



Planning Committee
11th December 2014

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

E13 / 0049 - 1 Hill Park, Walsall, WS9 9RD – Erection of Fencing, alteration to land levels and construction of hard surfaced block paving

1.0 PURPOSE OF REPORT

- 1.1 To request authority to take planning enforcement action in respect of the erection of fencing adjacent to the highway, increase in land levels and the hard surfacing of the garden frontage.
- 1.2 A retrospective application to retain the fence and hard standing (13/1048/FL) was refused planning permission and the owner has failed to exercise their right of appeal to the secretary of state against the Council's decision.

2.0 RECOMMENDATIONS

- 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 2.4.
- 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 to make 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 at 2.4 stating the nature of the breach(es) the reason(s) for taking enforcement action, the requirement(s) of the Notice, or the boundaries of the site, in the interests of ensuring accurate and up to date notices are served.

2.4 Details of the Enforcement Notice

The Breach of Planning Control:-

Without the required planning permission the erection of fencing above 1 metre in height and directly adjacent to the highway

Without the required planning permission the hard surfacing of a garden frontage otherwise in conformity with permitted development rules

Without planning permission the increase in land levels above 300mm

Steps required to remedy the breaches:-

Fencing

Removal of the fencing panels, gravel boards and supporting concrete posts from the land as illustrated on the plan attached to this report or;

Reduce the height of the fencing panels, gravel boards and supporting concrete posts to no more than 1 metre adjacent to the highway or;

Set back the fencing panels, gravel boards and supporting concrete posts to a distance of at least 2 metres measured from the back of the footpath adjacent the land.

Land Levels

Restore land levels to provide an even slope from the edge of the pavement to the original garden level. Provide grass seed or apply turf to the area of land.

Hard standing

Carry out all necessary works to ensure that the hard standing situated between the principal elevation of the dwelling and the highway conforms with Schedule 2 Part 1 Class F of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) by the provision of direct surface water run-off to a permeable or porous area or surface within the curtilage of the dwelling house;

Where it is not possible to make provision for direct surface water run-off from the hard standing to a permeable or porous area or surface within the curtilage of the dwelling house to remove the hard standing so that an area no greater than 5 square metres between the principal elevation of the dwelling and the highway remains.

Period for compliance:-

2 months.

Reasons for taking Enforcement Action:-

Road frontages in the area are generally open in character. The position of the fence immediately next to the back of the pavement harms this open character. The design of the fence with wooden panels supported by concrete posts and resting on concrete boards that are visible from the road is also of a poor quality that detracts from the appearance of the area

in this prominent location. Moreover the increase in land levels has resulted in the new fence being elevated in the street scene enhancing its character as an incongruous feature alien to the existing pattern of development which is predominantly formed by open plan frontages. The development is therefore contrary to the National Planning Policy Framework the Black Country Core Strategy policies ENV2 and ENV3 and Walsall's saved Unitary Development Plan, in particular policies GP2 and ENV32, the Supplementary Planning Document, Designing Walsall and Manual for Streets.

The creation of a hard standing forward of the principle elevation and fronting the highway does not benefit from permitted development rights as it exceeds an area of 5m² and does not include an appropriate drainage system nor is it constructed of an acceptable permeable material. Accordingly, the driveway as constructed can lead to storm water runoff affecting neighbouring properties and the public highway. The development is therefore contrary to the National Planning Policy Framework the Black Country Core Strategy policies ENV2 and ENV3 and Walsall's saved Unitary Development Plan, in particular policies GP2 and ENV32, the Supplementary Planning Document, Designing Walsall and Manual for Streets.

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. Planning applications may also be submitted that require an application fee.

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:

- Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings
- Take account of the different roles and character of different areas, promoting the vitality of our main urban areas

Key provisions of the NPPF relevant in this case:

7: Requiring Good Design

11: Conserving and enhancing the natural environment

56. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making better places for people.

57. It is important to plan positively for the achievement of high quality and inclusive design for all development.

58. Planning policies and decisions should aim to ensure that developments meet criteria that include:

- Function well and add to the overall quality of the area
- Establish a strong sense of place
- Respond to local character and history and reflect the identity of local surroundings and materials

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.

207. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

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. The results of this assessment are to be published on the BCCS and Council websites and it is planned to report to the Council's Cabinet to confirm this view. In the absence of evidence to the contrary it is considered that the BCCS policies should be given full weight in planning decisions.

The relevant policy is:

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.

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.

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

ENV32: Design and Development Proposals.

(a) Poorly designed development or proposals which fail to properly take account of the context or surroundings will not be permitted.

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

Other Policy Guidance

Manual for Streets - Communities and Local Government

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

Aldridge North and Walsall Wood

9.0 CONSULTEES

Related planning application 13/1048/FL and 14/0544/FL was subject to normal publicity.

10.0 CONTACT OFFICER

James Fox
Planning Enforcement Officer
01922 652613

11.0 BACKGROUND PAPERS

Planning Applications 13/1048/FL and 14/0544/FL

Enforcement file E13/0049 not published

David Elsworthy
Head of Planning and Building Control

Planning Committee
11th December 2014

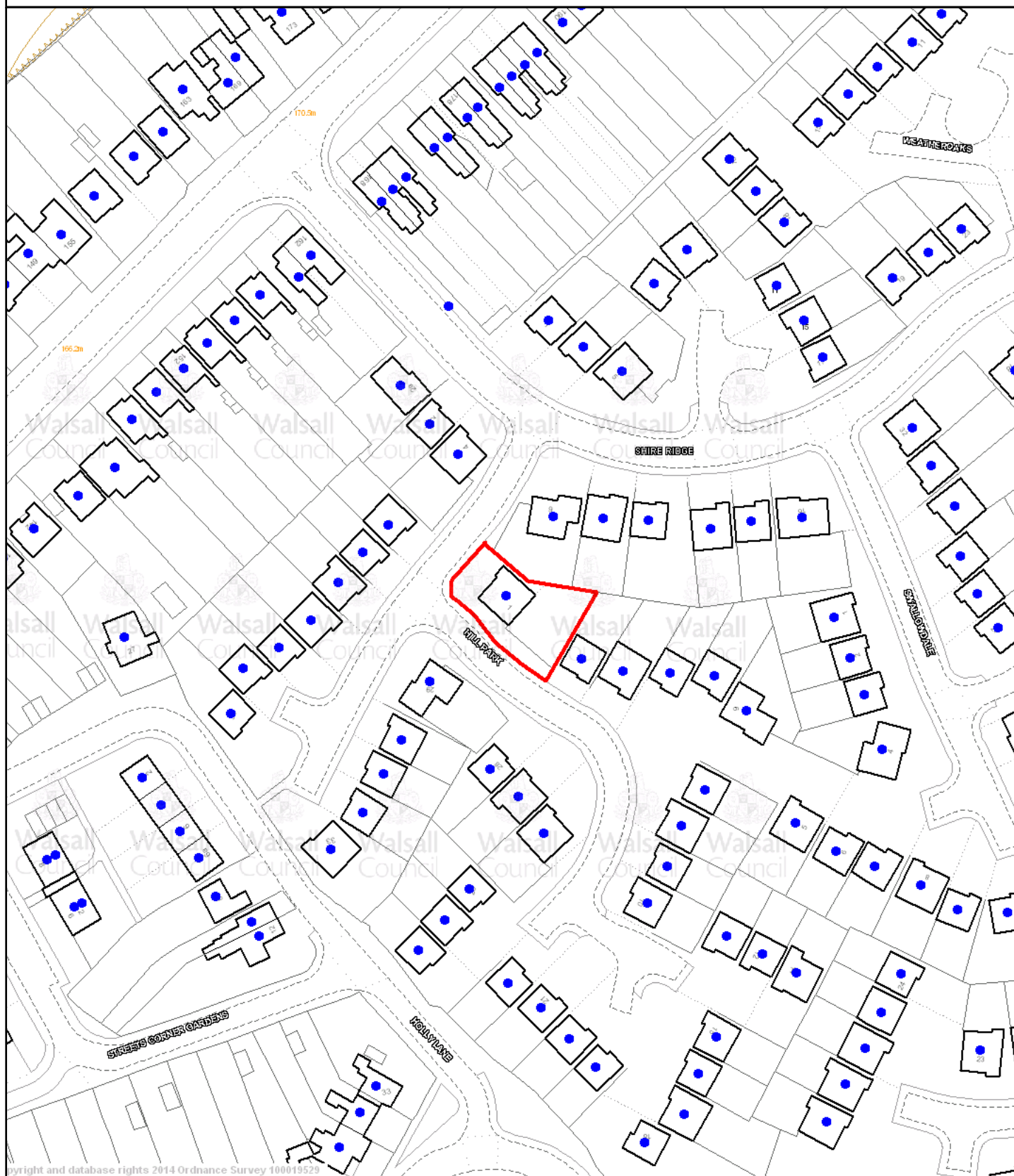
12 BACKGROUND AND REPORT DETAIL

- 12.1 1 Hill Park is a detached dwelling on the corner of Shire Ridge in an area mainly consisting of similar sized properties. A plan showing the land edged in red is attached to this report.
- 12.2 At the beginning of February 2013 Planning Services received a complaint about new fencing around the side and rear of the 1 Hill Park directly adjacent the back of the pavement. An officer inspected the site to assess the fencing and became aware of further unauthorised development including hard surfacing around the front and side of the property and an increase in land levels of approximately 700mm.
- 12.3 During the inspection the elderly and disabled owners of the property advised the officer the development was carried out to remove the hard to maintain planting and minimise the ongoing maintenance of the land for the current occupants. The owners also suggested the land developed to the side of their property was previously overgrown and overhanging the highway.
- 12.4 A letter to the owners during June 2013 confirmed the development required planning permission. The letter stressed a retrospective application to retain the fencing is unlikely to be supported due to the poor design of the fencing and the lack of appropriate drainage for the hard-surfacing.
- 12.5 A retrospective application (13/1048/FL) was refused planning permission at the end of September 2013. The fencing was refused due to its poor visual appearance, harm to the open character of the area and for its adverse effect on highway safety. The hard-surfacing was refused permission due to it being out of character with the area and failing to provide appropriate drainage to ensure that surface water runoff does not adversely impact on the adjacent footpath and highway.
- 12.6 The owner failed to exercise their right of appeal to the Planning Inspectorate against the Council's decision meaning officers contacted the owners again during February 2014 advising that either work should be completed to remove the unauthorised development or a new application should be submitted addressing the reasons for refusal. It was made clear in the letter that officers would report to the Planning Committee to recommend enforcement action if the matter remained unresolved.
- 12.7 In response the owners submitted an amended planning application for the retention of the hard surfaced driveway (14/0544/FL). Proposals to address the Council's reasons for refusal regarding the fencing were not included in this application.
- 12.8 Although the application proposed drainage provision within the area of hard-surfacing to restrict water run-off onto the highway, it was brought to officers attention that a section of land on the corner of the development site forms the visibility splay for the T junction adopted by the highways authority. Furthermore

the drainage provision outlined in the application was not sufficient to address the previous reason for refusal.

- 12.9 Officers attempted to resolve these issues with the planning agent but the concerns of the Council were unresolved and no further progress has been made following an email to the planning agent in July 2014
- 12.10 Officers appreciate the development was carried out by an elderly couple who require the convenience of a low maintenance garden, however this should not detract from the fact the development is unauthorised and having an adverse impact on the surrounding area and the conclusion that enforcement action is required as set out.
- 12.11 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 prosecution proceedings are undertaken and that proceedings should also be brought in regard to non-return of the Requisitions for Information.

1 Hill Park



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