



## Planning Enforcement Report for 0184/2020



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.

## Report to Planning Committee

<b>Reference Number:</b>	<b>0184/2020</b>
<b>Location:</b>	<b>3 Woburn Rise, Woodthorpe</b>
<b>Breach of Planning Control:</b>	<b>Unauthorised development</b>

### 1 Background

- 1.1 The property No. 3 Woburn Rise, Woodthorpe, is a detached bungalow located on an elevated position within a cul-de-sac. The property has a side projection on the western side elevation and a flat roofed attached garage on the eastern side elevation.
- 1.2 The properties to the east and south are set at a higher level and are all of a different design. No. 4 Woburn Rise is a similar detached bungalow located to the east of the site. The properties to the south east, south and west of the site are detached two storey properties.
- 1.3 Planning permission (Reference 2019/0527) was granted on the 29<sup>th</sup> July 2019 for "Alterations including a pitched roof over the existing garage and construction of a new garage with a new access".
- 1.4 The pitched roof over the existing garage would measure 2.1m from the eaves to the ridge height (0.9m lower than the existing ridge height) extend 8m in length and 8m in width. Two roof light windows were approved to the front as well as a new window in place of the garage door.
- 1.5 The approved new garage should measure 5.5m in length and 3.1m in width. As the land slopes up to the north east the overall height of the new garage to the north east (rear elevation) would be 2.3m and to the south west 3.17m in height (front elevation). The garage was to be set back from the highway and a new access was agreed to the front of the new garage.
- 1.6 On the 25<sup>th</sup> September 2020, the Council received a complaint about the development advising it was not being built in accordance with the approved plans. The complainant advised that a 'dormer had been added where the single roof light was proposed on the western side elevation and it appeared that foundations had been laid for a double garage rather than the approved single garage'.

- 1.7 On the 2nd October 2020, the Council sent an email to the owner to advise the Council was concerned about alterations being made which were not in accordance with the approved plans and it was requested a new application should be submitted by the 24<sup>th</sup> October 2020.
- 1.8 On the 3<sup>rd</sup> October 2020 the owner acknowledged receipt of the email and was advised by return that if work continued in conflict with the approved plans they did so at their own risk as there was no guarantee the development would be granted planning permission.
- 1.9 On the 27<sup>th</sup> October 2020, the Council's Planning Enforcement Officer attended at the site and noted that a first floor addition had been constructed to the single storey projection on the western side elevation of the dwelling, which does not appear on the approved plans. The extension over the width and length of the side projection has a flat roof meeting with the roof ridge of the principal elevation of the original dwelling. Two new windows at first floor level have been inserted into the extension which overlook No. 2 Woburn Rise.
- 1.10 The height of the new roof over the existing garage on the eastern side elevation of the dwelling is approved at 0.9m below the existing ridge height to the dwelling. At the time of the Enforcement Officer's site visit, the roof was covered in a tarpaulin but it appeared the roof extension is higher than approved and reaches to the full height of the ridge of the main dwelling. When this was pointed out to the developer he did not disagree and recently updated plans submitted on behalf of the owner show the new roof is higher than approved extending to the ridge of the original dwelling.
- 1.11 At the time of the site visit, it was noted there had been engineering works to alter the land levels to the west of the dwelling and the foundations to the garage were not in the approved location but appear closer to the dwelling and in front of the principle elevation of the dwelling. The new plans show the garage dimensions to be 4.3m wide by 9.9m in length, rather than the approved 3.1m X 5.5m. The developer was advised to stop work and submit a new application for the development as built.
- 1.12 A new application was not received and so a Temporary Stop Notice (TSN) was issued on the 6<sup>th</sup> November 2020 to ensure the development did not continue.

## **2 Planning History**

- 2.1 2019/0527 - "Alterations including a pitched roof over the existing garage and construction of a new garage with a new access"

## **3 Assessment**

- 3.1 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.

3.2 The main considerations when deciding whether to take enforcement action in this case are;

i) Whether the development is 'permitted development' by virtue of the GPDO 2015

ii) Design and visual amenity

ii) Residential amenity

iii) Highway safety.

General Permitted Development Order 2015 Schedule 2, Part 1, Class A 1 (i)

3.3 This provides permitted development rights for the enlargement of a house consisting of an extension to a side elevation of a dwelling. However, such an extension is not permitted if it;

i) exceeds 4metres in height

ii) has more than a single storey or

iii) has a width greater than half the width of the original dwelling house.

3.4 In addition, the materials used in any exterior work must be of similar appearance to those used in the construction of the exterior of the existing dwelling house and where the enlarged part of the dwelling house has more than a single storey, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwelling

3.5 The extension on the western elevation in this case, cannot be permitted development; the extension is two storey and is 5.3metres high. In addition, the extension has a flat roof and so it fails to comply with the requirement that the roof pitch is the same as the roof pitch of the original dwelling.

3.6 It is also suspected that there is an increase in the approved height of the roof over the original garage. Although this change may be acceptable in planning terms it would still require planning permission.

3.7 The alterations to the land levels and the relocation of the garage nearer to the dwelling and in front of the principal elevation of the dwelling also requires planning permission and may not be acceptable.

Planning policy considerations

3.8 The NPPF (February 2019) is relevant. At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF seeks good design as a key element of sustainable development and it seeks a high standard of amenity for existing and future users of land and buildings.

3.9 Gedling Borough Council Aligned Core Strategy 2014:

Policy 10 – Design and Enhancing Local Identity states that development will be assessed in terms of its “structure, texture and grain including street patterns, plot sizes orientation and positioning of buildings and the layout of space.”

3.10 Local Planning Document

Policy LPD 32 – Amenity states “Planning permission will be granted for development proposals that do not have a significant adverse impact on the amenity of nearby residents or occupiers, taking into account potential mitigation measures.

3.11 LPD43 Extensions to dwellings not in the Green Belt – states “Planning permission will be granted for extensions or alterations to dwellings provided: -

- a. the appearance of the proposal is in keeping with surrounding character in terms of height, built form and general design;
- b. the proposal conserves any historic significance the building may have;
- and
- c. the proposal would not cause a significant adverse impact on the amenity of nearby occupiers.

3.12 LPD 61 – Highway Safety states “Planning permission will be granted for development proposals which do not have a detrimental effect on highway safety, patterns of movement and the access needs of all people.”

### Design

3.13 The dwelling is angled along Woburn Rise and both the new first floor extension positioned on the western side elevation and the increase in roof height over the original garage are readily visible from the public realm.

3.14 The appearance of the dwelling is significantly altered by the unauthorised first floor extension and the increased height of the roof over the existing garage. The overall scale and form of the side extension adds bulk and is disproportionate to the original building. It is considered the flat roof first floor extension is out of keeping with other residential properties in the area and is detrimental to the character of the area.

3.15 The increase in the size of the garage and its re-positioning closer to the dwelling and in front of the principal elevation would also be over- prominent on the street scene. The development is considered to be contrary to the principles of the NPPF and Policy 10 of the Council’s Core Strategy and Policy LPD 43.

### Residential amenities

- 3.16 The two windows inserted into the side extension at first floor level look down on the neighbouring property and have clear glass. They overlook two windows in the adjacent property one of which appears to be a bedroom window and the bulk of the extension is out of scale and dominates the adjacent dwelling. The development is considered to impact on the residential amenities of the occupiers of the neighbouring property and conflicts with Policy LPD 32.

#### Highway Safety

- 3.17 There are no obvious highway safety issues.

#### Time Limits

- 3.18 The statutory time limit for taking action for unauthorised development is four years. In this case the evidence available to the Council strongly suggests the unauthorised development is not substantially completed and has been in position for less than four years and so the Council is within the legislative time limit to commence enforcement proceedings such as issuing a temporary stop notice and/or an enforcement notice.

#### Action available

- 3.19 Section 171E of the Town and Country Planning Act 1990 enables a local planning authority to issue a temporary stop notice (TSN) if they think there has been a breach of planning control and it is expedient that the activity or any part of it, which amounts to the breach is stopped immediately. In this case there has been email correspondence with the owner to advise of the serious breach of planning control but despite this the development continued and no new planning application was received. As a result, on the 6<sup>th</sup> November 2020 a TSN was served on the owner and developer. It expires on the 3<sup>rd</sup> December 2020.
- 3.20 Power to issue a full Stop Notices is given by sec.183 of the 1990 Act. Before serving a Stop Notice, the local planning authority must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped immediately and before the end of the period allowed for compliance with the related enforcement notice.
- 3.21 A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence and is liable to a fine not exceeding £20,000 – and on conviction on indictment, to an unlimited fine.
- 3.22 There is no right of appeal to the secretary of state against the prohibitions in a Stop Notice. The validity of a stop notice, and the propriety of the local planning authority's decision to issue a notice, may be challenged only by application to the High Court for judicial review.
- 3.23 There is no compensation payable to the recipient of a Stop Notice if the local planning authority subsequently grants retrospective planning permission for the activity specified in the Stop Notice or permission is granted at appeal, only

if an error of procedure or fact is found that cannot be corrected, leading to the quashing of the notice. Even then loss or damage because of the effect of a Stop Notice has to be shown.

### Human Rights

- 3.24 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.
- 3.25 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 Temporary Stop Notice, a full Stop Notice or 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 such notices including a TSN and full Stop Notice as the temporary notice expires together with an enforcement 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 notices it might well be justified to take court action.

### Equalities

- 3.23 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.
- 3.24 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 regularisation and/or attempts to encourage compliance have failed as in this case.

## Crime and disorder

- 3.25 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.
- 3.26 In light of all the facts it is now considered expedient to serve a full Stop Notice together with an Enforcement Notice to ensure the unauthorised development is rectified.

## **4 Conclusion**

- 4.1 A breach of planning control has been identified. Through a combination of its siting, height and materials, the development has resulted in significant harm to the character and appearance of the street scene and it affects the amenities of the occupiers of the neighbouring property.
- 4.2 The breach therefore 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 amenity of the area.
- 4.3 The Council should now commence enforcement action without delay by issuing Stop notice together with a planning enforcement notice requiring the unauthorised development to be removed.

## **5 Recommendation**

- 5.1 That the Assistant Director - Planning and Regeneration, be authorised to take all enforcement action including the service of any necessary stop notices and enforcement notices and in conjunction with the Director of Organisational Development & Democratic Services, proceedings through the courts if required to ensure the unauthorised development at the site is removed.**