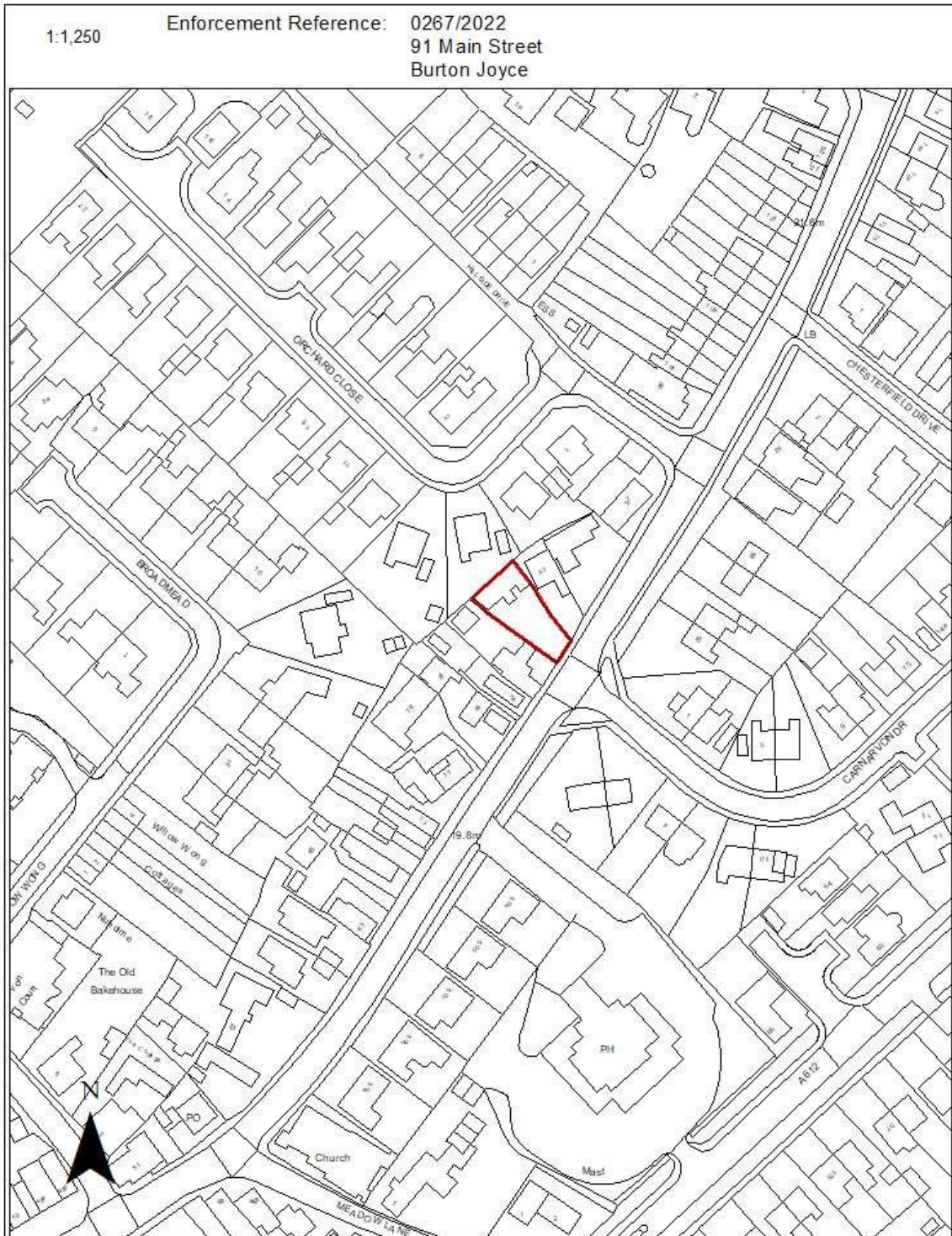




Planning Enforcement Report for 0267/2022



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Report to Planning Committee

Reference Number: 0267/2022

Location: 91 Main Street, Burton Joyce

Breaches of Planning Control: Unauthorised Gates and Fencing.

1. The Breach of Planning Control

- 1.1. The construction of 2m high wooden gates and fencing adjacent the highway.

2. Site Description

- 2.1. 91 Main Street is a residential property located opposite the junction with Carnarvon Drive. The site comprises a detached, two-storey dwelling that is set back from the highway. The private amenity space for the property is all located forward of the building line and the dwelling has no rear garden area.
- 2.2. The unauthorised gates and fencing have been constructed to enclose the front garden. The new wooden boundary incorporates a set of double gates for vehicle access, a single pedestrian gate and 3 sets of solid close boarded fencing. The fencing only runs along the highway boundary and does not return into the garden area.
- 2.3. The front boundary treatments in this area of Main Street are predominantly low in height, of various types, including metal railings, hedging, stone walls and wooden fencing. In this immediate locality the fencing subject to this report is the only high boundary treatment.

3. Relevant Planning History

- 3.1. 2023/0275 – *'Driveway gates and side gate to front garden (retrospective)'* – **Refused** permission on the 2nd June 2023. An appeal (ref: APP/N3020/D/23/3328184) against the refusal was dismissed and the decision of the Council upheld.

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 the appearance of new development is in keeping with surrounding character in terms of height, built form and general design and will not cause a significant adverse impact on the amenity of nearby occupiers.
- 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.

Neighbourhood Plan Document

4.6. The Burton Joyce Neighbourhood Plan (2017-2028). The following policy is relevant to this breach of planning control.

- Policy NP3 (Design Principles for Residential Development) states that development should demonstrate a high design quality and be of a scale and massing that should reinforce existing character

5. Investigation

- 5.1. The unauthorised boundary treatment occupies a prominent location on one of the main routes through the village, where the dominant character of the boundaries that front the highway are low level. The predominance of low-level boundary features creates the open character to the streetscene.
- 5.2. Prior to the construction of the 2m high wooden boundary treatment the property used to have a low-level white picket fence with low level wooden vehicle access gates.
- 5.3. The new unauthorised gates and fencing were subject to a planning application (2023/0275) which was refused by the Council on the 2nd June 2023. The boundary treatment was considered to be of an unacceptable scale and design, which had a significantly detrimental impact on the character and appearance of both the existing dwelling and the street scene.
- 5.4. 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 boundary as a vehicle access point was previously in existence. Neither was the new boundary 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).
- 5.5. The current boundary treatment was then subject to an appeal. The Planning Inspectorate dismissed the appeal on the 2nd February 2024. The Planning Inspector agreed with the Council. The Inspector felt that the gates and fencing “present an unrelentingly hard sense of enclosure at the back of pavement.” The Inspector concluded that “given the low and unobtrusive treatments to neighbouring properties at Nos. 83, 89 and 93, what has been erected stands in significant contrast as a detractor to the streetscene in a part of Main Street that incorporates a distinctive and characterful group of traditional buildings.”
- 5.6. Subsequent to the appeal decision the landowner has been in communication with the Council regarding potential alternative designs for the boundary treatment. The landowner did suggest reducing the height of the fence panels only, whilst leaving the gates. The Council still has concerns that this arrangement won't break up the overall height of the boundary feature, which will still appear as a prominent high boundary treatment.
- 5.7. The Council did suggest moving the fencing back so that it is level with the side gable to the neighbouring house (89 Main Street). That would mean moving the fence back approximately 6m from the highway, the fence would need extending in width so that it spans the whole garden. This would allow the car parking provision to be maintained and would provide the private amenity area that the resident was seeking. However, this option was rejected by the landowner.
- 5.8. The existing gates and fence are the only boundary treatment to the properties main garden area. Whilst sympathetic to the requirement to have some private amenity, the Council has to consider the wider impact of the

gates and fencing due to its location and prominent position within the street scene.

6. Assessment

- 6.1. The main considerations when deciding whether to take enforcement action in this case are the impact of the gates and fencing 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. Neighbourhood Plan policy NP3 requires development to demonstrate a high design quality.
- 6.4. The unauthorised high gates and fencing are considered to be an unacceptable boundary treatment. The gates and fencing create a harsh tall boundary feature in a prominent position. The development 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 boundary features. As a result, the gates and fencing do 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 gates and fencing are considered to have a detrimental impact on the character and appearance of the site and wider street scene by virtue of its height, location, and design. As such, the gates and fencing are contrary to policy 10 of the ACS, policy 43 of the LPD, policy NP3 of the Neighbourhood Plan 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. 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, the only other option is to do nothing. This is not considered an acceptable alternative. This would leave the gates and fencing in its current condition and may lead to other gates or fences of similar design being constructed in the area.

9. Conclusion

- 9.1. To date, the breach of planning control remains. A planning application has been refused, as well as an appeal dismissed, 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 gate or fencing that is located within 2m of the highway boundary. 1 month to seek compliance is considered reasonable given the works required to remove or reduce the gates and fencing.
- 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 height of the gates and fencing.**