

WEST OXFORDSHIRE DISTRICT COUNCIL
LOWLANDS AREA PLANNING SUB-COMMITTEE
MONDAY 10 FEBRUARY 2020
UNAUTHORISED OPERATIONAL DEVELOPMENT
106 RALEGH CRESCENT WITNEY OX28 5FY
18/00089/PENF

REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING

(Contact: Kelly Murray Tel: (01993) 861674)

(The Sub-Committee's decision on this matter will be a resolution.)

1. PURPOSE

To enable Members to consider whether it is expedient to authorise the issue of an enforcement notice.

2. RECOMMENDATIONS

Issue an enforcement notice to require:-

- (i) the removal of a fence; and
- (ii) the reinstatement of land within the contravener's ownership appropriated as garden but designated under the enabling consent as landscaped amenity area.

3. BACKGROUND

- 3.1 In May 2018 the Council received complaints about the erection of a boundary fence at this property, which is situated within an estate forming part of the wider Deerpark development off the Curbridge Road to the West of Witney town centre.
- 3.2 The original enabling permission under which the estate was built removed permitted development rights for the erection of fences. It also designated as amenity land the land that has been fenced off as part of the owner's garden (this land does fall within her ownership).
- 3.3 Enforcement officers contacted the owner and informed her that there had been a breach of planning control. The owner was, and continues to be, reluctant to remove the fence. On 7 December the owner submitted a retrospective application for the retention of the fence and for a change of use of the amenity land to domestic garden.
- 3.4 The planning application (18/03550/FUL) was refused on 13 March 2019. The reasons given were that the broad expanse of close-boarded fencing in an open estate location is considered to have an extremely harmful effect on the visual amenity of the surrounding area and is a stark and urbanising contrast to the designated landscaped area of mature trees and bushes that were removed before its

erection. The fence is not considered to be in keeping with other boundary treatments on the estate which comprise low walls and hedges. To allow the fence to remain in place would set a precedent for further such harmful development to the detriment of the amenity enjoyed by other occupiers of the estate. Officers consider the development to be contrary to policies OS2, OS4 and EH4 of the adopted Local Plan 2031 and relevant paragraphs of the NPPF.

- 3.5 An appeal was lodged on 29 May 2019 which was dismissed on 10 October 2019 (appeal decision attached). Part of the Inspector's findings was as follows:-

"With the interface between public and private land predominantly having a verdant appearance, the appeal fence has an abrupt presence abutting the pavement. In doing so, it appears as an unacceptably blunt and incongruous feature in the street that is out of kilter with the prevailing pattern of landscaping and boundary treatment in the area.

7. The appellant considers that the new fence has improved the visual amenity of the area, whilst further planting of climbing species and painting or staining it in a colour to match surrounding materials, would soften its appearance and ensure it blends into the area. However, the visual appearance of the fence and modest improvements proposed would not overcome the loss of a larger area of landscaping at a prominent location that made a valuable contribution to the public realm. The fact that the trees had become overgrown is not a reasonable justification to remove them, as general maintenance would control overgrowing.

8. It is also stated that the amenity land now enclosed by the fence, served no useful purpose. However, its contribution had allowed for the assemblage of trees and shrubs that formed an important part of the estate's inherent design and layout, and I consider that the appeal fence and enclosed land has a harmful effect on the character and appearance of the area."

4. NEXT STEPS

- 4.1 Following the decision Officers have met with the owner with the purpose of trying to agree a way forward in terms of removing the fence and replanting the amenity land. The owner has not to date accepted that she must remedy the harm confirmed by the Planning Inspector and has not adhered to a timetable for addressing the breach. In light of the harm, Officers consider there is little choice but to serve an enforcement notice.

5. ENFORCEMENT ACTION AND HUMAN RIGHTS

- 5.1 The Council has the power to issue an enforcement notice where it appears: first, that there has been a breach of planning control and secondly, that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The Council must also have regard to relevant guidance, including the NPPF which sets out at paragraph 58:-

“Effective enforcement is important to maintain 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.”

- 5.2. The recommended enforcement action would require the owner to remove the fence and to reinstate planting to the amenity area. This potentially engages provisions of the European Convention on Human Rights.
- 5.3 Article 1 of the First Protocol to the European Convention on Human Rights provides for the peaceful enjoyment of possessions. This right applies also to legal persons, including companies. It is, however, a qualified right and the Courts recognise that it has to be balanced against the need to enforce laws controlling the use of property in accordance with the general public interest. In this case Officers consider – and the appeal inspector agreed – that there is harm to the character and appearance of the area. In view of this, the balance of interest lies in the need to ensure removal of the fence and the reinstatement of the amenity area. Having regard to government guidance and the principle of proportionality, enforcement action is required and is an expedient and a proportionate response to the harm identified in this report.

Accordingly, the options for next steps are as follows:-

Take no further action

- 5.4 In light of the points noted above, Officers consider the development to be harmful. In view of this, taking no further action is not a recommended option.

Issue an enforcement notice to secure the removal of the fence and the re-planting of the previously landscaped area

- 5.5 The owner has shown reluctance to remove the fence, stating that she considers it to be an improvement on what was there before and also due to the cost of purchasing the fence and having it erected. She does not appear to accept the outcome of her appeal. Since the fence has now been in place for some time it is considered that enforcement action is necessary to secure its removal and the reinstatement of the amenity land.

6. ALTERNATIVES / OPTIONS

Take no further action- see above.

7 RISK

None at this stage.

8. FINANCIAL IMPLICATIONS

None at this stage.

9. REASONS

See paragraph 3.4. 5.4 and 5.5 above.