



Planning Enforcement Report for 0167/2019

1:1,250

Enforcement Reference: 0167/2019

Location

97 Westdale Lane East

Carlton Notts NG4 3NX



NOTE This map is provided only for purposes of site location and should not be read as an up to date representation of the area around the site.
Reproduced with the permission of the Controller of H.M.S.O. Crown Copyright. Licence No LA100021248.
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

Date: 28/01/2020

Report to Planning Committee

Reference Number: 0167/2019

Location: 97 Westdale Lane East, Carlton NG4 3NX

Breach of Planning Control: Unauthorised construction of 1st floor extension to rear elevation.

1 Background

- 1.1 At the end of August 2019 it was brought to the Council's attention that a 1st floor rear dormer was being constructed at 97 Westdale Lane East and it was alleged that this development was beyond the development approved by a recently granted planning permission (reference 2018/0200) which was for single storey extensions to the rear and side of the dwelling alongside some other external alterations to the dwelling.
- 1.2 The Council made contact with the agents for planning permission 2018/0200 and were assured that the additional development beyond the approved scheme accords with the parameters of permitted development. A request for an Enquiry Questionnaire to be submitted was made by the Council as this would assist all parties in determining if the additional works met permitted development or not. No Enquiry Questionnaire was received by the Council.
- 1.3 The site was visited by the Councils' planning enforcement officer and as the development was not yet complete and still under construction, it was advised that development ceased as it was clear that the development was beyond what was approved under planning permission reference 2018/0200 and that the 1st floor development would not accord with the parameters of Permitted Development.
- 1.4 The wooden framework of the 1st floor development was in situ at the time of the enforcement officer's visit and it was clear that the unauthorised development consisted of a rear dormer which projects from the rear roof slope of the existing fully hipped roof of the single storey dwelling. This dormer then extends over the approved rear single storey extension (also under construction and not fully complete at this time). This element of the unauthorised development essentially creates a 1st floor which would feature a 1st floor balcony to the rear.
- 1.5 The owner who was present at the time of this visit was advised to stop all development until a revised planning application was submitted to, and

determined by the Council. This advice was also provided to the agents for the application via email.

- 1.6 Planning permission reference 2019/0856 was submitted for the amended development now proposed and ultimately refused planning permission on the 19th November 2019. No appeal to the Planning Inspectorate was lodged regarding this application within the required 12 week time limit.

2 Site Description

- 2.1 The property is a detached single storey dwelling positioned in the established residential area of Carlton. The property is set back from the highway by approx. 10m with a private driveway located to the west of the dwelling which provides off street parking for a minimum of two vehicles.
- 2.2 The land levels on the site rise to the south, resulting in a split level garden to the rear. The existing rear garden boundary treatment consists of concrete post and timber panel fencing which is approximately 2m in height.

3 Planning History

- 3.1 2018/0200 - Single storey extensions to rear and side and external alterations to dwelling – Approved 27th April 2018
- 3.2 2019/0856 - 1st Floor dormer extension to rear elevation – Refused 19th November 2019.

4 Assessment

- 4.1 No. 97 Westdale Lane East is a residential property with gardens 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.
- 4.3 The main considerations when deciding whether to take enforcement action in this case are;
 - i) whether the structure 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

- 4.4 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...”
- 4.5 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.
- 4.6 Policy LPD 32 of the Local Planning Document seeks to protect the amenity of nearby residents or occupiers. 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. Policy LPD 43 require the appearance of proposals to be in keeping with the surrounding character and not cause a significant adverse impact on the amenity of nearby occupiers.
- 4.7 Although not complete, the framework of the 1st floor addition is in place and it is therefore clear as to what the finished development would look like and relate to the existing dwelling and surroundings. In considering the visual impact of the unauthorised development, it is considered that due to its design and position, it would result in an incongruous feature within the street scene. Whilst the extension is positioned to the rear of the property, it would occupy a prominent location above the approved ground floor extension, match the width of the dwelling and feature a flat roof creating a box like addition. The additional height created would ensure that the first floor extension would be readily visible from the public realm and given its scale, bulk and form, would have a significant detrimental impact in relation to the visual amenity of the local area (including when viewed from surrounding properties) and wider street scene.
- 4.8 In addition to the above, it is considered that the development would appear out of keeping with the characteristics of the host dwelling which is a single storey fully hipped bungalow with an approved single storey flat roof rear addition. By virtue of this design the first floor addition appears as an additional floor over the rear extension. This is considered to represent an addition that is not subservient to the host dwelling which is therefore considered to be of a poor, unsympathetic design.
- 4.9 Taking all of the above points into account, it is considered that the development represents poor design and is therefore contrary to Part 1 of the NPPF, Policy 10 of the ACS and LPD policies 32 and 43.

Time Limits

- 4.10 The statutory time limit for taking action for built development is four years. In this case the evidence available to the Council strongly suggests the unauthorised structure was constructed within the last 12 months and so the Council is within the legislative time limit to commence enforcement proceedings such as issuing an enforcement notice requiring the structure to be removed.

Human Rights

- 4.11 Under the Human Rights Act, it is necessary for the Council 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 regularisation and/or 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 removal of the unauthorised structure.

5 Conclusion

- 5.1 A breach of planning control has been identified which is detrimental to the character of the area and the visual amenity 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 structure.

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 unauthorised structure is removed.**