

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning and Economic Development Services

TO: Planning Committee DATE: 7th February 2018

WARD: Queen Edith's

PLANNING ENFORCEMENT REPORT FOR:

Address: 59 Hills Avenue, Cambridge, Cambridgeshire CB1 7UZ

Details of Alleged Breaches of Planning Control: Without planning permission, the unauthorised change of use from Class C3 dwellinghouse to an 'Aparthotel' style short-term visitor accommodation use at the premises

SUMMARY	This report has regard to an alleged unauthorised change of use of a domestic residential dwellinghouse into a commercial short-term visitor accommodation letting use 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 59 Hills Avenue is an extended two storey 6 roomed semi detached house on the northern side of Hills Avenue. The locality is of a predominately residential nature.
- 1.2 Information was initially received during April 2017 from local residents that the house was being used as a newly opened

hotel/Bed and Breakfast accommodation, and this was evident from the increased amount of vehicular activity associated with the premises. Information was also provided that rooms were being advertised on the Booking.com website for nightly let. It appeared therefore that it was being used commercially for short-term visitor accommodation rather than as a dwellinghouse. A planning enforcement investigation was undertaken that included the service of a Planning Contravention Notice (PCN). A decision on how to proceed with the investigation has been pending whilst consideration has been given to when the use of a dwelling for short-term visitor accommodation can amount to a change of use that constitutes development.

- 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

05/0555/FUL	Erection of single storey outbuilding (retrospective)	Granted Permission subject to conditions
C/04/0582	Erection of a two storey rear extension	Granted Permission subject to conditions

2.2 Planning Enforcement

EN/0054/17 – Alleged change of use to holiday let (Current Investigation)

3.0 ENFORCEMENT INVESTIGATION AND ASSESSMENT

- 3.1 The site was initially referred to the Planning Enforcement Team by local residents, through ward councillors, concerned with increased vehicular activity and parking along the road deemed attributable to the premises.

- 3.2 There are no recorded complaints to the Council's Environmental Health Team concerning noise. However, the same department's Commercial Food Team carried out a site visit in April 2017 where they interviewed the employee who lives on site in the rear outbuilding. Information was provided that the premises was converted in March 2017 to 6 independent rooms each with en-suite, fridge freezer, kettle, toaster, microwave and coffee machine. In addition, each of the rooms were provided with small packets of cereal, tea bags, coffee, biscuits, bread, milk, jams and butter. It is clear from this that there are no formal communal eating or cooking facilities hosted within the current use of the premises such that the facilities would not be consistent with use by a single household.
- 3.3 A Planning Enforcement site visit, also in April 2017, also found that the outbuilding was being occupied with en-suite double bedroom, evidence of clothes hung up and a separate room with TV, large fridge, large sofa and microwave. This gives the outbuilding the propensity to be used as a separate unit of accommodation but appears to be used by the employee managing the use of the main dwelling house as a short-term let 'Aparthotel' style serviced accommodation.
- 3.4 Council records show that a building control application was received in June 2017 for works relating to a change of use from residential to hotel at the premises.
- 3.5 Searches on the Booking.com website for the premises continue to show the premises available to rent room by room, on a night by night basis, for up to 12 guests under the name of 'Hills House'.
- 3.6 Residents continue to contact the planning enforcement team as a result of what they feel to be harm to their amenity resulting from increased traffic and the principle of the alleged current use at the premises not benefitting from planning permission.
- 3.7 The PCN response is awaited. Officers will update Members on the response during committee proceedings. It is an offence to knowingly make a false or misleading statement within a PCN and any information submitted should therefore be taken at face value and assessed accordingly.

3.8 A case review has been carried out and identified the following:

The premises are let and available to be let as individual rooms for some or all of the days of the week. Whilst the complainants, owners and employee have previously described the premises as a hotel/B&B, it is considered in planning terms that the use is as an 'Aparthotel' form of short term visitor accommodation. There are no communal areas such as a room for partaking of breakfast. Barring the service of laundry and the provision of breakfast foodstuffs within the rooms there and no other services provided and there is no reception area. As such, the current use of the premises as Class C1 hotel should be discounted.

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 It is recognised that permanent residential occupation may involve occasional changes in occupiers such as when a property is sold or a lease expires and new owners/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 Aparthotel 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.
- 3.13 In addition to this assessment is the need to consider any potential loss of the property as residential accommodation occupied by a single household as defined within Use Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended). The lawful use of the premises is as a dwelling within Use Class C3 which requires that occupation be by a person or persons regarded as forming a single household. Any such loss would, of itself, represent a change of use of the dwelling from C3 and, as a result, the loss of the dwelling as permanent residential accommodation.
- 3.14 In relation to 59 Hills Avenue, it is clear from the website that the property is available to be let out on a room by room basis throughout the year and that it has been subdivided into 6 separate units. It is therefore no longer occupied by a person or persons as a single household and for this reason alone can no longer be considered to fall within Use Class C3. This amounts to the change of use of the dwelling and its subsequent loss as permanent residential accommodation. It is also clear that there

has been a change to the character of the use since the frequency of the comings and goings of occupiers of the units is well in excess of the working definition. Officers consider in this regard also that a change in the character of the use has occurred and that therefore the use can no longer be considered to fall within Use Class C3.

- 3.15 For it to be expedient to consider taking formal enforcement action there has to be material planning harm identified as a result of the change of use. In this case this is identified as the loss of permanent residential accommodation and unacceptable impact on the amenity of occupiers of neighbouring properties. More detail in this regard is given in the following paragraphs and in the reasons for service of the notice.
- 3.16 It is considered that from the change of use to six separate apartments used as short term visitor accommodation, there has been a change in character of the use of the premises for short term lettings. This is in terms of the loss of single household occupation, the frequency of the changes in occupation and the timings of arrivals and departures to and from the premises, especially the increased likelihood of early morning and late evening arrivals/departures compared to the pattern of these events when the owner is resident. In relation to this is the fact that these arrivals are more likely to be groups of persons coming and going together and the associated noise and disturbance that this may cause compared to various occupants of a property coming and going separately i.e. not all at the same time.
- 3.17 A further factor is that 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 property 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 local residents. This is likely to be more greatly felt as the site is located in a leafy residential suburb that is off the main road.

- 3.18 The use of the property as short-term visitor accommodation is also not considered to be consistent with Class C4 use, Houses in multiple occupation (HMO) (3-6 occupants) since the short term nature and frequency of the arrivals and departures is inconsistent with the nature of the HMO use as a single household by persons who reside in the property on a longer term basis and who have some investment in the local community and neighbourhood. As such the use for short-term lets fails to fall within Classes C3 or C4 and is considered to be Sui Generis (a class of its own).
- 3.19 In my view the subdivision of the property and the frequency of changes in occupation has resulted in the loss of occupation by a single household and changed the character of the use resulting in a sui generis use for short-term visitor accommodation that represents the loss of the premises as permanent residential accommodation and introduces an unacceptable level of harm to the amenity of occupiers of neighbouring dwellings.
- 3.20 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.
- 3.21 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.
- 3.22 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

3/4 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 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, namely without planning permission, the unauthorised change of use from C3 dwelling house to Aparthotel style serviced short- term visitor accommodation lets (sui generis) 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 Director of Planning and Economic Development (after consultation with the Head of Legal Practise) to draft and issue the enforcement notice.

- (iii) To delegate authority to the Director of Planning and Economic Development (after consultation with the Head of Legal Practice) 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 for short-term let visitor accommodation of less than 90 days duration provided for paying occupants.
- 9.3 Permanently cease the use of the premises as six separate units for short-term let visitor accommodation of less than 90 days duration provided for paying occupants.
- 9.4 Permanently remove all but one set of kitchen and cooking facilities from the premises.
- 9.5 Permanently cease the use of the outbuilding at the premises for any use other than ancillary use to the main residential dwellinghouse.
- 9.6 Permanently cease and remove all forms of advertising in relation to all of the rooms within the premises for let in relation to the short-term let visitor accommodation use.

Period for Compliance:

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

Statement of Reasons:

- 9.8 (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 whole of the premises for commercial short term visitor accommodation use results in none of the accommodation being retained as permanent residential

accommodation. This is contrary to policies 5/4 and 6/3 of the Cambridge Local Plan (2006).

- (iii) The subdivision and use of the premises into six independent self-contained visitor accommodation units results in the loss of single household occupation of the dwelling and thereby the loss of the C3 use of the dwelling as defined within Use Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended). This therefore amounts to the loss of permanent residential accommodation contrary to Policies 5/4 and 6/3 of the Cambridge Local Plan (2006).
- (iv) The use of the premises 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).
- (v) The use of the premises 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).
- (vi) It is considered that planning conditions could not overcome the identified objections with regard to this unauthorised change of use.

9.9 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 John Shuttlewood on extension 457326.