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Report to Planning Committee

Reference: 0196/2016

Location: 143 Gedling Road, Arnold NG5 6NT

Breach of Planning: Breach of Planning Condition No. 3 of Planning Reference 2011/0968

1 Background

- 1.1 On the 12th October 2011 planning permission was granted to 'erect a two storey side extension plus loft conversion with 1 dormer window' (Reference 2011/0968) at 143 Gedling Road, Arnold.
- 1.2 The permission was subject to a number of conditions including Condition 3 which stated:

Condition 3 - The windows proposed to be inserted in the side elevation of the proposed two storey side extension shall be obscured glazed and fixed shut at all times. The window to the other side elevation of the existing dwelling shall be obscured glazed and fixed shut at all times. The roof light to the rear elevation roof slope of the 2 storey side extension shall be obscured glazed and fixed shut at all times.
- 1.3 There are two windows in the side elevation of the extension, a window to the loft area and a window to the ensuite bathroom. On the 21st November 2016 the Council received a complaint alleging the windows in the side elevation of the extension were being opened on a regular basis.
- 1.4 Officers visited the site on several occasions but at the time of the visits nobody was at home. Although the windows appeared to be obscure glazed and the windows were all closed, access was not gained to confirm the fact the windows were non-opening.
- 1.5 Letters were sent to the occupier to remind them of the requirements of Condition 3 but no response was received.

1.6 On Tuesday 30th May 2017, a photograph was sent to the Council by the complainant showing the window on the side elevation of the extension to be open.

2 Assessment

2.1 The power to impose conditions on planning permissions is an extremely important part of the development management process in order to safeguard matters of planning importance, mitigate the impact caused by the development and ensure the development is acceptable in all planning aspects.

2.2 Conditions have to be necessary, relevant to planning, relevant to the development to be permitted, precise, enforceable and reasonable in all other aspects. Conditions should only be imposed where they fulfil all the above criteria (known as the “six tests”). If not, they are likely to fail if challenged at appeal.

2.3 In this case, Condition 3 was imposed to ‘protect the privacy of the adjoining dwellings, in accordance with the aims of Policy ENV1 of the Gedling Borough Replacement Local Plan (Certain Saved Policies 2008)’. It is considered the condition complies with the six tests and that the open window has a detrimental impact on the privacy of the adjoining neighbour.

2.4 As the occupiers have failed to enter into any dialogue with the Council, there are two main options available to the local authority when a condition is being breached:

i) to issue a Breach of Condition Notice (BCN) which will require the recipient to remedy the breach. There is no right of appeal to the secretary of state and breach of a BCN is a criminal offence punishable by a maximum fine of £2,500 ; or

ii) to issue a Breach of Condition Enforcement Notice which will require the recipient to take steps to remedy the breach. There is a right of appeal to the Secretary of State which would suspend the notice until the appeal has been determined. Breach of an enforcement notice is also a criminal offence punishable by a maximum fine of £20,000 on summary conviction if it is not adhered to once it has come into effect.

2.5 As this is a straightforward breach of condition it is considered the simpler Breach of Condition Notice is the most appropriate action to take in this instance.

Time limits for taking action

2.8 Section 171B(3) of the Town and Country Planning Act 1990 provides that generally no enforcement action can be taken against a breach of a planning condition after the end of the period of ten years from the date on which the breach first occurred. The Council is within this time limit to take action in this case.

2.9 Human Rights

- 2.10 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’.
- 2.11 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 a breach of condition notice or taking court 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

- 2.12 The Enforcement section operates in accordance with the Council’s 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.
- 2.13 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

- 2.14 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.

3 CONCLUSION

- 3.1 The occupier of the property has been made aware of the planning conditions attached to the planning permission; in particular they have been made aware the new windows inserted in the property must be obscure glazed and non-opening.
- 3.2 The occupiers have declined to respond to the Council's letters and are opening the windows to the detriment of the privacy of the occupiers of the neighbouring properties
- 3.3 In order to remedy the breach of planning control it is considered the issuing of a Breach of Condition Notice is the most appropriate action in this instance.

4 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 ensure compliance with Condition 3 of Planning a