



## Planning Enforcement Report for 0099/2018

1:2,500

Enforcement Reference: 0099/2018

Location

Land at Mere Close, Mere Avenue  
And Broom Road Calverton



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## **Report to Planning Committee**

<b>Reference Number:</b>	<b>0099/2018</b>
<b>Location:</b>	<b>Land at Mere Close, Mere Avenue, Broom Road and Labray Road, Calverton</b>
<b>Breach of Planning Control:</b>	<b>Material change of use of residential garages to B8 commercial storage.</b>

### **1 Background**

- 1.1 In May 2018, it was brought to the Council's attention that a number of domestic garages in certain residential areas of Calverton had been bought by a 'garage letting' company.
- 1.2 The garages are positioned as a run of garages joined together in an allocated garage/parking area for the nearby residential properties rather than the more usual situation of being positioned within the garden curtilage of the dwelling. The lawful use of the garages is for domestic use only but some of the garages are now rented out at a commercial rent to a number of businesses for storage use (Use Class B8).
- 1.2 In June 2018 the Council served a Planning Contravention Notice on the owner company. A Planning Contravention Notice requires the recipient to answer in writing certain questions put to them. The owners responded that since January 2016 they had owned approximately 100 garages in Broom Close, Beck Avenue, Labray Road, Mere Avenue, Mere Close and Thorndale Road, Calverton which they had bought from Gedling Homes.
- 1.3 The owners agreed they rent some of the garages to business owners for storage of goods in connection with those businesses. It was explained to the owners that the lawful use of the garages was for a domestic use only and using the garages for business storage was a material change of use of the garages which required planning permission.
- 1.4 On the 15<sup>th</sup> August 2018, officers met with one of the owners of the garage letting company and carried out an inspection of the garages owned by them in Calverton. It was found that at least 20 of the 100 garages owned by the company were being used for commercial storage in breach of planning control.
- 1.5 The company gave an undertaking to evict the tenants using the garages for other than a domestic use. Despite this undertaking it is apparent that only

one such tenant has cleared the garage they were renting of his business storage. The garage letting company have advised they have had difficulty in contacting some of their tenants and others have promised to leave but are still occupying the garages.

## **2 Site Description**

- 2.1 The garages in breach of planning control are located in allocated garage forecourts within residential housing estates situated on Mere Close, Broom Road and Labray Road. They consist of rows of garages joined together with parking for private motor vehicles.
- 2.2 The garages were in poor condition and have been refurbished by the garage letting company. Amongst the garages owned by the garage letting company there are one or two garages privately owned by nearby residents.

## **3 Planning History**

- 3.1 There is no relevant planning history for the garages.

## **4 Assessment**

- 4.1 The main considerations when deciding whether to take enforcement action in this case are;
  - i) whether the use of the domestic garages for B8 storage has any detrimental effect on, the character of the area or the environment, on the amenity of the 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 policy considerations

- 4.2 The NPPF attaches great importance to positive improvements in the conditions which people live and work and paragraph 130, the NPPF states that “Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions...” The NPPF also advises at paragraph 109 development should be refused if there is an unacceptable impact on highway safety.
- 4.3 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.
- 4.4 Policy LPD 32 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers.

- 4.5 Policy LPD 35 requires the massing, scale and proportion of development should appropriate to the immediate context, site constraints and the character of the surrounding area.
- 4.6 Policy LPD 61 states that “Planning permission will only be granted for development proposals which do not have a detrimental effect on highway safety...”

Impact on the character of the area and the environment

- 4.7 The areas where the garages are positioned are wholly residential in character and the use of the garages for commercial storage results in larger commercial vehicles visiting the sites to deliver and collect materials and items including, building and construction materials, plumbing materials, rolls of carpet stored for a carpet business and storage of construction waste, giving the feel of an industrial park to the detriment of the residential character of the area and in conflict with the NPPF Policy LPD 35.

Impact on residential amenity

- 4.8 It has been reported to the Council that delivery and vehicles collecting items from the garage may be parked with the engine running and radios playing while vehicles are loaded and unloaded which may take up to 45 minutes or longer. The delivery vehicles attend at all times of the day including into the late evening. It is considered that the increased number of vehicular movements associated with the use 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. The use is therefore contrary to LPD Policy 32

Impact on highway safety

- 4.9 A local resident has complained that a delivery vehicle to one of the garages in Mere Close had a narrow miss with her eight year old daughter as she walked along the garage forecourt to a friend. Although the garage forecourt is partly privately owned and partly within the ownership of the Highways Authority the approach and direct access to the garage forecourt is from narrow adopted residential roads and increased commercial vehicle movements, in this residential area is considered to be detrimental to highway safety. The commercial use of the garages is therefore contrary to LPD Policy 61.

Time Limits

- 4.10 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 change of use of the garages has occurred within the last 4 years and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.



## Human Rights

- 4.11 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.
- 4.12 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

- 4.13 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.
- 4.14 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

- 4.15 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.

- 4.16 In light of all the facts it is now considered expedient to serve an enforcement notice to require the cessation of the unauthorised business storage use of the land and removal of items not considered incidental or ancillary to the domestic use of the garages.

## **5 Conclusion**

- 5.1 A breach of planning control has been identified which is detrimental to the character of the surrounding residential areas and amenities of nearby the occupiers of residential properties and highway safety.
- 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 number of garages near to their residential properties which are occupied by businesses for storage purposes and which adversely affects their well-being and is detrimental to the character and amenity of the area.
- 5.3 The Council should now commence enforcement action without delay by issuing planning enforcement notices requiring the cessation of the unauthorised business use in each of the garages where this is occurring and removal of the items and materials which are not incidental to a domestic use 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 storage use in the residential garages**

**(b) the removal of all materials and items which are not incidental or ancillary to the domestic residential use of the garages.**