

Planning Enforcement Report for 0182/2020



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Report to Planning Committee

Reference Number: 0182/2020

Location: 9 Gedling Road, Carlton

Breach of Planning Control: The construction of an unauthorised building.

1 Background

- 1.1 In September 2020, it was brought to the Council's attention that a single storey outbuilding had been constructed forward of the principal elevation of No. 9 Gedling Road, Carlton.
- 1.2 No. 9 Gedling Road is a detached residential dwelling within the built-up area of Gedling. The site is elevated above Gedling Road and is located on a corner plot between Gedling Road and Redland Grove. Neighbouring properties are predominantly residential, although there are some commercial uses close by.
- 1.3 The front and side of the property is bound by a stone wall approximately 1 metre in height with a fence directly behind this adding a further metre in height. This fence does not have planning permission but is likely to be exempt from any formal planning enforcement action due to the length of time it's been there.
- 1.4 The outbuilding measures 7.3 metres in length x 4.9 metres in width (at its widest point). It is used as a garden room and to cover a hot tub.
- 1.5 Recently, the applicants have planted conifers (which do not require planning permission) in order to try and screen the building from public view points.
- 1.6 On the 14th October 2020 the owners of the dwelling submitted a retrospective planning application reference 2020/1030 to retain the building but the application was refused permission in December 2020.

2.0 Planning History

- 2.1 There are various extensions at the property, including a conservatory to the side and a rear off-shoot linking to a garage in the rear garden (with vehicular access from Redland Grove). This means that the front garden is the largest area of amenity space serving the dwelling.

2.2 Google street view shows that the fence to the front of the site has been in situ since at least 2008 and therefore is likely to be immune from enforcement action.

3 Assessment

3.1 Schedule 2 Part 1 Class E of the General Permitted Development Order 2015 (GPDO) grants permission for an outbuilding within the curtilage of a dwelling house, if it is incidental to the enjoyment of the dwelling, subject to certain restrictions including a condition that the building must not be situated on land forward of a wall forming the principal elevation of the original dwelling house. In this case the outbuilding is forward of the principal elevation and therefore requires planning permission

3.2 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 2019 (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.

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

- i) the visual impact of the proposal on the character and appearance of the locality
- ii) the impact of the proposal on the residential amenity of occupants of the neighbouring properties
- iii) Highway safety
- iv) whether the Local Planning Authority is within the four year statutory time limit for taking action for unauthorised development.

3.4 Planning Policies

The following policies are relevant to this development:

3.5 At the national level the National Planning Policy Framework (February 2019) is relevant. At the heart of the NPPF is a presumption in favour of sustainable development. It seeks good design as a key element of sustainable development and a high standard of amenity for existing and future users of land and buildings.

- 3.6 Paragraph 124 of the NPPF states that “Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.
- 3.7 Paragraph 127 of the NPPF states that “Planning policies and decisions should ensure that developments ... create places ... with a high standard of amenity for existing and future users.”
- 3.8 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.
- 3.9 Policy LPD 32 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers.
- 3.10 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.
- 3.11 LPD 43 - states planning permission will be granted for extensions or alterations to dwellings which are not within the Green Belt but which are within the main built up areas and key settlements provided it is in keeping with the surrounding character and it would not cause an adverse impact on the amenity of nearby occupiers.
- 3.12 LPD 61 – Highway Safety requires planning permission to be granted for development which does not have a detrimental effect on highway safety.

Visual impact on the character and appearance of the locality

- 3.13 The site is located in a prominent location on the corner of two public highways. The outbuilding is located to the front / side corner of the site and the development is extremely prominent within the street scene and dominates the front of the site and host dwelling.
- 3.14 The development measures 2.5 metres in height but due to the site being on higher land than Gedling Road, it appears much taller than this when viewed from public areas. The development measures 7.3 metres in width and dominates the front boundary of the plot, obscuring part of the ground floor of the host dwelling.
- 3.15 Both of the elevations of the unauthorised building which face Gedling Road are blank elevations, containing no visual interest such as windows. Overall this leads to a prominent outbuilding, presenting blank elevations and dominating and obscuring the front of the site, to the detriment of the visual amenity of the area.
- 3.16 The applicant has recently planted conifer trees to try and screen the building. However, at this current time the conifers are only marginally taller than the existing fence and do not screen the building.

- 3.17 It is considered the development is contrary to the advice contained in the NPPF, Policy LPD43 of the Local Plan

Impact on Residential Amenity

- 3.18 Due to separation distances and the fact the development borders two public highways and not other residential dwellings or gardens, I do not consider that the development has an unacceptable impact on the residential amenity of neighbouring occupiers in terms of massing / overshadowing and there are no issues involving overlooking onto neighbouring properties as all windows face into the site itself.

Highway Safety

- 3.19 Parking and access at the site are unaffected by the development.

Time Limits

- 3.13 The statutory time limit for taking action for unauthorised built development is four years. In this case the evidence available to the Council strongly suggests the development only commenced this year and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice.

Human Rights

- 3.15 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.
- 3.16 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 an enforcement notice would be a proportionate response to halt the breach of planning control taking place and depending on compliance with the notice it might well be justified to take court action.

Equalities

- 3.17 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.

- 3.18 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

- 3.19 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 Conclusion

- 4.1 A breach of planning control has been identified and it is considered that the siting and scale of the development make the outbuilding extremely prominent within the street scene, presenting blank elevations which dominate the front of the site and host dwelling to the detriment of the visual amenity of the area.
- 4.2 For these reasons the development is considered to be contrary to the advice in the NPPF as well as Policy 10 of the Gedling Borough Council Aligned Core Strategy and Policy 43 of the Gedling Local Planning Document.
- 4.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the removal of the outbuilding.

5 Recommendation

- 5.1 **That the Head of Development and Place, be authorised to take all enforcement action including the service of any enforcement notices and in conjunction with the Head of Governance and Customer Services take proceedings through the courts if required to ensure the unauthorised outbuilding is removed.**