

Report to Planning Committee

Planning Enforcement 0029/2014

Reference:

Location: Land and buildings at 8 Shorwell Road, Carlton, NG3 7HG

Breach of Planning Control: Material change of use of residential dwelling and garden to a mixed use of residential dwelling and garden and a sales business and the storage of items in connection with that business.

1 Site Description

- 1.1 The property No.8 Shorwell Road is a semi-detached residential property. It is positioned in a residential area of other similar semi-detached houses occupying a prominent corner plot on a no-through small estate road and is surrounded by garden on three sides.
- 1.2 Access to the dwelling is via a short drive way from Shorwell Road to the front western elevation of the property. Shorwell Road bends to the right around the northern elevation and side garden of the property and into a cul-de-sac. There is a second short drive way just past the bend from Shorwell Road to the domestic garage at the rear of No. 8, close to the boundary of No. 10 and along the eastern boundary of the garden.
- 1.3 The garden immediately in front of the dwelling and drive way along the western elevation is open plan but a 2 metre close boarded fence has been erected from the north western corner of the dwelling to the boundary with the highway and around the rest of the garden to the side and rear. The driveway leading to the garage at the rear of the dwelling does not have gates and is open to the public view.
- 1.4 A second 1.8m high close boarded fence has been erected from the north elevation of the dwelling to the northern boundary garden fence with No.10 Shorwell Road, sub dividing the side and rear garden into two distinct areas. Three sheds together and other additional smaller storage containers have been erected in the smaller of the two areas closest to Shorwell Road and this area is used for the business and storage of items for sale. A fourth shed has been erected in the second area of divided rear garden and is used for private storage. The tops of the shed can be seen from Shorwell Road over the 2 metre close boarded fence.

2 Planning History

- 2.1 There is no relevant planning history to this site.

3 Background

- 3.1 The Council first received complaints about disturbance from activities and the

visual appearance of No. 8 Shorwell Road in February 2014.

- 3.2 In January 2017 a Council Officer reviewed the outstanding files and visited the site. The four sheds in the garden were easily visible over the 2 metre boundary fence. There were items stored in the open in part of the rear garden and on the roof of two of the sheds. There was an empty trailer, several hose pipes, a large white tarpaulin and a number of other items stored on the drive way leading to the front door of the property and a large white box trailer covered in green mould with a damaged axle and a smaller trailer full of rubbish and waste items and other items on the ground stored on the driveway leading to the rear garage.
- 3.3 In addition there were two very large transit vans parked on the highway outside of the property. The transit vans were also covered in green mould and appeared to be used for storage and were full of domestic items and rubbish, including items stored on the front passenger seats making it impossible to carry any passengers without removing some of the items.
- 3.4 A Planning Contravention Notice was served on the occupier of No. 8 and on Monday 23rd January 2017 the occupier attended a meeting at the Council Offices to discuss the activities and the condition of their property. The occupier admitted that they are running a market trading business from home. The occupier stated that they attended at auctions on a Saturday at Nottingham Cattle Market and on a Tuesday at Shirebrook. Any items that are not sold at the auctions are often given to them free of charge providing they take them away. These items are stored at the address until the occupier sells them, usually at the market in Hyson Green on a Wednesday.
- 3.5 The items are stored in their sheds, in their garden and in the two transit vans parked on the highway. The occupier stated that he began to operate the business sometime after 2005.
- 3.6 On Monday 6th February 2017 two officers attended at the property and access was gained to the garden and the sheds and the premises were found to be in a similar condition to that described above. The occupier again confirmed the items stored in the open, in the sheds and in the two transit vans were not personal items but items they wanted to sell at the market. Access was not gained to the garage because the occupier claimed they had lost the keys to the garage.

4 Assessment

- 4.1 No. 8 Shorwell Road is a residential property with a small garden in close proximity to other similar semi-detached dwellings. The use of the premises to operate a sales and associated storage business is not incidental to the enjoyment of the dwelling house and requires planning permission. No such permission has been granted.
- 4.2 Although development has occurred without planning permission and is therefore unauthorised, local planning authorities are required to consider government guidance when deciding whether to take planning enforcement action. Government guidance is found in the National Planning Policy Framework (NPPF) (Paragraph 207) and states that although effective enforcement is important as a means of maintaining public confidence in the planning system, ultimately enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control.

- 4.3 The main considerations when deciding whether to take enforcement action in this case are;
- i) whether the use of the dwelling for a sales and associated storage business has any detrimental effect on the amenities of other occupiers of nearby dwellings, on highway safety or the character of the area.
 - ii) whether the Local Planning Authority is within the ten year time limit for taking action for a material change of use of the land.

Planning considerations

- 4.4 In relation to the development the most relevant paragraphs of the NPPF are paragraph 9 which seeks positive improvements in the conditions in which people live, work and travel, paragraph 58 setting out the quality of development expected for an area and paragraph 123 minimising adverse impacts from new developments.
- 4.5 At the local level, the development plan comprising of the adopted Gedling Borough Aligned Core Strategy (ACS) Part 1 Local Plan Policy 10 Design and Enhancing Local Identity; Draft Local Planning Document (LPD) for Gedling Borough (published but not yet adopted) Policy LPD 32 Amenity and saved policies within the Gedling Borough Council Replacement Local Plan (Certain Policies Saved) 2014 (RLP): Policy ENV1 Development Criteria, are relevant.
- 4.6 The open plan driveways are being used to store items and trailers full of poor quality unsold goods and rubbish obtained from local auctions. The white box trailer with a broken axle on the rear drive way is covered in green mould and looks unsightly. The two large transit vans parked on the highway outside of the property are also covered in green mould and are also unsightly and are being used for the storage of rubbish and items from the auction.
- 4.7 The side and rear garden has been sub divided into two; one area used for the unauthorised business to keep and store items and goods left over from the auctions and intended for sale at a later date and the other half for private residential use. The part of the garden used for the business contains three sheds in very poor condition as well as additional plastic storage units. The sheds are also full of poor quality items from the auction. One of the sheds has been leaking water from the roof and the contents of the shed are sodden and rotting and smell and are an attraction for vermin.
- 4.8 The land and buildings will be seen from neighbours' upstairs bedroom and landing windows. The open drive ways are visible from the street and neighbouring properties and the tops of the sheds are seen from over the 2 metre high fence.
- 4.9 Complaints received advise that items are sold by the occupier on both the internet and at markets. When the occupier attends markets, it is advised there is activity from 3.30 – 4am and this disturbs nearby residents from their sleep as vans are loaded with items stored in the sheds. Concern is also raised that visitors attend the site to collect goods they have bought from the internet or earlier at the market. On occasions it is alleged that items are dropped in the road when the operator of the business is unloading their vehicle and are left broken on the highway. Neighbours are left to clear the road of glass and other broken items.
- 4.10 The condition of the land with dilapidated sheds and items and rubbish stored on the

land and the visual look of the two transit vans is detrimental to the visual amenity of local residents and visitors to the area. The noise created by the occupier loading their vans in the early hours disrupts and disturbs neighbours sleep and is detrimental to their health and well-being. In addition, items' over-spilling from the vehicles and being dropped in the highway when the operator is loading and unloading their vehicles is detrimental to highway safety.

- 4.11 It is considered that the unauthorised storage and sales business operating from No. 8 Shorwell Road is in conflict with the above policies at paragraphs 4.7 and 4.8 which all seek development of a high standard and development that does not adversely affect the area in which it is located but provides good living standards and which makes a positive contribution to the public realm and sense of place.

Time Limits

- 4.12 The time limit for taking action for a material change of use of the land is 10 years. The occupier has stated that they are uncertain when the business use began but that it was sometime after 2005.
- 4.13 The Encyclopaedia of Planning Law advises that "Pinpointing the date of a change of use can be problematic because a change of use is frequently a gradual process involving fluctuations in intensity and shifts in precise location. ...the only effective test is to compare the present use with the ...use in the base year."
- 4.14 Aerial photographs taken in 2007 and 2008 show a low 1 metre high fence round the boundary of the garden where the now 2 metre fence is located. It shows the garden undivided and only two sheds in the garden and the rear driveway to the garage clear of any items. A later photograph taken in 2011, shows there was still only two sheds in the garden and one transit van parked in the driveway leading to the garage.
- 4.15 The onus is on the occupier of the land to show that on the balance of probabilities the unauthorised use has continued uninterrupted at a level that changed the character of the land for at least ten years.
- 4.16 In this case the evidence available to the Council strongly suggests that the storage and sales business was established less than 10 years ago and the Council is within time to issue an enforcement notice requiring the use to cease.

Human Rights

- 4.17 Under the Human Rights Act, it is necessary for the Authority to have regard to the rights of the owner and occupier of a site under Article 1 of the First Protocol to peaceful enjoyment of possessions and the protection of property and under Article 8 of the convention to respect for his private and family life, his home and his correspondence except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 4.18 In considering whether to take any enforcement action, the Council has to consider the proportionality of its actions. In other words whether the proposed action would be proportionate to the objective being pursued – here the enforcement of planning control in support of National and Local Planning Policies. It is recognised that issuing an enforcement notice or pursuing formal proceedings in the Magistrates

Court if the notice is not complied with, will result in interference with the recipients' rights. However, it is considered that issuing a notice in the first instance would be a proportionate response to rectifying the breach of planning control taking place and depending on compliance with the notice it might well be justified to take court action.

Equalities

- 4.19 The Enforcement section operates in accordance with the Councils Planning Enforcement Policy and is largely dictated by legislation which reduces the risk of discrimination in this service. The Council is accountable to the public, including its stakeholders, for its decisions both to take enforcement action and not to utilise its enforcement powers. There is a legitimate expectation of the public and stakeholders that the Council will take action to address breaches of planning by such means as are appropriate and which are in accordance with the Councils policy and government legislation.
- 4.20 The Council strives for a consistent approach in targeting its enforcement action. This means that the Council will take a similar, but not the same, approach to compliance and enforcement decisions within and across sectors. It will strive to treat people in a consistent way where circumstances are similar. Each case however will be evaluated on the basis of its own facts and circumstances but will ensure that decisions or actions taken in any particular case are consistent with the law and with the Councils published policies. It should be noted that decisions on specific enforcement actions may rely on professional judgment. The Council will usually only take formal enforcement action where attempts to encourage compliance have failed as in this case.

Crime and disorder

- 4.21 The Crime and Disorder Act 1998 places a duty on the Local Planning Authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on the integrity of the planning system and the setting of a precedent if action is not taken is therefore a material consideration in the authorisation of enforcement proceedings.
- 4.22 In light of all the facts it is now considered expedient to serve an enforcement notice to require the cessation of the unauthorised business use of the land and removal of the sheds and other associated structures and items not considered incidental or ancillary to the domestic use of the dwelling.

5 Conclusion

- 5.1 A serious breach of planning control has been identified which is detrimental to the amenities of nearby occupiers of other residential properties, highway safety and the character of the area.
- 5.2 The breach conflicts with both national and local policies. Negotiations have failed to rectify the breach and failure of the Council to act in these circumstances may leave local residents with a business which adversely affects their health and well-being and is detrimental to the amenity of the area and which is beyond the control of the Council.
- 5.3 The Council should now issue a planning enforcement notice without delay requiring the cessation of the unauthorised business, removal of the unauthorised sheds and

associated containers and all other items not incidental to the enjoyment of the dwelling stored on the land and if the notice is not complied with formal action should be taken through the courts if necessary.

Recommendation:

That the Service Manager, Development Services be authorised to take all enforcement action including the service of any necessary enforcement notices and proceedings through the courts in conjunction with the Director of Organisational Development & Democratic Services to ensure (a) the cessation of the unauthorised business use (b) the removal of the sheds and other associated structures and items not considered incidental or ancillary to the domestic use of the dwelling be removed from the land.