

Planning Enforcement Report for 0202/2019



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Report to Planning Committee

Reference Number: 0202/2019

Location: 84 Sandford Road, Mapperley

Breach of Planning Control: Unauthorised fence and boundary treatment

1 Background

- 1.1 The property No. 84 Sandford Road, consists of a detached dwelling which is set back from the road and which has a private drive to the east of the dwelling leading from Sandford Road.
- 1.2 In September 2019, it was brought to the Council's attention that a new boundary treatment had been constructed along the front boundary of the garden of the property.
- 1.3 The boundary treatment consists of wooden fence panels with a kickboard and concrete posts of a height of approximately 1.8m, which projects along most of the site's front boundary. There are two gaps in the fence for vehicular and pedestrian access.
- 1.4 Part of the original front boundary, which consists of a low brick wall with a hedgerow behind, has been retained. The new fence along with the retained front boundary treatment acts as a screen across the width of the property on its road frontage.
- 1.5 Any fence or boundary treatment constructed adjacent to the highway which is over 1m in height requires planning permission. In October 2019, the owners of the property submitted a planning application reference 2019/0955 to retain the fence but the application was refused permission on the 20th December 2019. A subsequent appeal against the Council's decision was also dismissed on the 15th June 2020.
- 1.6 The fence remains in place.

2 Site Description

- 2.1 No. 84 Sandford Road, is positioned in the middle of a popular residential area with various boundary treatments to different properties. Although some

properties within the street scene are fenced along their front boundaries, these tend to be lower, shorter or are tempered with vegetation.

3 Planning History

- 3.1 2019/0955 - Removal of fence and hedgerow at front of property facing highway and replaced with fence and kickboard 1.8m tall (retrospective) – Refused 20th December 2019
Appeal dismissed 15th June 2020.

4 Assessment

- 4.1 The development has a prominent position within the street scene and the development visually dominates the site and creates a non-active street frontage.
- 4.2 Although the development has occurred without planning permission and is therefore unauthorised, local planning authorities are required to consider government guidance when deciding whether to take planning enforcement action. Government guidance is found in the National Planning Policy Framework (NPPF) (Paragraph 58) and states that although effective enforcement is important as a means of maintaining public confidence in the planning system, ultimately enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control.
- 4.3 The main considerations when deciding whether to take enforcement action in this case are;
- i) Design and visual amenity
 - ii) Residential amenity
 - iii) Highway safety.

Planning policy considerations

- 4.4 The NPPF (February 2019) is relevant. At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF seeks good design as a key element of sustainable development and it seeks a high standard of amenity for existing and future users of land and buildings.

4.5 Gedling Borough Council Aligned Core Strategy 2014;

Policy 10 – Design and Enhancing Local Identity states that development will be assessed in terms of its “structure, texture and grain including street patterns, plot sizes orientation and positioning of buildings and the layout of space.”

4.6 Local Planning Document

Policy LPD 32 – Amenity states “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.

- 4.7 LPD 35 – Safe, Accessible and Inclusive Development states that proposals for development should enable active frontages to the public realm and natural surveillance over all publicly accessible spaces.
- 4.8 LPD 61 – Highway Safety states “Planning permission will be granted for development proposals which do not have a detrimental effect on highway safety, patterns of movement and the access needs of all people.”
- 4.9 The development is not considered to be in keeping with other front boundary treatments in the neighbourhood. Other examples of tall boundary treatments in the locality are hedgerows which do not require planning permission or are located on corner plots which screen rear amenity space.
- 4.10 The Inspector in the appeal found “the fence has a hard appearance, mainly due to its materials, which are in contrast with the open and verdant character of the street scene... the development appears as an incongruous addition which harmfully affects the character and appearance of the street scene”.
- 4.11 It is considered the fence is in conflict with the aims of the NPPF, Policy 10 of the Aligned Core Strategy and Policy 32, Policy 35 and Policy 61 of the Local Planning Document.

Time Limits

- 4.12 The statutory time limit for taking action for unauthorised development is four years. In this case the evidence available to the Council strongly suggests the unauthorised fence has been in position for less than four years and so the Council is within the legislative time limit to commence enforcement proceedings such as issuing an enforcement notice requiring the boundary treatment to be removed or alternatively reduced in height to no more than 1m as allowed by the General Permitted Development Order 2015.

Human Rights

- 4.13 Under the Human Rights Act, it is necessary for the Council to have regard to the rights of the owner and occupier of a site under Article 1 of the First Protocol to peaceful enjoyment of possessions and the protection of property and under Article 8 of the convention to respect for his private and family life, his home and his 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.
- 4.14 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 a notice in the first instance would be a proportionate response to rectifying the breach of planning control taking place and depending on compliance with the notice it might well be justified to take court action.

Equalities

- 4.13 The Council's Planning Enforcement team operates in accordance with the Council's Planning 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.
- 4.14 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 regularisation and/or attempts to encourage compliance have failed as in this case.

Crime and disorder

- 4.15 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.
- 4.16 In light of all the facts it is now considered expedient to serve an enforcement notice to require the removal or the reduction in the height of the unauthorised fence to no more than 1 metre so that it complies with the General Permitted Development Order 2015.

5 Conclusion

- 5.1 A breach of planning control has been identified. Through a combination of its siting, height and materials, the development has resulted in significant harm to the character and appearance of the street scene.

- 5.2 The breach therefore conflicts with both national and local policies. The failure of the Council to act in these circumstances may set a precedent for other poor development and which is detrimental to the amenity of the area.
- 5.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the front boundary treatment at No. 84 Sandford Road to be removed or alternatively reduced to a height not exceeding 1metre in line with Schedule 2; Part 2; Class A of the General Permitted Development Order 2015.

6 Recommendation

- 6.1 **That the Assistant Director - Planning and Regeneration, be authorised to take all enforcement action including the service of any necessary enforcement notices and in conjunction with the Director of Organisational Development & Democratic Services, proceedings through the courts if required to ensure the unauthorised fence is removed or alternatively reduced in size to no more than 1m in height.**