

Planning Enforcement Report for 0073/2020



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: 0073/2020

Location: Land at 17 Upminster Drive, Arnold.

Breach of Planning Control: Construction of an unauthorised building.

1 Background

- 1.1 This property is a two storey detached dwelling in the urban area of Arnold. There is a rear garden area to the property with the land sloping upwards from the west to the east, resulting in the neighbouring property at No. 15 being set at a slightly lower level and No. 19 at a slightly elevated level to the land at No.17. Adjoining the rear boundary of the site is No. 54 Kempton Drive.
- 1.2 On the 5th April 2019, the Council was notified that a large building was being constructed in the rear garden of No. 17 Upminster Drive without the benefit of planning permission.
- 1.3 The Council's Planning Enforcement Officer visited the site and saw a wooden building incomplete but under construction. The building measured approximately 7.2m by 8.1m and an overall height of 2.8m. There were sewerage and water pipes installed and leading to the building.
- 1.4 The owners advised the building was intended as a residential annex to the main building for family members to live in. The annex was to provide three bedrooms, a kitchen/living room and bathroom facilities.
- 1.5 A retrospective planning application reference 2019/0502 was submitted to retain the building but was refused planning permission on the 5th December 2019

2 Planning History

- 2.1. There is no other planning history for this property

3 Assessment

- 3.1 Although the construction of the building 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 residential annex 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 four year statutory time limit for taking action for built development.

Planning policy considerations

3.3 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 124 of the NPPF states “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.” Paragraph 130, of the NPPF further 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...”

3.5 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. In order to achieve this, the policy approach sets out a number of criteria to reinforce valued local characteristics.

3.6 Policy LPD 32 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers.

3.7 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.

3.8 Policy LPD 43 advises planning permission will be granted for extensions not in the Green Belt but in urban and key settlements, providing the proposal is in keeping with the character of the area and it does not cause a significant adverse impact on the amenity of nearby occupiers.

- 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...”
- 3.10 Buildings that provide ancillary accommodation to a main dwelling can be considered acceptable in some instances, but proposals have to be assessed in terms of whether or not the accommodation is truly providing ancillary accommodation, the appearance of the proposal and the impact on neighbouring properties.
- 3.11 In this instance, the scale of the building together with the accommodation which would be provided, three bedrooms, a bathroom, kitchen/living room, in my opinion does not constitute ancillary accommodation to the main dwelling but rather it appears as `an independent residential unit being sited within the rear garden of the existing dwelling and it would not be serving the main dwelling on the site.

Impact on residential amenity

- 3.12 The footprint of the building is comparable with that of a small bungalow and the building is supported on short posts raising it above the ground level of the garden in part, by approximately 380mm above the existing ground level of the site.
- 3.13 The scale of the building together with its height above the ground level of the land results in the building appearing dominant and prominent within the plot reinforcing the opinion the building is not ancillary to the existing dwelling.
- 3.14 As the land is higher than that of the neighbouring property at No. 15 and the building is further raised above the ground level of the site, the building appears dominant when viewed from the neighbouring property and results in an overbearing and prominent form of development on the site contrary to both national and local policies mentioned above.
- 3.15 The property at No. 19 is on land higher than the unauthorised building and as such there is no adverse impact on the residential amenities of the occupiers of this property.
- 3.16 Whilst there would be no over shadowing or overbearing impact from the unauthorised building on the neighbouring property to the rear, the windows to the rear of the building could result in an adverse overlooking impact onto this neighbouring dwelling. However, the plans submitted in respect of the 2019 planning application indicate these windows would be obscured glazed with any opening parts located 1.7m above the floor level of the rooms they serve, this being the case there would be no overlooking issues onto the neighbouring property at the rear.

Impact on the character of the area and the environment

- 3.17 Given the scale and footprint of the building together with the accommodation proposed the building is considered to be a separate independent unit as opposed to an annex to be used in conjunction with the main dwelling.
- 3.18 The site is not large enough to cater for two independent units on the site whilst maintaining an acceptable relationship with each other and with the existing neighbouring properties. It appears as a cramped and contrived development and in addition given the scale of the building together with the fact that it is raised in part above the level of the land on which it sits the building appears overly dominant and prominent within the site to the existing dwelling and the neighbouring dwelling at No. 15.
- 3.19 The building 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

- 3.20 It is considered the building has no adverse impact on highway safety.

Time Limits

- 3.21 The statutory time limit for taking action for built development is 4 years. The building is not substantially completed and so the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the building to be demolished.

Human Rights

- 3.22 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.
- 3.23 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

- 3.24 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.
- 3.25 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

- 3.26 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.
- 3.27 In light of all the facts it is now considered expedient to serve an enforcement notice to require the removal of the unauthorised building.

4 Conclusion

- 4.1 The unauthorised building is currently incomplete and unoccupied but it is intended as a separate residential property within the garden of an existing dwelling. The development results in a cramped and contrived form of development which is out of keeping and detrimental to the character of the area. Furthermore it is overbearing on the existing dwelling and on the neighbouring dwelling at No. 15.
- 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 a dwelling which is out of character and 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 building to be demolished. If the notice is not complied with proceedings should be taken in the courts if necessary.

5 **Recommendation**

- 5.1 **The Head of Development and Place, be authorised to take all enforcement action including the service of any necessary enforcement notices and in conjunction with the Head of Governance and Customer Services take proceedings through the courts if required to ensure the cessation of the unauthorised storage and distribution use.**