

## Planning Enforcement Report for 0052/2018



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## Report to Planning Committee

**Reference Number:** 00052/2018

**Location:** Nottingham Care Village 168 Spring Lane Lambley

**Breach of Planning Control:** Unauthorised construction of a car park.

### 1 Background

- 1.1 A retrospective planning application (reference 2017/1270) for the retention of an area of hardstanding used as a car park at the rear of Nottingham Care Village was refused permission by the Council on the 26<sup>th</sup> March 2018 after it was considered the car park would encroach into the Green Belt and would have an adverse effect on the openness of the Green Belt.
- 1.2 An appeal was submitted by the applicant and on the 25<sup>th</sup> February 2019 the appeal was dismissed by the Planning Inspectorate.

### 2 Site Description

- 2.1 The application site, 168 Spring Lane, relates to a two-storey nursing home situated within the designated Green Belt of Nottingham. The property is accessed off Spring Lane, via a vehicular access to the site from the north of the highway. There is a private driveway leading to an area of hard standing at the front of the site for service users.
- 2.2 The closest neighbouring properties are located to the northeast and west of the site; 164 Spring Lane a detached bungalow accessed via an un-adopted lane to the east of the site and to the west, 174 Spring Lane a semi-detached dwelling set forward from the Nursing Home and 178 Spring Lane, a bungalow set back from the Nursing Home.
- 2.3 The boundaries of the site are clearly defined by mature hedgerows and trees.

### 3 Planning History

- 3.1 There is no other relevant planning history for the site.

### 4 Assessment

- 4.1 The car park has been constructed on an area of land that was previously undeveloped open land. The car parking area is located approx. 2m away

from the northeast boundary of the site and measures approx. 17 metres by 18 metres, covering an area of approx. 316m<sup>2</sup>.

- 4.2 The car parking area has been constructed from MOT type 1 hard-core. There is a 0.65m high 1 bar timber fence around the surrounding edge, an entrance gate and two outdoor lights on wooden posts which measure approx. 2.5m in height.
- 4.3 The car parking area is accessed off the un-adopted lane which runs along the eastern boundary of the site and is separate from the original parking area to the front of site.
- 4.4 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.
- 4.5 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) The principle of development within the Green Belt and impact on the openness;
  - ii) Whether the Local Planning Authority is within the statutory time limit for taking action.
- 4.7 Chapter 13 of the NPPF (Protecting the Green Belt) advises “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”.
- 4.8 The principle of the development within the Green Belt and the impact of the car park on the openness of the Green Belt has already been considered at appeal by the Planning Inspector. The Inspector stated in his decision letter, “...The hard surfaced car park is still visible from a number of vantage points along the track. It has an urbanising and encroaching effect, particularly when viewed against the backdrop of (and in the context of) neighbouring undeveloped land”. The Inspector goes on to say “...multiple cars were

parked upon the site [at the time of his visit] so as to exacerbate the negative effects of the proposal and the loss of openness...”

- 4.9 The car park is also in conflict with Local Plan Policy LPD 19 which does not permit any development which results in a significant adverse impact on visual amenity or significant impact on the character of the landscape.

#### Time Limits

- 4.10 The statutory time limit for taking action for built development or engineering works is four years. In this case the evidence available to the Council strongly suggests the car park has been constructed within the last four years and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the car park to be removed and the land to be reinstated to its previous undeveloped state.

#### 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 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

- 4.20 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 the car park and the instatement of the land to its previous undeveloped state.

### **5 Conclusion**

- 5.1 A breach of planning control has been identified which is detrimental to the openness of the Green Belt and the character of the area.
- 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 openness of the Green Belt and the character 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 car park and the reinstatement of the land.

### **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 the car park is removed and the land to be reinstated to its previous undeveloped state.**