

Report to Planning Committee

Planning Enforcement 0010/2017

Reference:

Location: 1 Central Avenue South, Arnold, NG5 6NG.

Breach of Planning Control: Land detrimental to the amenity of the area.

1 Site Description

- 1.1** No. 1 Central Avenue South, Arnold is a detached residential property. It is positioned in a popular residential area of other similar detached houses and bungalows on the prominent corner of Central Avenue South and Central Avenue and within a few hundred metres of Arnold town centre.
- 1.2** Access to the front elevation of the property is via a pedestrian gateway and a separate vehicle access consisting of two brick built archways with solid wooden gates from Central Avenue South. There is a second vehicular access to a newly built double garage and the rear garden of the property through large wooden gates from Central Avenue.
- 1.3** The garden area and the ground floor of the dwelling are well screened by the wooden gates and a two metre high well maintained hedge. However the dwelling above ground floor level is widely visible from Central Avenue, Central Avenue South and Castleton Avenue which meets with Central Avenue to the south east of the dwelling.

2 Relevant History

Reference	Description	Outcome	Date
0010/2017	Enforcement investigation into allegation of land and buildings detrimental to the amenity of the area	On - going	Complaint received 10.01.2017-
037/2016	Enforcement investigation into alleged breach of planning control and untidy land	No breach of planning control. On-going lawful works being carried out. File closed	Complaint received 18.02.2016 Closed 20.04.2016

2002/1630	Erect 2 storey extension, garage and conservatory, entrance, porch and internal conversions	Conditional Permission	09.10.2002
85/1098	Erect garage and extend the property	Conditional permission	20.09.1985

3 BACKGROUND

- 3.1** Planning permission (Reference 2002/1630) was granted to No. 1 Centra Avenue South on the 9th October 2002, to erect a two storey extension, a double garage and conservatory, a new entrance porch and internal alterations. Council records show that the development commenced immediately in October 2002.
- 3.2** The works were extensive and required scaffolding to be erected around the dwelling. When works began on the roof of the dwelling, thirteen years ago, the property was made weatherproof with large blue tarpaulins tied firmly over the roof area and attached to the scaffolding poles.
- 3.3** The works have never been completed and in February 2016 the Council received a complaint about the unsightliness of the ongoing works and in particular the blue tarpaulin over the roof.
- 3.4** An investigation was carried out by the enforcement officer in post at that time and it was found that there was no breach of planning control as the development was in accordance with the approved plans. It was agreed with the owner of the property that the works to the roof would be completed by Christmas 2016 and the blue tarpaulin and scaffolding would be removed at that time. The file was then closed.
- 3.5** In January 2017, the Council received a further complaint about the impact the unfinished work was having on the area and as a result a meeting recently took place between a Council Officer and the owner of the property.
- 3.6** The owner of the property agreed that they had given an undertaking to complete the roof and remove the tarpauling and scaffolding by Christmas 2016 but stated they had not been able to keep to that deadline. They stated that the development had taken so long because of various difficulties but they offered to complete the roof and remove the tarpaulin and scaffolding by June of this year (2017).

4 ASSESSMENT

- 4.1** The dwelling is on a prominent corner plot in a popular residential area of

generally well maintained detached dwellings. This development commenced fifteen years ago and has been on going ever since. The scaffolding and blue tarpaulin across the roof line have been in position for thirteen years and although the tarpaulin is changed every 6 – 12 months it is still very conspicuous and obtrusive from wide views along Central Avenue South and from the main route leading from the town centre along Central Avenue.

- 4.2** It is expected that during building works a site will look disorderly and unkempt but this should be for a limited time if the works are carried out efficiently. The land and buildings should then be restored to a tidy condition at the earliest opportunity to minimise any adverse impact on the area.
- 4.3** It is highly unusual for works to continue for fifteen years or more and the impact of such an occurrence on the occupiers of neighbouring properties cannot be underestimated and must be given consideration. The continuing work, the scaffolding and starkness of the blue tarpaulin over the roof line of the property for such a length of time is detrimental to the amenity of the area and to the visual amenity of local residents, particularly people living opposite the and immediately next door to the property and to visitors to the area.

Available action

- 4.4** Section 215 (s215) of the Town & Country Planning Act 1990 (the Act) provides a local planning authority (LPA) with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied.
- 4.5** The Government's Best Practice Guide states "Section 215 has been effectively used on large vacant industrial sites, town centre street frontages, rural sites, derelict buildings, and semi-complete development..... Any discussions should not be allowed to result in undue delay in terms of yielding results".
- 4.6** There is a right of appeal against the s215 notice to the Magistrates Court. The grounds of appeal available to a recipient of a notice include;
- "the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from the carrying on of operations or a use of land which is not in contravention of Part III".*
- 4.7** Although the owner of No. 1 Central Avenue South may seek to use this defence in appealing the notice, it is considered the Council would successfully argue that fifteen years to build an extension on an existing dwelling is not usual and in the ordinary course of events.
- 4.8** If the notice is not complied with Local Planning Authorities have the option of prosecuting the owner for non- compliance or the Authority may carry out the

work itself and recover the costs of doing so from the owner or occupier of the site.

Human Rights

- 4.9** 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.
- 4.10** 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 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

- 4.11** The Enforcement section operates in accordance with 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 Council's policy and government legislation.
- 4.12** 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 Council's 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

4.13 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.

5 CONCLUSION

5.1 The on-going work and the dwelling surrounded by scaffolding and with a blue tarpaulin over the roof line for more than thirteen years is not the usual course of events. The scaffolding and starkness of the blue tarpauling over the roof is detrimental to the amenity of the area and to the visual amenity of the occupiers of neighbouring properties and visitors to the area.

5.2 Although the owner of the property has given an undertaking to complete the work on the roof and remove the scaffolding and tarpaulin by June 2017, they has given similar undertakings previously but the work has not been undertaken. In order to ensure the works are now progressed and the injurious scaffolding and tarpauling are removed it is considered expedient to serve a notice under S215 of the Town and Country Planning Act 1990 to prevent the continuing detrimental impact the unfinished development has on the amenity of the area.

Recommendation:

To note the report.