

PLANNING COMMITTEE

17 January 2017

Title of Report:

**Proposed Enforcement Action : Unauthorised Fencing Three Rivers,
St Mary's Road, Beccles.**

Meeting Date

17th January 2016

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Is the report Open or Exempt?

Open

REPORT

1 Introduction

1.1 The site is located at a prominent location on St Marys Road B1062, close to the junction with London Road (A145) and Peddars Lane. The site is within the conservation area and is prominent in the townscape. The boundary of the site as it fronts onto St Mary's Road is demarked by an enclosing timber fence. Vehicular access to the property is taken via St Mary's Road.

1.2 The fence encloses the front garden of the property which provides private amenity space. The fence screens the habitable rooms of the dwelling from passing motor vehicles, provides a barrier between the garden and the road, preventing the owner's children from accessing the Road 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 St Mary's Road 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 obtaining planning permission from the Local Planning Authority.

2.2 The site has an undulating topography, from planning case law perspective the height of the fence should be measured from the highest point of relief. Officers have found that when measuring from these highest points of relief that 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 Negotiations

3.1 Officers met with the contravener in June 2016, having received an enforcement complaint from a member of the public.

3.2 Officers explained the breach of planning control and provided the offender with 4 options for rectifying the matter:

1. Retain the fence in its existing position and make a planning application to seek its 'lawful' (permanent) retention. Officers expressed their concerns on the appearance of the fence (as constructed and in its untreated form) and its resultant impact upon the street scene and the setting of the adjacent conservation area and that officers felt unable to support an application for the proposal as existing.
2. The offender remove the fence and plants a laurel or hornbeam hedge in its place. The offender had expressed concern over this option due to the time that it will take for the hedge to establish and the owner's immediate need to provide security and privacy for their family.
3. An application is made for the retention of the fence (in its existing position) for a temporary period (18 months) and in the meantime the owner plants a hedge (laurel or hornbeam) behind. The hedge will then form the sole means of enclosure once the fence is removed (at the end of the 18 months and in the event the application is supported). Officer's felt capable of supporting a proposal for the fence's temporary retention given that an alternative and potentially more appropriate option (the hedge) would be available at the end of this time.
4. Move the hedge back by up to 1m and plant a laurel or hornbeam hedge in front of the repositioned fence. The owner will still be required to make an application for the temporary retention of the fence (for 18 months and in its amended position. The Council's Tree Officer has confirmed that a depth of 0.75m to 1m would be sufficient to allow a laurel or hornbeam hedge to establish. Officers would be willing to support an application for the hedge as described above

3.3 Officers received no further correspondence from the owner, albeit works have since taken place to improve the appearance of the fence including its staining.

3.4 It is essential that this case is considered upon the basis of the impact on matters of public safety or amenity. Only where an overwhelmingly harmful impact on these interests is clearly demonstrated can planning enforcement action be justified. It is the harm those matters of public interest that officers have considered in this enforcement report and that members are requested to conclude on.

4 Planning Considerations

4.1 The impact of the fence in terms of local highway safety, along with the aesthetic impact of the fence on the local street-scene and views into / out of the Beccles Conservation Area are the material considerations. Officers advise that to a limited 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 very limited weight as the development is likely to remain once those individuals have moved on.

4.2 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.

5 Representations

The owner of the property and the original complainant has been informed of officer's recommendation and Members will be updated on the representations received at the Committee Meeting.

6 Related Case

6.1 Members may recall that officers reported an enforcement matter in September 2016 on the matter of an unauthorised fence at the property immediately adjacent to this site.

6.2 Officers considered that on this occasion the fence as erected required planning permission and that there was a case for an unacceptably harmful impact being created on matters of public amenity (principally visual amenity and context within the conservation area).

6.3 Members considered this case on its merit and determined that the planning balance was not so significantly negative so as mitigate enforcement action. The proposed enforcement action was then demurred. The fence has subsequently become immune from action by the passage of a four year period since erection of the structure.

7 Expediency

7.1 Officers are of the opinion that the fence is in a prominent position. Whilst the locality is commonly delineated by tall brick walls, railings or evergreen hedgerows the fence is viewed alongside The Lodge on the Corner of St Mary's and London Road which is delineated by a fence of similar form and height. Members will recall that that fence was subject to a separate enforcement case and officers resolved to demur from taking formal enforcement action in that instance (see section 5 above).

7.2 The fence has been stained to match the appearance of the adjacent fence and to 'dull' the appearance of the newly cut panels. The impact and harm created by the fence as treated is not considered to be so significant as to give rise to a substantial harm to the character and appearance of the Conservation Area. There is no harm to local highway safety, the fence is set in a location significantly above the carriageway and does not interfere with either pedestrian or vehicular safety.

7.3 The owner has stated that the fence is essential to provide a secure environment for their children. The fence ameliorates impacts on privacy and nuisance from noise and dust from the passing motor vehicles. Without a fence (of a lesser height) the owner considers that the impact on their amenity and child safety would be severe.

7.4 The passage of time can give immunity from prosecution on enforcement matters, in this category the enforcement time limit is four years. There is no evidence of the fence having been in place for four years and as such it is not immune from enforcement action.

7.5 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.

7.6 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.

7.7 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.

7.8 In this particular instance officers do not consider the proposed development to result in substantial harm to the character and appearance of the conservation area nor to be of inappropriate design. The fence whilst in breach of planning control broadly meets the planning policy considerations outlined above; on balance there is insufficient justification on matters of public interest for officers to recommend enforcement action to remove the fence.

7.9 The planning balance as considered in this report leads officers to recommend that Members demur from taking formal enforcement action in this instance, officers note that removal of the fence may have potentially severe impacts on the amenity and safety of the dwelling's occupiers; furthermore that the harm resulting from the construction of the fence in highway safety, visual impact and heritage terms is not so significant as to merit enforcement action to remove the structure.

RECOMMENDATION

That Members demur from taking formal enforcement action.

Background papers:

Appendix 1: Location plan