



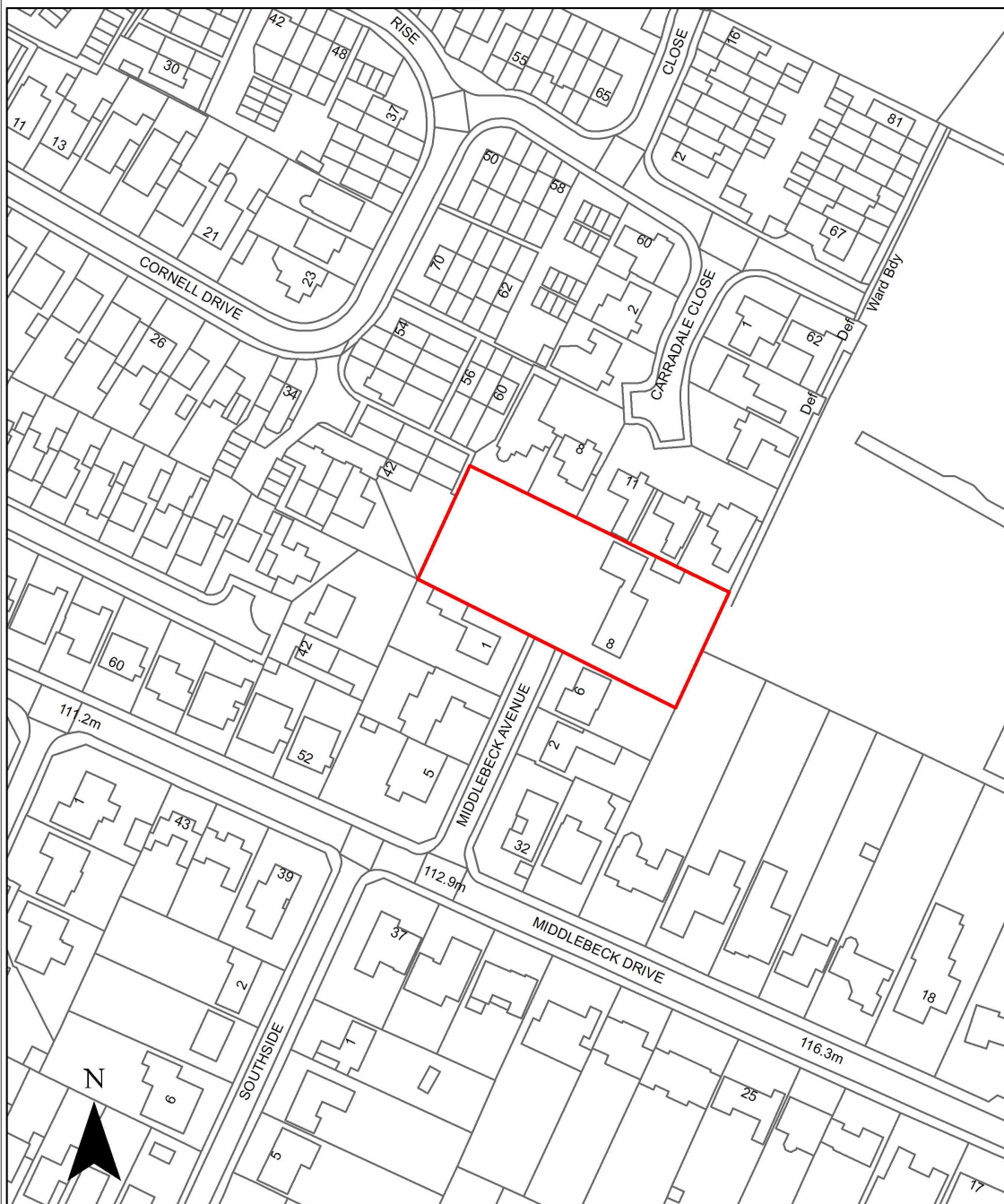
## Enforcement Report for 0179/2017

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Enforcement Reference: 0179/2017

Location

Land At 8 Middlebeck Avenue  
Arnold



NOTE This map is provided only for purposes of site location and should not be read as an up to date representation of the area around the site.  
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**PLANNING ENFORCEMENT REPORT**

**Reference;** 0179/2017

**Location;** Land at No. 8 Middlebeck Avenue, Arnold

**Breach of Planning Control;** **Material change of use of residential dwelling and garden (Use Class C3) to a mixed use of residential dwelling and garden (Use Class C3) and a car sales business (sui generis) and storage of vehicles in connection with that business (Use Class B8).**

**1 Background**

- 1.1 The Council first received complaints about a car sales and storage business operating from No. 8 Middlebeck Avenue in May 2016 but after negotiations with the owner the use appeared to cease and the file was closed.
- 1.2 In September 2017, the Council received a further complaint about the number of cars stored at the property and also parked on the nearby public highway and about vehicles being delivered on trailers. A subsequent site visit by officers confirmed there were over thirty vehicles parked on the front lawn and driveway of the dwelling.
- 1.3 The owner was sent a letter on 18<sup>th</sup> September 2017 advising the operation of a car sales business and the storage of vehicles in connection with that business was a breach of planning control and it was unlikely planning permission would be granted for that change of use. In addition, a Planning Contravention Notice (PCN) was also issued which required the owner to answer a number of questions in writing about the ownership of the property and about the activities being carried on at the dwelling. In that PCN, the owners were also offered a meeting with officers to give them the opportunity to make any representations about the activities taking place at the site.
- 1.4 The owners subsequently contacted the Council by phone on 25<sup>th</sup> September 2017 and declined the meeting but they gave an undertaking the unauthorised use would cease by the end of September when their new business premises would be completed.
- 1.5 The owner was told by officers that if the vehicles were not removed from the site by the end of September the Council would consider taking formal enforcement action.
- 1.6 On the 9<sup>th</sup> October 2017, officers visited the site and saw at least 32 vehicles stored on the front lawn and on the drive way of the property. The owner of the site was not available at the time of the visit but an employee of the owner was present and stated they were waiting for new premises to be completed before they could relocate the vehicles.

## **2 Site Description**

- 2.1 The property No.8 Middlebeck Avenue Arnold is located within the urban residential area of Arnold and is a detached dwelling at the end of the cul-de-sac. The property is set back from the highway, northeast from the end of the avenue. It is positioned on a large plot of approximately 1,848 sq. metres with most of the garden laid to lawn to the front of the property but there is also a generous lawned area to the rear of the property. The boundaries are clearly defined by close-boarded panelled fencing and mature planting.
- 2.2 Access to No. 8 is from Middlebeck Drive into Middlebeck Avenue and then directly onto the hard surfaced private driveway within the garden area of the dwelling. There are no gates to the property and so there is a clear view into the garden from the highway. Properties on Carradale Close border the site along the north eastern boundary while the properties in Cornell Drive share the western boundary and Nos. 5 and 6 Middlebeck Avenue abut the south west boundary of the site.

## **3 Planning History**

- 3.1 Planning permission was granted in January 2010 for the erection of a detached garage to the north west of the dwelling (Reference 2009/1033). In October 2010 a further application was granted for an amendment to the previous application by including a link from the dwelling house to the garage. (Reference 2010/0780)
- 3.2 In May 2016 the Council received complaints about the owner of the site storing vehicles in the residential garden of the property in connection with his car sales business but after discussions with the owner this matter appeared resolved.

## **4 Assessment**

- 4.1 No. 8 Middlebeck Avenue is a residential property and although it has a large garden it is positioned in close proximity to other dwellings. The use of the premises to operate a car sales and associated storage business is not incidental to the enjoyment of the dwelling house and requires planning permission. No such permission has been applied for nor 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 car sales and an associated storage business has any detrimental effect on the character of the area or the environment, on the amenities of other occupiers of nearby dwellings or on highway safety.
  - ii) whether the Local Planning Authority is within the ten year statutory time limit for taking action for a material change of use of the land.
- Planning considerations
- 4.4 The NPPF attaches great importance to positive improvements in the conditions which people live, work and travel (paragraph 9), while paragraph

58 sets out the quality of development expected for an area and paragraph 123 requires the minimising of adverse impacts from new developments.

- 4.5 At the local level, Policy 10 of the Greater Nottinghamshire Aligned Core Strategy (2014) seeks to proactively promote good design and reinforce valued local characteristics. In order to achieve this, the policy approach sets out a number of criteria to reinforce valued local characteristics. Saved policies ENV1 Policy of the Adopted Local Plan (2005) (certain saved policies) seeks a high standard of design; new developments are expected to have regard to the character of the locality and the details of their proposals in terms of their scale, bulk, form, setting, layout and materials. Policy E4 provides that change of use for businesses will only be permitted where it would not generate traffic of a type or amount inappropriate for the character of the access road and where it would not harm the character of the area or the amenity of local residents and it would not cause noise or air pollution.
- 4.6 Policy LPD 32 set out in the tracked changes version of the Local Plan Document Publication Draft (Version 2 – December 2016) seeks to protect the amenity of nearby residents or occupiers and Policy LPD 34 seeks to protect residential gardens and aims to ensure any development does not result in harm to the character or appearance of an area. The moderate weight currently attached to these particular policies is noted in accordance with the advice of paragraph 182 of the NPPF.

#### Impact on the character of the area and the environment

- 4.7 A view into the open driveway is obtained from the highway and the large number of vehicles parked on the lawn and drive way is seen as an alien feature in this residential area. In addition the amount of traffic generated by the use is inappropriate for the narrow estate road. The number of second hand vehicles stored on the site also provides the potential for ground contamination from leaking oil or fuel. It is also presumed some cleaning and valeting of vehicles must be necessary to the operation of the business which will create additional noise and disturbance and there has been no information about drainage on the site to cope with water run off and chemicals.

#### Impact on residential amenity

- 4.8 Access to the site is along a small estate side road passing close to other residential properties with short front gardens. Although the garden to the site is well screened from properties bordering the site, it is considered that the large number of vehicular movements associated with the use and increased visitors to the site is detrimental to neighbours' amenities and will cause noise and disturbance to the occupiers of nearby dwellings affecting their enjoyment of their homes.

#### Impact on highway safety

- 4.8 Increased vehicle movements, the parking of other additional vehicles on nearby public highway and the delivery of vehicles on trailers are considered to be detrimental to highway safety.
- 4.9 The unauthorised car sales business and associated vehicle storage operating from No. 8 Middlebeck Avenue is in conflict with the above policies seen at paragraphs 4.4, 4.5 and 4.6 which all seek development of a high standard and development which 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

- 4.11 The statutory time limit for taking action for a material change of use of the land is 10 years. In this case the evidence available to the Council strongly suggests that the car sales business has been operating from the site for less than 10 years and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.

#### Human Rights

- 4.12 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 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.
- 4.13 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 and depending on compliance with the notice it might well be justified to take court action.

#### Equalities

- 4.14 The Council's Planning Enforcement team 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 in the individual circumstances and which are in accordance with the Council's policy and government legislation.
- 4.15 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 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

- 4.16 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.

- 4.17 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 vehicles which are offered for sale and other items not considered incidental or ancillary to the domestic residential 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 with the owners 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 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 commence enforcement action without delay by issuing a planning enforcement notice requiring the cessation of the unauthorised business, removal of the vehicles which are not incidental to the enjoyment of the dwelling and all other items associated with the business which are stored on the land and if the notice is not complied with proceedings should be taken in the courts if necessary.

## **6 Recommendation**

- 6.1 **That the Service Manager, Development Services, in conjunction with the Director of Organisational Development & Democratic Services, be authorised to take all enforcement action including the service of any necessary enforcement notices and proceedings through the courts if required to ensure;**
- (a) the cessation of the unauthorised business use; and**
- (b) the removal of the vehicles and any other items not considered to be incidental or ancillary to the domestic residential use**