

Report to Planning Committee

PLANNING ENFORCEMENT REPORT

Reference; 0090/2018
Location; Land to the west of 47A Riverside Stoke Bardolph
Breach of Planning Control; The construction of an unauthorised building.

1 Background

- 1.1 Members will recall the report brought to the Committee meeting on the Wednesday 8th August 2018 relating to the construction of the unauthorised building at Stoke Bardolph. The report was brought as an urgent item after a site visit by officers identified a serious breach of planning control which involved the construction of an unauthorised building in a flood zone 3 location.
- 1.2 Negotiations had failed to resolve the issue and a Temporary Stop Notice had been served but it was considered further action was necessary in order to apprehend the breach. At the meeting on the 8th August, Members resolved “that the Service Manager, Development Services, in conjunction with the Director of Organisational Development and 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.”
- 1.3 The purpose of this report is to update Members after additional meetings with the owner and site visits and further substantial consideration. There are no changes to the background, site description and site history from the previous report. However, there has been a re-assessment of the unauthorised development and of both national and local policies that should be applied.

2 Assessment

- 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 unauthorised building is accessed by a shared drive way from the public highway known as Riverside along the side of No. 47 and 47A 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 flood zone 3 as defined by the Environment Agency.
- 2.3 At a recent meeting with the owner and the appointed planning consultant, the owner stated land levels had been raised on the site with the intentions of ensuring the unauthorised development was brought from a flood zone 3 area into a flood zone 2. Increasing land levels in this manner requires planning permission.
- 2.4 The owner has accepted that the height of the building exceeds the dimensions permitted by Schedule 2, Part 1 Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). In addition, the owner stated they had not yet decided what the building will be used for but he then contradicted himself and said he was going to rent the building out to a friend as a garage for his vintage cars. This use would not be incidental to the enjoyment of the main dwelling and as a result it cannot therefore be classed as a building permitted by Class E of the GPDO even if the height of the building was reduced.
- 2.5 Since the meeting, a retrospective planning application has been received seeking permission for the building to be used as a residential annex for the occupation of the applicant but as an enforcement notice has already been served, the local planning authority has declined to determine the planning application under section 70C(1) of the Town and Country Planning Act 1990 (as amended). Furthermore, the key judgment in *Rambridge* is that Class E was not intended to include buildings designed from the start as primary residential accommodation and an annex building designed for residential accommodation cannot therefore be considered permitted development under Class E of the GPDO.
- 2.6 There have been two previous planning applications for a dwelling on the site which have both been refused. (reference 2015/1176 and 2016/0551)
- 2.7 The applicant has subsequently submitted an appeal against the enforcement notice on the grounds that planning permission should be granted for the building (ground 'a' appeal). The appeal is with the Planning Inspector awaiting confirmation it is a valid appeal and for a start date to be given.

Planning considerations

- 2.8 The main planning considerations in this matter 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.

2.9 The following policies are relevant to this matter:

2.10 National Planning Policy Framework (NPPF)

- Part 13 - Protecting the Green Belt
- Part 14 - Meeting the challenge of climate change, flooding and coastal change

2.11 At a local level, the Aligned Core Strategy (ACS) for Gedling Borough (adopted September 2014) Part 1

- ACS Policy A: Presumption in Favour of Sustainable Development
- ACS Policy 3: The Green Belt
- ACS Policy 10: Design and Enhancing Local Identity

2.9 The following Local Planning Document Policies (adopted July 2018) are also relevant to the development:

- 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

2.10 The unauthorised building can be seen over the close boarded fence along the northern boundary of the site by visitors and supporters using the track to the north of the development as they enter the sports field and by supporters and players when on the sports field. It can also be seen from the highway near to the access of the site.

2.11 Paragraph 133 of the NPPF states that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

2.12 Whilst there is no specific definition of openness in the NPPF, this is a concept which relates to the absence of built form; it is land that is not built upon. Openness is therefore epitomised by the lack of buildings, but not by

buildings that are unobtrusive, camouflaged or screened in some way. Any construction harms openness quite irrespective of its impact in terms of obtrusiveness or its aesthetic attractions.

- 2.13 An individual building could have minimal impact, however there is a clear distinction between visual impact and openness and I consider that there would be some significant adverse impact on the openness of the surrounding countryside by way of the cumulative encroachment of development arising from this proposal along with the previous buildings erected at the site.
- 2.14 Policy LPD15 – ‘Development within the Green Belt’, states inter-alia that ‘Within the villages of Linby Papplewick and Stoke Bardolph, those parts of Lambley and Woodborough that are within the Green Belt and within the boundaries of previously developed sites within the Green Belt, the construction of new buildings is not inappropriate provided...(b) the proposal is for development of a gap within a village or site which is enclosed by buildings on at least two sides.
- 2.15 After looking at aerial photographs, it was initially thought the unauthorised development was enclosed on two sides and could benefit from the policy but a recent site visit shows the unauthorised building in situ has a building only on one side which is the dwelling approved under 2016/0551. The supporter’s stadium on the adjacent sports field is separated from the development by a track and is off set to the south west of the unauthorised development.
- 2.16 The proposed building would therefore not be infill development as previously reported and would not meet the exceptions listed in LPD15. As a result the development would be inappropriate development in the Green Belt and should not be approved except in very special circumstances. In my view it is considered that no very special circumstances have been forwarded that would outweigh the harm to the Green Belt by reason of the buildings inappropriateness.
- 2.17 It should also be noted that the subtext of LPD15 states ‘Where the gap covers residential garden land, Policy LPD34 which restrict the circumstances where garden land can be developed applies’. Policy LPD34 – Residential Gardens states that the loss of residential gardens will not be permitted unless... b) in all cases, any development of residential garden land should not result in harm to the character and appearance of the area. In my view it is considered that the building would have an adverse impact on the character of the area.

Impact on residential amenity

- 2.18 A boundary fence has been erected between the existing property and the unauthorised development giving each building its own curtilage. At over 76sq metres the footprint of the unauthorised building is considerably larger

than for the two storey dwellings which were previously refused permission on the site and cannot be considered to be subservient the existing dwelling which has a foot print of about 85 sq. metres.

- 2.19 The development has the appearance of a single storey dwelling, fitted with its own separate services including water, gas and electricity. At the time of the Council's site visits markings on the floors and walls showed where each of the internal walls were to be erected between the rooms and the position of kitchen units and door openings. When these features were pointed out to the owner he did not offer any explanation about the markings or deny the building was intended to be a dwelling.
- 2.20 The development with this larger footprint is considered to be cramped and contrived on this plot of land. It is overlooked from the balcony on the rear bedroom at No. 47A and has little private amenity space.
- 2.21 Further information now available since the initial report was presented indicates the only access to the site is via a shared driveway to the south of the application site which 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 both properties and it is noted the external door to No. 47 opens directly onto the shared drive way. Anyone exiting the property could walk straight into an oncoming vehicle and this is a particular concern for any children living or visiting the property.
- 2.22 In my opinion, the increase of vehicular traffic to access the new building would be to the detriment of the amenity and safety of the residents at No 47 due to the vehicles passing within very close proximity to the main door of this property.

Impact on highway safety

- 2.23 The Highways Authority has previously advised in these circumstances the information submitted with previous applications does not satisfy the requirements of the Authority. The development would need to be served by a wider drive from the highway to allow two cars to pass, and have a minimum width of 3.7m.

Impact on Character and Appearance of the Area

- 2.24 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.

- 2.25 Application ref. 2013/0680 established the site as domestic curtilage to 47A Riverside. Policy LPD34 of the Local Development Plan sets out that development involving the loss of residential garden will not be permitted unless the proposal is a more efficient use of land at the location where higher densities are appropriate. In all cases, the development should not result in harm to the character and appearance of an area.
- 2.26 Higher densities are not appropriate in this rural village and the development appears hemmed in behind the existing dwelling onto a small plot with limited amenity space. The building can be seen from outside of the site both from within the sports field and from the access track to the sports field. There is also a limited view of the building from Stoke Lane close to the main access to the site. In my opinion it is considered that there is an adverse impact on the character of the area caused by a cramped development with little functional garden space.

Flood Risk

- 2.27 The site falls within Flood Zone 3, and a Flood Risk Assessment is therefore required for this development. To meet the needs of the NPPF, a sequential test needs to successfully demonstrate there are no other alternative sites that are reasonably available for the development in an area with a lower probability of flooding. The information submitted with the 2016 application failed the sequential test.
- 2.28 The Environment Agency have advised in their consultation response to the 2015 and the 2016 application that even if an acceptable floor level could be achieved at the property which would allow residents to take refuge at first floor level during in a flood, they would not be able to safely evacuate. The Environment Agency are concerned about safe access and egress from the proposed development as the exit route could be flooded to a depth in excess of 2 metres. They stated it is unreasonable to expect to increase the pressure on the emergency services by relying on them to assist evacuation especially in circumstances where it may be unsafe for them to enter deep, fast flowing flood water.
- 2.29 The Sequential Test has not been met as required by Paragraph 156 of the NPPF and Policy LPD 3 Managing Flood risk and a full site-specific flood risk assessment has not been carried out to the fulfil the requests of the EA. Therefore, in accordance with the Environment Agency's consultee response, there is absence of relevant statutory information required for development at this location and the development cannot be supported without the consideration of these factors.

Action Taken

- 3.2 The Temporary Stop Notice expired on the 28th August 2018. It was recommended and resolved by Members that all necessary enforcement

action should be taken including through the courts if necessary to apprehend the breach of planning control.

- 3.2 Consideration was given by officers to issuing a notice requiring the building to be reduced in size in order that it could benefit from permitted development granted under Class E of the GPDO. However, investigations showed that the land levels had been increased and the evidence available to the Council indicated the building was never intended to be incidental to the enjoyment of the dwelling from the start.
- 3.3 In these circumstances the Council did not have the option of requiring the reduction in the dimensions of the building as the raised land levels cannot be reduced unless the building is first demolished.
- 3.4 The Council has therefore issued a notice on the 15th August 2018 requiring that the building be demolished, land levels be reduced to their natural level and the land returned to a condition before the breach took place. The notice also requires the boundary fence separating the existing dwelling and the unauthorised building be removed returning the land as part of the garden to No. 47A. The notice allows six calendar months for compliance but the pending appeal has the effect of suspending the time limit until an Inspectors' decision is given.

6 Recommendation

- 6.1 Members to note the contents of the report and the changes to officers assessment**