

Planning Enforcement Report for 0020/2021



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Report to Planning Committee

Reference Number: 0020/2021

Location: Land at 48 Avondale Road, Carlton.

Breach of Planning Control: Unauthorised glazing within dormer window unit.

1 Background

- 1.1 No. 48 Avondale Road, Carlton is a large detached property which has historically been extended to the side elevation. The property is situated on the corner of Avondale Road and Trentdale Road with the principle elevation and access to the property on Avondale Road.
- 1.2 Following a side extension in 2004, the side elevation sits further forward than other properties on the eastern side of Trentdale Road. Properties on the western side of Trentdale Road are approximately 20m from the side elevation of No. 48 Avondale Road.
- 1.3 On 2nd February 2021, the Council received a complaint about a new dormer window being inserted into the side elevation facing Trentdale Road. A letter was sent to the owners of the property on 4th February 2021 making them aware of the requirements of the General Permitted Development Order and requesting that they ensure the dormer complies in order to avoid the need to make a planning application.
- 1.4 A visit by an officer on 25th February 2021 confirmed that the dormer was still under construction and at the time the window had not been installed. The officer was satisfied that at the time of their visit the dormer would be permitted development on condition that any window installed would be non-opening and obscurely glazed.
- 1.5 On 21st December 2021, an email was received from the complainant informing that the window had been installed. At the time the email was sent the glazing hadn't been installed, however the window frame included a side opening window had been installed.

- 1.6 On 4th January 2022 a letter was sent to the owners of the property again requesting that the window is made non-opening and obscurely glazing. The letter gave a period of 14 days for the works to be undertaken.
- 1.7 An officer visited the site on 18th January 2022 and confirmed that the requested works had not been undertaken as the window was still not obscurely glazed and had an openable side window.

2 Planning History

Reference	Proposal	Decision	Date
2003/0331	Two storey side extension & single storey rear extension	Conditional Permission	31/03/2003

3 Assessment

- 3.1 The General Permitted Development Order (GPDO) allows for additions to be made to roofs without planning permission on condition that specific requirements are complied with. The relevant condition in this case is as follows:

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 The dormer window in question is on the side elevation of the property and so the condition applies. The installation of a clear glass, openable window without planning permission is 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 59) 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 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 four year statutory time limit for taking action.

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 126 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 134, of the NPPF further states that “Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design ...”
- 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.

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 unobscured, opening window of No. 48 Avondale Road is directly opposite two 1st floor bedroom windows of No. 25 Trentdale Road with a separation between the two properties of approximately 20m.
- 3.9 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 the neighbouring property with a loss of privacy and overlooking in accordance with Section 12 of the NPPF (2021), and Policy LPD 32.

Time Limits

- 3.10 The statutory time limit for taking action for unauthorised development is four years beginning with the date on which the operations were substantially complete. In this case the evidence available to the Council strongly suggests the development was substantially completed in January 2022 and the Council

is within time to commence enforcement proceedings such as issuing an enforcement notice.

Human Rights

- 3.12 Under the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a right under the European Convention on Human Rights (the Convention). In this instance under Article 1 of the First Protocol of the Convention: Protection of Property, every person is entitled to the peaceful enjoyment of their possessions except in the public interest and subject to conditions provided for by law. Furthermore under Article 8 of the Convention all individuals enjoy the right 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 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 an enforcement notice and pursuing Court action if the enforcement notice is not complied with, would be a proportionate response to the breach of planning control.

Equalities

- 3.14 The Council's Planning Enforcement team operates in accordance with 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

- 3.11 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.
- 3.12 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 neighbouring properties.
- 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 neighbouring properties and which is beyond the control of the Council.
- 4.3 The Council should now commence enforcement action without delay by issuing an Enforcement 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 That 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 is obscure glazed and non-opening unless the opening parts of the window are more than 1.7m from floor level.**