

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: West / Central Area Committee DATE: 21st June 2011

WARDS: Castle

PLANNING ENFORCEMENT - PLANNING CONTRAVENTION REPORT

1 PURPOSE

- 1.1 To consider whether a planning enforcement notice should be issued in respect of development carried out without the benefit of planning permission at the site of the former Texaco Garage, Huntingdon Road, Cambridge CB3 0DQ, namely the erection of a boundary treatment adjacent to a Highway that exceeds 1 metre in height.
- 1.2 Section 55 (1) of the Town and Country Planning Act 1991 defines development as: 'the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any building or other land'.

2 BREACH

- 2.1 The erection of herras fencing and plastic sheeting which exceeds one metre in height and is adjacent to the highway at the site of the former Texaco Garage, Huntingdon Road, Cambridge CB3 0DQ which requires express planning permission from the Local Planning Authority.
- 2.2 The owner of the site is Norman Lynch, the Company Director of Cambridge Land Limited, 59 Ballagarey Road, Glen Vine, Isle of Man IM4 4ET.

3 PLANNING HISTORY

- 3.1 The site is currently used as a hand car wash, it was previously a Texaco garage which was erected under planning permission C/72/0263.
- 3.2 On 17th September 2010 application reference 10/0887/FUL for "Erection of a part three/part four storey building for student housing accommodation (94 rooms) and a retail unit at ground floor level, together with associated hard/soft

landscaping and service lay-by" was refused at committee. An appeal has been lodged with the Planning Inspectorate.

- 3.3 If the site benefits from planning permission and works have commenced to implement the permission then fencing to shield the site whilst construction takes place may be erected under Part 4 Class A of the General Permitted Development Order 1995 (as amended).

4 HISTORY OF ACTIONS BY PLANNING INVESTIGATION SERVICE

- 4.1 In April 2010 the Planning Investigation Service received a complaint regarding herras fencing that had been erected at the former Texaco site on the junction of Huntingdon Road and Victoria Road. It was alleged that the plastic sheeting attached to the herras fencing was causing an obstruction to road users and required planning permission.

On 2nd July 2010 the manager of the site was advised that the fencing and plastic sheeting required planning permission and that it would be unlikely to get permission in its current form. The site manager informed officers that the erection of the fencing and plastic was requested by the Health and Safety Executive in order to prevent water from the car wash spraying off the site which could cause a hazard at the busy junction. The manager also stated that planning permission had been granted on the site and consequently the use of the site as a hand car wash would only continue for a short period of time.

On 22nd November 2010 a letter was sent to the car wash requesting an application for planning permission for the fencing was submitted within 28 days.

- 4.2 On 18th February 2011 Requisition for Information was hand delivered to the site, it was completed and returned on 15th March 2011. The Requisition for Information provided the name and address of the freeholder of the land.
- 4.3 On 23rd March 2011 the agent responsible for submitting planning application 10/0887/FUL provided the name of the Company Director of Cambridge Land Management and agreed to forward an email to him that advising that if an application for the fencing was not forthcoming within 28 days then enforcement action would follow.
- 4.4 The carwash business began operating in 2008 and the fencing was erected at that time and therefore the Planning Department are satisfied that the breach described above occurred within the last four years.

5 POLICY, PLANNING AND OTHER MATERIAL CONSIDERATIONS

Planning Policy Guidance 18: Enforcing Planning Control states that a local planning authority may issue an enforcement notice where it appears to them that there has been a breach of planning control and it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

The development has proceeded without planning permission but in order to issue an enforcement notice there must be sound planning reasons to justify taking such action.

6 JUSTIFICATION FOR ENFORCEMENT

6.1 Planning permission application reference 10/887/FUL for "Erection of a part three/part four storey building for student housing accommodation (94 rooms) and a retail unit at ground floor level, together with associated hard/soft landscaping and service lay-by" was refused by planning committee on 15th November 2010 for the following reasons:

1. Inadequate car parking space for disabled users
2. Failure to demonstrate that the student accommodation will be occupied only by students attending Anglia Ruskin University or the University of Cambridge
3. The proposal responded poorly to existing features of historic and local character, and fails to provide an attractive built form to positively enhance the townscape
4. Failure to make appropriate provision for open space, waste storage facilities, or public art.

This refusal is now subject to an appeal to the Planning Inspectorate. An Informal Hearing was held on 5th May 2011. A decision from the Inspector is likely before the end of June 2011.

The third reason for refusal would also apply to the unauthorised operational development concerning the erection of the fence in that it fails to positively enhance the townscape and so is contrary to policy ENV7 of the East of England Plan (2008), policies 3/4 and 3/7.

6.2 Cambridge City Council has not received any further application for planning permission for the site.

6.3 All attempts to negotiate and secure the removal of the fencing and plastic sheeting around the site at have failed and therefore officers consider the serving of an Enforcement Notice is required in order to address the negative impact on the area.

6.4 If an Enforcement Notice is authorised by this committee it will be drafted and approved by Legal Services and contain the following:

6.4.1 **Steps to comply:** Reduce the height of the herras fencing surrounding the site to a height not exceeding 1 metre.

Reason: the height of the fencing exceeds the permitted limit for an enclosure.

6.4.2 **Period of compliance:** 28 days.

Reason: an Enforcement notice must state a period for compliance, this suggested provides a reasonable period of time for works to secure compliance to be undertaken.

6.4.3 Statement of reasons: It appears to the Council that the breach of planning control has occurred within the last four years.

The owner and tenants of the site have been advised of the need to obtain planning permission for the fencing and have been given adequate time to submit an application.

The local planning authority consider that the fencing does not respond to the context of the area or enhance its character and so is contrary to Policy 3/4 of the Cambridge City Local Plan 2006.

The City Council considers that it is expedient to issue an enforcement notice, having regard to the provisions of the development plan and other material considerations.

7 RECOMMENDATION

It is recommended that the Head of Legal Services be authorised to issue an enforcement notice under the provisions of S172 of the Town and Country Planning Act 1990 (as amended) for, without planning permission, the carrying out of operational development, namely the erection of a fence adjacent to a highway which is over 1 metre in height.

8 IMPLICATIONS

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| (a) Financial Implications | None |
| (b) Staffing Implications | None |
| (c) Equal Opportunities Implications | None |
| (d) Environmental Implications | None |
| (e) Community Safety | None |

No background papers were used in the preparation of this report

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Report file: N:\Development Control\Planning\Enforcement\Committee reports\former Texaco report June 2011.doc

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