

Report to Planning applications committee
08 March 2018

Report of Head of planning services

Subject Enforcement Case 17/00006/ENF – 17-19 Castle Meadow

Item

4(n)

Summary	
Description	Basement in use as a dwelling in breach of refused application ref 15/01805/F and subsequent dismissed appeal APP/G2625/W/16/3155779.
Reason for consideration at committee	Enforcement action recommended
Recommendation	Authorise enforcement action to secure the cessation of the use of the basement as a dwelling.
Ward	Mancroft
Contact Officer	Lara Emerson laraemerson@norwich.gov.uk

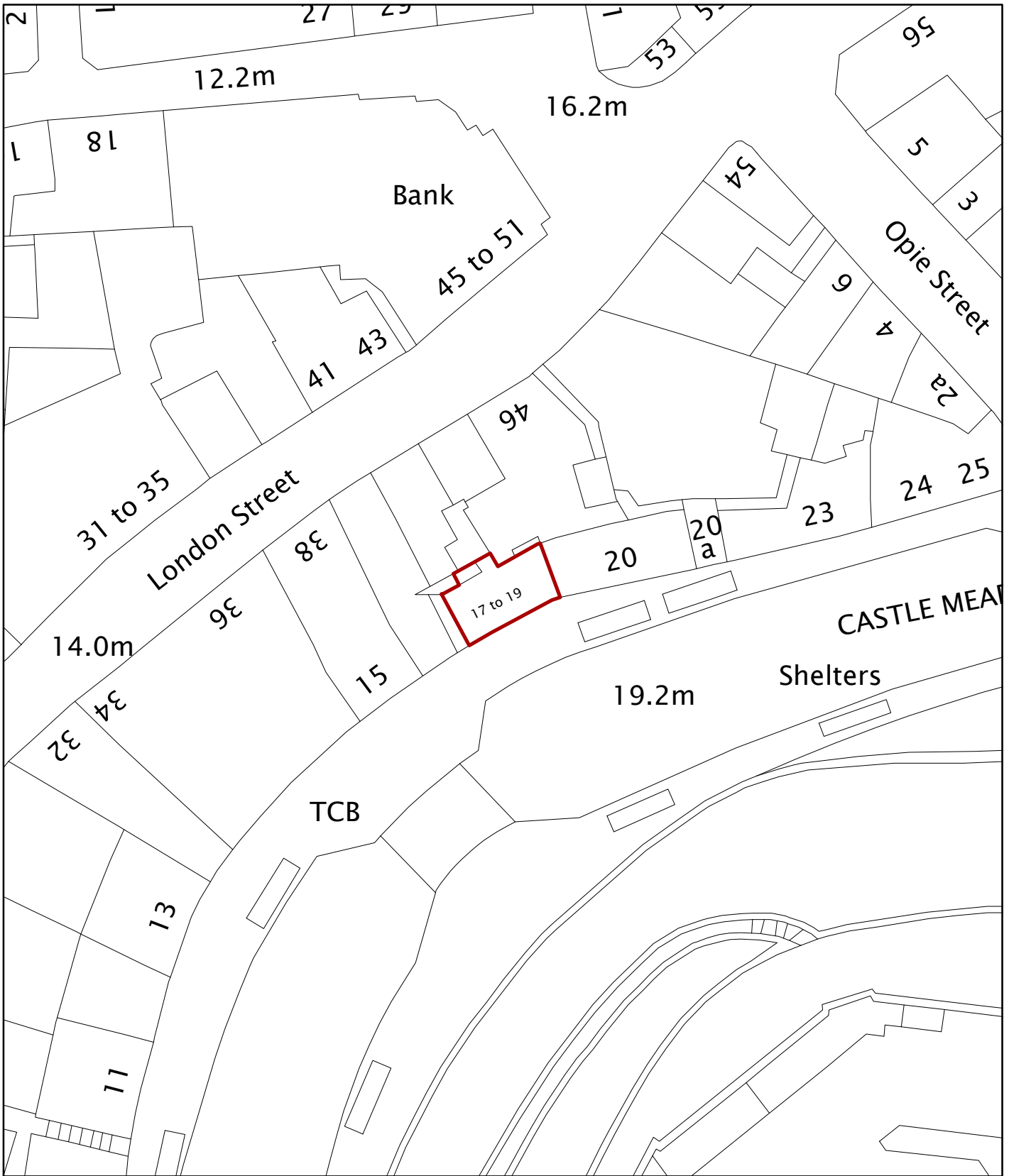
The Site

1. 17 -19 Castle Meadow is a three storey mid terraced building situated on the north western side of the road. The 20th century building is occupied by a café on the ground floor and has a contemporary style shop front on the left-hand side of the frontage and three single doors on the right-hand side at ground floor level. Of these three doors, the first serves the ground floor café, the middle door gives access to the basement and the last door provides access to the two bedsits on the first and second floors of the building.
2. The site is situated within City Centre Conservation Area and the site is located on opposite Norwich Castle, which is a Grade I listed building and a Scheduled Ancient Monument.

Relevant planning history

3. An application for the change of use of the basement to a single dwelling was refused on 25 January 2016 (application reference 15/01805/F). The reason for refusal was:

The proposal would have a significant detrimental impact on the residential amenity and living conditions of any future occupiers particularly due to the restricted size of the proposed accommodation and its lack of adequate natural daylight and outlook, contrary to Policies DM2 and DM13 of the Norwich Development Management Policies Local Plan, adopted December 2014.



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Planning Application No 17/00006/ENF
 Site Address 17 - 19 Castle Meadow

Scale 1:500



NORWICH
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4. The applicant then appealed this decision (appeal reference APP/G2625/W/16/3155779). The appeal was dismissed on 12 December 2016 with the inspector agreeing that the unit offered a poor quality of accommodation. The appeal decision is attached as an appendix to this report.

The Breach

5. Council Tax records show that the basement has been in use as a single dwelling since 10 April 2014.

Policies and Planning Assessment

National Planning Policy Framework (March 2012):

- NPPF0 Achieving sustainable development
- NPPF1 Building a strong, competitive economy
- NPPF2 Ensuring the vitality of town centres
- NPPF4 Promoting sustainable transport
- NPPF6 Delivering a wide choice of high quality homes

Joint Core Strategy for Broadland, Norwich and South Norfolk adopted March 2011 amendments adopted Jan 2014:

- JCS3 Energy and water
- JCS4 Housing delivery
- JCS5 The economy

Norwich Development Management Policies Local Plan adopted Dec 2014:

- DM1 Achieving and delivering sustainable development
- DM2 Ensuring satisfactory living and working conditions
- DM8 Planning effectively for open space and recreation
- DM12 Ensuring well-planned housing development
- DM18 Promoting and supporting centres
- DM20 Protecting and supporting city centre shopping

Justification for enforcement

6. The use of the basement as a dwelling is a breach of planning control and it has already been determined that planning permission would not be granted for this change of use due to the poor living environment provided to occupants. The appeal decision (reference APP/G2625/W/16/3155779) is attached as an appendix to this report and gives a thorough planning assessment of the material change of use.
7. It is considered expedient for the council to serve an enforcement notice to require the cessation of the use of the basement as a dwelling. The change of use took place on 10 April 2014, and the council has the ability to enforce for a period of 4 years (up to 10 April 2018). The serving of an enforcement notice is therefore a matter of urgency.

Equality and Diversity Issues

8. The Human Rights Act 1998 came into effect on 2 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.
 - 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.

Conclusion

9. The breach of planning control is detrimental to the amenity of the occupants of the flat which suffers poor levels of light and outlook. It is expedient for the council to take enforcement action against this breach of planning control.

Recommendation

10. Authorise enforcement action against the use of the basement as a single dwelling.

Appeal Decision

Site visit made on 21 November 2016

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 December 2016

Appeal Ref: APP/G2625/W/16/3155779

17 Castle Meadow, Norwich, Norfolk, NR1 3DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Dritan Duraj against the decision of Norwich City Council.
 - The application Ref 15/01805/F, dated 27 November 2015, was refused by notice dated 25 January 2016.
 - The development proposed is Proposed Change of Use to Basement from Class Use A1 (Shop) to Class Use C3 (Dwelling / Flat).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. At the time of my site inspection the change of use had already taken place. The term retrospective is not an act of development. I have dealt with the appeal on the basis that planning permission is sought for the change of use of the basement to a dwelling.

Main Issues

3. The main issue is whether the dwelling would provide acceptable living conditions for future occupiers with particular regard to the size of accommodation, outlook, daylight and sunlight.

Reasons

4. The Council is concerned that the numerical area of the unit would be below standard. It has 'advisory minimum standards' for accommodation size in place and the officers report refers to the national space standards. The quantity of accommodation is a factor in its acceptability. Nevertheless it is not the only consideration. Its usability is also a critical element. In this case, even if I were to accept the Council's calculation of floor space as being below standard, it would not alter the usability of the space. The layout of the unit is regular in shape. The main area being large enough to accommodate furniture with space to move around. I note that the kitchen and bathroom areas would utilise mechanical ventilation, which is not unusual, but are of a reasonable size and well lit.
 5. The unit is at basement level. It is open plan and single aspect with three windows facing the 'lightwell' area on the plans. The 'lightwell' is treated with glass bricks at pavement level. These are laid out in groups within the
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pavement in front of the ground floor unit (coffee shop), entrance doors to the other flats and the basement itself. The arrangement of the bricks for the 'lightwell' does not create a solid expanse of glazing. In addition it is located in an area where it could be obscured by the use of the shop unit or access points to the flats. As such, even with the south facing aspect, the amount of daylight and sunlight to the unit below would be limited.

6. The glass bricks are visible from within the unit when looking out of the window. However, there are not any significant views outside or of the skyline. In addition, whilst the location of the unit is close to Castle Gardens and is not family accommodation, there is no dispute that the flat does not have direct access to outside space or that it would not be possible to provide it. The appellant highlights that there are other developments that do not have outside space, including the first and second floor flats of this building and that a report on light could be produced. However, I do not have the detail of other examples or a report. Nevertheless the other units are in the upper floors of the building which the plans show benefiting from large windows. Therefore in contrast to the appeal scheme these units would have adequate outlook, daylight and sunlight making the provision of outdoor space less critical.
7. The appellant has suggested that a screen could be put in place within the light well. It is submitted that a large size screen could be used to present a live stream of the outside activity. However, I am concerned that this would not be enforceable. The occupier of the unit could choose to turn it off and the Council would have no practical means of monitoring its use day to day. Therefore I attach very limited weight to this proposal as a benefit for future occupants.
8. Overall, whilst the size of the accommodation is not necessarily harmful, the quality of the accommodation is. The absence of outlook taken in combination with the restricted daylight and sunlight lead me to conclude that the proposal does not provide adequate living conditions for future occupiers with particular regard to outlook, daylight and sunlight. It would be in conflict with policies DM2 and DM13 of the Norwich Development Management Policies Local Plan which amongst other things seek new development that provides a high standard of amenity, satisfactory living conditions and adequate light and outlook and conversions to flats to achieve a high standard of living conditions for future occupiers. It would also be in conflict with the Framework which seeks a high quality design and good standard of amenity for all existing and future occupants of land and buildings.

Other matters

9. I note that the scheme would provide a dwelling suitable for a single/young person in a location that is sustainable with access to facilities and public transport, there would be no flood risk issues, cycle parking and refuse storage could be provided, it is not in a prime employment area and there were no objections to the scheme on matters of noise. However, none of these matters alter my findings on the main issue.
10. The site is located within the City Centre Conservation Area (CA). The current appearance of the site is not harming the character and appearance of the area. The change of use has no significant external changes and would not have an adverse impact on the fabric of the building. Accordingly the proposal would preserve the character of the Conservation Area in which it is located.

11. The appellant submits that lawful use of the basement is A1 and that the change of use would benefit from permitted changes under Class M if it was not in a CA. In particular that Class M would not impose any requirement to assess the quality of the resultant accommodation. Whilst this may be the case the facts remain that the proposal requires planning permission. As such it falls to be considered against the development plan and there is no lawful residential scheme that could be implemented. As such I attach very limited weight to this consideration.
12. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case there is clear conflict with the development plan and I attach only limited weight to the other material considerations in this case.

Conclusion

13. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

D J Board

INSPECTOR