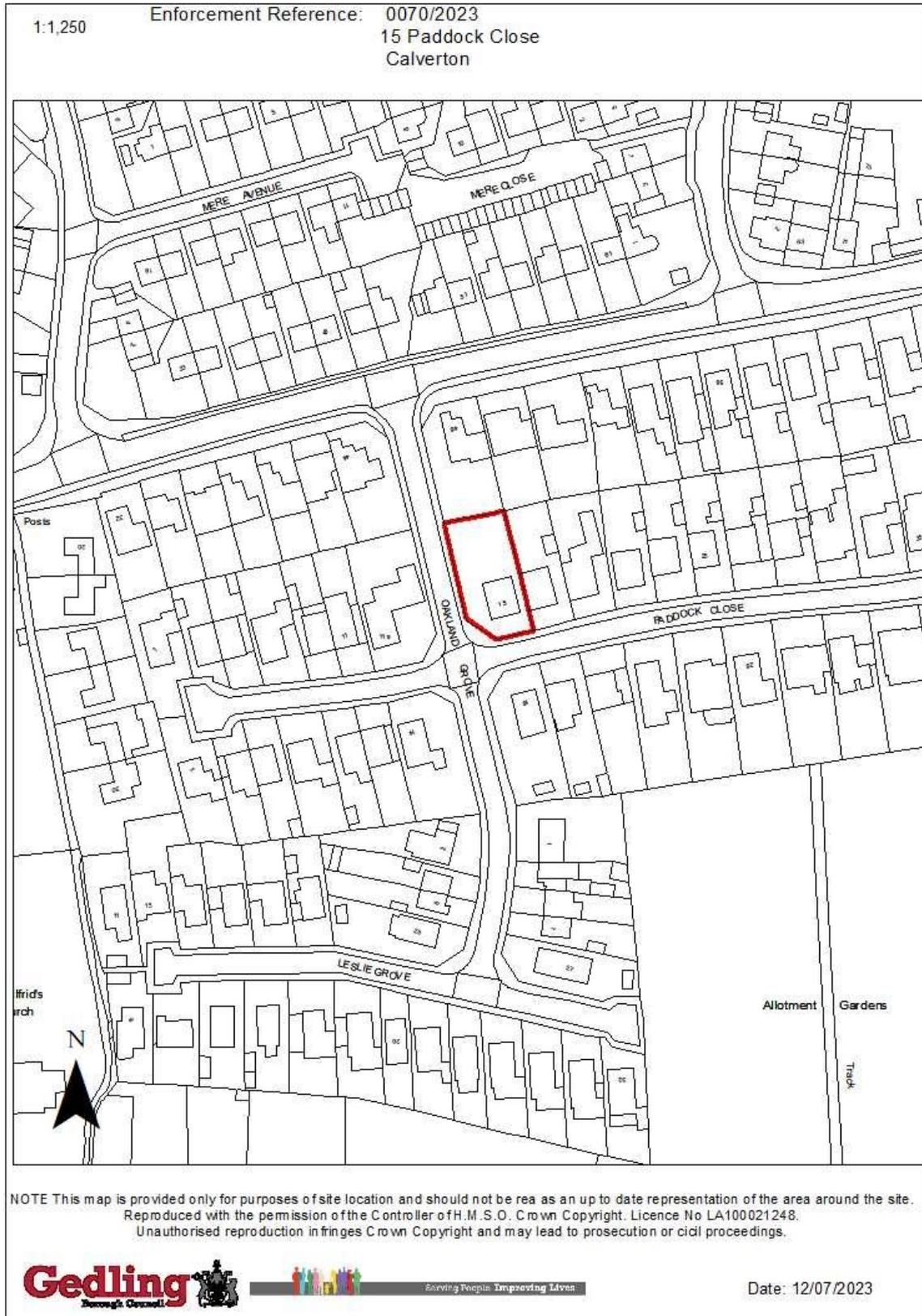




Planning Enforcement Report for 0070/2023



Report to Planning Committee

Reference Number:	0070/2023
Location:	Land to the north of 15 Paddock Close, Calverton.
Breach of Planning Control:	Unauthorised change of use from residential garden to storage of building materials/equipment with associated siting of storage containers.

1 Background

- 1.1 On 28th April 2023, the Council received several complaints alleging that 2no large portable containers had been placed on land at 15 Paddock Close following removal of the fence along the boundary with Oakland Grove and the removal of a tree. Photos were sent in by residents showing 2no large containers stacked on top of the other within the garden of 15 Paddock Close.
- 1.2 On 28th April 2023, the Council's Planning Enforcement Officer called the person listed as the applicant on a previous planning application for the site. He advised that the containers were placed to provide storage for the main house whilst building works to the interior of the house were on going and in anticipation of approval of a pending application for external alterations. As the land on which the containers had been placed was considered to be within the curtilage of the residential property at 15 Paddock Close, the officer made it clear that use of the containers for storage of building materials, tools or anything not associated with the dwelling at 15 Paddock Close would be unauthorised. He gave assurances that no such unauthorised use had occurred. It was agreed that the top container would be moved to ground level and the conditions required in order to meet permitted development as outlined under Class E of the GPDO were relayed to the gentleman. He advised they would be moved the following week.
- 1.3 On 24th May 2023, a further call was made to the applicant responsible for placing the containers but he did not answer the call. A message was left requesting again that the containers be moved such that they meet the conditions of permitted development.
- 1.4 On 24th May 2023, an email was received from a local residents claiming that someone had recently been seen at 06:45 hammering to gain access to the site by dismantling part of the garden fence. The resident saw "goods being

removed between the site and a car not normally associated with the dwelling". The complainants were asked to notify the Officer of any activity they felt was unauthorised.

- 1.5 On 26th May 2023, an application (2023/0270) under prior notification for a proposed additional storey to 15 Paddock Close was refused.
- 1.6 On 1st June 2023, an email was received from another local resident who was concerned that the containers didn't appear to be in use associated with work at 15 Paddock Close. They said they had seen the applicant for the above prior notification application or one of his colleagues "access the container at ground level to remove either building materials or equipment on at least 3 occasions. They were moved away from the site in either his van or his colleagues car. There are no trade vehicles parked at No 15 to indicate work is being carried out. I have not seen any furniture being moved from No15 to the container." They also claimed that the applicant has previously threatened to use the garden as a builders yard if unsuccessful in his attempts to gain planning permission to build on it.
- 1.7 On 5th June 2023, the Enforcement Officer called the applicant/landowner but again the call was not answered. A message was left to advise that evidence submitted from more than one resident suggests that the containers have been placed on the land as part of an unauthorised use. It was requested that the containers be removed and the land restored to residential garden use by Friday 9th June in order to prevent further action being taken.

2 Site Description

- 2.1 The site is located on the north side of Paddock Close, Calverton. The garden associated with 15 Paddock Close has previously been sectioned off using fencing such that one third of the plot is now accessed from Oakland Grove This is the area that is the subject of the unauthorised use. The site is surrounded by residential properties; to the north and east are two storey dwellings and to the south and west are bungalows.

3 Planning History

- 3.1 2019/0679 - 2 bed bungalow on land to rear of property. Refused 18th October 2019

2020/1159 - Erection of dwelling. Refused 1st February 2021

2022/1123 - New single storey garage, with new boundary wall and gates. Refused 15th December 2022.

2023/0270 – Prior notification for proposed additional storey. Refused 26th May 2023

4 Assessment

- 4.1 The use of the premises to operate a storage facility and associated placing of containers is not incidental to the enjoyment of the dwelling house and requires planning permission. No such permission has been applied for nor granted. Although development 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 2021 (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.
- 4.2 The main considerations when deciding whether to take enforcement action in this case are;
- whether the use of the site as a storage facility and associated placing of containers has any detrimental effect on the character of the area or the environment, on the amenities of other occupiers of nearby dwellings or on highway safety.
 - whether the Local Planning Authority is within the ten year statutory time limit for taking action for a material change of use of the land.

Planning considerations

- 4.3 The following policies are relevant to the assessment:

National Planning Policy Framework

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 134, the NPPF 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”.

Aligned Core Strategy

- 4.4 At a local level, Gedling Borough Council at its meeting on 10th September 2014 adopted the Aligned Core Strategy (ACS) for Gedling Borough (September 2014) which is now part of the development plan for the area. The adopted ACS forms Part 1 of the new Local Plan for Gedling Borough. It is considered that the following policy of the ACS is relevant:
- ACS Policy 10: (Design and Enhancing Local Identity) sets out the criteria that development will need to meet with respect to design considerations.

Local Planning Document

- 4.5 In July 2018 Gedling Borough Council adopted the Local Planning Document (LPD). The following LPD policies are relevant to this breach of planning control:
- LPD 19 – (Landscape Character and Visual Impact) states that planning permission will be granted where new development does not result in significant adverse visual impact or significant adverse impact on the character of the landscape.
 - LPD 32 (Amenity) states that planning permission will be granted for development proposals that do not have a significant adverse impact on the amenity of nearby residents or occupiers, taking into account potential mitigation measures.
 - LPD 34 (Residential Gardens) seeks to protect residential gardens and aims to ensure any development does not result in harm to the character or appearance of an area
 - LPD 35 (Safe, Accessible and Inclusive Development) states that small scale development that is insensitive to existing character can have an adverse impact on the sense of place.
 - LPD 61: (Highway Safety) states that planning permission will be granted for developments that do not have a detrimental impact upon highway safety, movement and access needs.

Time Limits

- 4.6 The statutory time limit for taking action for operational development is 4 years from when the development is substantially completed and ten years for a material change of use. In this case it is considered the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the unauthorised development to be removed and for the unauthorised use of the site to cease.

Impact on the character of the area and the environment

- 4.7 Policy LPD34 seeks to protect residential gardens from development and states planning permission should be refused for development in residential gardens unless development proposals would result in a significant improvement to the urban design of an area. It goes on to advise that “in all cases, any development of residential garden land should not result in harm to the character and appearance of an area.” It is considered that given the established character of the area, use of the site and the associated placing of containers does not improve the urban design of the area but actually causes harm to the character and appearance of the area. The use is therefore in conflict with Policy LPD34.

- 4.8 This area of Calverton is characterised by well-kept and well-presented residential properties. There is no other commercial use in the immediate vicinity. The operation of a storage facility is an alien feature at a residential property and is out of character for this residential street. The additional vehicular movement and visitors associated with the business is detrimental to the character of the area. The use is therefore in conflict with the NPPF and Policy 10 of the ACS and Policy LPD 35 of the Local Plan.

Impact on residential amenity

- 4.9 It is considered that the unauthorised use of the site as a storage facility is detrimental to neighbours' amenities and will cause noise and disturbance to the occupiers of nearby dwellings affecting their enjoyment of their homes. It is also considered that the size, massing and siting of the associated storage containers results in a significant adverse impact upon the residential street scene and character of the area, to the detriment of residential and visual amenity. The use is therefore contrary to LPD Policy 32.

Human Rights

- 4.10 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 their private and family life, their home and their 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.
- 4.11 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

- 4.12 The Council's Planning Enforcement team operates in accordance with the Council's 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.

- 4.13 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

- 4.14 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.

5 Conclusion

- 5.1 A breach of planning control has been identified which is detrimental to the character of the area, amenities of nearby occupiers of other residential properties and highway safety.
- 5.2 The breach conflicts with both national and local policies. Negotiations with the responsible party have failed to rectify the breach and failure of the Council to act in these circumstances may leave local residents with an operation which adversely affects their well-being and is detrimental to the character and amenity of the area and which is beyond the control of the Council.
- 5.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the cessation of the unauthorised change of use and removal of the containers. If the notice is not complied with proceedings should be taken in the courts if necessary.
- 5.4 Evidence available to the Council indicates the unauthorised change of use commenced within the last 10 years and operational development completed within the last 4 years.
- 5.5 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the cessation of the unauthorised change of use of the site a storage facility and removal of all associated storage containers.

6 Recommendation

- 6.1 That the Head of Development and Place, be authorised to take all relevant planning enforcement action including the service of any necessary enforcement notices and in conjunction with the Head of Governance and Customer Services, issue of proceedings through the courts, if required, to ensure the cessation of the unauthorised change of use of the site a storage facility and removal of all associated storage containers.**