

Planning Enforcement Report for 0143/2020



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.
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Report to Planning Committee

Reference Number: 0143/2020

Location: Land at 60 Woodchurch Road, Bestwood.

Breach of Planning Control: **Material change of use of residential dwelling and garden to a mixed use of residential dwelling and garden and a warehousing/storage and distribution facility.**

1 Background

- 1.1 No. 60 Woodchurch Road, is a large detached dwelling in a wholly residential area of Bestwood. It is fully enclosed by large electronic gates and a brick built boundary wall. It has a large garden area to the front and rear of the property and a large double integral garage.
- 1.2 Access to the site is via a private road extending northwards from an adopted section of Woodchurch Road. The private access road also provides access to two other existing large detached properties and a development site where permission has been granted for three more large detached dwellings and a large bungalow.
- 1.3 Complaints were first received in November 2015 about the owners of this property, receiving deliveries at the property of fixtures and fittings in connection with their kitchen business which was operating from shop premises nearby.
- 1.4 A letter was sent by the Council to the owners advising them this activity required planning permission as the fixtures and fittings being delivered and stored at the property were not required in connection with the dwelling, resulting in a change of use of the residential premises. A month later, in December 2015 the complainants advised there had been no further deliveries and they were happy for the file to be closed.
- 1.5 In March 2017, the Council again received complaints about deliveries to No. 60 and about the impact the HGVs and deliveries were having on other people living nearby.

- 1.6 The Council sent another letter and in May 2017, the complainant advised that the problem had been resolved and there was no need for any further action.
- 1.7 In September 2017, further complaints were received about the owners at No. 60 receiving kitchen units and other fittings at their residential property in connection with their kitchen business and again the Council wrote to the owners to advise enforcement action would be taken if the use did not cease. Again, the complaint confirmed the use had cease and there was no further action required by the Council.
- 1.8 In August 2020, the complainant contacted the Council to advise there had been further commercial deliveries to No. 60 in heavy goods vehicles in the early hours of the morning and that the vehicles had blocked the access and the noise had caused disturbance.
- 1.9 The owners were contacted and they advised the Council Officer that they had retired and were no longer running the kitchen business but they were now building two self-build properties and had received bathroom and other fittings at their home for storage until they could be fitted in the new dwellings.
- 1.10 The owners were advised that the matter would be referred to the Planning Committee for consideration of enforcement action.

2 Planning History

- 2.1 There is no planning history for this property

3 Assessment

- 3.1 No. 60 Woodchurch Road is a residential property in a popular residential area of Bestwood. The narrow private access road is currently busy with construction traffic working on and delivering to the development site opposite as well as neighbours trying to access and leave their own properties.
- 3.2 The use of the dwelling for storage of items and materials not intended for the property, requires planning permission and no such permission has been applied for nor granted.
- 3.3 Although the change of use 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 for the storage and distribution of goods has any detrimental effect on the amenities of the occupiers of nearby properties, on 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 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers.
- 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 number of vehicular movements and deliveries associated with the storage and distribution of goods, fittings and materials 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.

Impact on the character of the area and the environment

- 3.11 This area of Bestwood is characterised by well-kept and well-presented residential properties. There is no other commercial use in the immediate vicinity. The additional vehicular movement and visitors associated with the delivery and

distribution of goods is detrimental and out of character with this residential area and is therefore contrary to Policy 10 of the Core strategy and Policy LPD 35.

Impact on highway safety

- 3.12 The Highways Authority are unable to object to this change of use as it is operating from a private access drive.

Time Limits

- 3.13 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 change of use has been intermittent for the last five years and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.
- 3.14 Should the activity be allowed to continue without formal intervention from the Council, the use will become established and outside of the control of the Council resulting in a storage and distribution operation being allowed to continue without any conditions in a wholly residential area.

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 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

- 3.17 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 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

- 3.19 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.
- 3.20 In light of all the facts it is now considered expedient to serve an enforcement notice to require the cessation of the unauthorised storage and distribution use of materials and items which are not considered incidental or ancillary to the domestic residential use of the dwelling.

4 Conclusion

- 4.1 The use of this residential property for the storage and distribution of materials, fittings and other items for use at other premises has continued intermittently for five years. Although the owners cease the use for a period of time when the Council contacts them, the use later resumes.
- 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 use. If the notice is not complied with proceedings should be taken in the courts if necessary.

5 Recommendation

- 5.1 The Assistant Director – Planning and Regeneration, 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 the cessation of the unauthorised storage and distribution use.**