



Planning Enforcement Report for 0156/2020



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Report to Planning Committee

Reference Number: 0156/2020

Location: Land at 5 Station Road Carlton.

Breach of Planning Control: Breach of Planning Conditions; Upper floor window not obscured glazed or non-opening.

1 Background

- 1.1 No. 5 Station Road, Carlton is a large detached property which has historically been converted into four flats. The site is accessed via a private drive off Station Road that presently serves 'The Cottage', No.5 and No.7 Station Road. The private drive incorporates a steep gradient which leads up to the property and the property is set back from Station Road and is elevated from the street. To the frontage of property is garden land.
- 1.2 To the south west is another residential property, No. 11 Wallace Avenue, whose rear elevation directly faces the south west elevation of No. 5 and whose rear garden boundary abuts this side elevation of No. 5.
- 1.3 In August 2020, the Council received a complaint about the replacement of an existing obscured glazed window in the south west side elevation of No. 5 Station Road, Carlton for a window which is clear glass and opening. This window is the kitchen window of Flat 1.
- 1.4 The kitchen window is level with two bedroom windows of No 11 Wallace Avenue and looks down into the kitchen and dining room windows of this property and the rear garden.
- 1.5 The property is owned by a limited company. The Company Secretary has been written to and the tenant of the flat has been written to twice to request the window is obscured, advising this can be done easily with plastic film which can be purchased from any of the large hard-ware stores but the request has been ignored.

2 Planning History

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

3 Assessment

- 3.1 The General Permitted Development Order (GPDO) allows for new windows to be inserted without planning permission. However, windows inserted after 2015 must comply with certain conditions in the GPDO which states;
- (b) any upper floor window located in a wall or roof slope forming a side elevation of the dwelling must be –
- (i) Obscure glazed, and
- (ii) Non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed;
- 3.2 Although the window was existing, it was obscured glazed and non-opening. The change of the window to clear glass and opening means it is now in breach of the conditions in the GPDO and is therefore unauthorised.
- 3.3 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 window has any detrimental effect on the amenities of the occupiers of nearby properties or on character of the property.
- ii) whether the Local Planning Authority is within the ten year statutory time limit for taking action for breach of conditions.

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 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...”

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.

Design / Visual Amenity

- 3.7 The window is small and insignificant on the side elevation of this property in terms of its character and therefore has no detrimental impact on the character of the property.

Impact on Residential Amenity

- 3.8 The rear elevation of No. 11 Wallace Avenue, faces directly onto the south west elevation of No. 5. There is about a 10 – 12m separation between the two properties. The unobscured kitchen window of Flat 1, No. 5 Station Road is directly opposite two bedroom windows of No. 11 Wallace Avenue and looks down directly into the kitchen and dining room and rear garden of the neighbouring property.
- 3.9 The neighbour has taken a video of the window of Flat 1 and the occupier can be seen clearly in the kitchen walking past the window. The neighbour feels a complete loss of privacy in the main rooms of their property.
- 3.10 Taking into account the location of the window, it is considered that there is an unacceptable adverse impact on the residential amenities of the occupiers of neighbouring property with a loss of privacy and overlooking in accordance with Section 12 of the NPPF (2019), and Policy LPD 32.

Time Limits

- 3.11 The statutory time limit for taking action for a breach of planning conditions is 10 years. In this case it is considered the Council is within time to commence enforcement proceedings such as issuing an breach of condition notice requiring the window to be obscured glazed and non-opening unless the opening part of the window is higher than 1.7m above floor level.

Human Rights

- 3.12 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.

- 3.13 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 breach of condition 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

- 3.14 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.
- 3.15 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

- 3.16 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.

3.17 In light of all the facts it is now considered expedient to serve an enforcement notice to require the window to be obscured glazed and non-opening unless the opening part of the window is more than 1.7m from the floor level.

4 Conclusion

4.1 The clear glazed opening window presents an overlooking and loss of privacy issue and has a detrimental impact on the amenities of the occupiers of a neighbouring property.

4.2 The breach conflicts with both national and local policies. The owners have failed to rectify the breach and failure of the Council to act in these circumstances may leave a dwelling with an unauthorised window which is detrimental to amenity of the occupiers of a neighbouring property and which is beyond the control of the Council.

4.3 The Council should now commence enforcement action without delay by issuing a Breach of Condition Notice requiring the window to be obscured glazed and non-opening unless the opening parts of the window are more than 1.7m from floor level. 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 window to be obscured glazed and non-opening unless the opening parts of the window are more than 1.7m from floor level.