

**DELEGATED**

**AGENDA NO  
PLANNING COMMITTEE**

**4<sup>th</sup> February 2009**

**REPORT OF CORPORATE DIRECTOR,  
DEVELOPMENT AND  
NEIGHBOURHOOD SERVICES**

**4 COUNTISBURY ROAD, NORTON**

**Alleged change of use from residential to mixed residential and business purposes**

**SUMMARY:**

It has been brought to the attention of the Head of Planning that 4 Countisbury Road, Norton, a residential property, is being used to operate a business trading as Teesside Property Services which carries out general property repairs, maintenance and building works and associated administrative functions.

The purpose of this report is to advise members of the action taken by the Planning Enforcement Team to determine whether the operation of that business at the property constitutes a material change of use for which planning permission is required, and, if so, whether or not it would be expedient to authorise the Director of Law & Democracy to instigate all appropriate legal action for any breach of planning control.

The business involves general property repairs, maintenance and building works and associated administrative functions, and operates 2 commercial vehicles, one of which sometimes parks on the drive but the majority of time the vehicles involved are parked on the public highway. No goods, materials or equipment are stored at the property. The administrative functions of the business are undertaken at the property.

It is clear from the officer's inspection of the site and the evidence supplied by the neighbour of vehicular movements associated with the business, that the use is ancillary to the main use of the property as a dwelling. It is therefore considered that no material change of use, from dwelling house (C3) to mixed use as a dwelling house and building firm's office (B1) has occurred.

Accordingly it is also considered at this present time that no further action is required and the property owner should be informed that, on the basis of the current levels of usage, a planning application is not required to regularise the planning position. However the owner should be advised that if activities intensify within the curtilage of the property then an application may be required at that time and that there can be no guarantee that permission would be forthcoming.

## **RECOMMENDATION:**

*It is recommended that Members note that:*

- 1. Planning permission is not required for the business operation at the current level of activity as it is accepted that the scale of the business use of the property at its current level of activity is ancillary to the residential use of the property and does not constitute a material change of use.*
- 2. The applicant is informed of the opinion set out in point 1 of this recommendation that at the current level of commercial activity a planning application is not required to regularise the planning position. However, should activities intensify within the curtilage of the property then an application for a change of use may be required, and that such a permission for such a use might not necessarily be forthcoming.*
- 3. It is considered that at this present time it is not expedient to authorise the Director of Law and Democracy to take legal action, as there is considered to be no breach of planning control.*
- 4. The file be closed unless evidence of such intensification of use is received.*

## **BACKGROUND:**

1. The Local Planning Authority was made aware via a telephone call from the Council's Director of Law and Democracy (who had previously been contacted by a complainant) that a builders business might have been established at 4 Countisbury Road, Norton. The complainant also alleged storage of waste materials associated with the alleged commercial use of the property, misleading advertising, and the blocking of the public highway. These last two allegations are being investigated separately by the relevant Council Departments.
2. The Planning Enforcement Officer checked the planning history and noted that a planning application had neither been approved nor submitted for this alleged use.
3. As Planning Services had not received a formal complaint, an informal inspection took place on 16<sup>th</sup> January 2008 when the owners of the property confirmed they operated a business called 'Teesside Property Services' but used 4 Countisbury Road as a Company address only. The owners of the property advised they operated two medium size commercial vehicles which were used only to commute to and from the place of business, one of which was usually parked at their one employees own property but had been parked at 4 Countisbury Road for security during the employees Christmas holidays. There was no evidence at that time of building materials, goods or equipment being stored in the house or on the front and rear garden areas. A grey van between the size of a Ford Escort and Ford Transit van was parked on the driveway of the property and the owner's car was parked on the highway to the front of the property. The property was

undergoing extensive internal alterations and trade related vehicles could be seen parked at the site at various times.

4. On the basis of the above information the alleged business use of the property was considered to be ancillary to the primary residential use of the property and was therefore considered not to constitute development for which planning permission would not be required.
5. The Director of Law and Democracy was advised of the above on 17<sup>th</sup> January 2008 and he confirmed by email that he had informed the complainants accordingly. He also advised that the situation would be reviewed if the complainant contacted Planning Enforcement with any evidence of business use at the property, until which time there was no requirement for Planning Enforcement to take any further action.
6. The Director of Law and Democracy emailed the Senior Enforcement Officer on 17<sup>th</sup> January 2008 to advise that the complainant had contacted him again alleging two commercial vehicles advertising Teesside Property Services were being parked on the driveway of 4 Countisbury Road or on the road / part on the footpath to the front of the property and the property owners private vehicle was parked on the road making it difficult for one of the complainants to enter / exit her driveway, and stating the alleged business use of the property being the fundamental cause of the parking issue / problems. The complainant also alleged that business acquaintances regularly visited the property and parked their vehicles on the highway to the front of the property.
7. The Senior Enforcement Officer replied to the Director of Law and Democracy on 18<sup>th</sup> January 2008 to ask how he wished to pursue the matter taking into account that the alleged business use of the premises was considered ancillary to the primary residential use of the property and currently did not require consent and therefore the parking of vehicles on the highway was a civil matter. In addition, although the Councils Uniformed Enforcement Division would investigate allegations that vehicles were being parked obstructing the public footpath Planning Enforcement had still not received a formal complaint.
8. On 19<sup>th</sup> January 2008 one of the complainants emailed The Director of Law and Democracy alleging that one commercial vehicle advertising Teesside Property Services was parked directly to the right of their drive and remained there overnight resulting in her having to mount the pavement opposite to access /exit her property.
9. On 22<sup>nd</sup> January 2008 The Director of Law and Democracy emailed the complainants that he would contact them further with his views on the matters raised.
10. On 22<sup>nd</sup> January 2008 the complainant emailed photographs indicating commercial vehicles advertising Teesside Property Services being parked on the road outside his property.

11. On 28<sup>th</sup> January 2008 the complainant emailed The Director of Law and Democracy to advise that due to the parking of the commercial vehicles they could not exit their property without mounting the footpath. They also advised it was their understanding that the garage at 4 Countisbury Road was being used to house two dogs and as a materials store. They also alleged that sub-contractors visited the property and parked without consideration for others.
12. On 26<sup>th</sup> February 2008 The Planning Enforcement officers contacted The Director of Law and Democracy by email to ask if there had been any further developments with regards to the complaints received. The Director of Law and Democracy advised that he was due to discuss the situation with the DANS Information Officer Mrs N Jackson.
13. On 12<sup>th</sup> March 2008 the Senior Enforcement Officer advised The Director of Law and Democracy that, having reviewed with Mrs Jackson the information received by the Councils Legal Division, Planning Enforcement were of the opinion that there was still no evidence received sufficient to change the view that the business being operated from 4 Countisbury Road was ancillary to the primary residential use of the property, the main complaint being vehicular parking on the highway and that, without a formal investigation which would include monitoring the site and requesting the complainants to complete log activity records to help assess the planning situation, it was considered nothing further could be done. On 14<sup>th</sup> March 2008 The Director of Law and Democracy emailed the complainant to advise accordingly.
14. On 18<sup>th</sup> March 2008 the complainant emailed The Director of Law and Democracy to advise he did not accept the Councils views and had submitted a Freedom of Information request to inspect all related information.
15. On 20<sup>th</sup> March 2008 Senior Enforcement Officer emailed to the Director of Law and Democracy a full history of Planning Enforcements observations relating to the site – carried out on an informal basis as a formal complaint had still not been received by Planning Enforcement.
16. On 3<sup>rd</sup> April 2008 the Councils Legal Division emailed the complainants to advise that in order to take their allegations of commercial use at 4 Countisbury Road further it would be necessary for them to complete log activity sheets regarding the use of the property, rather than just the parking of commercial vehicles on the highway and they would also be required to attend Teesside Magistrates Court to verify the evidence if required.
17. On 13<sup>th</sup> April 2008 the complainants emailed The Director of Law and Democracy to confirm they would be willing to complete log activity sheets and attend Teesside Magistrates Court if required. The complaint was then formalised with Planning Enforcement and the complainants were notified accordingly.
18. On 15<sup>th</sup> April 2008 the complainants emailed the Director of Law and Democracy to advise that Teesside Property Services employed operatives and that sub-contractors were using 4 Countisbury Road as a base for their operations.

19. On 17<sup>th</sup> April 2008 two Planning Enforcement Officers visited the complainants at their house to discuss the planning situation and the procedure for completing log activity sheets for an initial period of one to three months after which time the situation would be reviewed. It was agreed that officers would monitor the site for early morning and evening activities and the complainants would monitor on a daily basis. The complainants were also advised that the occupiers of 4 Countisbury Road would be made aware the site would be monitored for commercial activity and given the option of compiling log sheets for activity at their property due to the ongoing building works at their property, although they subsequently declined to do so.
20. The complainants then later that day emailed the Director of Law and Democracy concerned that because his previous correspondence had been marked 'Confidential' their complaint had not been formalised with Planning Enforcement and they considered the evidence previously provided appeared to be in vain. He advised his wife was not comfortable with her understanding of the planning situation and not happy that the occupiers of 4 Countisbury Road would be made aware the site was being monitored. The complainant also confirmed that no further correspondence would be exchanged between himself and The Director of Law and Democracy at the latter's request.
21. It should be noted that up until the 17th April all contact from the complainant was to the Director of Law and Democracy via e-mails marked confidential and not to Planning Enforcement. Also other investigations by other sections of the Council had established no waste materials were being put in the residential bins and there were no obstructions on the highway. Trading Standards investigated the complaint regarding misleading advertising but it is not appropriate or relevant to report it to this committee.
22. The monitoring exercise commenced on 18<sup>th</sup> April 2008.
23. On 28<sup>th</sup> April two Planning Enforcement Officers made a cold call, full inspection of the property at 4 Countisbury Road including the garage and garden areas and confirmed that there was no evidence in the form of goods, equipment or materials associated with the alleged commercial use of the property being stored anywhere at the site. The property is the Registered Company Address for Teesside Property Services but for administrative purposes only, the associated business activities being carried out at clients' properties.
24. The evidence provided by the complainants log sheets showed that vehicular movements in a period from 17<sup>th</sup> April 2008 until 27<sup>th</sup> July 2008, a period of 13 weeks, recorded 357 entries as entering / exiting / attending 4 Countisbury Road. An average of 27.5 per week. This is not a level that would be deemed excessive for a normal residential property occupied by a family unit.
25. Further analysis showed that for 218 of those entries it could not be confirmed if they were all used in connection with the business operation or whether they were more likely to be private vehicles of the householders and their friends and relations. Of the vehicle movements recorded it was also noted that on 53 occasions vehicles were recorded as being transferred to the drive from the road

or vice versa. Based on the information provided by the complainants a spreadsheet was compiled to show all this information (See Appendix 1)

26. The complainants telephoned the Planning Enforcement Officer on 8<sup>th</sup> September 2008 to advise that two commercial vehicles were being parked on the driveway of 4 Countisbury Road.
27. The Planning Enforcement Officer re-inspected the site on 10<sup>th</sup> September 2008 and confirmed the above and spoke with the owners of the property who advised that one of the vehicles was parked on the drive awaiting works which would be carried out within the next few days after which time this vehicle would no longer be parked on the drive. The owners of the property also advised that the second vehicle was currently not being used due to family illness.
28. Planning Enforcement Officers continued monitoring the site and confirmed that 2no commercial vehicles were more frequently being parked at the site, one within the curtilage of the property and one on the adjacent highway.
29. On 9<sup>th</sup> December 2008 the Planning Enforcement Officer spoke with the owners of the property, who advised that due to the current economic climate business had decreased and their one employee was now only working part time therefore two vans were more often to be seen parked at the site, one on the road and one on the drive.
30. Discussions took place regarding the facts of the case with a Planning Area Team Leader and also with the Principal Solicitor, who both agreed that based on the facts and evidence the business use would only be classed as ancillary to the primary residential use of the dwelling, which is residential.
31. On 8<sup>th</sup> January 2009 the Planning Enforcement Officer visited the complainants at their home to advise that despite their and officers monitoring of the site no evidence had come to light to confirm that the business activities could be considered anything other than ancillary to the primary residential use of the site. Therefore accordingly at this present time a planning application would not be required to regularise the planning position. However the complainants were not happy and not prepared to accept the outcome of the investigations.

## **SITE & SURROUNDINGS**

32. The property is a semi detached two-storey dwellinghouse with an external garage, located in a residential area of Norton. Part of an area on the first floor landing is used solely for administrative functions which are carried out on the family's computer. There have been no physical alterations to the property internally or externally to accommodate the business operations and no storage of materials in connection with the business (see Appendix 3).

## **THE DEVELOPMENT**

33. It is confirmed that the property is the residential home of the occupiers and their children, the commercial use being limited to a Company address and the use of

two commercial vehicles (one which parks on the road and one which parks on the drive) The occupiers have one employee who drives the second commercial vehicle, which is sometimes parked at his own home and is used to commute to and from his place of work. But since January this vehicle has been parking in the road at Countisbury Road

## **LEGISLATIVE BACKGROUND**

34. Section 55 of the Town & Country Planning Act provides that the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such shall not be taken to constitute "development". "Development", of course, includes a material change of use. In addition, any use that is ancillary to the main use of land is not sufficient to constitute a "material" change of use and hence is not "development".

## **MATERIAL PLANNING CONSIDERATIONS**

35. Whether planning approval may be required for the operation of a property repair / maintenance / building business and associated administrative functions to operate from 4 Countisbury Road, Norton is a matter of fact or degree and it is not automatically required and is dependant on a number of factors.
36. The aim of this report is to determine whether a material change of use from a dwelling (C3) to a mixed use incorporating elements of office, general property repairs, maintenance and building works (use class B1) has taken place and therefore whether a request for an application for planning permission would be justified. In order to do so, an assessment of the scale, nature and character of the operations is required.
37. The background information describes the operations and extent of the business at 4 Countisbury Road, It is clear from that description and the evidence supplied by the neighbour of vehicular movements associated with the business, that the use is low key, and ancillary in the majority of respects to the use of the property as a dwelling, and confined mainly therein. The hours of operation are limited in the sense of vehicles leave in the morning and arriving back in the evening with very little activity during the day. Although a commercial vehicle is sometimes parked at the property, the main parking occurs on the highway and there are non-domestic vehicles associated with the business plus personal domestic vehicles calling at the property. There is no evidence to suggest that the extent of on street parking, noise, disturbance and inconvenience arising from those visits is beyond that which would be expected at a dwelling in a residential area.
38. Ultimately the Council does have the power to issue an enforcement notice against an unauthorised change of use of a property, but it is only appropriate to do so if planning permission was required and would have been refused. It must also be noted that the enforcement notice would only affect the activities within the curtilage of the property and not the issue of parking on the public highway / footpath.

39. It is clear from the information gained from both officers and the complainants monitoring of the site that one commercial vehicle is regularly being parked on the driveway at 4 Countisbury Road. One of the householder's two family cars is parked either on the driveway or on the road outside the property. A second family car is also to be seen parked on the road to the front of the property. On occasions a sub-contractors van is parked on the road near 4 Countisbury Road and the driver leaves the site in a Teesside Property Services van.
40. The evidence gained, however, would seem to indicate that only one commercial vehicle is being parked within the curtilage of the property. The parking of one commercial vehicle within the curtilage of the property would not normally require planning permission particularly as the vehicle is not a large commercial vehicle. Furthermore, it must be recognised that if an application was requested and refused, this could result in further parking problems on the highway by forcing this vehicle to be parked elsewhere.
41. The occasional parking of a second commercial vehicle, a sub-contractors van and the two family cars on the road to the front of the property is not a planning matter and therefore in itself presents no justification for pursuing enforcement action. It must also be noted that this appears to be the main source of contention as the complainants have continually complained about being blocked in by vehicles being parked on the highway.
42. The evidence gained relating to the alleged business use and associated parking of vehicles on the highway was referred to the Councils Principal Solicitor who advised that it could be deemed reasonable for the householders to park vehicles owned by them on their property for security purposes without it being deemed a change of use provided they are not storing goods or tools or equipment at the house. It was also considered that if the vehicles were prevented from parking within the curtilage of the property they would likely be parked on the adjacent highway and therefore cause greater problems for the complainants and it would not be possible to serve an Enforcement Notice for vehicles parked on the road.
43. On the evidence obtained the commercial use of the property is considered ancillary to the primary residential use of the property for which planning consent would not be required.

## **CONCLUSION:**

44. It is considered that the site is located in a primarily residential area and as such would be unsuitable for the operation of a business comprising general property repairs, maintenance and associated administrative functions if planning permission was required. However at its current level of operation the use of 4 Countisbury Road is considered to be ancillary to the main residential use and therefore no planning approval is required.
45. It is the opinion of the Head of Planning that taking into account all the above information the business use is still ancillary to the main use of the dwelling (residential) and therefore planning consent is not required at 4 Countisbury Road for the operation of the business use in question



## **Corporate Director of Development & Neighbourhood Services**

**Contact Officer:** Stuart Wilson

**Telephone Number:** 01642 526058

**Email Address:** stuart.wilson@stockton.gov.uk

### **Financial Implications:**

Possible costs in defending an appeal should enforcement action be pursued.

### **Environmental Implications:**

As Report

### **Community Safety Implications:**

N/A

### **Human Rights implications:**

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report. The determination of whether a breach of planning control has occurred is a matter of fact and there can be no consideration of the impact of the decision on others' human rights in reaching that determination.

### **Background Papers:**

Complaint File Ref: 18.0.1  
Stockton on Tees Local Plan.

### **Ward and Ward Councillor(s):**

Norton West      Councillor Mrs A Cains  
                         Councillor Mr R Cains