

Report to Planning Committee

Application Number: 0090/2018

Subject: Breach of Planning Control – Construction of an unauthorised dwelling

Location: Land to the west of 47a Riverside Stoke Bardolph

Date 8 August 2018

1 Background

- 1.1 Planning permission was refused in December 2015 for the construction of a three bedroomed dwelling on rear garden land of 47A Riverside, Stoke Bardolph.(reference 2015/1176)
- 1.2 In January 2018 a further planning application was refused for the construction of a 3 bedroom house. (reference 2016/0551)
- 1.3 In May 2018 the Council received a pre application enquiry to ascertain whether planning permission was required for the construction of double garage/garden store on the site.
- 1.4 Schedule 2 Part 1 Class E of the General Permitted Development Order 2015 (GPDO) grants permission for any building within the curtilage of a dwelling house, subject to certain restrictions, including that it remains incidental to the enjoyment of the dwelling, the height of the building does not exceed 4 metres in the case of a building with a dual pitched roof, the height of the eaves does not exceed 2.5m from ground level and it is not within two metres of a boundary
- 1.5 The plans submitted for the garage showed that it fell within the requirements of the General Permitted Development Order 2015 (GPDO) and was therefore permitted development and could be constructed without an express planning permission from the Local Planning Authority.
- 1.6 Later the same month the Council was advised that development had commenced on the site. An officer attended the site and met with the owner. At the meeting the officer verbally advised the owner of the maximum dimensions the building could be to ensure that it complied with the conditions

of the GPDO. It was also stressed the garage must remain incidental to the enjoyment of the main dwelling and that it could not be separated or used independently.

- 1.7 The owner stated that they were fully aware of the restrictions and would ensure the building complied with the GPDO.
- 1.8 On the 29th May 2018 the Council wrote to the owner to reinforce the restrictions in the GPDO.
- 1.9 On the 9th July an officer from the Council again visited the site and noted the building had its own curtilage and was being built to a very high standard with cavity wall insulation and a very deep damp proof course.
- 1.10 The officer again met with the owner of the site and expressed concerns about the high specification of the build when it was still claimed it was only a garage. Again the owner insisted the building would comply with the GPDO and that it was a garage for the main dwelling.
- 1.11 On the 1st August 2018 two officers from the Council visited the site. It was noted the building had the roof timbers installed and officers measured the height of the building from the ridge to ground level at 4.2m and the height of the eaves to the original ground level at 2.9m. The building clearly exceeded the dimensions permitted under Class E of the GPDO.
- 1.12 Furthermore it was noted extensive wiring had been installed into the building with 14 double plug sockets and five single sockets, water pipes had been installed in two separate areas of the building, room areas had been marked out on the floor with doorways and entrance points, a hole drilled for an extractor fan, and gas and electricity boxes fitted for independent use to the building. The building was within its own curtilage and does not appear to be incidental to the main dwelling which is occupied by a tenant.
- 1.13 On the 2nd August 2018, the Acting Chief Executive in conjunction with the Chair of the Planning Committee authorised a Temporary Stop Notice and later the same day two copies of the notice were displayed on the site, a copy of the notice was served on the owner of the site and on the two builders working on the development.
- 1.14 The temporary stop notice prevents the construction works from continuing for a period of 28 days, allowing time for elected Members to consider this report and authorise any further action they consider appropriate. Failure to comply with the notice is a criminal offence.

2 Site Description

- 2.1 The site is situated in the rural village of Stoke Bardolph in the rear garden of 47A Riverside which is a detached two storey dwelling. The property is accessed by a shared drive way from the public highway known as Riverside along the side of No. 47 Riverside. There is a football ground to the west of the property and other residential properties to the east and south and a public house to the north.
- 2.2 Stoke Bardolph is situated in the Nottinghamshire Green Belt in close proximity to the River Trent and falls within Floodzone 3 as defined by the Environment Agency

3 Planning History

3.1

Reference	Proposal	Decision	Date
2016/0551	Construction of 3 bedroom house	Refused	19.01.2018
2015/1176	Construction of 3 bedroomed house	Refused	18.12.2015
2014/1277	Removal of condition 9 attached to planning application 2004/1556 (Removal of PD rights)	Unconditional permission	05/06/2015
2013/0680	Construction of wooden shed to replace concrete garage, change of use of land to the rear of the property to domestic curtilage, Erection of a 3m high fence to the rear of the boundary	Conditional permission	30/01/2014
2013/0211	Construction of 4 car garage	Refused	22/05/2013
2012/1489	Extension and conversion of apple store into bedroom	Conditional permission	15/05/2013
2011/0840 PRE	Proposed 2 storey dwelling (pre application enquiry)		20/07/2011
2004/0454	Extension & alteration to dwelling from 2 bedrooms to 3 bedrooms	Refused	27/04/2004
2004/1244	Extension & Alterations from 2 bed to 3 bed.	Conditional permission	23/08/2004
2004/1556	Demolition of existing house and rebuilt to form a new extended dwelling	Conditional Permission	02/12/2004

4 Assessment

- 4.1 The building to the west of 47A Riverside requires planning permission because it exceeds the dimensions permitted by the GPDO.
- 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 2018 (NPPF) (Paragraph 58) 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) the impact of the building on the Green Belt and the character and appearance of the area
 - ii) the impact on residential amenity
 - iii) the impact on highway safety.
 - iv) flood risk
 - v) whether the Local Planning Authority is within the four year statutory time limit for taking action for unauthorised development.

Planning considerations

- 4.4 The main planning considerations in the determination of this application are, the principle of the development, the impact of the development to the openness and character of the Green Belt, impact of the proposal on the residential amenity of occupants of the neighbouring properties, impact to highway safety, flood risk as well as the visual impact of the proposal on the character and appearance of the locality.

At the national level, the NPPF is relevant. At the heart of the NPPF is a presumption in favour of sustainable development.

The following policies are relevant to the application:

National Planning Policy Framework

- Part 13 Protecting the Green Belt
 - Part 14 Meeting the challenge of climate change, flooding and coastal change
- 4.5 At a local level, Gedling Borough Council at its meeting on 10th September 2014 adopted the Aligned Core Strategy (ACS) for Gedling Borough (September 2014) which is now part of the development plan for the area. The adopted ACS forms Part 1 of the new Local Plan for Gedling Borough. It is considered that the following policies of the ACS are relevant:
- ACS Policy A: Presumption in Favour of Sustainable Development
 - ACS Policy 3: The Green Belt
 - ACS Policy 10: Design and Enhancing Local Identity
- 4.6 In July 2018 Gedling Borough Council adopted the Local Planning Document. The following LPD policies are relevant to this breach of planning control:
- LPD 3: Managing Flood Risk
 - LPD 15 Infill Development within the Green Belt
 - LPD 32: Amenity
 - LPD 34: Residential Gardens
 - LPD 35 Safe: Accessible and Inclusive Development
 - LPD 61 Highway Safety

Green Belt

- 4.7 Paragraph 143 of the NPPF specifies that construction of new buildings in the Green Belt should be regarded as inappropriate. The applicant has stated in the 2016 application that the dwelling would constitute 'infill' development, as limited infill development in villages is defined as being not inappropriate by paragraph 143. In this respect, the positioning of the site between an existing dwelling and a football ground, which has a built form that includes a spectator stand, is noted.
- 4.8 In this instance it is considered that the critical criterion of LPD 15 is that infill development must be the development of a gap within a village or site which is enclosed by buildings on at least two sides. In light of the presence of a dwelling and the football ground stand to each side boundary, it is considered that this criterion is met. In terms of the other criteria of LPD 15, the scale of the development would be limited, the development would fall within the existing fabric of the village, the development would not affect valuable views nor would it be out of character or of an unacceptable design.
- 4.9 The remaining criterion to be considered under LPD is whether the development would have a detrimental impact on the openness of the Green Belt or the reasons for including land within it. This criterion replicates the

requirements of the National Planning Policy Framework. Whilst the development would introduce a built form onto the site, given the location of the site between built development on two sides, it would not represent encroachment or sprawl into the Green Belt. Furthermore, any impact upon openness would not be significant in the context of the immediate built development.

- 4.10 It is therefore considered that the proposal does represent limited infill development within the Green Belt in a manner that would not cause harm to the policy objectives set out by national and local planning policies.

Impact on residential amenity

- 4.11 Access to the site is shown to be via driveways/tracks to the north and south of the application site. Supporting information has been submitted by an interested party of land adjoining the application site, although no technical details as requested by the Highways Authority have been forthcoming. The private driveway to the south of the application site currently facilitates vehicular access for 47 and 47A Riverside. The use of the proposed southern access point would require traffic to pass in close proximity to the side of 47A Riverside however due to the layout of this building, it was considered that any impact upon 47A that would arise from vehicle movements would not be so significant to warrant the refusal of planning permission. I am satisfied that there would not be any unduly detrimental impact to neighbouring properties from development through overlooking, overshadowing or overbearing development.

Impact on highway safety

- 4.12 The Highways Authority has advised that the revised information submitted with the 2016 application showing a width of 5m to the access from the highway is adequate to serve the development. There are no other highway concerns with the proposed development. Parking can be provided within the curtilage of the building, therefore the development concurs with Policy LPD 61 of the Local Planning Document and Gedling's SPD: Parking Provision for Residential Development.

Flood Risk

- 4.13 The 2016 application was accompanied by a sequential test, as required by the National Planning Policy Framework due to the fact that the site is situated within Flood Zone three. To meet with the requirements of the NPPF, the sequential test needs to successfully demonstrate that there are no alternative sites that are reasonably available for the proposed development in an area with a lower probability of flooding. The sequential test concludes that there are no such sites located within a 15 mile radius, which would include most of

the Gedling Borough and some areas beyond. It cannot however be accepted that there are no reasonably available sites within such a large area, most of which falls within flood risk zone 1, on which a single dwelling could be accommodated.

- 4.14 It is noted that the sequential test includes six stated search parameters which have been suggested as reasonable to guide the search. However, given that the aim of flood risk policy is to guide development away from higher flood risk, it is not accepted that land and development costs are a relevant consideration. Furthermore, a search of available development land on a property website is not considered to constitute a comprehensive search and there is no assessment of sites which currently benefit from planning permission. Finally, it is considered correct that a wider search area than just the village of Stoke Bardolph has been used. Given that the unauthorised development is considered to fail the sequential test, it is not necessary to apply the exceptions test.
- 4.15 Notwithstanding the fact that it is considered that the site fails the sequential test, a revised Flood Risk Assessment was submitted to the Local Planning Authority in August 2016; and the Environment Agency advised that there are significant concerns about development at this location and would therefore object to the application. This is due to the fact that although an acceptable floor level could be achieved at the property which would allow residents to take refuge at first floor level during a flood, they would not be able to safely evacuate the site as this would require them to enter flood waters as they moved away from the site, in the direction of the River Trent and the adopted highway.
- 4.16 The Environment Agency advises that in a 1 to 100 year flood it could be expected that the depth of flood water along the access drive could be in excess 2 metres and in a lesser flood it could still be expected to reach between 50 and 70cm in depth. This would not only make it dangerous for residents to leave the site, it would place the emergency services at risk. For these reasons the proposal would be unacceptable at this location as it would pose a clear risk to life of the inhabitants of the property and the emergency services during a flood scenario.
- 4.17 In light of the above the development would not be in accordance with Part 13 of the NPPF, Aligned Core Strategy Policy 1 and Policy LPD3 of the Local Planning Document.

Impact on Character and Appearance of the Area

- 4.18 Stoke Bardolph is a historic village set in rural countryside and has a close relationship with the River Trent to the east of the application site. The

character set by the properties on Riverside is semi-detached dwellings set back from the highway with long, linear gardens to the rear.

- 4.19 Application ref. 2013/0680 established the application site as domestic curtilage to 47A Riverside. Policy LPD34 of the Local Development Plan sets out that development involving the loss of residential garden would not be permitted unless; the proposal is a more efficient use of land at the location where higher densities are appropriate, the development would be a significant improvement to the urban design of the area, and the development is an extension of existing residential building and would retain an adequate area of functional garden. In all cases, the development should not result in harm to the character and appearance of an area. In relation to the application site, 47A is an existing two storey dwelling to the rear of 47 and 48 Riverside, and on the approach along Riverside the new dwelling would not be directly visible due to its setting to the rear of the plot.
- 4.20 Policy 10 of the Aligned Core Strategy require development to be of a high standard and not to have a significant adverse impact on local amenity. Given the location of the site between the existing dwelling at 47A and the football ground to the west and its location to the rear of the dwellings facing Stoke Lane, it is not considered that the proposed would have a significantly adverse impact character and appearance of Stoke Bardolph and the new building could, but for the flood risk considerations, represent a more efficient use of land

Time Limits

- 4.21 The statutory time limit for taking action for unauthorised development is four years. In this case the evidence available to the Council strongly suggests the development only commenced this year and the Council is within time to commence enforcement proceedings such as issuing a stop notice and an enforcement notice.

Action available

- 4.22 Section 171E of the Town and Country Planning Act 1990 enables a local planning authority to issue a temporary stop notice ("TSN") if they think that there has been a breach of planning control and that it is expedient that the activity, or any part of it, which amounts to the breach, is stopped immediately.
- 4.23 A temporary stop notice expires 28 days after the display of the notice on site (or any shorter period specified). At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served before the expiry of this time limit. It is therefore important to follow up

a temporary stop notice with an enforcement notice and if necessary a full stop notice.

Human Rights

- 4.24 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.
- 4.25 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 temporary stop notice, a stop notice or 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 temporary stop notice in the first instance followed by an enforcement notice and if necessary a full stop notice would be a proportionate response to halt the breach of planning control taking place and depending on compliance with the notice it might well be justified to take court action.

Equalities

- 4.26 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.
- 4.27 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

- 4.28 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.
- 4.29 In light of all the facts a temporary stop notice has been issued which prevents construction works from continuing for a period of 28 days. At the end of this time if no further action is taken by the Council, the development may continue.
- 4.30 It is therefore considered expedient to now serve a full stop notice together with an enforcement notice requiring the reduction in the size of the unauthorised building to the dimensions permitted by Class E of the GPDO and the removal of the separate and independent electricity and gas supply boxes and removal of all but four of the double internal plug sockets, (leaving 8 electrical sockets in all within the building). In addition one of the water inlet pipes of the two water inlet pipes installed should be required to be removed and the fencing around the building which provides for the unauthorised building to have its own curtilage separate from the main dwelling should also be required to be removed. The owner should also be given the alternative option to demolish the unauthorised building rather than make the alterations.

5 Conclusion

- 5.1 A breach of planning control has been identified which is contrary to the flood risk Policies.
- 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 result in an unauthorised building which is not incidental to the enjoyment of the main dwelling and which is affected by flooding to the detriment of the occupiers of the building.
- 5.3 The Council should now commence enforcement action without delay by issuing stop notice together with a planning enforcement notice in the terms advised at paragraph 4.30 above and if the notice is not complied with proceedings should be taken in the courts as 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 relevant planning enforcement action including the service of any necessary enforcement notices and proceedings through the courts if required.**