



PLANNING COMMITTEE

26th June 2014

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

79 Daisybank Crescent, Walsall, WS5 3BH.

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of the erection of fencing adjacent to the highway and creation of hard surfaced driveway.

2.0 RECOMMENDATION

- 2.1 **That authority is granted for the Head of Planning and Building Control to issue an Enforcement Notice** under the Town and Country Planning Act 1990 (as amended), to require remedial actions to be undertaken as shown below in 2.3.
- 2.2 **To authorise the Head of Planning and Building Control to institute prosecution proceedings** in the event of non-compliance with an Enforcement Notice or the non-return of Requisitions for Information or a Planning Contravention Notice; and the decision as to the institution of Injunctive proceedings in the event of a continuing breach of planning control.
- 2.3 To authorise the Head of Planning and Building Control, to amend, add to, or delete from the wording set out below stating the nature of the breaches the reasons for taking enforcement action, the requirements of the Notice, or the boundaries of the site, **in the interests of ensuring the accurate and up to date notices are served.**

Details of the Enforcement Notice

The Breach of Planning Control:-

Without the required planning permission the erection of fencing above 1 metre in height directly adjacent to the highway and creation of hard surfaced driveway over 5m² which have not been shown to be in conformity with permitted development rules.

Steps required to remedy the breach:-

1. Reduce the height of fencing and concrete supporting posts directly adjacent to the highway to a height of no more than 1 metre. Remove one fence panel and concrete supporting post nearest to the highway on the boundary with No.77 Daisybank Crescent ensuring no part of the continuing fencing is

above 1 metre within 2 metres of the highway or more than 2 metres in height elsewhere.

2. Submit a retrospective planning application to retain the driveway at its current size showing how surface water run-off will be directed to an area to be drained within the curtilage of the house. Should an application not be received by the Council within the periods of compliance set out below the driveway must be reduced to no more than 5m² ensuring surface water run-off is directed to an area to be drained within the curtilage of the house.

Period for compliance:-

1. One month for the reduced fencing.
2. One month to submit an application for the retention of the driveway, if no planning application is submitted and approved, within two months of the notice taking effect, or one month of the decision to refuse any planning application for the driveway reduce the size of the driveway to no more than 5m².

Reason for taking Enforcement Action:-

The erection of the fencing over 1 metre high is an unduly dominant and incongruous form of development being out of character with its surroundings due to the height and design of the development directly adjacent to the highway within the street scene. The fencing is contrary to the aims and objectives of Walsall Unitary Development Plan policies GP2, 3.6 and ENV32 of Walsall Unitary Development Plan; policy ENV3 of the Black Country Core Strategy; policy DW3 of Supplementary Planning Document Designing Walsall and the National Planning Policy Framework.

In addition there are highways visibility issues surrounding the entering and exiting of No.77 Daisybank Crescent in relation to the current height and position of the fencing contrary to policy T13 of Walsall Unitary Development Plan.

The creation of a hard surfaced driveway over 5m² is not within current permitted development allowances and no information has been provided showing how surface water run-off would be directed to an area to be drained within the curtilage of the house contrary to the objectives of Paragraph 109 of the National Planning Policy Framework.

3.0 FINANCIAL IMPLICATIONS

An appeal against an enforcement notice could be subject to an application for a full or partial award of the appellant's costs in making an appeal if it was considered that the Council had acted unreasonably.

4.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

National Planning Policy Framework (NPPF)

The NPPF sets out the Government's position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development,

in economic, social and environmental terms, and it emphasises a “*presumption in favour of sustainable development*”.

All the **core planning principles** have been reviewed and those relevant in this case are:

- Seek to secure high quality design and good standards of amenity for all existing and future occupants
- Take account of the different roles and character of different areas

Key provisions of the NPPF relevant in this case:

32 All development should have safe and suitable access to the site for all people. Development should only be refused on transport grounds where the residual cumulative impacts of development are severe.

7: Requiring Good Design

58. Developments should function well and add to the overall quality of the area.

60. It is proper to seek to promote or reinforce local distinctiveness.

64. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

11: Conserving and enhancing the natural environment

On **planning conditions** the NPPF says:

Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

On **decision-taking** the NPPF sets out the view that local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development and look for solutions rather than problems and work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

The Development Plan

Planning law requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions but recognises that what it terms ‘Local Plan’ policies should not be considered out-of-date simply because they were adopted prior to the publication of the framework.

The Black Country Core Strategy (BCCS)

http://www.walsall.gov.uk/index/environment/planning/local_development_framework/ldf_core_strategy.htm

This was adopted under the current Local Development Framework system, and the NPPF says that for 12 months from the publication of the national framework “*decision-takers may continue to give full weight to relevant policies*. However, it is more than 12 months since the NPPF was published in March 2012. Now (as with the saved policies of Walsall’s UDP) the NPPF advises that “... *due weight should be given to relevant policies ... according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*.” To consider the

conformity of the BCCS with the NPPF the four Black Country councils have completed a 'Compatibility Self-Assessment Checklist' (published by the Planning Advisory Service) and have discussed the results with a Planning Inspector. Whilst there is no formal mechanism to certify that the BCCS is consistent with the NPPF the discussions led officers to the conclusion that the exercise identified no issues that would conflict with the NPPF or require a review of the BCCS in terms of conformity.

This checklist has been published on the BCCS and Council websites. Cabinet on 24th July 2013 resolved to endorse the assessment undertaken by officers from the four local authorities and agreed that the Black Country Core Strategy is consistent with the National Planning Policy Framework, so that the Core Strategy policies should be given full weight in planning decisions.

The relevant policies are:

ENV2: Development proposals will be required to preserve and, where appropriate, enhance local character.

ENV3: Development proposals across the Black Country will deliver a successful urban renaissance through high quality design that stimulates economic, social and environmental benefits. Implementation of the principles of "By Design" to ensure the provision of a high quality networks of streets, buildings and spaces.

TRAN2: Planning permission will not be granted for development likely to have significant transport implications.

It is considered in this case that the relevant provisions of the BCCS can be given full weight.

Walsall's Unitary Development Plan (UDP)

www.walsall.gov.uk/index/environment/planning/unitary_development_plan.htm

Policies that have been saved and not replaced by the BCCS remain part of the development plan. However, in such cases the NPPF says "*due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*".

The relevant policies are:

GP2: Environmental Protection

The Council will expect all developments to make a positive contribution to the quality of the environment and will not permit development which would have an unacceptable adverse impact on the environment. Considerations to be taken into account in the assessment of development proposals include:

I. Visual appearance.

VII. Traffic impact

3.6: Development should help to improve the environment of the Borough.

ENV32: Poorly designed development which fails to properly take account of the context or surroundings will not be permitted

It is considered in this case that the relevant provisions of Walsall's saved UDP policies are consistent with the NPPF

Supplementary Planning Documents (SPD)

On the basis that relevant UDP policies are consistent with NPPF, the related SPD(s) will also be consistent provided they are applied in a manner consistent with NPPF policy. The relevant SPD's are:

Designing Walsall (SPD) (Feb 2008)

Aims to achieve high quality development that reflects the borough's local distinctiveness and character, through eight key design principles and ten policies. The following are the relevant policies;

DW3: Character - all new development must be designed to respect and enhance local identity

DW9: High Quality Public Realm - new development must seek to ensure it creates places with attractive environmental quality

5.0 LEGAL IMPLICATIONS

Pursuant to section 171A(a) of the Town and Country Planning Act 1990 (as amended) the carrying out development without the required planning permission constitutes a breach of planning control. Section 171B adds that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. It appears to officers that the breach of planning control occurring at this site commenced within the last four years.

For the reasons set out in this report, officers consider it appropriate to take enforcement steps. Accordingly, officers seek authority to serve an enforcement notice, pursuant to s172.

Non-compliance with an Enforcement Notice constitutes an offence. In the event of non-compliance the Council may instigate legal proceedings. The Council may also take direct action to carry out works and recover the costs of those works from the person on whom the Enforcement Notice was served. Any person on whom an Enforcement Notice is served has a right of appeal to the Secretary of State.

In the event of non-compliance with a Requisition for Information or non-compliance with a Planning Contravention Notice an offence is also committed and the Council may prosecute

6.0 EQUAL OPPORTUNITY IMPLICATIONS

Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In this case, the wider impact of the appearance of the land and building overrules the owner's right to the peaceful enjoyment of his property.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Pheasey Park Farm

9.0 **CONSULTEES**

None.

10.0 **CONTACT OFFICER**

Michael Brereton
Development Management

11.0 **BACKGROUND PAPERS**

Enforcement file not published

David Elsworthy
Head of Planning and Building Control

Planning Committee
26th June 2014

12.0 BACKGROUND AND REPORT DETAIL

79 Daisybank Crescent is a two storey semi-detached house located on a prominent corner within a residential area. In September 2013 a query was received in regard to the erection of fencing over 1m high adjacent to the highway at the residential property. It should be noted that fencing erected over 1m high at 52 Daisybank Crescent (directly opposite) has recently been removed on request of the Council.

Officers wrote to the owner in November 2013 advising that a breach of planning control had taken place and requested the fence panels and supporting concrete posts be reduced to no more than 1m in height and ensure no part of the fence infringes on highway visibility to meet current Permitted Development Rights.

The owner contacted the officer on 11th November 2013 to confirm they were willing to reduce the height of the fencing to 1m but wished to add the existing bowed trellising on top to which officers advised the Council may not be able to support. The owner also confirmed one fence panel had been removed to widen the vehicle entrance to No.79 and a new driveway surface had been laid which does not appear to be within current permitted development allowances as set out in the sections above.

Officers visited the site on 7th January which confirmed the new driveway had been laid and one fence panel at the vehicle access had been removed as suggested by the owner. The Council's Highway Officer confirmed the remaining fence panels on the boundary with No.77 Daisybank Crescent still causes an obstruction and the fence panel closest to the footpath should be removed to rectify this.

A second letter was sent to the owner on 23rd April 2014 to advise that the remedial works mentioned above were noted but did not change the views of the planning department that the fencing is still considered to be unacceptable at its current height and form resulting in an incongruous feature, viewed as being out of keeping within its setting and therefore deemed detrimental to the surrounding residential street scene. The owner was requested to reduce the fence panels and supporting concrete posts to no more than 1m in height directly adjacent the highway or remove the panels, posts and boards in their entirety. The owner was also requested to remove the panel closest to the highway located between 77 & 79 Daisybank Crescent ensuring no part of the continuing fencing is above 1 metre within 2 metres of the highway or more than 2 metres in height elsewhere.

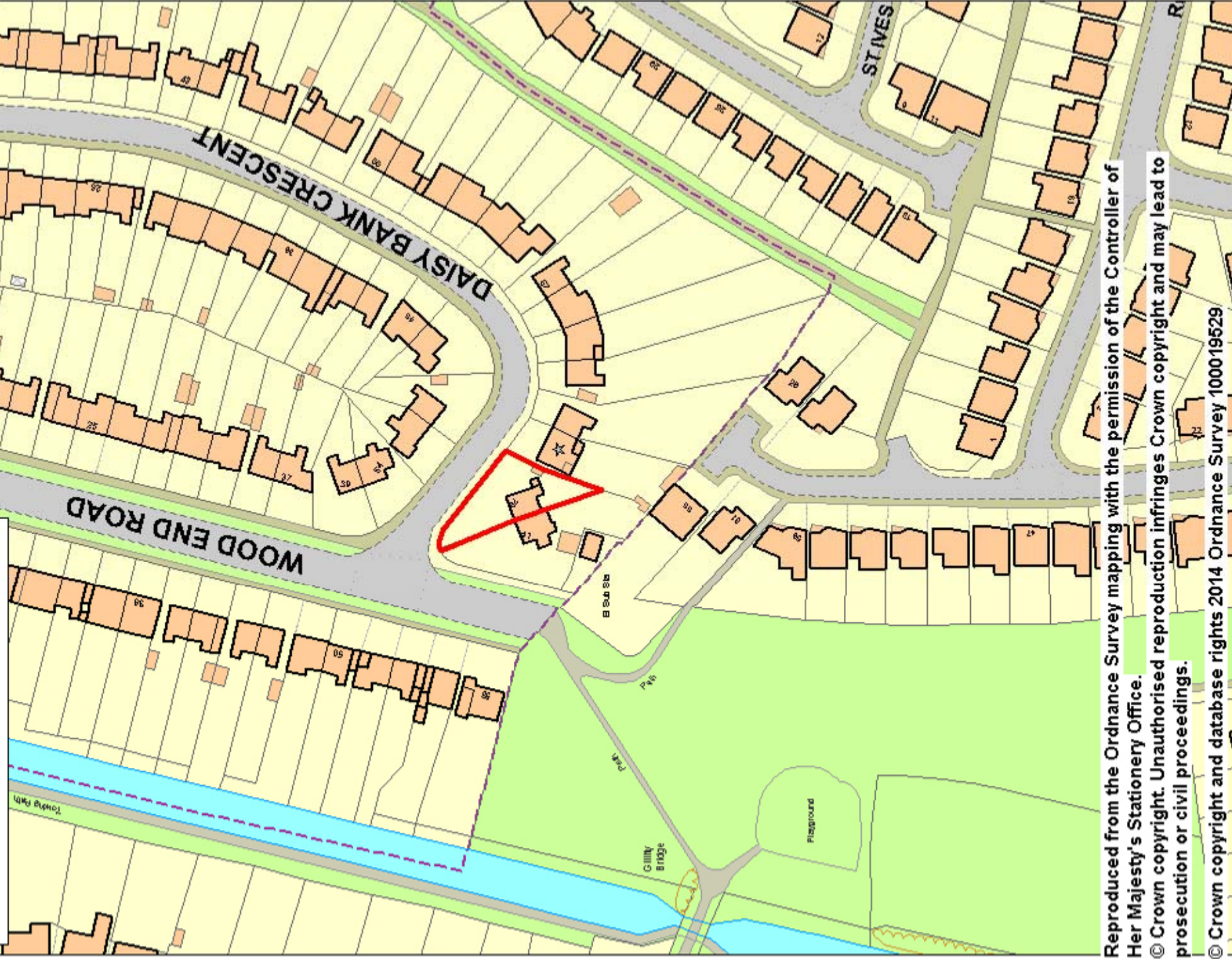
The owner contacted the officer on 8th May 2014 to advise they intended on submitting a planning application by 13th May 2014 to retain the fencing at over 1m high. Officers advised the owner that the matter would be reported to the Council's Planning Committee in June 2014 seeking enforcement action to rectify the breach if a planning application is not received. No such application has been received at the time of writing this report.

In view of the above it is considered expedient that enforcement action is now taken through the issue of an enforcement notice to rectify the breach of planning control and the harm it is causing. Officers also request that should any enforcement notice not be complied with and prosecution proceedings are undertaken, that proceedings should also be brought in regard to non-return of the RFI.



Walsall Council

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