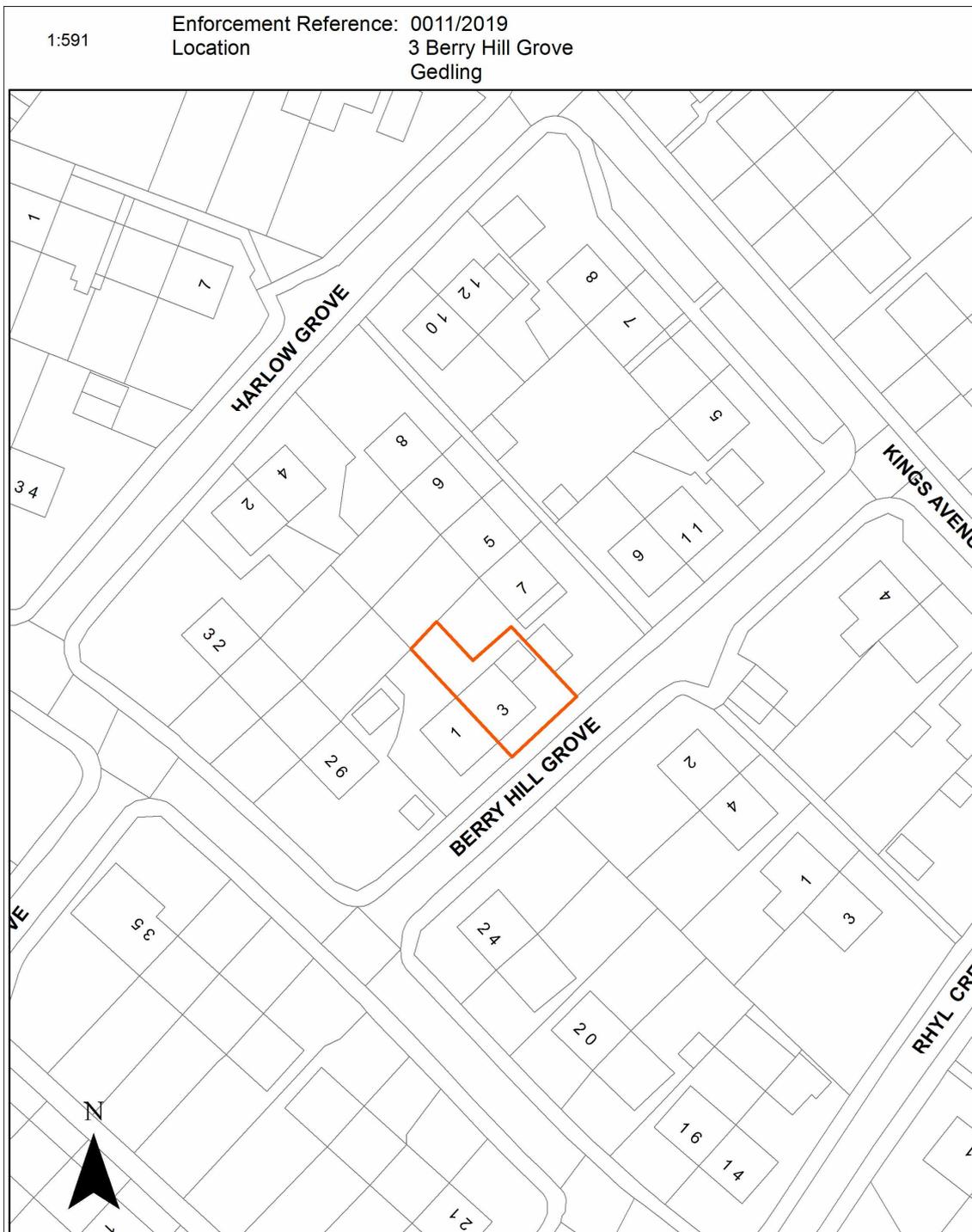


Planning Enforcement Report for 0011/2019



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Report to Planning Committee

Reference Number: 0011/2019

Location: Land at No. 3 Berry Hill Grove, Gedling

Breach of Planning Control: **Unauthorised construction of a play house built on the roof of a garage and a wooden and corrugated structure on the front elevation of the dwelling.**

1 Background

- 1.1 At the beginning of January 2019 it was brought to the Council's attention that a children's play house had been erected in the north east side garden of 3 Berry Hill Grove and a wooden post and corrugated plastic structure had been attached to the front elevation of the dwelling.
- 1.2 The playhouse is built on the roof of an existing domestic garage with a ladder and slide leaning against the garage giving access to the play house.
- 1.3 The structure at the front of the house has the appearance of a shelter and has lights and lanterns strung from one wooden post to another together with hanging baskets and plants. There is a table and chairs under the shelter providing a seating area.
- 1.4 Aerial photographs show the structures were not in position in 2016 and neither structure benefits from permitted development.

2 Site Description

- 2.1 The property is a semi-detached dwelling positioned in a residential area of properties.

3 Planning History

- 3.1 There is no planning history

4 Assessment

- 4.1 No. 3 Berry Hill Grove is a residential property with a small garden to the rear, side and front of the property. It is positioned in close proximity to other similar residential properties

- 4.2 Although the 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 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.
- 4.6 The main considerations when deciding whether to take enforcement action in this case are;
- i) whether the structures are detrimental to the character of the area or to the amenities of the occupiers of nearby properties.
 - ii) whether the Local Planning Authority is within the four year statutory time limit for taking action for a material change of use of the land.

Planning policy considerations

- 4.5 The fundamental aim of the NPPF is that the planning system should achieve sustainable development by three overarching objectives and in doing so should take local circumstances into account to reflect the character, needs and opportunities of each area. It 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..."
- 4.7 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.
- 4.8 Policy LPD 32 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers and Policy LPD 35 requires the massing, scale and proportion of development should be appropriate to the immediate context, site constraints and the character of the surrounding area.
- 4.10 The children's play house, positioned on top of the garage, detracts from the overall quality and character of the area. There is a risk of overlooking the neighbouring garden from the top of the garage to the detriment of neighbours' amenities and it is visually intrusive on the street scene.
- 4.3 The wooden post and corrugated structure attached to the front elevation of the dwelling is visually unattractive and is of poor architectural design.
- 4.4 Both structures require planning permission but no application has been received. It is considered the two unauthorised structures are in conflict with the policies above.

Time Limits

- 4.15 The statutory time limit for taking action for built development is four years. In this case the evidence available to the Council strongly suggests neither structure was in position in 2016 and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.

Human Rights

- 4.16 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.
- 4.17 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

- 4.18 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.
- 4.19 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

- 4.20 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.
- 4.21 In light of all the facts it is now considered expedient to serve an enforcement notice to require the removal of both structures.

5 Conclusion

- 5.1 A breach of planning control has been identified which is detrimental to the character of the area and amenities of nearby occupiers of other residential properties.
- 5.2 The breach conflicts with both national and local policies. The failure of the Council to act in these circumstances may set a precedent for other poor development and which is detrimental to the character and amenity of the area.
- 5.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the removal of the structures

6 Recommendation

- 6.1 That the Service Manager, Development Services, be authorised to take all enforcement action including the service of any necessary enforcement notices and in conjunction with the Director of Organisational Development & Democratic Services, proceedings through the courts if required to ensure both structures are removed.**