



Planning Enforcement Report for 0171/2020

1:1,250

Enforcement Reference: 0171/2020
Land at 95 First Avenue
Carlton



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Report to Planning Committee

Reference Number: 0171/2020

Location: Land at 95 First Avenue Carlton.

Breach of Planning Control: Construction of an unauthorised extension.

1 Background

- 1.1 No. 95 First Avenue is a semi-detached residential property located within the built-up area of Carlton. It is located on a prominent corner plot between First Avenue and Third Avenue. The neighbouring properties are all residential.
- 1.2 In September 2020, it was brought to the Council's attention that a single storey wooden clad lean to side extension had been constructed without planning permission at the property.
- 1.3 Planning permission is required because the enlarged part of the dwelling extends beyond a wall which fronts a highway and forms a side elevation of the original dwelling house.
- 1.4 The owners' of the property were contacted and they submitted a retrospective planning application seeking permission to retain the extension. (Reference 2020/1071). The application was refused on the 22nd December 2020.

2 Planning History

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

3 Assessment

- 3.1 Although the construction of the extension 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 extension 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 43 advises planning permission will be granted to 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.

3.8 Policy LPD 61 states that “Planning permission will only be granted for development proposals which do not have a detrimental effect on highway safety...”

Principle

3.9 The site is located outside of the Green Belt within an urban area where the principle of a residential extension is considered to be acceptable through Policy LPD43 subject to it complying with certain criteria and other relevant planning policies.

Design / Visual Amenity

- 3.10 Dwellings in the immediate vicinity are predominantly brick with some render. By contrast this lean-to structure is timber built and the materials used in the extension are not considered to be in keeping with either the host dwelling or surrounding properties.
- 3.11 Furthermore, there are no windows to either of the elevations facing the road resulting in blank elevations of no interest. Again, this is in contrast to the rest of the host dwelling and neighbouring properties, all of which have windows and doors on prominent elevations.
- 3.12 This situation is further exacerbated by the fact that the lean-to is in an extremely prominent location, on a corner plot and built up to the edge of the public highway. The land level slopes upwards resulting in the site also being elevated from both public highways.
- 3.13 For the reasons stated above, it is considered that the development by virtue of its design and materials is out of keeping with both the host dwelling and surrounding properties and as such has a detrimental impact on the visual amenity of the area. The development is considered contrary to the NPPF (Section 12), Policy 10 of the Core Strategy and Policy LPD 43 of the Local Plan.

Impact on Residential Amenity

- 3.14 The extension is not in close proximity to any neighbouring occupiers and therefore it does not have a detrimental impact on the residential amenity of neighbouring properties in terms of massing, overshadowing or overlooking.

Highway Safety

- 3.15 Parking and access are not affected by the development.

Time Limits

- 3.16 The statutory time limit for taking action for built development is 4 years. In this case it is considered the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the extension to be demolished.

Human Rights

- 3.17 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.

- 3.18 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

- 3.19 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.
- 3.20 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

- 3.21 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.

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

4 Conclusion

- 4.1 It is considered that the development is out of keeping with both the host dwelling and surrounding properties and it has a detrimental impact on the visual amenity of the area.
- 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 extension 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 extension 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 removal of the unauthorised extension.**