

Report to: Planning Applications Committee **Item**
Date: 18 April 2013 **5(9)**
Report of: Head of Planning Services
Subject: Enforcement Case 12/00048/BPC/ENF
Unit 1 ABC Wharf, King Street, NR1 1QH

SUMMARY

Description: Unauthorised change of use from Office (Class B1) use to Residential (Class C3) use.

Reason for consideration at Committee: Enforcement Action recommended.

Recommendation: Authorise enforcement action up to and including prosecution in order to secure the cessation of the unlawful residential (Class C3) use.

Ward: Mancroft

Contact Officer: Ali A N J Pridmore Enforcement Officer

INTRODUCTION

The Site

1. The site is on the east side of King Street and forms one unit in a wider complex known as ABC Wharf. The unit is 67.3sqm in size and fronts King Street with a glazed frontage to the main elevation and entrance door on the southern most end of the building. There is no outside space attributed to this unit.
2. The site falls within the City Centre Conservation Area and forms part of the King Street character area of the Conservation Area Appraisal, noted for its high significance in terms of the concentration of historic buildings and quality of building detail. The wider area is mixed in character with important and historic domestic buildings and more recent industrial units.
3. The premises are located in close proximity to several listed buildings; the first at 167-169 King Street (Music House) which is a Grade I Listed Building, and a run of terraced dwellings from 168 to 182 King Street which are all Grade II Listed Buildings. There are also a plethora of locally listed buildings in the area; The Waterfront Nightclub is located to the north-east of the site whilst Wensum Lodge is to the south-east. Some of the buildings in the ABC Wharf complex itself are also locally listed.

Planning History

4. Application No. 11/01090/F - Change of use from office (Class B1) to hot food take-away (Class A5) including installation of air handling plant. Refused 30 September 2011.

Purpose

5. This report relates to the unauthorised change of use of Unit 1, ABC Wharf, King Street from Office (Class B1) use to Residential (Class C3) use.
6. As the current change of use from Office (Class B1) use to Residential (Class C3) use does not have planning permission and has occurred within the last four years and is therefore not immune from enforcement action the change of use is a breach of planning control and is therefore unlawful.
7. The owner of Unit 1 ABC Wharf, King Street has been informed the current residential use is unlawful and was asked to cease the unauthorised use or to apply for planning permission which he was advised would not be supported. Unfortunately, the unauthorised use has continued and a planning application has not yet been received.
8. Authority is sought from the Planning Applications Committee for enforcement action to secure the discontinuance of the unauthorised residential use of the property. Enforcement action to include prosecution if necessary.

Breach

9. A material change of use of the property has occurred without the benefit of planning permission as required by Section 55 of the Town and Planning Act 1990 (as amended).
10. It appears to Norwich City Council that the above breach of planning control has occurred within the last four years and is not therefore immune from enforcement action. The current unauthorised use is not an appropriate use of the building which is a dwellinghouse in close proximity to well established industrial, commercial and leisure premises with associated noise and fumes. The Council do not consider that planning permission should be given because planning conditions could not mitigate these objections.

Policies and Planning Assessment

Relevant Planning Policies

National Planning Policy Framework:

- Section 1 – Building a strong, competitive economy
- Section 6 – Delivering a wide choice of high quality homes
- Section 7 – Requiring good design
- Section 12 – Conserving and enhancing the historic environment

Relevant policies of the adopted Joint Core Strategy for Broadland, Norwich and South Norfolk 2011

- Policy 2 – Promoting good design
- Policy 3 – Energy and Water
- Policy 4 – Housing delivery
- Policy 9 – Strategy for growth in the Norwich Policy Area
- Policy 11 – Norwich City Centre

Relevant saved policies of the adopted City of Norwich Replacement Local Plan 2004

HBE8 - Development in Conservation Areas
HBE12 - High quality of design in new developments
EP22 - High standard of amenity for residential occupiers
EP18 – High standard of energy efficiency
EMP3 – Protection of small business units
HOU13 – Housing Criteria
HOU15 – Conversion of vacant or underused parts of buildings
TRA7 - Cycle parking standards
TRA8 - Servicing provision
AEC1 – City centre leisure area
TVA4 – Visitor attraction area
CC11 – King Street regeneration

Supplementary Planning Documents and Guidance

City Centre Conservation Area Appraisal (September 2007)

Emerging policies of the forthcoming new Local Plan (submission document for examination, April 2013):

Development Management Policies Development Plan Document – Pre-submission policies (April 2013).

DM1 Achieving and delivering sustainable development
DM2 Ensuring satisfactory living and working conditions
DM3 Delivering high quality design
DM9 Safeguarding Norwich's heritage
DM12 Ensuring well-planned housing development
DM31 Car parking and servicing

Procedural Matters Relating to the Development Plan (JCS and RLP) and the NPPF

The RLP has been adopted since 2004 and in accordance with the Planning and Compulsory Purchase Act 2004. The JCS has been adopted since 2011. With regard to paragraphs 211 and 215-216 of the NPPF, both sets of policies have been subjected to a test of compliance with the NPPF. Some RLP policies are considered to be only partially compliant with the NPPF (in this case only policy HOU13) and as such that particular policy would be given lesser weight in any assessment. All JCS policies are considered to be NPPF compliant. The Council has also reached submission stage of the emerging new Local Plan policies, and considers most to be wholly consistent with the NPPF. Where discrepancies or inconsistent policies relate to this assessment they are identified and discussed within the report; varying degrees of weight are apportioned as appropriate.

Written Ministerial Statement: 23 March 2011: Planning for Growth

Written Ministerial Statement: Planning for Growth, March 2011.
The Localism Act 2011 – s143 Local Finance Considerations

Justification for Enforcement

11. The principal reasons why the current unauthorised change of use would not be supported is that occupiers of Unit 1 ABC Wharf would be exposed to elevated noise levels as a result of the normal operation of long standing and legitimate neighbouring businesses including; a nightclub/live music venue (The Waterfront), and a number of vehicle maintenance garages and other commercial workshop premises. Furthermore, there is a lack of appropriate amenity space for the occupiers of Unit 1 ABC Wharf including space to store residual waste and recycling waste receptacles (wheelie bins, boxes, food caddies etc).
12. Several attempts have been made in negotiating with the owner of the site in order to achieve the ceasing of the unauthorised use of Unit 1 ABC Wharf or to applying for retrospective planning which would probably not be supported but to no avail. No retrospective planning applications has yet been received by Norwich City Council.

Equality and Diversity Issues

13. The Human Rights Act 1998 came into effect on 2nd October 2000. In so far as its provisions are relevant:
 - a. Article 1 of the First Protocol (the peaceful enjoyment of ones possessions), is relevant in this case. Parliament has delegated to the Council the responsibility to take enforcement action when it is seen to be expedient and in the public interest. The requirement to secure the removal of the unauthorised building works in the interests of amenity is proportionate to the breach in question.
 - b. Article 6: the right to a fair hearing is relevant to the extent that the recipient of the enforcement notice and any other interested party ought to be allowed to address the Committee as necessary. This could be in person, through a representative or in writing.

Conclusions

14. It is considered that the current unauthorised Residential (Class C3) use is not considered acceptable. The likelihood of noise disturbance from businesses in the vicinity and the lack of appropriate residential amenity space could not be made acceptable by conditioning of any prospective planning permission for the change of use.
15. It is therefore necessary to ask for authorisation from the Planning Applications Committee to ensure the cessation of the unauthorised Residential (Class C3) use and therefore remedy the breach of planning control.

Recommendations

16. Authorise enforcement action to secure the cessation of the unauthorised Residential (Class C3) use including the taking of direct action including prosecution if necessary.

Relevant policy documents/references

National Planning Policy Framework

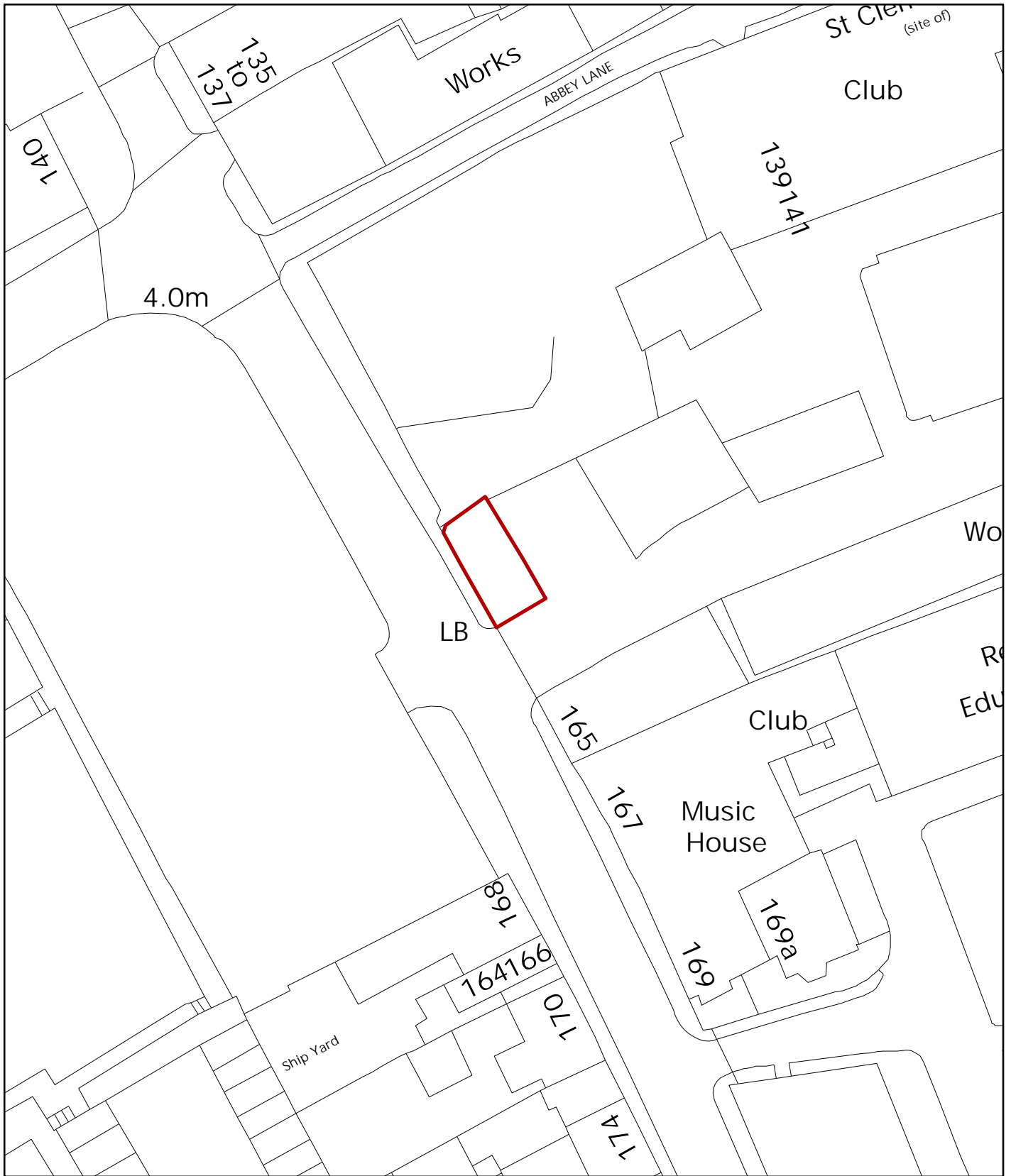
Joint Core Strategy for Broadland, Norwich and South Norfolk (Adopted March 2011)

City of Norwich Replacement Local Plan (Adopted Version, November 2004)

City Centre Conservation Area Appraisal (Sept. 2007)

Development Management Policies Development Plan Document – Pre-submission policies (April 2013).

Relevant correspondence – Uniform Enforcement File – 12/00048/BPC/ENF



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Planning Application No 12/00048/BPC/ENF
Site Address Unit 1 ABC Wharf King Street
Scale 1:500



NORWICH
City Council

PLANNING SERVICES

