

Report to Planning applications committee

Item

13 July 2017

Report of Head of planning services

4(d)

Subject Enforcement Case 17/00026/ENF – 21-23 St Benedicts Street, Norwich, NR2 4PF

SUMMARY

Description: Installation of approved extraction duct and air grille in breach of approved plans.

Reason for consideration at Committee: Enforcement Action recommended.

Recommendation: Authorise enforcement action to secure the removal of the unauthorised Mechanical extraction and ventilation plant and associated flue; including the taking of direct action may result in referring the matter for prosecution if necessary.

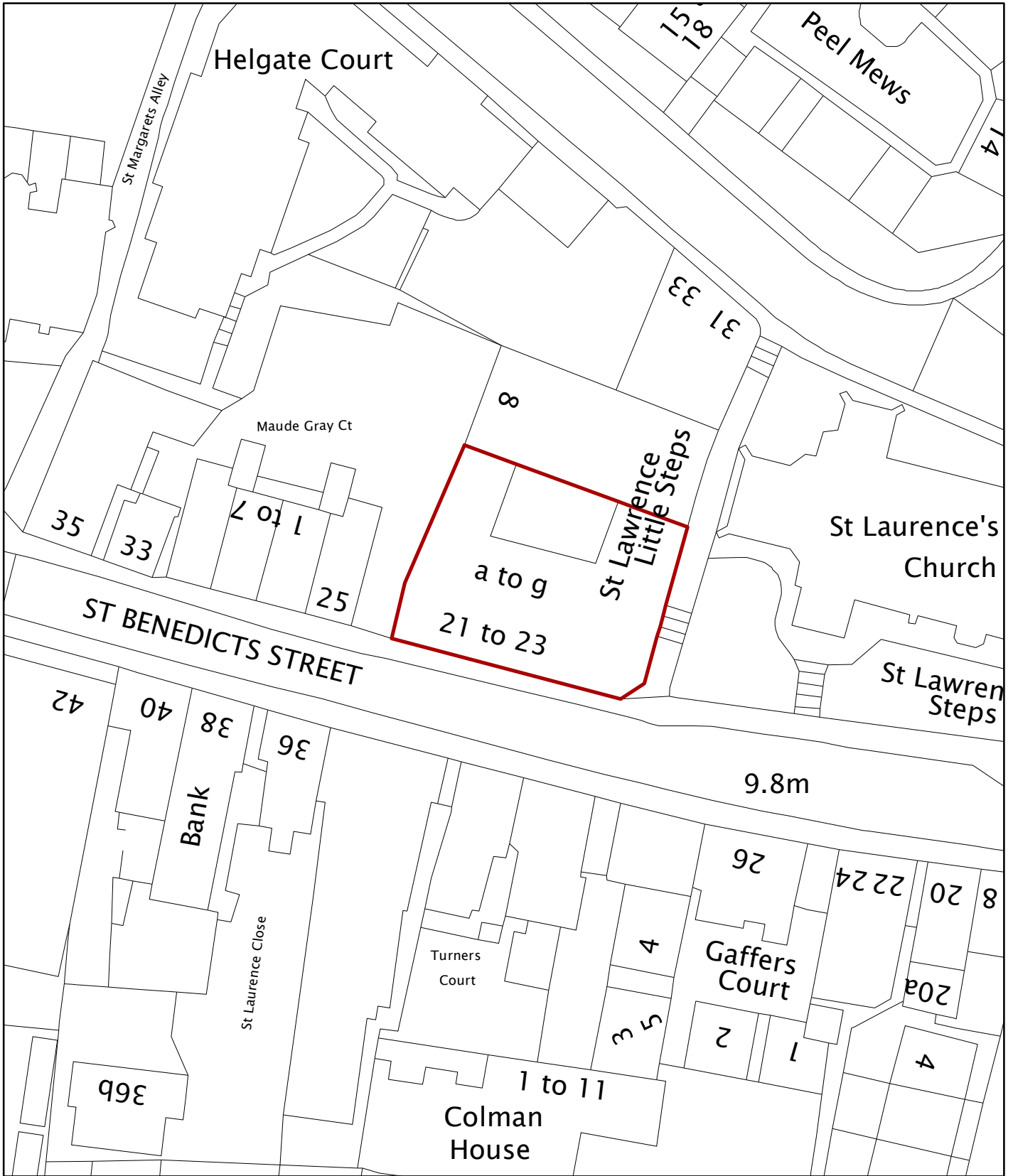
Ward: Mancroft

Contact Officer: Samuel Walker samuelwalker@norwich.gov.uk

INTRODUCTION

The Site

1. 21-23 Saint Benedict's Street is two to three storey building, of 21st Century construction, located on the north side of St Benedict's Street, this case relates to the ground floor restaurant unit. The site currently consists of two restaurant/café units at ground floor with seven residential flats on the upper floors. The flue is attached to the rear elevation of the property within the courtyard space which is used as residential amenity space by the occupiers of the flats above. The space is fully enclosed on all sides. The flats are accessed through this courtyard area. The Fire escape for the ground floor offices is also through this courtyard.
2. The character of St Benedict's Street is a mixture of commercial retail and leisure use at ground floor with residential use at upper floors.



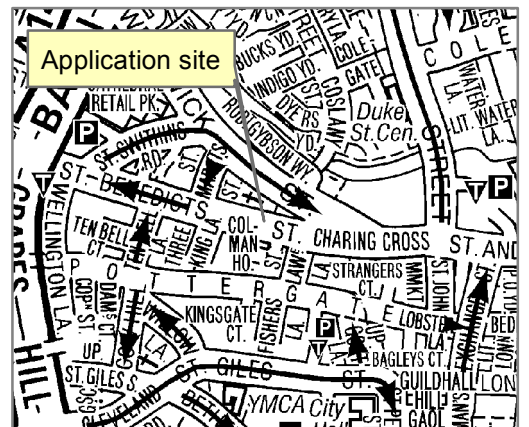
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Planning Application No 17/00026/ENF
 Site Address 21-23 St Benedict's Street

Scale 1:500



NORWICH
 City Council
 PLANNING SERVICES



Relevant planning history

3. **06/00267/F** Redevelopment of site to provide three-storey building with 2 retail units on the ground floor and 7 flats on upper floors. Approved - 02/05/2006
4. **06/00583/D** Condition 2: Details of materials; Condition 3(a): Doors, windows and external joinery; Condition 3(b): Shopfronts; Condition 3(c): Dormer windows; Condition 3(d): Rainwater goods of previous planning permission 06/00267/F 'Redevelopment of site to provide three-storey building with two retail units on the ground floor and seven flats on upper floors'. Approved 01/08/2006
5. **07/00580/F** Amendments to Planning permission 06/00267/F 'redevelopment of site to provide three-storey building with 2 retail units on the ground floor and 7 flats on upper floors' comprising increase in ridge heights to buildings fronting St Benedict's Street, increased height of party wall parapet, extension to ridge of two storey extension fronting Maude Gray Court, alterations to building footprint/boundary, alteration of windows and doors and introduction of additional roof parapet to west facing gable wall. Approved. 06/07/2007
6. **07/00945/D** Condition 2: Details of railings of previous planning permission 07/00580/F 'Amendments to Planning permission 06/00267/F'. Approved 28/08/2017
7. **07/01307/D** Details of Condition 4: Submission of scheme relating to landscaping, planting and site treatment works of previous planning permission 06/00267/F: 'Redevelopment of site to provide three-storey building with 2 retail units on the ground floor and 7 flats on upper floors' Approved 07/01/2008
8. **09/00466/U** Change of use from shop (Class A1) to mixed use for training and advice (sui generis). Approved 14/08/2009
9. **09/01543/D** Details of Condition 3 - submission of details of how refuse and cycle provision will be made available for the commercial and residential aspects of previous planning permission (App. No. 09/00466/U) 'Change of use from shop (Class A1) to mixed use for training and advice (sui generis)'. Approved 22.03.2017
10. **10/01031/F** Installation of air conditioning unit in rear courtyard. Approved 12/08/2017
11. **16/00304/U** Change of use to a flexible use class (Class A1/A2/A3). Approved 10/06/2016
12. **16/01366/F** Installation of coated extraction duct and air grille to rear. Approved 04/11/2016
13. **16/01420/A** Display of 1no. illuminated fascia sign. Approved 17/11/2017.

The Breach

14. The coated extraction duct and air grille to the rear of the subject property has not been installed in accordance with the plans approved under application reference 16/01366/F. An enforcement complaint has been received regarding the negative impact on amenity with regards to noise, odour, and outlook.
15. The development, as installed fails to comply with the conditions to which planning permission was granted which is required under section 171A(1)(b) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).
16. The approved plans, including ‘commercial kitchen extract system. Noise and odour assessment” compiled by Adrian James Acoustics limited shows the majority of the plant within the building (including pre filter, activated carbon filter and GBW 450/4 extract fan). It appears that a large amount of this (or alternative specification) is now located on the external wall resulting in a negative impact on the amenity of neighbouring residents with regards to outlook, noise and odour. This impact extends to the private courtyard area which was designated for external amenity space associated with the flats at upper floors, resulting in an unappealing space to occupy. There is a substantial bulk of equipment attached to the wall directly outside the window to one of the first floor flats.
17. The scheme as approved includes specification of a jet cowl to increase discharge of effluent vertically above eaves level of the highest roof. The plant installed omits this detail, instead a curved top has been installed which discharges effluent down towards the private courtyard area.
18. The lease holder and owner of 21St Benedict’s have been informed the coated extraction duct and air grille to rear as installed is a breach of planning control, following informal negotiations to mitigate the breach of planning control, a Planning Contravention Notice was served on 12th June 2017.
19. It is known by 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.

20. Policies and Planning Assessment

National Planning Policy Framework:

- Statement 1 Building a strong and competitive economy
- Statement 6 A wide choice of good quality homes
- Statement 7 Requiring good design

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

- JCS1 Addressing climate change and protecting environmental assets
- JCS2 Promoting good design

- JCS5 The economy
- JCS7 Supporting communities
- JCS8 Culture, leisure and entertainment
- JCS11 Norwich city centre
- JCS12 The remainder of the Norwich urban area including the fringe parishes
- JCS20 Implementation

Norwich Development Management Policies Local Plan adopted Dec. 2014 (DM Plan):

- DM1 Achieving and delivering sustainable development
- DM2 Ensuring satisfactory living and working conditions
- DM3 Delivering high quality design
- DM9 Safeguarding Norwich's heritage
- DM11 Protecting against environmental hazards
- DM15 Safeguarding the city's housing stock
- DM17 Supporting small business
- DM18 Promoting and supporting centres
- DM21 Protecting and supporting district and local centres
- DM23 Supporting and managing the evening and late night economy

Justification for Enforcement

21. The plant as installed provides has been reported as having a significant detrimental impact on the residential amenities of the neighbouring properties, particularly as a result of the consistent use throughout all hours of the day. This is contrary to policies DM2 of the Development Management Policies Development Plan Document adopted 2014.
22. There is significant visual impact within the courtyard resulting from the nature of the installation. The system has an overbearing nature which is detrimental to the current and future external amenity of the courtyard area, and to the outlook of the residential dwellings in this location. This is contrary to policies DM2 of the Development Management Policies Development Plan Document adopted 2014.
23. Environmental Health have also received a statutory nuisance complaint relating to the noise & odours omitted from this flue. This is being monitored separately.
24. The enforcement was registered on 05.01.2017; a site visit was carried out on 06.04.2017 and email contact was made on this day to the applicant and agent responsible for application reference 16/01366/F requiring a response within 21 days (by 27.04.2017). A formal response was received from the applicant on 13.04.2017 to inform us that they would like to pursue a revised planning application which would seek to take measures mitigate the impacts of the unauthorised flue. We have received regular contact from the applicant and their assigned agent, however, no information has been received as to the measures proposed, no retrospective or alternative planning application has been

received.

25. A resolution has been sought through informal negotiation, it is hoped that this will be achievable; however, in the absence of any progress in this matter we seek committees approval to serve an enforcement notice if it becomes necessary. It is understood that the applicant has encountered difficulties commissioning the necessary professional parties to supply the relevant information which has resulted in the delays experienced.

Equality and Diversity Issues

26. 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

27. The current unauthorised flue is causing significant detrimental impact on the residential amenities of occupiers and neighbouring properties.
28. Authority is sought from the Planning Applications Committee for enforcement action to secure the removal of the unauthorised Mechanical extraction and ventilation plant and associated flue. Enforcement action is to include direct action and prosecution if necessary.

Recommendations

29. Authorise enforcement action to secure the removal of the unauthorised Mechanical extraction and ventilation plant and associated flue; including the taking of direct action may result in referring the matter for prosecution if necessary.