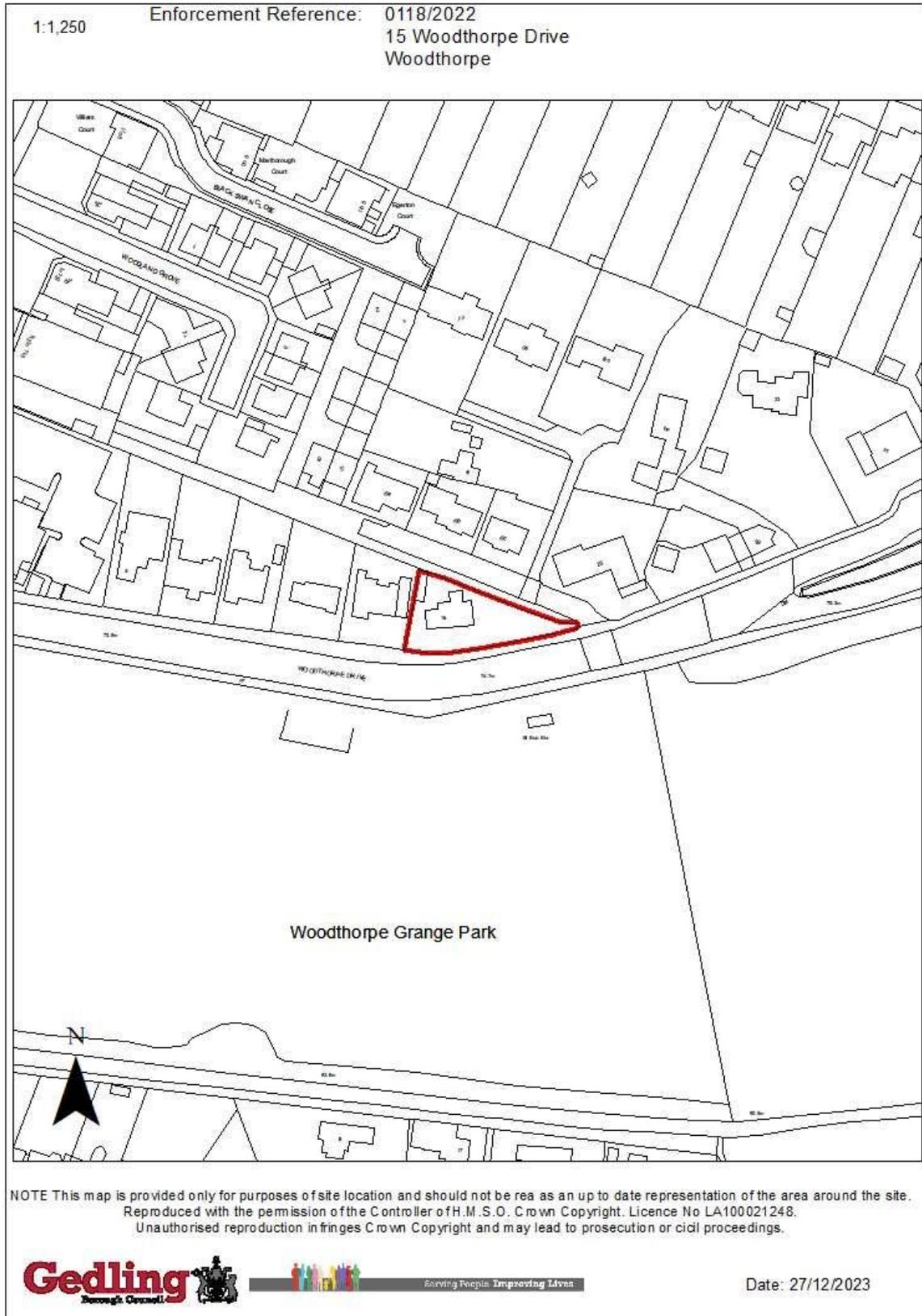




Planning Enforcement Report for 0118/2022



Report to Planning Committee

Reference Number: 0118/202

Location: 15 Woodthorpe Drive, Woodthorpe

Breach of Planning

Control: Fencing

1. The Breach of Planning Control

1.1. The construction of 2.25m high wooden fencing adjacent the highway.

2. Site Description

2.1. 15 Woodthorpe Drive is a residential property located on a main arterial route through the borough. The property fronts Woodthorpe Drive to the south but has a wedged shaped garden area located to the east side of the dwellinghouse. This side amenity area is the main garden to the property. To the north of the property is a vehicle access drive to other residential properties.

2.2. The unauthorised fence has been constructed to enclose the properties side garden. The new fence is approximately 25m in length and features 14, 2m high solid wooden panels sitting on a concrete kickboard with associated concrete posts. The new fence is located immediately to the rear of the highway boundary. The fencing returns into the property at the west end to divide the garden area from the front driveway. At the eastern end, the garden narrows to a point and new fencing then returns along the access road to the north.

2.3. Immediately to the front of the dwelling there is the original boundary treatment to the property, which was a low wall with hedge planting. A similar boundary treatment was removed to facilitate the construction of the new unauthorised boundary fencing.

3. Relevant Planning History

3.1. 2023/0169 – Planning Application – **Refused**
Retention of fence

4. Planning Legislation and Policy

- 4.1. The Town and Country Planning Act 1990
Town and Country Planning (General Permitted Development) Order 2015

Policy Considerations

- 4.2. The following policies are relevant to the assessment of this case:

National Planning Policy Framework

- 4.3. Part 12 – Achieving well-designed places.

Aligned Core Strategy

- 4.4. At a local level, Gedling Borough Council at its meeting on 10th September 2014 adopted the Aligned Core Strategy (ACS) for Gedling Borough (September 2014) which is now part of the development plan for the area. The adopted ACS forms Part 1 of the new Local Plan for Gedling Borough. It is considered that the following policy of the ACS is relevant:

- ACS Policy 10: (Design and Enhancing Local Identity) sets out the criteria that development will need to meet with respect to design considerations.

Local Planning Document

- 4.5. In July 2018 Gedling Borough Council adopted the Local Planning Document (LPD). The following LPD policies are relevant to this breach of planning control:

- LPD 32 (Amenity) states that 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.
- LPD 43 (Extensions to Dwellings) seeks to ensure that the appearance of development is in keeping with surrounding character in terms of height, built form and general design.
- LPD 61 (Highway Safety) states that planning permission will be granted for developments that do not have a detrimental impact upon highway safety, patterns of movement and access needs.

5. Investigation

- 5.1. The unauthorised boundary treatment occupies a prominent location on Woodthorpe Drive, where the dominant character of highway fronting boundaries is that of low-level walls. Many of the low walls are topped with hedges of differing heights, but generally the boundary treatments in this immediate area have an open character.

- 5.2. The fence was subject to a planning application (2023/0169) which was refused by the Council on the 27th July 2023. The timber fencing was considered to be an incongruous addition along the northern side of Woodthorpe Drive due to the fences height and its appearance which is uncharacteristic of the immediate setting.
- 5.3. There were no highway concerns raised as part of the determination of the planning application. The access arrangements have not been altered by the new fence. Neither was the fencing considered to impact upon the residential amenity of any neighbouring residential property. The fencing accorded with the policies LPD 61 (Highway Safety) and LPD 32 (Amenity) of the Gedling Borough Local Planning Document 2018 (LPD).
- 5.4. The fence was then subject to an appeal. The Planning Inspectorate dismissed the appeal on the 18th October 2023. The Planning Inspector agreed with the Council. The Inspector felt that the fencing had a “bleak and inhospitable look, with a dominant appearance which prevented it from fitting in comfortably with the general character of the area”. The Inspector concluded that “the street scene was significantly and adversely affected by the excessive height of the fence and its considerable length of uninterrupted solidity”.
- 5.5. Subsequently to the appeal decision the landowners have been in communication with the Council regarding potential alternative designs for the fencing. The landowner has suggested that alternative panels could be replaced and set back with trees planted along the highway boundary to break up the appearance of the fence. The Council still has concerns that this arrangement won't break up the overall height of the fence, which will still appear as a prominent high boundary treatment.
- 5.6. The fence had been constructed to replace high boundary hedge that had been damaged, in parts by a car that crashed through. The existing fence now forms the only boundary treatment to the properties main garden area. Whilst sympathetic to the loss of the hedge and the resultant impact on the resident's enjoyment of their private amenity space, the Council has to consider the wider impact of the fence due to its location and prominent position within the street scene.

6. Assessment

- 6.1. The main consideration when deciding whether to take enforcement action in this case is the impact of the fence on the character of the area.
- 6.2. Paragraph 131 of the National Planning Policy Framework 2023 (NPPF) identifies that good design is a key aspect of sustainable development, creates better places in which to live and work. Paragraph 139 identifies that development that is not well designed should be refused.
- 6.3. Policy 10 of the Greater Nottingham Aligned Core Strategies Local Plan 2014 (ACS) states that development should be designed to make a positive contribution to public realm and sense of place. Policy LPD 43 of the Gedling

Borough Local Planning Document 2018 (LPD) identifies that development should only be permitted where the appearance is in keeping with the surrounding character in terms of height, built form and general design.

- 6.4. The unauthorised 2.25m high fencing is considered to be an unacceptable boundary treatment. The fence creates a harsh tall boundary feature in a prominent position. The fencing and sense of enclosure created is visually at odds with the established form and appearance of boundary treatments in the locality which is characterised by open low-level walls. As a result, the fence does not make a positive contribution to the areas public realm and sense of place as required by the Aligned Core Strategy (ACS).
- 6.5. The fencing is considered to have a detrimental impact on the character and appearance of the site and wider street scene by virtue of its height, location, design and choice of materials. As such, the fence is contrary to policy 10 of the ACS, policy 43 of the LPD and the provisions of Part 12 of the NPPF.
- 6.6. Given the above the Council are of the opinion that enforcement action must now be taken to seek a resolution to the existing breach of planning control.

7. Other Considerations

Human Rights

- 7.1. The Under the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a right under the European Convention on Human Rights (the Convention). In this instance under Article 1 of the First Protocol of the Convention: Protection of Property, every person is entitled to the peaceful enjoyment of their possessions except in the public interest and subject to conditions provided for by law. Furthermore under Article 8 of the Convention all individuals enjoy the right to respect for their private and family life, their home and their 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.
- 7.2. 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 an enforcement notice and pursuing Court action if the enforcement notice is not complied with, would be a proportionate response to the breach of planning control.

Equalities

- 7.3. The Council's Planning Enforcement team operates in accordance with the Council's 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.

- 7.4. 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 attempts to encourage compliance have failed as in this case.

Crime and disorder

- 7.5. 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.

8. Enforcement Option

- 8.1. Although the above development has occurred without planning permission a local planning authority is required to consider Government legislation when deciding whether to take planning enforcement action. Paragraph 59 of the National Planning Policy Framework 2023 (NPPF) states that 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 breaches of planning control.
- 8.2. Other than pursuing enforcement action that only other option is to do nothing. This is not considered an acceptable alternative. This would leave the fence in its current condition and may lead to other fences of a similar design being constructed in the area.

9. Conclusion

- 9.1. To date, the breach of planning control remains. Given there is a clear reason to reject the unauthorised development, the commencement of enforcement action is warranted and the appropriate course of action.

- 9.2. In this case the enforcement action to be pursued is the removal or lowering to 1m in height, of any fencing that is located within 2m of the highway boundary.
- 9.3. The service of an enforcement notice under section 172 of the Town and Country Planning Act 1990 should now be undertaken. This course of action will remedy the injury to amenity which has been caused by the breach of planning control, as required by section 173(4)(b) of The Act. The action will also uphold the appropriate planning control of the land.

10. Recommendation

- 10.1. **That the Head of Development and Place, in conjunction with the Head of Governance and Customer Services, be authorised to take all relevant planning enforcement action including the service of any necessary enforcement notices and issue of proceedings through the courts, if required, to ensure the removal or reduction in the height of the fence.**