

**Report to** Planning applications committee

**Item**

16 May 2013

**Report of** Head of planning services

**5(7)**

**Subject** Enforcement Case 13/00010/EXTEN/ENF – 13 Trafalgar Street, Norwich, NR1 3HW.

### **SUMMARY**

**Description:** Erection of an unauthorised structure (enclosure of balcony) at 13 Trafalgar Street, Norwich, NR1 3HW.

**Reason for consideration at Committee:** Enforcement Action recommended.

**Recommendation:** Authorise enforcement action up to and including prosecution in order to secure the removal of the unlawful structure (enclosure of the first floor balcony area).

**Ward:** Town Close

**Contact Officer:** Ali A N J Pridmore

### **INTRODUCTION**

#### **The Site**

1. The site is located at 13 Trafalgar Street which is in the ward of Town Close to the south of the city. The area is predominantly residential in character typified by three-storey brick built blocks of flats. 13 Trafalgar Street is a first floor flat located within one of a three-storey block of flats. The dwellings in this block of flats are constructed of red brick with dark grey pantile roof. The site does not fall within a conservation area and the property is not statutory or locally listed. Most of the flats fronting onto Trafalgar Street have a brick built balcony incorporated into the block structure.
2. The balcony of 13 Trafalgar Street has recently been enclosed by the leaseholder such that it is now fully enclosed. The enclosure was done in two stages but has now been completed. The means of enclosure is by timber frame and glazed with Perspex sheeting. Although the structure does not project beyond the front elevation of the balcony the appearance of this enclosure is incongruous and out of keeping with other similar properties in the area and is therefore considered detrimental to the visual amenity of the area.
3. There are residential dwellings on Trafalgar Street running East to West. The impact of this structure on the visual amenity of this

residential area is significant resulting in complaints from residents in the area.

### **Planning History**

4. There is no related planning history.

### **Purpose**

5. This report relates to the unauthorised enclosure of the balcony at 13 Trafalgar Street, Norwich, NR1 3HW
6. The current unauthorised structure described above does not have planning permission and has occurred within the last four years and is therefore not immune from enforcement action. The works are classed as operational development for which planning permission would be required under section 171A(1)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). Therefore the enclosure is a breach of planning control and is therefore unlawful.
7. The leaseholder of 13 Trafalgar Street has been informed the current enclosure is unlawful and he was asked to remove the unauthorised structure and he was advised an application would not be supported. Subsequently, the leaseholder contacted planning enforcement on the 2<sup>nd</sup> February 2013 to say he has no intention of removing the enclosure. The unauthorised structure has not yet been removed and there is no expectation the leaseholder will remove the enclosure voluntarily.
8. Authority is sought from the Planning Applications Committee for enforcement action to secure the removal of the unauthorised structure. Enforcement action is to include direct action and prosecution if necessary.

### **Breach**

9. The current enclosing of the balcony at 13 Trafalgar Street is classed as development which falls outside of The Town and Country Planning (General Permitted Development) Order 2005 (as amended). Enclosing the balcony is operational development for which planning permission would be required under section 171A(1)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).
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 development is incongruous and out of keeping with other similar properties in the area, poorly and unsympathetically constructed and is therefore considered detrimental to the visual amenity of the area. The Council do not consider that planning permission should be given because planning conditions could not overcome these objections.

## **Policies and Planning Assessment**

### **Relevant Planning Policies**

#### **National Planning Policy Framework**

Section 7 – Requiring Good Design

#### **Relevant policies of the Joint Core Strategy for Broadland, Norwich and South Norfolk (Adopted March 2011)**

Policy 2 – Promoting good design

#### **Relevant saved policies of the City of Norwich Replacement Local Plan (Adopted November 2004)**

HBE12 – High quality of design in new developments

### **Other Material Considerations**

#### **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).**

DM3 Delivering High Quality Design

#### **Procedural Matters Relating to the Development Plan and the NPPF**

The Joint Core Strategy (JCS) and Replacement Local Plan (RLP) have been adopted since the introduction of the Planning and Compulsory Purchase Act in 2004. With regard to paragraphs 211 and 215-216 of the National Planning Policy Framework (NPPF), both sets of policies have been subjected to a test of compliance with the NPPF. The 2011 JCS policies are considered compliant, but some of the 2004 RLP policies are considered to be only partially compliant with the NPPF, the policies referred to in this case are considered to be compliant with the NPPF. The Council has also reached submission stage of the emerging new Development Management policies, and considers most of these to be wholly consistent with the NPPF.

11. The development would lead to a form of development that would be incongruous within the streetscene, and inconsistent with the character and design of the building and surrounding area therefore having a detrimental impact on visual amenity of the area. The development is therefore considered to be contrary to saved policy HBE12 of the adopted City of Norwich Replacement Local Plan (2004), policy 2 of the adopted Joint Core Strategy (2011) and paragraph 14 and statement 7 of the National Planning Policy Framework (2012).

### **Justification for Enforcement**

12. The current unauthorised development is poorly and unsympathetically constructed and is incongruous and out of keeping with other similar

properties in the area and is therefore considered detrimental to the amenity.

13. An attempt has been made in negotiating with the occupier of the site to un-enclose the balcony but without success. Norwich City Council has not invited a planning application because the Council do not consider that planning permission should be given because the application would not be supported and the matter recommended for refusal.

### **Equality and Diversity Issues**

14. 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**

15. The enclosing of the balcony is considered to be operational development which requires planning permission and does not benefit from permitted development. It is considered that the current unauthorised structure is poorly and unsympathetically constructed and is incongruous and out of keeping with other similar properties in the area and is therefore considered detrimental to the visual amenity of the area.
16. It is therefore necessary to ask for authorisation from the Planning Applications Committee to ensure the removal of the unauthorised structure and therefore remedy the breach of planning control.

### **Recommendations**

17. Authorise enforcement action to secure the removal of the structure (means of enclosure) including the taking of direct action including prosecution if necessary.

### **Background Documents**

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)

Development Management Policies Development Plan Document –  
Submission stage (April 2013).  
Relevant correspondence – Uniform Enforcement File –  
13/00010/EXTEN/ENF and Civica File – EH13/304





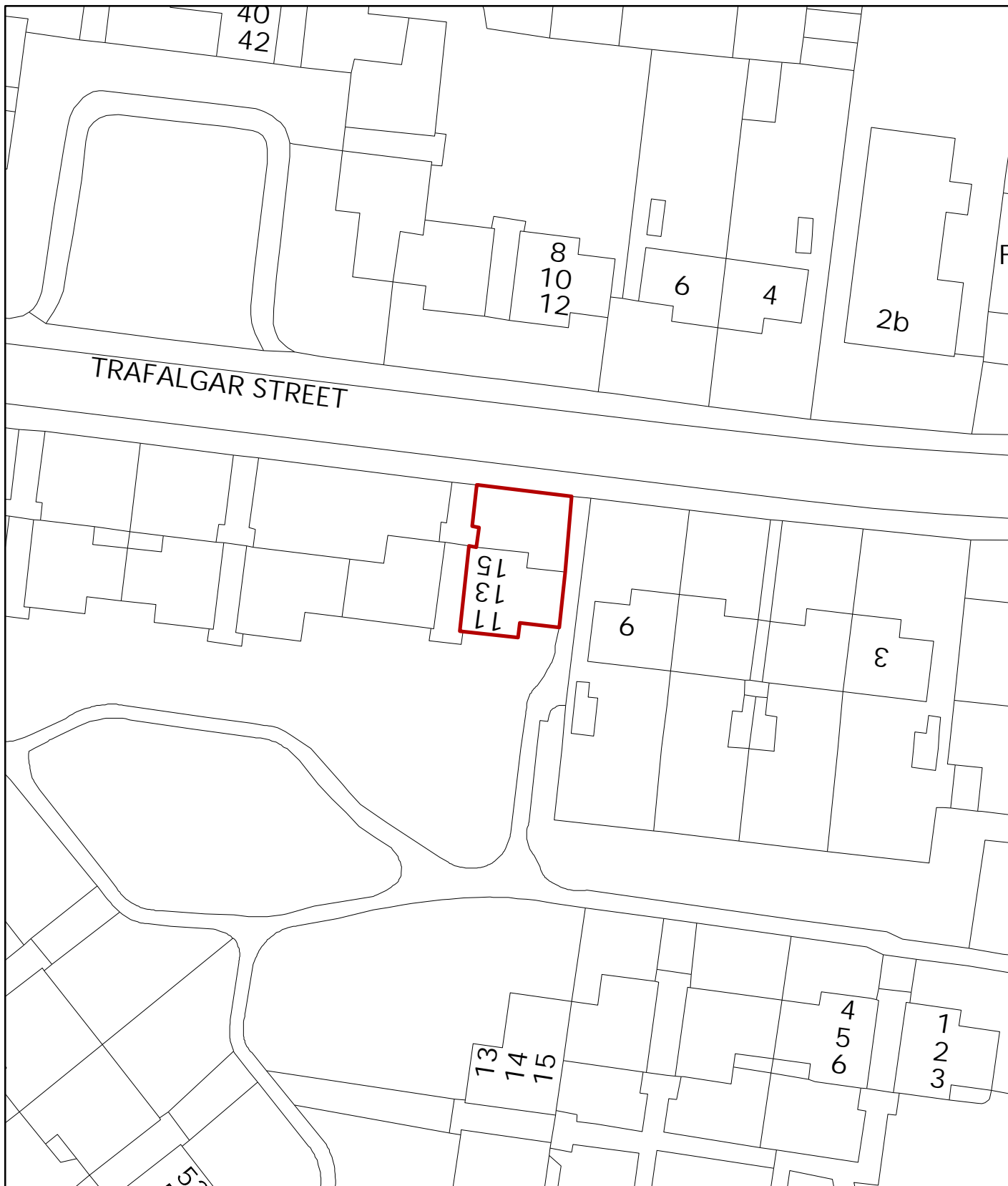
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Planning Application No 13/00010/EXTEN/ENF

Site Address 13 Trafalgar Street

Scale 1:500



**NORWICH**  
City Council

PLANNING SERVICES







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