

## **Report to Planning Committee**

**Planning Enforcement** 0185/2016

**Reference:**

**Location:** 772 Mansfield Road, Woodthorpe

### **1 BACKGROUND**

- 1.1 In November 2016, it was brought to the Council's attention that a single storey extension had been built at the rear of the Chinese takeaway at 772 Mansfield Road, Woodthorpe.
- 1.2 The extension is being used mainly for storage and has been constructed out of fence panels and with a corrugated plastic roof. A garden gate leads directly from the rear access road into the extension.
- 1.3 The occupiers have been advised the extension requires planning permission and that it is unlikely permission would be granted for the extension due to design and neighbours amenity issues. Despite this advice the development remains in position.

### **2 ASSESSMENT**

- 2.1 The premises No. 772 is a Chinese takeaway known as the Wandering Dragon situated on the southern corner of a parade of shops located on the south-eastern side of the junction between Mansfield Road (A60) and Thackeray's Lane, within the built up area of Woodthorpe.
- 2.2 Immediately fronting the parade of shops is a customers' parking area with an access road leading from the car park along the southern elevation of No. 772 round the back of the shops to garages and outbuildings mostly used for storage and into Thackeray's Lane.
- 2.3 The extension is attached to the corner of the southern elevation of the shop and encloses the rear yard belonging to the shop premises. It is approximately 3.1 metres wide by 5 metres long and is made of shiplap fencing with a corrugated plastic roof and a garden gate leading from the access road into the extension.
- 2.4 The extension requires planning permission as there are no permitted development rights allowing the development. 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.

#### Planning considerations

- 2.5 The main considerations in deciding whether to take enforcement action in this case is the principle of the development enclosing the rear yard of the premises, the impact on the amenity of the adjoining properties and the design and impact on the character of the area.
- 2.6 The main buildings and garages along the rear access route are mostly brick built. The fence and plastic extension is of a poor design and is out of character and an incongruous feature and as such does not accord with national and local policies.
- 2.7 The original rear door to the kitchen area of the takeaway is now kept open so that there is easy access into the covered yard area. The extension increases the useable working area available to the employees and the occupiers of the takeaway and as a result there is a material increase in the activity in the now enclosed yard area and an increase in the noise emitted from the premises. The extension has no insulation and the noise from the kitchen and extension, especially at night will have an adverse impact on the occupiers of any residential accommodation over the adjoining shops.
- 2.8 Policy ENV1 of the Gedling Borough Council Replacement Local Plan (Certain Policies Saved 2014) requires development to be of a high design standard and without an adverse effect on the area or the amenities of the adjoining occupiers or the locality in general.
- 2.9 Policy 10 of the Gedling Borough Council Aligned Core Strategy (September 2014) also requires development to be assessed on massing, scale and proportion; material, architectural style and detailing; impact on the amenity of nearby residents.
- 2.10 In addition, at the heart of the National Planning Policy Framework (NPPF) there is a presumption in favour of sustainable development. The NPPF sees good design as a key element of sustainable development. Paragraph 64 of the NPPF states Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- 2.11 The extension is out of keeping with the pattern of development in the surrounding area. The development is considered to be in conflict with both national and local policies.

#### Human Rights

- 2.12 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’.

- 2.13 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.

#### Equalities

- 2.14 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.
- 2.15 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

- 2.16 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.
- 2.17 In light of all the facts it is now considered expedient to serve an enforcement notice to require the demolition of the extension.

### **3 Conclusion**

- 3.1 Negotiations have failed to resolve the breach of planning control and the

unauthorised extension remains in place to the detriment of the character of the area and the amenities of other local residents and in conflict with both local and national policies.

- 3.2 The Council should now issue a planning enforcement notice requiring the unauthorised extension to be removed and if the notice is not complied with formal action should be taken through the courts if necessary.

**Recommendation:**

- 4.1 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 secure the removal of the unauthorised extension.