



PLANNING COMMITTEE

Title of Report: Proposed enforcement action unauthorised fencing The Lodge, London Road, Beccles.

Meeting Date 16th August 2016

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Is the report Open or Exempt?	Open
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REPORT

1 Introduction

1.1 The site is located at a prominent location on the crossroads of London Road (A145) and St Marys Road B1062, and Peddars Lane. The site is within the conservation area and is prominent in the townscape. Land rises steeply along St Marys Road, levels increase significantly across the site from east to west. The site is currently bounded by an enclosing timber fence which in part (St Marys Road) is sited at top a red brick retaining wall. Vehicular access to the Lodge is via London Road in the sites north eastern corner.

1.2 The fence encloses a small rear and side garden area which defines the tenant’s private amenity space, the fence screens the habitable rooms of the dwelling from passing motor vehicles on this busy junction and ameliorates the ingress of fumes and noise to the dwelling.

2 Alleged Breach

2.1 Members are advised that fence erected along the highway boundary to The Lodge London Road Beccles is unauthorised development. It is considered contrary to the provisions of the General Permitted Development Order 2015 (as amended) (GPDO) whereby a fence up to 1 metre in height can be erected without the requirement for a planning application.

2.2 Members will see from the officers presentation that the site has an undulating topography, the height of the fence should be measured from the highest point of relief, when measuring from these points over the site the fence has varying heights but at no point can this fence be considered to be under 1m in height, on this basis the fence as erected is considered to be in excess of the permitted development height for fencing, and therefore requires planning permission via the submission of an application.

3 Planning Considerations

3.1 The impact of the fence in terms of local highway safety, along with the aesthetic impact the fence has in the local street-scene and views into / out of the Beccles Conservation Area are the material considerations upon which the determination of actions should be primarily based. I should also add that to a lesser extent planning case law does allow for the consideration of the personal circumstances of a property owner or tenant to be considered. These personal factors

are normally considered to carry limited weight as the development is likely to remain once those individuals have moved on.

3.2 Local plan policy: CS17 Built and Historic Environment. Development is expected to protect and conserve heritage assets, Beccles conservation area is noted in the policy, along with local distinctiveness. Local plan Policy: DM02 Design principles: development should be sympathetic to the site and its surroundings, appropriate materials should be used for the locality, this will protect relationships between buildings, spaces and the wider streetscene or townscape. Local plan policy: DM30 Protecting and enhancing the historic environment, development proposals should preserve or enhance the character and appearance of conservation area, and protect heritage assets and their settings.

4 Representations

4.1 Complaints have been made regarding the impact of the fence these have been ongoing since the first complaint was received on 20th September 2012..

4.2 An e-mail has been received on 23rd June 2016 from Peter Aldous MP in relation to the circumstances the retention of the fence under an officer's agreement with the tenant, the correspondence states that from the tenant's perspective the Council are behaving inappropriately. Peter hopes that a "sensible and pragmatic solution" can be found.

4.3 There has been numerous correspondence between officers, tenant and site owner.

5 Expediency

5.1 Officers are of the opinion that the fence is in a prominent position and is prominent in the streetscene; the locality is commonly delineated by tall brick walls, railings or evergreen hedgerows. Fences are not commonplace and few are found to be of the height of that erected on this site. The impact and harm created by the fence as erected is considered to be significant in matters of character and appearance but has no harm in terms of local highway safety. The officer's presentation will show 2 other fences. One of which is subject to ongoing negotiations and enforcement investigations.

5.2 The tenant cites initial officer investigations as giving an agreement for the fence to remain whilst she remained in the property. This is not contested; however a planning officer does not have the authority to grant planning permission for development which would otherwise require a formal planning application. The agreement to demur from taking action was given on the basis of the ill health of the tenant as at September 2012. This is indeed a reasonable stance in the short term, where members will be familiar that the Council may choose to defer action to allow for the immediate personal circumstances of an individual.

5.3 The tenant has stated that the fence is essential to allow for a secure environment for their dogs and visiting grandchildren, the fence ameliorates impacts on privacy and nuisance from noise and dust from the passing motor vehicles. Without a fence the tenants consider that the impact on their amenity would be severe and potential make their home uninhabitable.

5.4 The passage of time can give immunity from prosecution on enforcement matters, in this category the enforcement time limit is four years. The four year time limit is a matter for further investigation, however the balance of probability shows a complaint as at 20th September 2012 was lodged and that the officer's photographs show a fence in reasonable recently erected. Officers are of the view that the balance of probability is that this matter can proceed as an enforcement case should members be so minded. Opportunities have been afforded for the site owner and tenant to resolve these issues but no positive outcome has arisen from those negotiations.

5.5 The Council has considered the Human Rights of those persons who are likely to be affected by the service of this notice. The Council considers that Article 8 of the European Convention on Human Rights (respect for one's private and family life, home etc...) is not engaged in these particular circumstances. Although the fence is a means of securing the home environment the matter of the wider public interest is also a significant consideration in terms of the protection of

the Conservation area and wider townscape. In any event, case law indicates that article 8 does not operate so as to prevent planning law from ensuring that development of this kind takes place only in appropriate locations.

5.6. Similarly, Article 1 of the First Protocol to the Convention which protects a person's right to peaceful enjoyment of his possessions does not prohibit the enforcement by the authorities of laws deemed necessary to control planning development in the public interest.

5.7 Section 172 of the TCPA 1990 provides that the council may serve an enforcement notice where it appears to it that there has been a breach of planning control and that it is expedient to issue a notice having regard to the development plan and any material considerations. The NPPF states "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.

5.8 In summary, the fence has remained for some time and the Council are at risk of the fence becoming immune from action if no notice served. This in its own right is not substantive ground to serve a notice, the matter of expediency pivots on the personal circumstances of the tenant / land owner and the wider public interest. The breach has been consistently alerted to the Council, the harm arising to the conservation area and streetscene is apparent to any passer by. The fence is intrusive and does not meet the planning policy considerations outlined above, a single occupants human rights cannot be considered to be so substantive as to outweigh the wider public good., in this case officers must then weigh the balance of the wider public good as justifying a recommendation for enforcement action to remove the fence.

5.9 Proportionality is a key consideration; officers have already facilitated a significant extended stay for this unauthorised fence. It is also true to say that the short term removal of the fence would create a significant impact on the tenant of the property and potentially on any future occupier. This being the case officers recommends that a long compliance period is sought to allow for the tenant to make alternative provision for the suitable removal of the fence and means of securing the site boundaries. Officers have indicated a willingness to continue to negotiate with the tenant and land owner to seek a sensible and pragmatic solution which will serve the wider public interest and the immediate interests of the tenant / land owner.

RECOMMENDATION

That appropriate notices are prepared and served to secure the removal of the fence as erected around The Lodge, London Road, Beccles. Any enforcement notice for the removal of the fence should have a minimum compliance period of 18 months and shall seek for suitable means of securing the site boundaries so as to comply with local plan policies CS17, DM02 and DM30

Background papers:

Appendix 1: Location plan