

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 Economy, Planning and Strategic Housing. 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 1 Somerset Road Farnborough

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.

Tim Mills

Head of Economy, Planning and Strategic Housing

BACKGROUND PAPERS

Rushmoor Local Plan (Adopted Feb 2019)

Rushmoor Local Enforcement Plan (2016)

National Planning Policy Framework (NPPF)

Item No. 1

Site location	1 Somerset Road, Farnborough, Hampshire, GU14 6DW
Alleged breach	Unauthorised change of use from Builders Merchant to A1 (retail) and unauthorised signage
Recommendation	No further action on change of use, and report to be noted in respect of signage.

1. Description

- 1.1 The site relates to a single storey ground floor shop fronting the eastern side of Somerset Road close to its junction with Queens Road. The unit is attached to the front of a two-storey dwellinghouse and has an internal floor area of approximately 3.4m x 3.9m. The site is 30m from the junction of Somerset and Queens Road where there are a number of ground floor commercial premises which are part of the North Camp District Centre although Somerset Road is residential in character.

2. Alleged breach

- 2.1 Complaints were received that there had been a possible unlawful change of use from an architectural office to a mixed-use retail and coffee shop and that there was unlawful advertising on the side of the building.

3. Investigation

- 3.1 A site visit on 25 October 2018 confirmed the tenancy was operating as business known as 'Vedas CBD and Coffee' selling hemp derived cannabinoid oil products with some customer seating. A front fascia sign and a business sign on the side elevation of the premises had been erected, replacing former signage.
- 3.2 Following a failure to respond to written requests, a Planning Contravention Notice was issued to the business owner. The response was received on 18 November 2018 and showed that the unit has a commercial tenancy agreement separate from the dwellinghouse. Plans submitted show that the unit operates as a shop with a display cabinet and display shelves and also has a coffee machine, a breakfast bar and small table. There is a store room, sink and WC behind the customer area.
- 3.3 The Council's Environmental Health Department found that following a food hygiene inspection on 13 November 2018, standards are in compliance with food safety legislation.

4. Commentary

Use of the premises

- 4.1 It is considered that the current use is predominantly (A1) retail. Food and drink offering is limited to the selling of hot drinks only and the seating is limited.
- 4.2 Planning approval FAU 3797 dated 4 January 1967 for the erection of a garage associated with the dwellinghouse shows the front unit was then in use as a shop. This is the only planning record the Council has for the site.

- 4.3 Google Maps Street View photographs show that by 2009 the unit appears to have been incorporated into the dwelling and that by 2016 it was again a separate commercial tenancy occupied by a home extensions design and build service called 'Cedar Designs'. This is considered to be an A2 Use (Financial and Professional Services).
- 4.4 The A1 retail use is considered to have an acceptable impact on the appearance and character of the area. It is a small visually unobtrusive unit with an internal floor area of approximately 12sqm and with a high standard of external finishes. There is evidence the unit has historically been a shop and isolated ground floor shop fronts in long residential streets are not uncommon in the area.
- 4.5 Furthermore the site is 30m away from the Queens Road commercial premises which are designated as secondary shop fronts in the North Camp District Centre under Policy SP2.2 of the Rushmoor Local Plan (2019).
- 4.6 Given the size of the shop, it is considered that the activity generated by the use would not have a materially harmful impact on the amenity of the neighbouring properties. It is noted that it operated as an A2 (Financial and Professional Services) use for two and a half years without complaint. One of the complaints received was that product sold has a noticeable odour on the footpath but this can be dealt with under Environmental Health legislation.
- 4.7 The Car and Cycle Parking standards SPD requires 1 space per 20sqm of retail floor area. The shop has an area of approximately 13sqm with no off street parking. There is unrestricted street parking on Somerset Road and the site is located close to a district centre. Therefore the shortfall is considered to have an acceptable impact on highway safety and the amenity of the area.
- 4.8 It is not therefore considered expedient to proceed with further action in respect of the use of the premises.

Advertising

- 4.9 Schedule 3 of the Advertisement Regulations 2007 gives deemed consent to display certain classes of advertisement subject to standard conditions. Class 5 relates to advertisements on business premises relating to the goods or services provided on those premises'. Provision 1 states that in the case of a shop, no advertisement may be displayed except on a wall containing a shop window.
- 4.10 Other conditions and limitations state that signs must not exceed 1.55sqm in area, must not have a symbol or letter that exceeds 0.75m in height and must be no higher than 4.6m above ground level or above the bottom of any first floor window.
- 4.11 In this regard the front fascia sign has deemed consent. However, there is no shop window on the southern side elevation of the shop building and therefore the second sign does not have deemed consent. In the context of the residential area, the side facing sign is considered harmful to amenity, a letter has been sent to the business owner warning them that the display of signage in contravention of the advertisement regulations is a criminal offence and asking them to remove this sign. If this does not happen by 15 March consideration will be given to prosecution proceedings.
- 4.12 It is recommended that in regards to signage, this part of the report be noted.

5. Full recommendation

- (a) With regard to the use of the premises no further action be taken.
- (b) With regard to the signage, the report be noted.