

25 JUNE 2019 PLANNING COMMITTEE

AGENDA ITEM:6h ENFORCEMENT REPORT WARD: BWB

Committee: PLANNING COMMITTEE

Date of meeting: 25 JUNE 2019

**Subject: UNAUTHORISED CHANGE OF USE FROM RETAIL (A1)
WITH ANCILLARY STORAGE TO RESIDENTIAL (C3) BY
CREATING 3 ONE BEDROOM FLATS AT 17 BREWERY
LANE, BYFLEET, WEST BYFLEET, SURREY, KT14 7PQ**

Case Officer: PLANNING ENFORCEMENT OFFICER DPC

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1. PURPOSE

To authorise all necessary action including proceedings in the Magistrates' Court in respect of breaches of planning control.

2. RECOMMENDATION

- (i) Issue an Enforcement Notice in respect of the above land requiring of the remedy of the breach of planning control to be achieved through the cessation of the C3 residential use and restoration of the building known as the workshop to ancillary A1 retail storage within (4) months of the Enforcement Notice taking effect. Restoration works required to the workshop include but are not limited to:-

- I. to reinstate the original workshop, including the external appearance and reducing the height of the roof back to the measurements of 2.71m and 2.35m within three months;
- II. to provide drainage on the recreated front forecourt; and
- III. to regularise the stairway to the first floor

- (ii) **That the Head of Democratic & Legal Services be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended, and officers be authorised in the event of non-compliance to prosecute under Section 179 of the Town & Country Planning Act 1990 or appropriate power and/or take direct action under Section 178 of the Town and Country Planning Act 1990 in the event of non-compliance with the notice. To instigate legal proceedings pursuant to Section 179 of the Town and Country Planning Act 1990, in the event of non-compliance with the notice.**

3. SITE DESCRIPTION

The site is located on the eastern side of Brewery Lane and the entrance into Eden Grove Road. 17 Brewery Lane is a Victorian two storey terrace house. The area is characterised by both detached dwellings of single storey design and also 2 storey dwellings. The authorised use of the site is A1 retail with ancillary workshop to the side/rear.

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4. PLANNING HISTORY

PLAN/2019/0084 - Proposed external alterations including new fenestration, altering existing fenestration and altering external materials. No Further Action 20 May 2019.

AMEND/2018/0070 - Non Material Amendment to PLAN/2018/0311 dated 02.08.2018 for the conversion of a two-bedroom upper floor flat to 2 x one-bedroom flats, including the insertion of a new first floor door in the rear elevation as well as the implementation of dormer previously approved as part of PLAN/2017/0727. No Further Action dated 12 October 2018.

AMEND/2019/0017 - Non Material Amendment to PLAN/2017/0727 dated for 13.09.2017 erection of a rear dormer to create an en-suite bathroom at second floor, front rooflights and enlarged window to the ground floor flank elevation. (Amended Description). Refused 03 May 2019.

PLAN/2018/0311 - Conversion of a two-bedroom upper floor flat to 2 x one-bedroom flats, including the insertion of a new first floor door in the rear elevation as well as the implementation of dormer previously approved as part of PLAN/2017/0727. Refused by Planning Committee on 24 July 2018.

PLAN/2017/0799 – Prior approval for a proposed change of use of a part of retail units (class A1/A2) to 4no one-bedroom dwellings (class C3). – dated 18 August 2017 for proposed single storey extension. Prior Approval – Approved on 29 September 2017.

PLAN/2017/0727 – Erection of a rear dormer to create an en-suite bathroom at second floor, front rooflights and enlarged window to the ground floor flank elevation. (Amended Description). Permitted on 14 September 2017.

PLAN/2017/0269 - Construction of 1 bed flat over garage following demolition of storage unit to rear of 17 Brewery Lane. No Further Action dated 10 March 2017.

PLAN/2016/0320 - Retention of a chimney flue. Permitted on 8 August 2016.

PLAN/1995/0193 - Retrospective application for the retention of a single storey rear extension for storage purposes ancillary to the retail shop. Refused on 17 July 1995.

5. REPORT

This matter was brought to the attention of the Planning Enforcement Team on 3 April 2018 following a complaint relating to were extensive 'new works' being undertaken. A drive past was undertaken by the Planning Enforcement Officer and at that time they did not observe any works being undertaken to the former workshop to the side/rear of 17 Brewery Lane.

In November 2018 a telephone call was received from a member of the public to say that works were taking place at 17 Brewery Lane, which had spread onto the highway and was causing trip hazards.

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A Planning Enforcement Officer undertook a site inspection and found that there was substantial work being undertaken on the former workshop at the rear of the property and the Planning Enforcement Officer entered the property to enquire what was happening.

The Planning Enforcement Officer was met by a person (who was later discovered to be a Director of the company which owns the site) who asked what was going on? The Director explained that they had planning permission to convert the workshop into 3 separate dwellings. The Planning Enforcement Officer corrected the Director and said that they do not have planning permission, but the benefit of Prior Approval to convert the building which was different.

The Director contested the Planning Enforcement Officer's assertions and it was not until the Agent, who had appeared, retrieved the paperwork that the Director accepted what the Planning Enforcement Officer had said.

The Planning Enforcement Officer confirmed that the Director was not permitted to change the exterior by improving the height or the width of the original workshop or extend the footprint or floor space, otherwise there would be a breach of the Prior Approval and the only way to remedy any breach was to either to revert back to the original measurements of the building or submit a retrospective planning application for the retention of the unauthorised change of use and any alterations carried out to the workshop.

It was at this point that the Planning Enforcement Officer advised the Agent and the Director that a retrospective planning application for the 3 separate units was unlikely to be looked upon favourably the Local Planning Authority.

The Planning Enforcement Officer then left the property and confirmed all the points discussed on site in a letter dated 9 November 2018.

On 12 November 2018 the Agent sent an email to Development Manager seeking assistance in understanding what the issues were that the Planning Enforcement Officer had raised.

The response by the Development Manager was "*I have reviewed the Planning Enforcement Officer's letter to you of 9th November and agree with its contents. I note your comments 3 and 4 below. However, I also note that the failure to discharge the contamination condition and the failure to comply with the Conservation of Habitats and Species Regulations are still outstanding. You will need to liaise with the Planning Enforcement Officer in order to address these matters.*"

There has since been a number of correspondences by both email and letter between the Planning Enforcement Officer and the Agent disagreeing that there has been a breach of planning control and that the works are not in accordance to Prior Approval permitted under the Town and Country (Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class M – retail shop to dwelling house(s).

Concerns have also been raised that the drawings submitted in connection with application for Prior Approval reference PLAN/2017/0799 have been wrongly submitted with details missing that the agent is now seeking to rely on and that the works that have been undertaken are permitted by the Prior Approval. Other concerns have also been raised regarding the proposed finishing to the

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former workshop with front doors being installed along the side elevation facing Eden Grove Road and proposed windows to be added once the works are at the appropriate stage.

As the breach of the conditions associated with the Prior Approval, were still not being addressed and the works were continuing the Planning Enforcement Officer sent a letter to the developer advising the works were unauthorised on 30 January 2019. The letter advised the Agent that if the works did not cease, that they either revert back to all the original measurements or submit a retrospective planning application to retain the works completed otherwise the matter would be reported to the Planning Committee to seek authority to take the appropriate Enforcement action.

At the same time the Planning Enforcement Officer set out 12 questions in the letter to verify a number of key points that had not been confirmed or answered when asked previously.

It was the Planning Enforcement Officer's opinion that the works were not being carried out in accordance to conditions permitted under the Prior Approval for the change of use from retail shop, because there has been a substantial change in the roof height, additional space being created at the rear of the property by the extension of the floor space; demolition of the outside toilet which abuts the former workshop directly to the dwelling house thus creating in effect an unauthorised extension.

Additionally, there has been the creation/replacement of a new stairway leading from Eden Grove Road, to the first floor above the A1 retail unit, where the consent from the Local Planning Authority not been obtained. The property having been converted into flats under planning permission reference number PLAN/2018/0311, and does not benefit from Permitted Development Rights.

The workshop occupies the following area of the rear garden of the property as follows:

(Total length of the tin structure from dwelling to end of tin structure 21.80m.
This is broken down to be:
Amenity area 3.852m x 5.832m
Tin structure length along Eden Grove Road 16.168m x 5.832m
Additional length of structure adjacent to 15 Brewery Lane is 1.78m added to 16.168m = 17.948m
Additional width of structure adjacent to 15 Brewery Lane is 5.823m – 2.93m = 2.09m – abutting the staircase.
Space for staircase opening 1.78m width depth 2.93m)

The photographs will show how much the roof has been raised in height and there is a photograph from the Agent to show that there were steel uprights installed to the height of the former height of the workshop, but the height was increased when the steel Ridge Steel Joist (RSJ's) were added.

There is also a photograph, again submitted by the Agent, showing the rear elevation of the workshop having been totally removed and subsequent photographs showing the new rear wall which has been installed.

The drawings submitted for all of the planning applications submitted since 2017 have all had details missing and those plans submitted for the Prior Approval (PLAN/2017/0799) have failed to take into account the fact that the

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proposed plans do not take into account the positioning of the stair case and shows the ground floor of 'proposed flats' as being abutting to the main dwelling.

The works that have been completed to raise the roof height,(we believe is in order to comply with Building Regulations and minimum ceiling height), the replacement of all the former roof joists, the insertion of a new steel frame (in the form of upright supports and RSJ's), the complete replacements of roof, the redesign and creation of a new back wall, the additional need to create steps to enter the first two units from Eden Grove Road (outside the curtilage of the property) all contribute to a circumvention of the spirit of the change of use under Class M.

The owners have been informed that the works undertaken are unlikely to be looked upon favourably because they would not meet the requirements of the Local Development Plan.

The unauthorised development is unlikely to be granted planning permission as there are a number of policies that the development would be in conflict with. One of the reasons that the Planning Enforcement Officer gave the Director and agent was that there was a concern about the Flood Risk and the need to reduce the risk in accordance to Policy CS9 (Flooding and Water Management).

The agent was advised that because of the former use of the workshop (i.e. motorcycle repair and manufacturing of fireplaces) there are contamination concerns and the agent/developer was informed that any discovery had to be reported to the Local Planning Authority for their further consideration. The agent/developer did not inform the Local Planning Authority, but raised the floor by block and beam to overcome any issues.

The use of the site as residential use converted to 3 flats would result in a contrived over-development with a cramped appearance which provides sub-standard accommodation and results in an undue loss of privacy to adjacent neighbouring property.

6. EXPEDIENCY OF TAKING ACTION

The conversion of the workshop into residential flats would result in contrived over-development, cramped appearance which provides sub-standard accommodation and result in an undue loss of privacy to adjacent neighbouring property.

CS:9

The Site is located within Flood Zone 2. As the development is for the subdivision of a commercial unit into separate residential dwellings which involves external works and alterations to the footprint of the building, it has not been demonstrated that the Sequential Test has been passed as required in paragraph 158 of the NPPF (National Planning Policy Framework) , **'The aim of the sequential test is to steer new development to areas with the lowest risk of flooding.** Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development

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in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding'. Or Paragraph 163 of the NPPF 'When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. **Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable)** it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.'

In addition Woking Core Strategy Policy CS9 (Flooding and water management) states '*The Council expects development to be in Flood Zone 1 as defined in the SFRA. Applications or allocations within Flood Zone 2 will only be considered if it can be demonstrated that there are no suitable alternatives in areas at lower risk*'.

This position was upheld at appeal for the construction of 2 residential dwellings within Flood Zone 2 at a property in Old Woking (APP/A3655/W/16/3161535) where the Planning Inspectorate concluded that the Sequential Test must be undertaken in accordance with policy and that as no suitable evidence had been submitted the site had not passed the Sequential Test. Furthermore the Inspectorate concluded that the Sequential Test must be carried out on a borough wide scale not just the local area of the proposed development, it was found that the harm to flood risk was not outweighed by the benefits of the development.

The unauthorised creation of 3 additional dwellings is therefore not in accordance with NPPF nor Woking Borough Council Core Strategy CS9. No evidence of the sequential test has been submitted, in addition no Flood Risk Assessment has been submitted to assess the flood risk to the site. Therefore the unauthorised development increases flood risk to the site and surrounding area.

CS11: Housing mix

Because of the contrived over-development and cramp appearance this does not only create sub-standard accommodation but does not benefit from any amenity facilities, such as a garden, car parking spaces, etc for the potential occupiers of the accommodation which has been built.

Additionally the accommodation that has been created is unlikely to offer a balance or sustainable asset to the neighbourhood. It may be argued that the actual development will have an adverse effect on the area and deter new residents from moving to the area, because it is out of character with the rest of the street scene.

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CS21: Design

The unauthorised development has not been designed with consideration in regards to its appearance or contribution to the existing characteristic of the street scene, in particular with respect to the scale, height proportions layout, materials and characteristics of adjoining buildings.

The unauthorised development does not achieve a satisfactory relationship to the adjoining properties and has a significant impact in terms of loss of sunlight as well its overbearing effect due to the bulk, proximity and outlook on the adjoining property.

The unauthorised development fails to provide appropriate levels of private amenity space, with the only space available being required to incorporate the provision for the storage of waste and recycle materials.

The building is not adaptable in the fact that there is scope to allow for changes to be to meet the needs of the occupier further now or in the future.

DM9: Flats above shops and ancillary accommodation

Although it's noted that there has been planning consent granted under PLAN/2017/0799 on 29 September 2018 the additional accommodation to the rear of the ground floor retail unit has not been designed in accordance to Core Strategy policy CS21 (Design) and the Councils Design SPD and there is no shared or common access between the dwelling and the additional accommodation.

The additional accommodation also has an effect on the parking standards which would have been considered as part of PLAN/2017/0799, but with the creation of 3 additional residential units there has been no assessment made.

Freestanding units that can demonstrate they are genuinely ancillary to the occupation of the main house will be considered in light of the character and amenities of the area and may be subject to conditions restricting their occupancy. Separate, freestanding, independent accommodation will be treated in the same way as a proposal for a new dwelling.

Planning Policy Guidance Note 18 – 'Enforcing Planning Control' require that where the LPA's initial attempt to perused the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop. However, enforcement action should always be commensurate with the breach of planning control to which it relates, for example, it is usually inappropriate to take formal enforcement action against trivial or technical breaches of planning control which cause no harm. The Local Planning Authority must, therefore, determine whether it is expedient to pursue action.

7. RECOMMENDATIONS

- (i) Issue an Enforcement Notice in respect of the above land requiring of the remedy of the breach of planning control to be achieved through the cessation

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of the C3 residential use and restoration of the building known as the workshop to ancillary A1 retail storage within (4) months of the Enforcement Notice taking effect. Restoration works required to the workshop include but are not limited to:-

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