Enforcement and possible unauthorised development

1. Introduction

This report considers current matters of enforcement and possible unauthorised development. Authority to take planning enforcement action is delegated to the Head of Planning. Matters that require a Committee decision are reported, together with delegated decisions to take action.

It is not an offence to carry out works without planning permission and the National Planning Policy Framework (NPPF) states that enforcement action is discretionary and that local planning authorities should act proportionately in responding to suspected breaches of planning control. Local authorities are also advised to take action only where it is appropriate to do so. The purpose of this report is normally, therefore, is to report to Committee matters that are breaches of planning control but where it is recommended that it is not expedient to take enforcement action.

2. Policy

The Council's Approach to Planning Enforcement is set out in the adopted Local Enforcement Plan. The essential thrust of the Plan is that we will not condone wilful breaches of planning law but we will exercise our discretion about taking enforcement action if it is considered expedient to do so. The priorities with regard to enforcement are:

- To focus our resources to ensure that the most pressing and harmful issues are addressed appropriately.
- In determining the expediency of enforcement action we will have regard to the seriousness of any harm which is evident as a result of a breach of planning control.
- Matters which can potentially have a serious impact on the safety or amenity of residents or occupiers of property or on the natural environment will take priority over minor infractions and matters of dispute between neighbours.

3. Items

Each item contains a full description, details of any investigation, and an assessment of the situation and concludes with a recommendation.

This report relates to:

Item 1 Delegated Decisions to take Enforcement Action

Item 2 Updates on Current Enforcement Cases

All information, recommendations and advice contained in this report are understood to be correct at the time of writing this report. Any change in circumstances will be updated verbally at the Committee meeting. Where a recommendation is either altered or substantially amended between preparing the report and the Committee

meeting, a separate sheet will be circulated at the meeting to assist Members in following the modifications proposed.

4. Human rights

The Human Rights Act 1998 (the Act) has incorporated part of the European Convention on Human Rights into English law. Any recommendation either to take or not to take enforcement action has been assessed to make sure that the decision is compatible with the Act. If there is a potential conflict this will be highlighted in the individual report on the relevant item.

5. Financial implications

There are no direct financial implications arising from this report. However, in the event of an appeal, further resources will be put towards defending the Council's decision. Rarely, and in certain circumstances, decisions on planning enforcement cases result in the Council facing an application for costs arising from a planning appeal. Officers will aim to alert Members where this may be likely and provide appropriate advice in such circumstances.

Keith Holland
Head of Planning

BACKGROUND PAPERS
Rushmoor Local Plan Review (1996-2011)[saved policies]
Rushmoor Core Strategy (October 2011)
Rushmoor Local Enforcement Plan (2016)
National Planning Policy Framework (NPPF)

Item1

Delegated Decisions to take Enforcement Action

The Following Decisions are reported for INFORMATION purposes only. They relate to decisions to take enforcement action that have already been made by the Head of Planning in accordance with the Council's adopted Scheme of Delegation.

Address	Land Adjacent to 16 Highfield Path, Farnborough
Ward	Cove and Southwood
Decision	Issue **Enforcement Notice**
Decision Date	13 March 2017
Reasons	Erection of 2m high fencing adjacent to the public highway, enclosing open amenity land and change of use to private domestic garden land.
Alternatives	No Action would fail to address the loss of open amenity land, which is contrary to Core Strategy Policy CP12 (Open Space, Sport and Recreation).
Case Officer	Mark Andrews
Associated Documents	Enforcement Reference 17/00024/COUGEN

Item 2 Updates on Current Enforcement Cases

Item 2.1

Site Location **The Beehive 264 High Street Aldershot**

Confirmed Breach

Without planning permission, the change of use of the land to a mixed use as a house in multiple occupation and self-contained studio units or flats.

Background

Following a decision made under delegated powers, an Enforcement Notice was served on 26 November 2015 on the owners of the above premises, requiring the unauthorised use of the premises to cease, with a 6 Month period for compliance.

An appeal was lodged by the owners, which was dismissed by the Planning Inspector on 2 September 2016, with amendments to the description of the alleged breach and the steps required. These are:

Cease using the property for the unauthorised use described in in the allegation above.

Remove all dividing partitioning, all kitchenettes and kitchens, all bathrooms and shower rooms and WCs (apart from customer and staff WCs and kitchen to serve the public house and two bathrooms on the first floor) from the premises including all materials and debris associated with the unauthorised use of the property.

The date for compliance was 2 March 2017.

Commentary

The premises were inspected on 7 March 2017 at which time no evidence was found that any of the flats or bedsits were being occupied. The electricity appeared to be turned off or disconnected.

For the flats – numbered as 2, 4, 6, 8, 10 and 12 Pound Road – the kitchens, toilets and shower rooms were still in-situ as were some items of furniture and appliances, but there was no indication of current occupation.

The partitions erected in the former bar area to divide up that part of the ground floor into flats was still in place, with a certain amount of debris. No apparent change had taken place since the Inspector's site visit.

It is therefore concluded that whilst the owners have complied with the requirements of the first part of the Enforcement Notice to cease the unauthorised use, they have not complied with the second part and it would be relatively simple to recommence the unauthorised use.

The owners have been advised in writing that further works are required to comply with the terms of the Enforcement Notice and they have given assurances that they will undertake these works. A further site inspection has been arranged and Members will be updated accordingly.

Recommendation

It is recommended that this report be **NOTED**.

Item 2.2

Site location **The Old Warehouse, Star Yard, Victoria Road, Aldershot**

Confirmed Breach

Unauthorised use of the property as a house in multiple occupation and some flats or studio flats.

Background

Members will recall that the requirements of an Enforcement Notice as served by the Council on 7 December 2015 in respect of this breach of planning control were modified slightly by the Inspector in considering and dismissing the property owner's appeal in a decision letter dated 2 September 2016. As a result, the requirements of the Notice following the unsuccessful appeal are as follows:-

1. Cease using the property as a house in multiple occupation and some flats or studio flats; and

2. Remove : all dividing partitioning, all kitchenettes and kitchens, all bathrooms and shower rooms and WCs (apart from one WC), and all electricity meters/fuse boxes (apart from one), from the premises including all materials and debris associated with the unauthorised use of the premises.

The period for compliance with the Enforcement Notice was 6 months, which commenced from the date the Enforcement Notice was upheld by the appeal decision of 2 September 2016, the requirements of the Notice were to be complied with by **no later than 2 March 2017**.

Commentary

An inspection of the property was made by appointment with a representative of the property owner on 13 March 2017. This revealed that the unauthorised residential occupation of the property has entirely ceased, thereby complying with Requirement No.1. of the Notice.

Considerable works had been undertaken seeking to comply with Requirement No.2. In this respect most of the partitions previously forming the individual residential units and w/c shower-rooms etc. within the building had been completely taken down. This was with the exception of some metal-framed partitions on the second floor of the

building. All furniture and appliances hade been removed. Water and drainage pipes had been disconnected, with stubs and sections sticking out of the floor or ceiling. Electrical wiring had been disconnected.

Although all of the plasterboard used in the partitions had been removed from the building, there were some piles of insulation battens, electrical wall outlets, timber studs, skirting boards and door architraves, kitchen units/sinks and shower cubicles and a washing machine, mainly deposited on the ground floor.

The following photographs show the situation at the property during the inspection on 13 March 2017.

The property owner has indicated that they now intend to lock up the vacant stripped-out property pending an application to the Council for a conversion of the property into self-contained flats.

The property owner has been reminded that, whilst the works undertaken to date are significant, compliance with the requirements of the Notice remains to be completed by removing all of the piles of materials and equipment from the building.

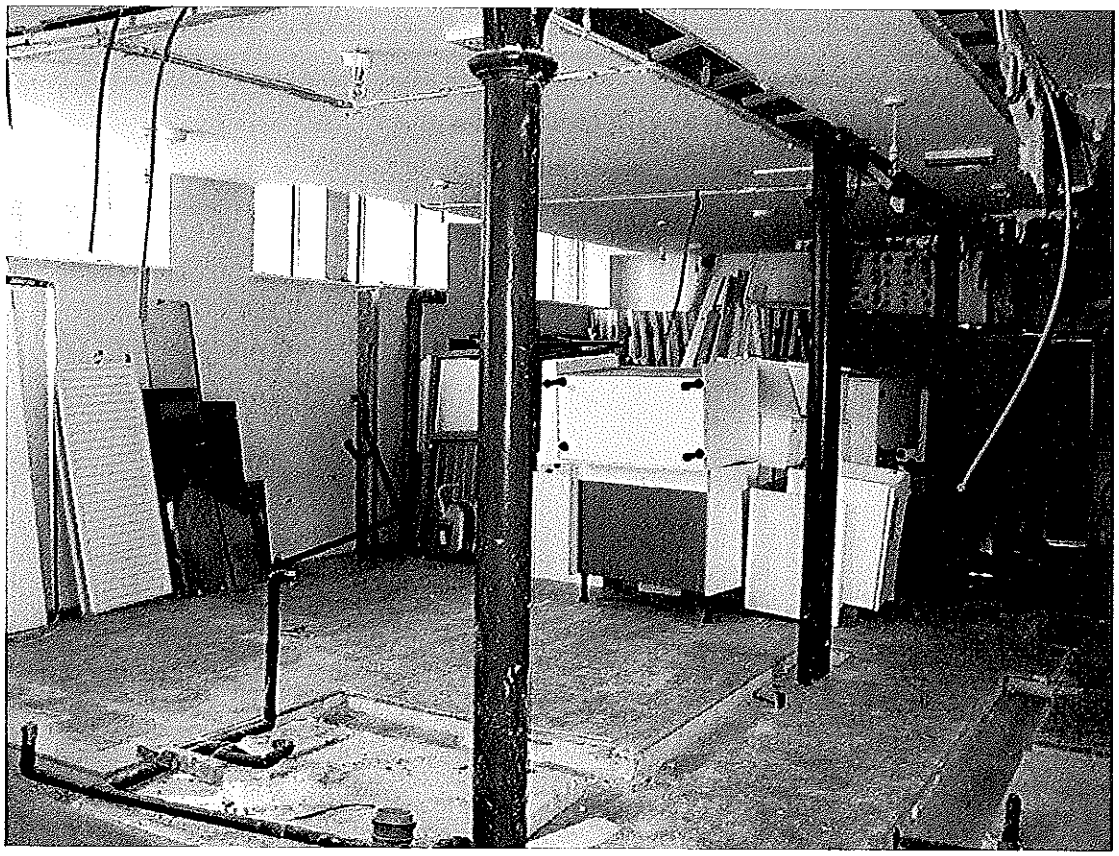
The requirements of the Notice are also considered to include the removal of the remaining pipes and wires forming part of the utility connections for the kitchenettes and shower-rooms. Whilst it is acknowledged that the metal-framed partitioning forming some rooms on the second floor was in situ before the property was acquired by the current owner, the property owner has been advised that the terms of the Notice require that these should also be removed. The owner has been requested to respond setting out his intentions with regard to completing compliance with the requirements of the Notice, together with a timescale within which it is envisaged that this further work will be done. At the time of writing this report the response is awaited. Members will be updated at the meeting in this respect.

Conclusions

Whilst technically an offence is being committed due to failure to fully comply with the terms of the Notice after the compliance date has expired, it is clear that substantial efforts and progress has been made in meeting the requirements of the Notice. Further, the property owner has been made aware of what remains to be done and a timescale for completion of the works has been requested. In the circumstances, it is not currently considered expedient for the Council to pursue the prosecution of the property owner for failure to complete the requirements of the Notice. However, in the event that the property owner fails to do so it is open to the Council to reconsider this matter.

Recommendation

It is recommended that this report be **NOTED**.



Above & Below: Ground Floor 13/03/2017





Above : First-Floor; Below : Second-Floor : 13/03/2017

