

<b>DECISION-MAKER:</b>	PLANNING AND RIGHTS OF WAY PANEL
<b>SUBJECT:</b>	ENFORCEMENT REPORT IN RESPECT OF 141 BURGESS ROAD, BASSETT
<b>DATE OF DECISION:</b>	17 JANUARY 2012
<b>REPORT OF:</b>	PLANNING AND DEVELOPMENT MANAGER
<b>STATEMENT OF CONFIDENTIALITY</b>	
Not applicable	

### **BRIEF SUMMARY**

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

At its 18.1.11 meeting the Panel resolved to defer the service of an Enforcement Notice to allow the owner to submit a planning application to regularise the use, tied to construction of a house in the rear garden (consented on Appeal) to a habitable state capable of occupation to overcome the policy objection to business use having caused loss of a dwelling. That construction was to have been secured through a planning legal agreement.

Whereas negotiations relating to the legal agreement foundered, the owner has now largely constructed the house, which is now reasonably close to being completed.

In these circumstances, Officers consider that it is therefore not expedient at this time to serve a planning enforcement notice and that case 06/00075/UURES be formally closed.

Whereas no complaints about the business use impacting on residential amenity or highway safety have ever materialised, Officers consider that these matters should still be kept under review, should new complaints be received in the future.

It is also understood that the owner may make a further planning application seeking to regularise the business use for a temporary period, so as to allow use to revert back to a single dwelling if the business use should cease.

### **RECOMMENDATIONS:**

- (i) That it is not expedient at this time to serve a planning enforcement notice and that case 06/00075/UURES be formally closed.
- (ii) That whereas no complaints about the business use impacting on residential amenity or highway safety have ever materialised, that these matters should still be kept under review until 1.3.2016, should new complaints be received in the future, unless the council as local planning authority subsequently grant permission for business use of 141 Burgess Road before that date.

### **REASONS FOR REPORT RECOMMENDATIONS**

1. The unauthorised use of 141 Burgess Road primarily as an office prevents the property being used as a single dwellinghouse. This is contrary to Policy H6 of the City of Southampton Local Plan Review (March 2006).  
However, because a new house has been constructed within the sub-plot, won on Appeal under reference 07/01817/FUL, which is now largely complete and not far off being capable of occupation, it is no longer considered expedient at this time to serve a planning enforcement notice.

## DETAIL

2. This report updates the 23<sup>rd</sup> November 2010 and 18 January 2011 reports to the Planning and Rights of Way Panel. At the former meeting it was resolved to serve an Enforcement Notice requiring the unauthorised use of 141 Burgess Road as an office to cease. The serving of this notice was deferred to enable officers to discuss any possible alternative courses of action with the owner.
3. At its 18.1.11 meeting the Panel resolved:-
  - (i) that the service of an Enforcement Notice be deferred to enable the submission of a valid planning application for a change of use of 141 Burgess Road to a live-work unit within one month of the date of this meeting and the application be subject to the following:-
    1. be time limited to a period of 5 years;
    2. include a unilateral undertaking requiring the completion of the dwelling at the rear of the site (LPA ref 07/01817/FUL) to be to a habitable standard within 24 months of the date of decision;
    3. be personal to the current owner of the site;
    4. include the provision of two car parking spaces to the rear of the property before the planning permission is implemented; and
  - (ii) that the resolutions passed at meetings of the Planning and Rights of Way Panel on 23<sup>rd</sup> November 2010 and 27<sup>th</sup> May 2008 to serve an Enforcement Notice in respect of this property be rescinded in the event that planning permission is granted for a live-work unit in the terms set out above”.
4. Subsequent discussions between the owner and the council led to an impasse. This related to the requirement that the site to be identified for the purposes of the legal agreement would need to cover the whole plot, not just the sub-plot. However, the bank who had an interest in the main property were not prepared to be party to such a legal agreement and it was determined that just identifying the sub-plot for the purpose of the agreement was not tenable
5. Whilst policy CS16 of the Core Strategy is relevant, the primary policy consideration in this instance is saved policy H6 of the City of Southampton Local Plan Review (March 2006 - LPR) which resists the net loss of dwellings.
6. A site inspection of the new house and the main property 3.1.2012 revealed the following:-

Main property

  - Still in business use.
  - One of the previous occupiers Madison Property had moved out, so the front ground floor room was largely unused, albeit still occupied by office furniture.
  - Smaller of the two first floor front rooms now largely containing filing cabinets, with double bed relocated to larger back room at first floor level.
  - That latter room and bathroom on that level being most obvious

evidence of any remaining residential use, tied to dual purpose kitchen on ground floor.

- Store room off kitchen at ground floor level (which previously contained filing cabinets) was being used as a store in connection with the construction of the new house.
- Boundary wall reconstructed with two vehicular openings formed (one for main property, other for new house, each leading to paved off-street parking – sliding doors as yet not fitted).
- Apart from that, use of other rooms primarily given over to office use. E-mail received from owner (**Appendix 1**) confirms his current use of the main property.

#### New house

- Roof on;
- Internal walls plastered
- Stairs to first floor installed
- Fenestration installed

#### **Conclusion and preferred option recommended by Officers**

7. All persons who have originally expressed written views on this matter have been written to and their views sought on this matter. At the time of preparing this report one e-mail has been received from an original complainant. He acknowledges that the Policy H6 objection is overcome and has never personally experienced any harm to his residential amenity or safe use of the immediate highway network resulting from this business use. He confirms his original objection to the modern appearance of the new house.
8. The evidence suggests that there is no residential use of the main 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 contrary to policy H6 of the LPR. Continued unauthorised use for business purposes does not meet the objectives of this policy, which is to protect a net stock of family housing.
9. The owner has now largely constructed a new house, which is nearing completion. This means there has been no net loss of dwellings and overcomes the previous Policy H6 objection. As such, it is no longer considered expedient to serve a Planning Enforcement Notice at this time relating to that Policy H6 matter.
10. Whereas no complaints about the business use impacting on residential amenity or highway safety have ever materialised, these matters should still be kept under review until 1.3.2016, should new complaints be received in the future, unless the council as local planning authority subsequently grant permission for business use of 141 Burgess Road before that date.

#### **RESOURCE IMPLICATIONS**

##### **Capital/Revenue**

11. None.

**Property/Other**

12. None.

**LEGAL IMPLICATIONS**

**Statutory Power to undertake the proposals in the report:**

13. None.

**Other Legal Implications:**

14. None.

**POLICY FRAMEWORK IMPLICATIONS**

15. None.

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**SUPPORTING DOCUMENTATION**

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

**Appendices**

1.	E-mail from owner of 141 Burgess Road
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**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)
None	

1.	Report to Planning and Rights of Way Panel 18.1.2011
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**Integrated Impact Assessment and Other Background documents available for inspection at:**

<b>WARDS/COMMUNITIES AFFECTED:</b>	Bassett
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