

Report to Planning Committee

Application Number: 0087/2015

Location: 80 Church Drive, Daybrook, Nottingham

Breach of Planning Control: Construction of a timber framed and clad garden annex in the rear of the ground floor flat, ancillary use to the ground floor flat.

Site Description and Development

No. 80 Church Drive is an end of terrace two storey property that was previously a dwelling before it was converted into two independent flats, located within the built up area of Daybrook.

The ground floor flat has a separate access off Church Drive and a long narrow rear garden. There is no off-street parking, however, there is a resident parking scheme in place, and access to the rear garden is made through a right of access through a shared entry off Church Drive.

No. 80 is adjoined by another terrace dwelling at no. 78 Church Drive to the south and The Old School Business Centre to the east and north. A 1.8m high brick wall separates the Business Centre from no. 80 Church Drive.

The rear garden level is lower than that the dwelling and slopes downwards to the rear. The wooden construction ground level is approximately 1.5m lower than the Old School Business enter level. All of the other residential properties on Church Drive are terraced two storey dwellings with long and narrow rear gardens.

The structure erected in the garden is a timber framed and clad structure that is to be used occasionally by visiting relatives as an ancillary use to the ground floor flat. The building is comprised of living with kitchenette room, shower room, one bedroom and a store room. Windows are present on all elevations.

The building measures 7.78m deep x 4.47m wide x 2.4m eaves height (2.8m to ridge).

Relevant Planning History

2004/1035 – Planning permission was granted for a single storey rear extension.

2007/0353 – Planning permission was granted to convert the dwelling into two self-contained flats.

2016/0325 – Planning permission was refused for the retention of the timber framed and clad garden annex in the rear of the ground floor flat on grounds relating to the timber structure being used as an independent new dwelling; by reason of the increased level of activity and insufficient access arrangements to the annexe the development has an undue impact on the residential amenity of neighbouring residential properties, contrary to the aims of Policy EN1 of the Gedling Borough Council Replacement Local Plan (Certain Policies Saved 2014) and; the unit to the rear of 80 Church Street would be out of keeping with the pattern of development in the surrounding area contrary to the aim of Policy 10 of the Gedling Borough Council Aligned Core Strategy (September 2014).

In 2012 pre-application advice was sought from the Borough Council in relation to the erection of an ancillary curtilage building to enable support for an elderly relative. Advice was given by the Borough Council stating that, an application for an independent residential unit would unlikely to receive a favourable decision from the Borough Council.

In September 2015 an enforcement investigation was opened relating to an unauthorised development. The Borough Council advised that the development requires full planning permission for an independent residential unit. Subsequently a householder planning application was submitted and determined.

Breach of Planning Control

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- a) Carrying out development without the required planning permission; or
- b) Failing to comply with any conditions or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015 constitutes a breach of planning control against which enforcement action may be taken.

In this instance a timber structure has been erected in the rear garden of no 80 Church Drive and the property does not have the benefit of permitted development rights for such structures given it is a ground floor flat. As part of an enforcement investigation the owner was advised that planning permission would be required for the erection of the structure, that it would unlikely receive a favourable recommendation and that the structure should be removed to avoid enforcement action.

The building has been in existence for less than 4 years and it was brought to the Council's attention in September 2015..

The retention of the structure requires planning permission and retrospective planning permission, 2016/0325, to retain the structure has been refused. This aspect of the development therefore constitutes a breach of planning control.

Planning Considerations

Although the development has taken place without planning permission and is therefore unauthorised, Local Planning Authorities are required to consider the guidance contained within paragraph 207 of the National Planning Policy Framework (NPPF) which advises:

“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 suspected breaches of planning control”

A retrospective planning application was submitted in an attempt to overcome and deal with the breach of planning control that has occurred at the property.

The main planning consideration in the determination of the retrospective application was the principle of the development in the rear garden of a residential flat, the impact on the amenity of the adjoining properties and the impact on the character of the area.

At the national level the National Planning Policy Framework (NPPF) (March 2012) is relevant. At the heart of the NPPF there is a presumption in favour of sustainable development. The NPPF sees good design as a key element of sustainable development.

At the local level Gedling Borough Council, at its meeting on 10 September 2014 approved the Aligned Core Strategy (ACS) for Gedling Borough (September 2014) which is not part of the development plan for the area. The following policy is relevant: -

- Policy 10 – Design and Enhancing Local Identity

In particular development will be assessed on massing, scale and proportion; material, architectural style and detailing; impact on the amenity of nearby residents.

Appendix E of the ACS refer to Saved Policies from Adopted Local Plans. The following policy contained within the Gedling Borough Replacement Local Plan (Certain Policies Saved) 2014 is still relevant:-

- ENV1 (Development Criteria).

Policy ENV1 states: planning permission will be granted for development of a high standard of design, which does not adversely affect the area by reason of its scale, bulk, form, layout or materials and it would not have a significant adverse effect on the amenities of adjoining occupiers or the locality in general.

The applicant understood that the development would not be deemed Permitted Development prior to any enforcement action being taken. However, during pre-application discussions it was advised that the retention of the structure did not amount to permitted development given it was located within the curtilage of a property that had been converted into two self-contained flats. It would be necessary to demonstrate that the occupier of the proposed building would be dependent on some facilities in the main dwelling at 80 Church Drive, but nothing was provided with the retrospective planning application.

The dwelling at no. 80 Church Drive has been previously converted into two flats with the rear garden being used by the occupant of the ground floor flat. The building being retained is located with the rear garden and is to be used by the applicant, who does not live at the address, and would use the annex when visiting relatives that live in the area and not on the planning unit incorporating the flat at no. 80 Church Drive.

The proposal was to use the timber building as ancillary to the use of the ground floor flat, given that the occasional occupier uses this as self-contained living accommodation when visiting relatives in the area. In my opinion this is not ancillary to the residential use of the ground floor flat at no. 80 Church Drive.

In terms of accommodation the building has a bedroom, living room, kitchenette and shower room which in my opinion would amount to self-contained accommodation. Given the stated and intended purpose of the building is for occasional and non-permanent use by the applicant who does not live at the address, it is my opinion the proposal could not be considered to be ancillary to the ground floor flat and should be treated as a new independent dwelling. An independent dwelling would require private amenity area and separate parking facilities that have not been shown on the submitted plans.

The only access to the annex is through a privately rented flat. I am mindful that the property has separate access for each flat and there is access to the rear garden made through a right of access through a shared entry off Church Drive. However, this access was not included with the application and would require access over adjoining neighbour properties with the relevant notice being served.

Given that the only access to the unit would be from the ground floor flat and that the purpose of the unit is to provide ancillary accommodation to support a dependent relative at a separate address, I consider that the means of access and increased activity for an independent unit would have undue impact on

the current or future residents of no. 80 Church Drive. I also consider the use of the right of access would have an undue impact on the residential amenity of these dwellings by virtue of the increased activity. It is therefore my opinion the proposal fails to make provision for satisfactory access to the building to the detriment of residential amenity of neighbouring properties.

This side of Church Drive is characterised by terraced two-storey properties with long rear gardens, I am of the opinion the independent living accommodation in this location would not be in keeping with the scale and character of the property and the wider area.

For the reasons set out above it was considered that the proposal was not to be in accordance with Policy 10 of the Aligned Core Strategy 2014 and saved Policy ENV1 of the Gedling Borough Council Replacement Local Plan (Certain Saved Policies) and Government advice contained within the NPPF and the retrospective planning application for the retention of the timber structure was refused for the following reasons:

1. In the opinion of the Borough Council, the proposal relates to an independent new dwelling which is not ancillary to the purposes of the application site, no.80 Church Drive. There is no separate private amenity space or parking facilities to serve the development which would result in an unacceptable form of development given its location in the rear garden of no.80 Church Drive. Given that the use of the unit would be independent from no.80 Church Drive the application needs to be considered as a Full Planning Application for a new residential unit. Enforcement investigations and notifications advised that the Borough Council considered that the application should be considered as an independent dwelling; however, the agent has requested the application be considered as a householder application. In the opinion of the Borough Council the construction of this development would not result in an ancillary development to no.80 Church Drive.
2. In the opinion of the Borough Council, by reason of the increased level of activity and insufficient access arrangements to the annexe, the development has an undue impact on the residential amenity of neighbouring residential properties. The proposal would therefore be contrary to the aims of Policy ENV1 of the Gedling Borough Council Replacement Local Plan (Certain Policies Saved 2014).
3. In the opinion of the Borough Council, the new residential unit to the rear garden area of no.80 Church Drive would be out of keeping with the pattern of development in the surrounding area. The proposal would therefore be contrary to the aims of Policy 10 of the Gedling Borough Council Aligned Core Strategy (September 2014).

In my opinion now that the retrospective planning application has been refused the only route available is to proceed with and serve an Enforcement Notice with a view securing removal of the timber structure. The time period given for this to take place is two months after the notice takes effect.

The notice will also have to be served on anyone with an interest in the land such as the tenants, the owner and the bank

Recommendation:

That the Chief Executive and the Director of Organisational Development and Democratic Services be authorised to take any appropriate enforcement action including the service of relevant notices.

The Director of Organisational Development and Democratic Services be authorised to take any further legal action following the service of any relevant notices, if such legal action is appropriate.