

## Planning Enforcement Report for 0132/2023



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## Report to Planning Committee

Reference Number: 0132/2023

Location: 22 Onchan Drive, Carlton

**Breaches of Planning Control: Unauthorised rear garden canopy.**

### 1. The Breach of Planning Control

- 1.1. A wooden framed canopy with polycarbonate roof and sides has been constructed above an approved roof terrace. The canopy is located in the properties rear garden, which is within 2m of the boundary and exceeds 2.5m in height. The canopy addition, therefore, does not conform to household permitted development rights under Part A, Class E of the General Permitted Development Order 2015 (GPDO) and requires planning permission.

### 2. Site Description

- 2.1. 22 Onchan Drive is a detached split-level property located within residential area of Carlton. The rear garden is approximately 40m long and the land levels decrease substantially over its length.
- 2.2. The original garden gradient would have been similar to the neighbouring properties gardens, where a series of plateaus/terraces and garden slopes are still present. Over time 22 Onchan Drive has undertaken a number of historical garden developments, these have altered the original garden gradients. To the rear of the dwelling there is now a flat parking area. From that, steps lead down to the approved roof terrace section from which a further set of steps lead to a lower lawn area.

### 3. Relevant Planning History

- 3.1. 2017/0235 - Proposed alterations and rear extensions – **Granted**
- 3.2. 2019/0389 – Extension to existing pantry. Remove shed roofs and extend existing terrace over with timber decking surface and concrete block perimeter wall – **Granted**

### 4. Planning Legislation and Policy

- 4.1. The Town and County Planning Act 1990

## Town and Country Planning (General Permitted Development) Order 2015

### Policy Considerations

4.2. The following policies are relevant to the assessment of this case:

#### National Planning Policy Framework

4.3. Part 12 – Achieving well-designed places.

#### 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 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 43 (Extensions to Dwellings) seeks to ensure that the appearance of development is in keeping with surrounding character in terms of height, built form and general design.

## **5. Background / Investigation**

5.1. The rear garden area to the property has been subject to a number of alterations. In 2017 the Council approved a basement floor extension to the main property. That planning permission created a level platform immediately adjacent the rear of the house. A parking area has been created within that space. The level of that parking area, at its furthest point from the house, is above the land level of the neighbouring properties. Below the parking area is an approved decked area, which is reached by a series of steps.

- 5.2. In 2019 a planning application to increase the size of the decked area was approved. The planning application granted consent for the removal of 2 outbuilding roofs and their replacement with a single span roof. An extended deck to measure 8.5m x 8.5m was then to be constructed by building over the top of those original outbuildings. New steps were then relocated on the furthest extent of the enlarged decked area, now roof terrace to allow access to both the lower lawn area and the outbuildings underneath.
- 5.3. The unauthorised wooden framed canopy, subject to this report, with its polycarbonate roof and sides has been built on top of part of the extended roof terrace. The canopy is L-shaped. It spans the full width of the deck nearest the upper terrace and measures approximately 8.5m x 3m in area with a mono-pitched roof. The canopy then extends along the western side of the roof terrace, adjacent to 20, with a flat roof structure measuring 5.5m x 2m in size and 2m in height. For clarification, the canopy on the eastern elevation adjacent to 24 is 3m deep.
- 5.4. The canopy is above 2.5m in height at its lowest point but extends up to approximately 4.5m in height at its highest point. The canopy therefore exceeds the 2.5m limit permitted by Part 1, Class E (buildings incidental to the enjoyment of a dwelling house) of the General Permitted Development Order 2015. The canopy therefore requires planning permission, which has not been sought.
- 5.5. The landowners have been advised of the breach, but to date no action has been taken to seek a resolution to the breach.

## **6. Assessment**

- 6.1. The main considerations when deciding whether to take enforcement action in this case are the impact on residential amenity and impact on the character of the area.
- 6.2. The Paragraph 131 of the National Planning Policy Framework 2023 (NPPF) identifies that good design is a key aspect of sustainable development, creates better places in which to live and work. Paragraph 139 identifies that development that is not well designed should be refused.
- 6.3. Policy 10 of the Greater Nottingham Aligned Core Strategies Local Plan 2014 (ACS) states that development should be designed to make a positive contribution to public realm and sense of place. Policy LPD 32 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. Policy LPD 43 of the Gedling Borough Local Planning Document 2018 (LPD) identifies that development should only be permitted where the appearance is in keeping with the surrounding character in terms of height, built form and general design.
- 6.4. The canopy is built abutting the boundaries to the neighbouring properties. On the western elevation the construction includes polycarbonate sides up to the

eaves along the full length of the decking area. There is also breeze block below, which forms the side of the historical outbuilding.

- 6.5. Given the overall height of the enclosed canopy the structure is considered to have a negative impact on residential amenity of the neighbouring properties. The canopy is considered dominant and out of keeping with the surrounding character of the area by virtue of its inappropriate size, design and appearance. The canopy results in a prominent and incongruous feature in the locality and is considered detrimental to the visual amenity of residents living within the vicinity of the site.
- 6.6. The canopy is also considered to have a detrimental impact on the character and appearance of the area. Given the sloping nature of the garden the full effect of the canopy is highly visible from the garden area of properties located to the west of 22 Onchan Drive. But the canopy will also be highly visible from the lower garden areas of many other properties in the locality. Removing the canopy is likely to increase overlooking to neighbouring properties, particularly properties to the west. However, the raised decking area did not have any screening as approved under permission 2019/0389 and there is a degree of mutual overlooking between a number of properties in the locality with the detrimental impact on the character of the area considered to be the overriding consideration in this instance. As such, the canopy is considered contrary to policy 10 of the ACS and 43 of the LPD, removal of the canopy is also not considered to result in a conflict with policy 32 of the LPD.
- 6.7. Given the above the Council are of the opinion that enforcement action must now be taken to seek a resolution to the existing breach of planning control.

## **7. Other Considerations**

### Human Rights

- 7.1. The 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.
- 7.2. 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

- 7.3. 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.
- 7.4. 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

- 7.5. 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.

## **8. Enforcement Option**

- 8.1. Although the above development has occurred without planning permission a local planning authority is required to consider Government legislation when deciding whether to take planning enforcement action. Paragraph 59 of the National Planning Policy Framework 2023 (NPPF) states that effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control.
- 8.2. Consideration has been had as to what works are required to remedy the breach. The canopy is constructed in 2 discernible sections, there is the full width monopitch part and the side projecting flat roof part. The furthest projecting flat roof section has the most impact on both residential amenity

and character of the area. When viewed from the east the monopitch element is more open does blend in better with the natural environment. However, when viewed from the west hand side the whole structure along the boundary is considered to cause issues with amenity. Enforcement action should therefore be pursued against the whole canopy structure.

- 8.3. The only other option is to do nothing. This is not considered an acceptable alternative. This would leave the canopy in its current condition and may lead to other unacceptable garden buildings being constructed in the area.

## **9. Conclusion**

- 9.1. To date, the breach of planning control remains. Given there is a clear reason to reject the unauthorised development, the commencement of enforcement action is warranted and the appropriate course of action.
- 9.2. In this case the enforcement action to be pursued is the complete removal of the existing canopy structure. 1 month to seek compliance is considered reasonable given the relatively small works required to remove the structure.
- 9.3. The service of an enforcement notice under section 172 of the Town and Country Planning Act 1990 should now be undertaken. This course of action will remedy the injury to amenity which has been caused by the breach of planning control, as required by section 173(4)(b) of The Act. The action will also uphold the appropriate planning control of the land.

## **10. Recommendation**

- 10.1. That the Head of Development and Place, in conjunction with the Head of Governance and Customer Services, be authorised to take all relevant planning enforcement action including the service of any necessary enforcement notices and issue of proceedings through the courts, if required, to ensure the removal of the unauthorised canopy.