

## Planning Enforcement Report for 0113/2020



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:** 0013/2020

**Location:** Land at 63 Catfoot Lane Lambley.

**Breach of Planning Control:** Construction of wall, pillars and gates to the frontage of the site together with the retention of engineering works to increase the land levels to the front of the site.

### 1 Background

- 1.1 No. 63, Catfoot Lane, Lambley is a single storey dwelling positioned in a rural location within the Nottinghamshire Green Belt. Access to the site is via Catfoot Lane with a driveway to the frontage of the site. There is a front and rear garden area to the property, while the side and rear boundaries of the site adjoin open fields.
- 1.2 In December 2019, planning permission (reference 2019/0824) was refused for the construction of a wall, pillars and gates to the front boundary of the property because it was considered to be inappropriate development within the Green Belt and it would have an adverse impact on the open character and appearance of the locality.
- 1.3 Following the refusal of planning permission, the works to erect the wall, pillars and gates on site were commenced and completed without consent. In addition, works have taken place to raise the land level between the boundary and the highway and these works are considered to be engineering works which also require planning permission.
- 1.4 On the 13<sup>th</sup> January 2021, an appeal to overturn the Council's decision to refuse permission was dismissed by the Planning Inspectorate.

### 2 Planning History

- 2.1. An application, ref: 79/1189, which sought permission for the construction of a pitched roof, was granted permission on the 29th August 1979.
- 2.2 On the 6th September 1990 conditional permission was again granted to erect a pitched roof under application ref: 90/1288.

- 2.3 Planning permission was refused in April 2019, ref: 2019/0095, for the demolition of the bungalow and the erection of two detached dwellings on the site.
- 2.4 A Certificate of Lawfulness for proposed development was submitted in June 2019, ref: 2019/0598, seeking confirmation that two single storey side extensions could be erected at the property under permitted development. The Certificate was granted on the 23rd September 2019.
- 2.5 A Prior Notification Larger Home Extension ref: 2019/0612PN was submitted for a single storey extension to the rear, on the 21st June 2019. It was determined on the 2nd August 2019 that Prior Approval was not required.
- 2.6 A further Certificate of Lawfulness, ref: 2019/0911, was submitted for a proposed householder extension and outbuilding on the 28th September 2019. This application was granted on the 3rd December 2019.
- 2.7 Planning application reference 2019/0824 was refused for the construction of a wall, pillars and gates to the front boundary of the property in December 2019

### **Assessment**

- 3.1 Although the construction of the wall, pillars and gates and the raising of land levels 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 appeal site is located within the designated Nottinghamshire Green Belt and so the main considerations when deciding whether to take enforcement action in this case are;
  - whether the development constitutes inappropriate development in the Green Belt;
  - the effect of the development on the openness of the Green Belt and the character and appearance of the surrounding area; and
  - whether the harm caused by inappropriateness and any other harm are clearly outweighed by other considerations and if so, whether very special circumstances exist that justify the granting of planning permission.
  - 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...”

- 3.4 Part 13 of the NPPF seeks to protect Green Belt land. Paragraph 133 of the Framework, outlines that great importance should be attached Green Belts while Paragraph 143 goes on to state that “inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”.
- 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 The site is situated in a rural location within the Green Belt and is predominantly surrounded by open fields delineated by hedgerows and other vegetation. There are a small number of residential dwellings within the locality however, the curtilages of these properties are typically defined with open frontages or 3 or 4 bar timber fences which retain some degree of openness. The unauthorised development consists of a solid brick wall with brick columns and gates and raised land levels and in my opinion, the development conflicts with the existing open nature of the surrounding area.

#### Green Belt – Inappropriate development

- 3.7 Boundary treatments of up to 1 metre in height can be constructed under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 without permission. However, the development, which is already completed, comprises of a wall, pillars and gates to the frontage of No 63 which are measured at between 1.20 – 1.30m depending where they are measured from and engineering works to raise the land level between the boundary and the highway.
- 3.8 Paragraph 145 of the National Planning Policy Framework states that the construction of new buildings and structures is inappropriate in the Green Belt, with some defined exceptions but the wall, pillars and gates do not fall within any of the exceptions set out in Paragraph 145 of the Framework.
- 3.9 The Inspector in his appeal decision letter states, “The infilling to raise the land levels in front of the boundary treatment has resulted in a loss of openness by its artificial nature in comparison to the natural land levels and also appears to have

been done to mitigate the effect of the wall and columns. Openness is an essential characteristic of the Green Belt, and whilst the engineering operations may be an exemption, they do not preserve the openness of the Green Belt and are therefore inappropriate”.

- 3.10 Given the overall visual impact of the walls, pillars and gates and the engineering works involving the raising of land levels, the Inspector agrees that the development is an inappropriate form of development in the Green Belt, which by definition is harmful to the Green Belt.

#### Openness

- 3.11 The Government attaches great importance to Green Belts. The fundamental aim of the policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence. The previous boundary has been replaced by a solid wall which forms a continuous means of enclosure. The Inspector in the appeal decision is of the opinion “The development has a harmful effect upon openness of the Green Belt given the wall’s location, height and scale”.

- 3.12 Owing to their size and siting, the introduction of the boundary walls and columns has had an impact on the openness of the Green Belt by introducing a structure which has had a ‘hard’ enclosing effect on the area. Whilst this loss of openness is not significant for this aspect, it nevertheless has a negative impact.

- 3.13 For the above reasons, given the loss of openness to the Green Belt and in accordance with the Framework, the development is inappropriate development which impacts on the Green Belt purpose of safeguarding the countryside from encroachment and is in conflict with the NPPF and Policy 10 of the Aligned Core Strategy.

#### Very Special Circumstances

- 3.14 The Inspector has considered the appellants’ arguments relating to a number of other boundary treatments at other nearby properties. The Inspector stated, “On balance, other considerations advanced by the Appellant in support of granting planning permission, whether taken individually or cumulatively, do not clearly outweigh the inappropriate nature of the development in the Green Belt and the other identified harm. Consequently, the very special circumstances necessary to justify the development do not exist in this case”.

#### Time Limits

- 3.15 The statutory time limit for taking action for built development and engineering works is 4 years. In this case it is considered the Council is within time to commence enforcement proceedings such as issuing an enforcement notice.

## Human Rights

- 3.16 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.
- 3.17 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

- 3.18 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.
- 3.19 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

- 3.20 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.
- 3.21 In light of all the facts it is now considered expedient to serve an enforcement notice to require the removal of the raised land levels and return the land to its previous level before the development took place and the removal or reduction in height of the front boundary treatment to 1m.

#### **4 Conclusion**

- 4.1 The unauthorised development represents inappropriate development in the Green Belt. It also reduces the openness of the Green Belt and there is an adverse impact on the character and appearance of the area. There are no very special circumstances to justify the development.
- 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 development which is in conflict with Green Belt policies and is out of character and detrimental to the area, which is beyond the control of the Council and which sets a precedent for other inappropriate development in the Green Belt.
- 4.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the land levels to be returned to the levels before the unauthorised engineering works took place and for the wall, pillars and gates to be removed or reduced in height to 1m. 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 land levels are restored to their original level before the development took place and the removal or reduction in height of the wall, pillars and gates to 1m.**