

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	ENFORCEMENT REPORT IN RESPECT OF 141 BURGESS ROAD, BASSETT, SOUTHAMPTON
DATE OF DECISION:	23 NOVEMBER 2010
REPORT OF:	PLANNING AND DEVELOPMENT MANAGER
STATEMENT OF CONFIDENTIALITY	
Not applicable	

BRIEF SUMMARY

An unauthorised change of use of 141 Burgess Road has taken place from single, four bedrooomed dwelling to use primarily as an office to an architectural practice / property development company / consultant.

This occurred in March 2006 and, following a report considered in May 2008, the Planning and Rights of Way Panel resolved to serve an Enforcement Notice requiring the unauthorised use to cease. Unfortunately, an error occurred in the minuting of that resolution and action was held in abeyance pending consideration of a planning application which sought use of the property as a live-work unit.

Whereas that application was favourably determined because of the unauthorised use, implementation of that consent was required in a three month time frame.

Implementation did not take place and that consent therefore lapsed. In the interim, unauthorised use as an office has continued.

An internal inspection revealed the property was still in use as an office and response to a further Planning Contravention Notice reveals that office use persists and that notwithstanding there being a bedroom on the first floor, the property does not form anyone's primary place of residence.

Since the original resolution to serve an Enforcement Notice, the Core Strategy has been adopted. This contains Policy CS16, which seeks to resist the loss of family homes, whether through redevelopment or conversion. Policy H6 of the Local Plan Review also resists such net loss on sites.

Whereas no amenity or highway safety issues appear to have resulted from the unauthorised use, it does stand contrary to the Policies identified above. With 14,000 people currently on the housing waiting list in the City and a high demand for 4 bedrooomed properties and having regard to the general availability of purpose built office accommodation in the City to allow relocation and continuance of the business and the employment it provides, it is considered expedient to serve an Enforcement Notice to require the office use to cease, as continued unauthorised use undermines the Policies identified above.

RECOMMENDATIONS:

- (i) Serve an Enforcement Notice, requiring the unauthorised use of 141 Burgess Road primarily as an office to cease and that should that unauthorised use not cease that authority be given to prosecute such a breach of control via the Magistrates Court.

- (ii) Offer assistance to the business(es) operating from the address to find alternative accommodation, authorised for office use.

REASONS FOR REPORT RECOMMENDATIONS

- 1 The unauthorised use of 141 Burgess Road primarily as an office prevents the property being used as a single dwelling house. This is contrary to Policy CS16 of the City of Southampton Local Development Framework Core Strategy (January 2010) and Policy H6 of the City of Southampton Local Plan Review (March 2006).

DETAIL (Including consultation carried out)

Introduction

- 2 This report is brought before the Panel, notwithstanding the Planning and Development Manager's powers of delegation, owing to the complex history of the site, the Panel's previous involvement, and to allow interested persons the opportunity to address the Panel, before a decision is reached.
- 3 This report sets out :-
- The land use character of the area;
 - Relevant site history;
 - Responses made to Planning Contravention Notices served at the address;
 - The complaints made about the unauthorised use of the site;
 - Representations from Quayside Architects, who are carrying out the unauthorised business;
 - Representations in support of Quayside Architects' occupation of the site; and,
 - The options available to the Local Planning Authority in terms of planning enforcement action that may be taken in the public interest, including the preferred option from Officers.

Land use character of the area

- 4 Originally built as a detached 4 bedroomed house, 141 Burgess Road stands on the eastern corner of Burgess Road and Meadowhead Road. It enjoys three garaged parking spaces to the rear and a hard surfaced forecourt, both separately accessed from Meadowhead Road. Burgess Road is a busy local distributor road linking the A35 (Winchester Road) to the A33 (The Avenue). Meadowhead Road is a cul-de-sac. The immediate area is wholly residential in character.

Relevant planning history

- 5 The first complaint about the alleged business use was made on 6 February 2006.
- 6 Quayside Architects have told the Local Planning Authority that their business use started at 141 Burgess Road on 1 March 2006.
- 7 A planning application was invited to regularise the situation and application 06/00325/FUL was made valid on 3 March 2006. This proposed use of the property as a live-work unit and the details of such a use given by Quayside Architects are set out as **Appendix 1**, along with the submitted plans. It is

important to note that the whole of the residential plot known as 141 Burgess Road, extending to the common boundary with 1 Meadowhead Road and including three garages, off-street parking spaces was shown within the application site. This, taken with 2 forecourt parking spaces made 5 spaces in total to support the live-work use.

8 06/00325/FUL was recommended by Officers for conditional permission to the 24 April 2006 meeting of the Planning and Rights of Way Panel. Deputations for and against that recommendation were heard by the Panel, which decided to overturn the recommendation and refuse planning permission. The decision notice is reproduced as **Appendix 2**. The Panel made no other resolution to take enforcement action to secure the cessation of business use at the property and no Appeal was subsequently lodged against the Local Planning Authority's decision.

9 A relevant consideration continues to be Policy H6 of the City of Southampton Local Plan Review (March 2006 - LPR), the most relevant wording or which is underlined below:-

H 6 Housing Retention

10 Planning permission which would result in the loss of dwellings will not be granted unless:

- (i) Surrounding uses make their retention for residential use unacceptable;
- (ii) The residential unit(s) forms a subsidiary part of a non-residential property and a separate access cannot continue to be practically provided;
- (iii) The form of redevelopment will make a positive contribution to urban regeneration initiatives;
- (iv) The use provides a necessary or desirable community facility designed to meet an identified need in the neighbourhood;
- (v) The overall development results in a net gain in residential units;
- (vi) A proposal provides 'home-working' facilities as part of the overall scheme;
- (vii) The property lies within the defined University Development Area (UDA);
- (viii) The property lies within the identified area for hospital development of the General (HC1) and Royal South Hants (HC2).

11 As a mixed use of 141 Burgess Road for business and dwelling had been proposed under 06/00325/FUL, the requirements of clauses (v) and (vi) to H6 would have been met, which is why Policy H6 is not referred to in the reason for refusal.

12 Following the meeting, Quayside Architects were written to on 15 May 2006 and advised to cease the unauthorised business use of the property.

13 A period of correspondence then ensued with Quayside Architects, where the Local Planning Authority sought to informally ascertain the nature and characteristics of the business use actually carried out and requested the submission of a revised planning application.

- 14 A site visit was undertaken on 5 February 2007, which basically found the layout and use of the property to accord with that which had been submitted under application 06/00325/FUL (refer to last page of **Appendix 1**). A Planning Contravention Notice (PCN), dated 19 February 2007, was served on at the address formally seeking information about the use being undertaken. That Notice is set out at **Appendix 3**.
- 15 Applications 04/01314/OUT & 06/00083/VC (as partially adjusted by Appeal decision dated 24.7.06), 06/01104/FUL, granted 12.9.06 and 06/01674/FUL, granted 8.1.07, 07/00112/VC (as partially adjusted by Appeal decision dated (14.3.08) and 07/01817/FUL (allowed at Appeal 23.06.2009) have been submitted and approved to subdivide the plot and place a dwelling on the rear part of the plot, which includes the demolition of the 3 garage parking spaces.
- 16 If a dwelling were to be constructed on the rear part of the plot, this would compensate for the loss of 141 Burgess Road as a dwelling, allowed for under LPR Policy H6. However, since that time the LDF Core Strategy has been adopted, where Policy CS16 resists the loss of family homes per se, whether through redevelopment or conversion.
- 17 Representations against another application 06/01269/FUL cross-referred to the continuing unauthorised business use at 141 Burgess Road and sought the Council's action to regularise the matter.
- 18 On the basis of answers given to the PCN dated 19 February 2007 (reproduced as **Appendix 4**) and the lack of significant harm being caused by the use, at that time the - (then titled) - Development Control Manager decided that it was not expedient to serve a planning enforcement notice to secure the cessation of the unauthorised business use.
- 19 On 14.12.07 a further complaint was received about the continuing unauthorised use. A further written invitation was put to Quayside Architects on 10.1.08 to submit a regularising application. After conferring with Legal Services a further site visit was undertaken on 4.4.08 by two officers, which revealed that shown in **Appendix 5**. The land use character of the building can now be summarised as business use pervading the character of most rooms save for one bedroom on the first floor.
- 20 A second PCN was served on 16.4.08. That and the response to it are reproduced as **Appendix 6**.
- 21 At its meeting on 27 May 2008 the Planning and Rights of Way Panel resolved to serve an Enforcement Notice for the reasoning set out in **Appendix 7**. Regrettably, owing to a drafting error, the minuted resolution said that the majority of Members were against such action, rather than for.
- 22 Subsequent to the May 2008 meeting Quayside Architects made a further planning application, not to regularise the use indicated in the second PCN response but for change of use to live/work use with extended boundary wall, new vehicular access from Meadowhead Road and associated parking, under reference 08/00971/FUL. In granting consent, and being mindful of the unauthorised use, condition 01 of the favourable decision stated:-
- 23 *"The development works hereby permitted shall begin not*

later than three months of the date on which this planning permission was granted.

Reason:

To comply with Section 91 of the Town and Country Planning Act 1990 (as amended) To prevent the continuation of the property as an unauthorised commercial premises which results in the loss of a dwelling unit contrary to the provisions of policy H6 of the City of Southampton Local Plan Review”.

- 24 That permission was not been implemented within that time frame and has now lapsed.
- 25 The unauthorised use has continued since that time and on 4 March 2010 Officers used powers of entry to survey the property again. Three rooms on the first floor were locked at that time, but the layout of other accommodation accorded with that set out in **Appendix 5**.
- 26 To be reasonably certain as to the use of the locked rooms, a further PCN was served. That and the response to it are reproduced as **Appendix 8**.
- 27 In order to resolve this unsatisfactory matter and in view of the minuting error from the 27.5.2008 Panel meeting, it has now been decided to bring this report back to Members, and to invite interested parties to address the Panel before a decision relating to whether or not planning enforcement action should now be taken by the Panel.

Nature and number of complaints made

- 28 Since 2006, eight written and one telephoned complaints/calls for action from occupiers of 4 separate addresses close to the site have been made against the unauthorised business use at 141 Burgess Road.
- 29 The harm identified relating to this use is overspill car parking in Meadowhead Road and loss of a family house.

Representations by Quayside Architects

- 30 Since the site inspection of 4.4.08, six letters have been received from Quayside Architects.
- 31 In summary, they conclude that the complaints made about them are vexatious and it is not expedient for the Local Planning Authority to take enforcement action as significant harm to amenity has not been established.

Representations made in support of Quayside Architects

- 32 A letter concerning the car parking implications of the continued business use of 141 Burgess Road from the occupiers of 139 Burgess Road was received. The occupiers of that property are not inconvenienced from the car parking associated with the business.

Options for action by the Local Planning Authority

- 33 Paragraph 4 of Planning Policy Guidance Note 18 states:-
“Public acceptance of the development control process is quickly undermined if unauthorised development, which is unacceptable on planning merits, is allowed to proceed without any apparent attempt by the LPA to

intervene before serious harm to amenity results from it”.

34 Paragraph 2.2 of Circular 10/97 states that a key test of whether to take action should be whether it is expedient to do so having regard to the provisions of the development plan and to any other material considerations.

35 The complaint relating to the impact of on-street car parking arising from the unauthorised business use which affects the amenities of residents living close by has not really been substantiated. Indeed, one occupier opposite has confirmed they suffer no inconvenience.

36 However, the loss of a 4 bedroomed, family dwellinghouse to the City’s housing stock, has occurred and has persisted for over 4 years. The LDF Core Strategy Policy CS16 has also been adopted since the last Panel resolution on this matter, which seeks to resist the loss of family housing.

37 The Housing development Officer has confirmed the following:-

- The Council has recently commissioned a Housing Needs and Market Survey update (completed October 2010).
- The consultants (DCA) identified that although the numbers waiting for 4 bed properties is relatively small (525 households at 31/3/10) their housing need is the most significant because of the stock level of such affordable housing and the low turnover of such stock. As can be seen from the table (**Appendix 9**), if no new households came on to the housing register, it would still take over 35 years to meet existing demand.
- Those in the highest need for a 4 bed property wait up to 7 years for such a property on average. This has a significant impact when most households waiting for such housing will be living in overcrowded conditions, generally with children.
- It is essential that new family homes are provided across the city and that existing family homes are protected to help meet the acute housing need for such homes.

38 Reviewing the ‘Invest-in-Southampton’ website on 9 November 2010, searching for available office space in the Southampton City area, between 1,000-2,500 ft.sq, 116 available properties were listed. Relocation of the unauthorised business use occupying 141 Burgess Road and the employment it provides is therefore possible.

39 A number of options exist as to how to proceed:-

- Conclude that no significant harm is occurring to amenity expressed in the provisions of the Development Plan and that no further action be taken. This would not stop the Local Planning Authority from taking action in the future, if circumstances change, and provided it was still within the statutory time limits to take such action (10 years in relation to an unauthorised business use);
- Conclude that significant harm is being caused which makes it expedient to serve an enforcement notice, because continued unauthorised use primarily as an office is contrary to Policy H6 of the Local Plan Review (March 2006) and Policy CS16 of the LDF Core Strategy (January 2010). A reasonable time for compliance to allow for the relocation of the business is 3 months.

Conclusion and preferred option recommended by Officers

- 40 The evidence suggests that there is no residential use of the building but if there is any residential use, then it has taken the character of a purely ancillary function of the building, whose primary use is now firmly as an office.
- 41 This raises the issue of Policy H6 of the LPR above. Continued unauthorised use for business purposes does not meet the objectives of this policy, which is to protect a net stock of family housing. Planning Policy Statement 3 (Housing) also promotes family housing in this regard.
- 42 Whilst no tangible harm is perceived or evidenced from on-street parking associated with the business at this moment in time, other than to serve as an irritation and reminder to neighbours that an unauthorised use persists in breach of planning control, this may largely be due to the 5 off-street parking spaces available to serve the business. Should that quantum of parking decrease in the future though, and with the ever increasing rate of car ownership, it may be that issues of congestion and highway safety could manifest themselves later.
- 43 In particular, a reduction in off-street parking to serve the business use could result from the sub-division of the plot to build a house consented under the extant residential consents referred to above.
- 44 It is therefore only considered expedient to serve an Enforcement Notice to require use of 141 Burgess Road primarily as an office to cease. This is because continued unauthorised use (since March 2006), has caused the loss of a four bedroomed, family dwelling house to the City's stock of housing and is therefore contrary to Policy H6 of the Local Plan Review (March 2006) and CS16 of the LDF Core Strategy (January 2010). The compliance period recommended is 3 months. The owner of the property would have the ability to Appeal the decision within a 28 day period.

RESOURCE IMPLICATIONS

Capital/Revenue

- 45 There is the possibility that the owner could claim costs for unreasonable behaviour by the Local Planning Authority, if an Appeal against the Enforcement Notice were to succeed. The risk is however, considered to be small given the council's statutory and up to date Development Plan and the evidence that exists in terms of housing need and relocation opportunities.

Property/Other

- 46 None.

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

- 47 None

Other Legal Implications:

- 48 None

POLICY FRAMEWORK IMPLICATIONS

49 None

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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Use of 141 Burgess Road proposed under application 06/00325/FUL, including relevant plans
2.	Decision notice refusing 06/00325/FUL
3.	PCN 19.2.2007
4.	Responses to 19.2.2010 PCN
5.	Property survey plan 4.4. 2008
6.	16.4.2008 PCN and responses to it
7.	Extract of minutes from 27.5.2008 PRow Panel meeting
8.	Third PCN served 27.9.2010 and responses to it
9.	Southampton City Council Housing waiting list demand for 4 bedroom homes

Documents In Members' Rooms

1.	None.
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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Other Background Documents

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	complainants' letters	
2.	6 letters from Quayside Architects	
3.	Letter of support form 139 Burgess Road	

Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:	Bassett
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