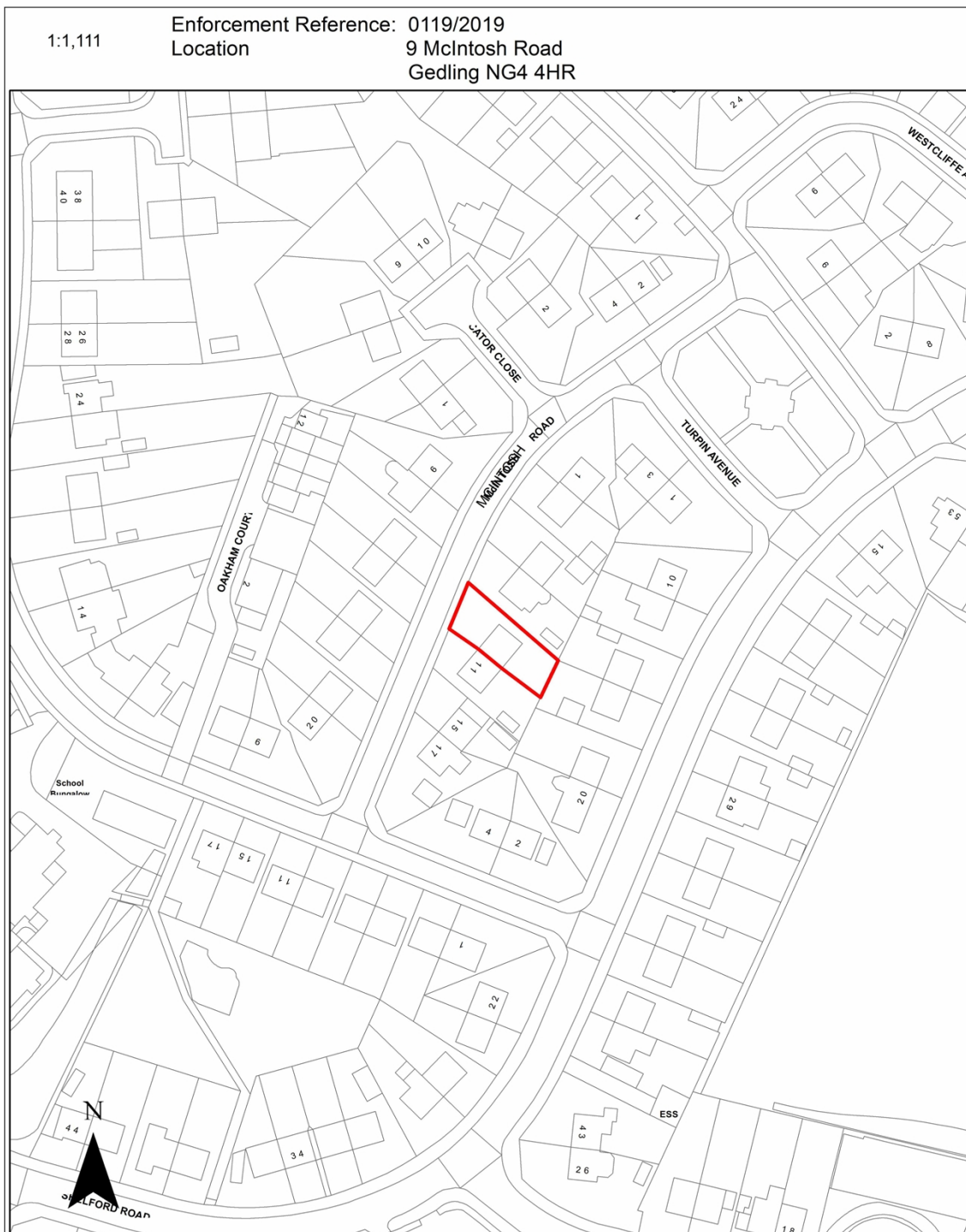


Planning Enforcement Report for 0119/2019



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Report to Planning Committee

Reference Number: 0119/2019

Location: Land at 9 McIntosh Road Gedling

Breach of Planning Control: **Material change of use of residential dwelling and garden (Use Class C3) to a mixed use of residential dwelling and garden and a car sales business (sui generis)**

1 Background

1.1 No. 9 McIntosh Road, Gedling is a semi-detached dwelling in a wholly residential area. It is positioned on a small estate road of similar houses. There is a 1 metre high hit and miss fence and open weave metal gate across the front boundary and private driveway of the property. The drive way which is accessed from McIntosh Road is approximately 21 metres long.

1.2 In June 2019 the Council received complaints stating that the occupiers of the property were selling vehicles from the dwelling and that cars advertised for sale were parked on the driveway and on nearby streets.

1.3 On the 9th July a letter was sent from the Council to the occupiers advising that car sales from a residential property requires planning permission but permission was unlikely to be granted and so the car sales should cease.

1.4 Complaints about the car sales continued to be received and on the 6th August 2019 the Council issued a Planning Contravention Notice asking certain questions about car sales from the property. The tenant refuted all accusations stating that three adults live at the property and all three adults had co-incidentally advertised their cars for sale at the same time and there would be no further adverts for car sales. The respondent stated there was no business operating from the premises.

1.5 Despite this it appears cars are still being advertised from the property on the internet and the Council is still receiving complaints about the number of cars parked at the property and about customers attending at the dwelling.

2 Planning History

2.1 There is no planning history for this property.

3 Assessment

- 3.1 No. 9 McIntosh Road is a residential property in the residential area of Gedling. Vehicles for sale have been seen displayed in the drive way of the property and on nearby side roads.
- 3.2 The use of the dwelling to operate a car sales and associated storage business is not incidental to the enjoyment of the dwelling house and planning permission has not been granted for the use.
- 3.3 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 (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.
- 3.4 The main considerations when deciding whether to take enforcement action in this case are;
 - i) whether the use of the dwelling and garden for car sales and an associated storage business has any detrimental effect on the amenities of the occupiers of nearby properties, the character of the area or the environment, or 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

- 3.5 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..."
- 3.6 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.
- 3.7 Policy LPD 32 seeks to protect the amenity of nearby residents or occupiers and Policy LPD 34 seeks to protect residential gardens and aims to ensure any development does not result in harm to the character or appearance of an area.

- 3.8 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.
- 3.9 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 residential amenity

- 3.10 It is considered that the large number of vehicular movements associated with the car sale use and increased visitors 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 contrary to LPD Policy 32 and Policy LPD 34

Impact on the character of the area and the environment

- 3.11 This area of Gedling is characterised by a number of similar semi-detached residential properties all built in close proximity to each other. There is no other commercial use in the immediate vicinity. There is an open view into the garden area of the property when walking or travelling along McIntosh Road.
- 3.12 The unusual number of vehicles displayed both in the drive way and on nearby streets is an alien feature and detrimental to the character to the area. It also reduces the number of on street parking spaces for nearby residents and visitors. The additional vehicular movement and visitors associated with the business is also be detrimental to the character of the area.
- 3.13 Policy LPD34 seeks to protect residential gardens from development and states planning permission should be refused for development in residential gardens unless development proposals would result in a significant improvement to the urban design of an area. It goes onto to advise that “in all cases, any development of residential garden land should not result in harm to the character and appearance of an area. Development involving front gardens should ensure the character of the street scene is not harmed and that appropriate boundary treatments and planting are retained”. The use is therefore in conflict with Policy 10 of the ACS and Policy LPD 34 and Policy 35 of the Local Plan and it is in conflict with the advice given in the NPPF.

Impact on highway safety

- 3.14 The Highways Authority has no objection to the use or increased vehicle movements on the minor estate roads. The proposal is not therefore considered to have a detrimental impact upon highway safety.

Time Limits

- 3.15 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 car sales business has been operating from the site in the last 12 months and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.

Human Rights

- 3.16 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.
- 3.17 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

- 3.18 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.

- 3.19 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

- 3.20 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.
- 3.21 In light of all the facts it is now considered expedient to serve an enforcement notice to require the cessation of the unauthorised car sales use of the land and removal of the vehicles which are offered for sale which are not considered incidental or ancillary to the domestic residential use of the dwelling.

4 Conclusion

- 4.1 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.
- 4.2 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 business which adversely affects their well-being and is detrimental to the character and amenity of the area and which is beyond the control of the Council.
- 4.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the cessation of the unauthorised business and removal of the vehicles which are not incidental to the enjoyment of the dwelling. 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, 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 take proceedings through the courts if required to ensure;**
- (a) the cessation of the unauthorised car sales business**
 - (b) the removal of all vehicles which are not incidental or ancillary to the domestic residential use of the dwelling.**