

Item No. 5

Enforcement No: E/08/0235

Type:	Change of use	Date of Complaint:	15 th October 2008
Developer:	Mr M Massarella		
Breach:	Unauthorised change of use of dwelling to House in Multiple Occupation		
Location:	9 Goldfinch Close, Loughborough, Leicestershire, LE11 3HG		
Parish:	Loughborough	Ward:	Loughborough Southfields
Case Officer:	Miss S J Coleman	Extension:	01509 634773

Description of the Unauthorised Development

This matter concerns a detached house, originally built with up to 6 bedrooms over three floors. The property is located on the Marlborough Place development (part of the Kingfisher Way estate) which comprises a mix of 3, 4, 5 and 6 bedroom detached/terraced dwellings constructed since 2000.

A downstairs room has been converted to a bedroom increasing the number to seven and the property is currently let to seven occupants who are also students.

The property was granted a licence for a House in Multiple Occupation in 2007 but according to the owner has been used as a student let since 2004.

• Development Plan Policies

Borough of Charnwood Local Plan (adopted 12th January 2004)

Policy H/13 – Houses in Multiple Occupation without On-site Supervision – seeks to control development of this nature where it is considered that the proposal would result in an unacceptable use by:

- Creating a greater source of noise and disturbance not normally associated with a dwelling to the detriment of neighbouring residential amenity
- Adversely affecting the general character and appearance of the surrounding area
- Leading to a concentration of such uses damaging to the character and amenity of a street or residential area

Policy EV/39 – Development and Pollution – seeks to control development that because of its nature would be likely to result in a serious risk to health or general amenities of nearby residents due to excessive noise and disturbance.

Policy TR/6 – Traffic Generation from New Development – states that planning permission will not be granted for development on non-designated sites where the

impact of traffic generated by an individual proposal or the cumulative impact together with other committed and allocated development in the locality would:

- i) result in unsafe and unsatisfactory operation of the highway system; or
- ii) have a significant adverse impact on the environment.

Policy TR/18, Parking Provision in New Developments states that Planning permission will not be granted for development unless off-street parking for vehicles are included to secure highway safety and minimise harm to visual and local amenities.

- **Other Policies**

Planning Policy Statement 3 – Housing – seeks to encourage the creation of mixed and balanced communities.

PPG 18, Enforcing Planning Control, gives advice about planning enforcement. It advises that the decisive issue in considering enforcement action should be whether the breach of control is unacceptably affecting public amenity or the existing use of land or buildings.

Supplementary Planning Document – Student Housing Provision in Loughborough – seeks to influence the distribution of student accommodation of all types to try to prevent the unbalancing of communities around the campus and to protect the general amenities of local residents. It does this by indicating that where the percentage of households in an area exceeds 10%, planning permission will not be granted for the conversion of Class C3 dwellings to provide Large Unmanaged Residents for Students (LURS) housing more than six people living together as a single household. Currently 34% of households in this area are student households.

- **Other Material Considerations**

The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the authorisation of enforcement proceedings.

The issue of **human rights** is a material consideration in the determination of planning applications and enforcement issues. Article 8 of the Human Rights Act 2000 requires respect for private and family life and the home while Article 1 of the First Protocol provides an entitlement to peaceful enjoyment of possessions. However, these rights are “qualified”. It is necessary to consider whether refusing planning permission and/or issuing an enforcement notice would interfere with the developer’s human rights. If it would, the Committee must decide whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The impact on the human rights of the developer must be balanced against the public interest in terms of protecting the environment and the rights of other people living

in the area. In this case, the balance points to protecting the residential amenity of the occupants of neighbouring properties.

Relevant Planning History

Application reference P/08/3220/2 was submitted in response to initial enforcement investigations and was subsequently refused by delegated authority in February 2009 for the following reason:-

1. *The local planning authority is of the opinion that the proposal to use the property beyond the scope of Class C3 as a large unmanaged Residence for Students (LURS) would be likely to increase the potential for further noise and disturbance within this primarily residential area, greater than that normally associated with a dwelling, which would be detrimental to the amenities of residents living in the surrounding area. As such, the proposed use would be contrary to the provisions of saved Policies H/13 and EV/39 of the adopted Borough of Charnwood Local Plan. Furthermore, the site is in an area where there is already a high concentration of student households (34%) and, thus, where Threshold Category (c), as defined by the policy matrix accompanying the adopted Supplementary Planning Document on Student Housing in Loughborough, applies. This indicates that planning permission for the conversion of Class C3 dwellings to provide LURS will not be granted planning permission because it would be likely to cause further fragmentation and unbalancing of the local permanent community and to cause further detriment to the general amenities of the local area for the reasons stated above. The proposal would, therefore, also be contrary to the intentions of the Borough Council as set out in this Supplementary Planning Document.*

Responses of Statutory Consultees (in response to planning application P/08/3220/2)

The highway authority has indicated that it would require a minimum of three spaces to serve a LURS occupied by 7 students. This is not based on a recognised or adopted parking standard but on a general requirement for student related developments (where 'no-car' agreements are not in place) for 1 spaced per 3 students

Other Comments Received (in response to planning application P/08/3220/2)

Three letters of objection from occupiers of dwellings on this estate were received; they raised the following concerns:

- (i) lack of adequate on-site parking will exacerbate the street parking problems in the area which are a highway danger harmful to visual amenity
- (ii) noise and disturbance
- (iii) increase in rubbish and deterioration of property
- (iv) the house, built for families, is inappropriate for the proposed use
- (v) the need for a flood risk assessment

- (vi) the undesirable precedent this proposal would set, if granted, through increased 'studentification' of the area which would be harmful to the residential character of the area and the balance of the community

Objectors consider that the proposal is contrary to local plan policies and SPD guidance. Their concerns are supported by both Ward Councillors.

Consideration of the Planning Issues

It is considered that the use of the property beyond the scope of Class C3 as a Large Unmanaged Residence for Students (LURS) is likely to increase the potential for further noise and disturbance within this predominantly residential area beyond that which is normally associated with a dwelling; which would also be detrimental to the amenities of residents living in the surrounding area.

Furthermore, the property is located in an area where there is already a high concentration of student households (34%) and therefore Threshold Category (c) as defined by the policy matrix accompanying the adopted SPD on Student Housing applies.

It is acknowledged that a house of this type which is occupied by 6 residents would not require an application for planning permission and would therefore still be a Class C3 dwelling house. The owner has stated that it is his intention to restore the downstairs room that has been converted to a bedroom to its original use as a dining room once the current tenants have moved out; their tenancy agreements are due to expire on 30th June 2009. He goes on to state that he has already secured a tenancy for the next academic year that will not exceed 6 occupants and has undertaken not to exceed this number in the future.

Whilst the owners' undertaking not to continue the breach after the expiry of the current tenancy agreements is welcomed and acknowledged, it is considered that as a breach currently exists at the property and an application to regularise the situation has been refused it is reasonable and necessary to serve a notice requiring the unauthorised use to cease to ensure that compliance with planning control is achieved and maintained in the future.

RECOMMENDATION:

Authorise Enforcement Notice

It is **RECOMMENDED** that the Committee:

authorise the Director of Development and the Director of Governance and Procurement to take enforcement action under the Town and Country Planning Act 1990 and the Director of Governance and Procurement to institute and conduct any legal proceedings necessary to secure compliance with the enforcement notice;

give the following reasons why it is expedient to authorise enforcement action:

- a) It appears to the Council that the above breach of planning control has occurred within the last 10 years.
- b) It is considered that the use would by reason of its potential to increase noise and disturbance, not normally associated with a dwelling, would be detrimental to the amenity of residents living in the surrounding area. It would also increase the already high concentration of student households in this area, leading to a further fragmentation and unbalancing of the local permanent community and cause further detriment to the general amenities of the local area. In this way, the proposal conflicts with saved Policies H/13 and EV/39 of the Borough of Charnwood Local Plan and adopted Supplementary Planning Document - Student Housing Provision in Loughborough.
- c) The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections

confirm that the notice will require the following steps to be taken:

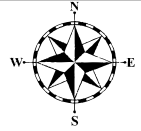
- 1. Cease the use of the property as a house in multiple occupation
- 2. Reinstate the downstairs room converted to a bedroom to its former use and condition

give the following period for compliance with the notice:

two months



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Location: 9 Goldfinch Close, Loughborough, Leicestershire, LE11 3HG
Scale: 1:500

