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Enforcement Reference: 0074/2018
Location
6 Marshall Hill Drive
Mapperley



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Report to Planning Committee

Reference:	0074/2018
Location:	Land at 6 Marshall Hill Drive, Mapperley
Breach of Planning:	Material change of use of residential dwelling to a mixed use of residential dwelling and bicycle sales and repair business and ancillary storage

1 Background

- 1.1 The Council first received complaints about a bicycle sales business operating from 6 Marshall Hill Drive on the 26th October 2015. After monitoring and site visits a letter was sent to the owners asking them to make contact because of the large number of bicycles stored in their driveway and garden. No response was received and so on 13th December 2016 a Planning Contravention Notice (PCN) was served on the owners of the property by the Council requiring them to answer certain questions in writing about the suspected breach of planning control.
- 1.2 The owners responded to the notice advising they were operating a 'bike cleaning and repairs' business. They stated it first started in June 2015 and it was being operated by their son.
- 1.3 On the 9th January 2017 a formal meeting was held with the owner who stated the bicycles were bought second hand and also new as 'end of lines' from retailers. They claimed they were now being stored in a rented 'lock-up' away from the residential property and they were only being sold at car boot markets. It was claimed the business use had ceased trading from the residential property.
- 1.4 A site visit on the 19th January 2017 confirmed the bicycles had all been removed from the site and it appeared the unauthorised business use had ceased and so the file was closed.
- 1.5 On the 12th April 2017 the Council received a new complaint claiming the business had commenced trading again from the residential property. A site visit confirmed this allegation to be correct and a letter was sent to the owner on the 18th April 2017 advising enforcement action would be taken if the business use continued.

- 1.6 A site visit carried out on the 22nd May 2017 again suggested the business operation had ceased and this was confirmed by the complainant.
- 1.7 On Monday 16th April 2018, a Council officer was carrying out a routine monitoring visit in the area of Marshall Hill Drive when a large number of bicycles were again seen in the garden of No. 6.
- 1.8 The officer entered the rear garden of the property and saw the owner repairing a bicycle and a large number of other bicycles in the garage. There were two other men with the owner at the time of the visit. The officer spoke to the owner who admitted he was again trading and repairing bicycles. The officer advised a report would be prepared for the Planning Committee for consideration of enforcement action.

2 Site Description

- 2.1 The property No.6 Marshall Hill Drive, Mapperley is a two storey detached dwelling located on a busy through road of other similar residential properties to the rear, both adjacent sides and facing the site.
- 2.2 It has a large rear garden screened by close boarded fencing and is accessed from a short private driveway leading under a car port and first floor extension into the back garden and to a large double domestic garage.

3 Planning History

3.1

Reference	Proposal	Decision	Date
90/0198	Extension	Approved	01.02.1990
2005/0546	Rear conservatory	Approved	24.05.2005
2006/0571	Bedroom extension and car port	Approved	16.06.2006
0110/2015	Enforcement complaint re unauthorised business	Closed	19.01.2017
0086/2017	Enforcement complaint re unauthorised business	Closed	01.08.2017
0074/2018	Enforcement investigation re unauthorised business	Current	

4 Assessment

- 4.1 Marshall Hill Drive is a main through road leading from Westdale Lane West to the wider Mapperley area. It is an area of mainly residential properties but is near to Westdale Lane Primary School, a veterinary practice, a pharmacy and other commercial businesses on Westdale Lane and attracts a great deal of 'on street' parking on both sides of the road particularly at school drop off

and collection times, allowing for only single lane traffic to pass in one direction at any one time.

- 4.2 In addition, the pavement is narrow and is often obstructed at these busy periods by groups of people standing together in conversation while waiting for children.
- 4.3 No. 6 Marshall Hill Drive has a short private driveway leading from Marshall Hill Drive which runs under a car port and first floor extension granted by permission in 2006, to the rear garden and large double garage which is situated close to the boundary with residential properties at the rear and to the north.
- 4.4 The driveway is open to the street and bicycles displayed under the car port and in the garden are easily viewed by visitors to the area and parents collecting children from the nearby school.
- 4.5 Work to repair the bicycles takes place by the owner in the rear garden and garage. The garage is also used to store a large number of bicycles and tools in connection with the business.
- 4.6 The owners have admitted operating a bicycle sales and repair business from their residential property without planning permission. On several occasions the owner has given an undertaking to cease the business use but has then continued after officers have visited to inspect and confirm the use has ceased.
- 4.7 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.
- 4.8 The main considerations when deciding whether to take enforcement action in this case are;
 - i) whether the use of the dwelling for a retail sales business and the commercial repair of bicycles has any detrimental effect on the character of the area or the environment or on the amenities of other occupiers of nearby dwellings.
 - ii) the impact on highway safety.

iii) 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

- 4.9 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.
- 4.10 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 Policy ENV1 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.
- 4.11 Policy LPD 32 of the Emerging Local Planning Document 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 Policy LPD 32 and the limited weight attached to LPD 34 is noted in accordance with the advice of paragraph 182 of the NPPF.

Impact on the character of the area and the environment

- 4.12 The open display of bicycles is an invitation to others to enter the garden to view and inspect the items for sale and to bring broken bicycles for repair in the same way customers may visit a retail shop. The operation of a retail business and the large number of bicycles on display is an alien feature at a residential property and is out of character for this residential street.

Impact on residential amenity

- 4.13 The area is already very busy particularly at school times and the bicycle sales business is encouraging people to congregate immediately outside of the property on the public highway and also into the front and rear garden of No. 6 causing noise and disturbance to the occupiers of adjoining dwellings and affecting their enjoyment of their own home and their neighbourhood.

Impact on highway safety

- 4.14 It is considered the business is likely to cause an increase in vehicle movements, with customers bringing and collecting bicycles for repair and viewing and purchasing bicycles. Parking in the area is already very congested at peak times, with parking on both sides of the highway and therefore only single lane traffic can pass.
- 4.15 The unauthorised bicycle sales and repair business and associated storage operating from No. 6 Marshall Hall Drive 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

- 4.16 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 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

- 4.17 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 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.
- 4.20 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 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

- 4.21 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 items not considered incidental or ancillary to the domestic residential use of the dwelling.

5 Conclusion

- 5.1 A 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 may intensify and grow and which adversely affects their well-being and is detrimental to the amenity of the area.

- 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 all bicycles, tools and equipment which are not incidental to the enjoyment of the dwelling 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 bicycle sales and repair business use; and

(b) the removal of bicycles, tools and equipment associated with the business use and not considered to be incidental or ancillary to the domestic residential use of the dwelling.