

Report to Planning Committee

Enforcement Reference: 0055/2015

Location: 4 Derry Drive, Arnold, Nottinghamshire.

Breach of Planning Control: Erection of unauthorised fence above 1 metre in height adjacent to a public highway.

Site Description

No.4 Derry Drive is a two-storey semi-detached residential dwelling. The rear boundary of the property backs onto Churchmoor Lane. At this point Churchmoor Lane is registered on the County Council rights of way records as Public Footpath No.11 Arnold. The trees to the rear boundary are protected by Group TPO G23. The Poplar Trees to the rear of the property have been removed and replaced with a 2 metre high close-boarded panelled fence.

Relevant History

In March 1996 the owner of no.4 Derry Drive was advised by the Borough Council's Arboricultural Officer that the Poplar Trees situated at the rear of the property were potentially hazardous due to numerous crown and root defects. Given the failure of part/all of the trees the owner was advised to remove or pollard the trees immediately. These works were undertaken at the expense of the landowner. Following the removal of the trees a fence has been erected.

The matter of the erection of a fence to the rear boundary of 4 Derry Drive was raised with the County Council in 2015 and action was sought by the County to remove the fence as it was considered, at this time, that the development encroached on to the public highway.

In June 2015 the owner of the site was contacted by Nottinghamshire County Council – Rights of Way Officer following enquiries with the Land Registry. The outcome was that; in the County Council's capacity as the Rights of Way office it was confirmed to the land owner that the fence does not encroach upon the highway as a sufficient 2.7 metre public right of way width had been retained.

Breach of Planning Control

An enforcement investigation was opened (ref: 0014/2015) regarding the erection of a fence and felling of trees.

A site investigation was carried out in October 2015 which concluded that poplar

trees and other vegetation had been removed and a 2 metre high fence was erected in their place.

Planning Permission is required as the height of the fence exceeds 1 metre and is adjacent to the highway. The development therefore does not benefit from 'permitted development' rights under Class A of Part 2 (Minor operations) to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

The council has written to the owners advising that retrospective planning permission is required. No application has been received and correspondence from the Land Registry, the Borough Council and County Council have been submitted in support of the development.

Planning Considerations

Although 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 in the National Planning Policy Framework (NPPF) (paragraph 207), published on 27 March 2012, states that although effective planning 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 suspected breaches of planning control.

The main issues involved with this matter are whether the proposed development would have a material impact on the character and appearance of the site, whether there would be any undue harm on the public right of way and whether there is any undue impact on the amenity of the neighbouring properties. It is noted that the protected trees on the rear boundary were removed by the land owner at their own expense on the advice of the Borough Council's Arboricultural Officer without the requirement to obtain Tree Preservation Consent. The trees were considered dead / deceased, or dying.

In my opinion the fence is visually acceptable and does not result in a significant impact on neighbouring residential amenity. I also consider that a 2 metre high, close boarded panelled fence is a common form of rear boundary treatment. I also consider that the development is visually acceptable.

In relation to the public right of way I note that sufficient width of footpath has been retained and that the Rights of Way Officer raises no highway safety implications as a result of the development.

Should an application have been submitted to retain the structure it is highly likely that a favourable recommendation would have been made and planning permission would have been granted.

The Planning Practise Guidance advises that enforcement action should be proportionate to the breach of planning control. Local planning authorities should usually avoid taking formal enforcement action where the development is acceptable

on its planning merits and formal enforcement action would solely be to regularise the development.

In light of the Borough Council's requirement of the land owner to remove the protected trees at their own expense, and taking into account the above it is therefore my opinion that no further action should be taken in relation to this matter. This opinion has been formed on an assessment of the impact of the development on the amenity of the area, highway safety, and neighbouring properties.

Recommendation:

To authorise the Corporate Director to close the enforcement investigation without taking enforcement action in relation to the Town and Country Planning Act 1990.