creating Successful Places
3/10 Sub-division of Existing Plots
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 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 4 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 4 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 4 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 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, namely without planning permission, the unauthorised change of use from C3 dwelling house to three

separate units of residential accommodation at the premises, specifying the steps to comply and the period for compliance 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 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 the premises as three separate units of accommodation.
- 9.3 Permanently remove all cooking facilities and kitchen sinks from the two unauthorised ground floor separate units of accommodation (micro-flats).
- 9.4 Insert an internal connection from the former garage space into the shared kitchen within the main dwelling household.

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 four years (Section 171B(2)). The applicant has undertaken development without the benefit of planning permission.
- (ii) The creation of additional separate self-contained units of accommodation within the main dwelling house (micro-flats), 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) 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 an enforcement notice in order to remedy the breach of planning control.

The contact officer for queries on the report is Nick Smith on extension 457163.