



**Planning Committee**  
**5th November 2015**

**REPORT OF HEAD OF PLANNING AND BUILDING CONTROL**

**34 Laneside Avenue, Streetly, Walsall, B74 2BZ**

**1.0 PURPOSE OF REPORT**

- 1.1 To request authority to take planning enforcement action in respect of the erection of rear garden boundary fence.

**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 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 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 a boundary fence exceeding 2m in height.

**Steps required to remedy the breach:-**

Reduce the height of the fence to the side boundary with 36 Laneside Avenue to no more than 2 metres above the ground level of 36 Laneside Avenue

**Period for compliance:-**

One month

**Reasons for taking Enforcement Action:-**

The height and appearance of the fence creates a prominent and incongruous feature, which is out of character with its surroundings. The fence has an

overbearing impact that results in a loss of outlook of the occupiers of 36 Laneside Avenue to the detriment of residential amenity. The development is therefore contrary to the aims and objectives of the National Planning Policy Framework, policy ENV3 of the Black Country Core Strategy and saved policies GP2, 3.6 and ENV32 of Walsall's Unitary Development Plan and policy DW3 of Supplementary Planning Document Designing Walsall.

### 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)** [www.gov.uk](http://www.gov.uk)

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:

- Find ways to enhance and improve places in which people live their lives
- Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings

**Key provisions** of the NPPF relevant in this case:

- ***NPPF 7 - Requiring good design***

#### **Local Policy**

##### **Black Country Core Strategy**

- ENV2: Historic Character and Local Distinctiveness
- ENV3: Design Quality

##### **Unitary Development Plan**

- 3.6: Environmental Improvement
- GP2: Environmental Protection
- ENV32: Design and Development Proposals

##### **Supplementary Planning Document**

###### **Designing Walsall**

- Policy DW3 Character

**Policies are available to view online:**

[http://cms.walsall.gov.uk/planning\\_policy](http://cms.walsall.gov.uk/planning_policy)

## **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 or failing to comply with a condition or limitation subject to which planning permission has been granted 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. In respect of any other breach (such as change of use or breach of condition) no enforcement action may be taken may be taken after the end of the period of ten years from the date of the breach except where the breach of planning control consists of a change of use of any building to use as a single dwellinghouse, in which case a four year period applies. It appears to officers that the breach of planning control occurring at this site commenced within the last ten years.

Section 172 of the Town and Country Planning Act 1990 provides that the local planning authority may issue an Enforcement Notice where it appears to them:

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the development plan and to any other material considerations.

The breach of planning control is set out in this report. Members must decide whether it is expedient for the enforcement notice to be issued, taking into account the contents of this report. 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.

## **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 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**

Streetly

## **9.0 CONSULTEES**

None

## **10.0 CONTACT OFFICER**

Paul Hinton 01922 652607  
Development Management

11.0 **BACKGROUND PAPERS**  
Enforcement file not published - E13/0131

**David Elsworthy**  
**Head of Planning and Building Control**

**Planning Committee**  
**5th November 2015**

**12.0 BACKGROUND AND REPORT DETAIL**

- 12.1 This semi-detached property is located within the residential area of Streetly where the ground levels drop towards the rear boundary of the garden. In September 2013 officers were made aware of works within the garden of 34 Laneside Avenue to raise the ground levels and the erection of a boundary fence at the rear. Officers visited the property and wrote to the owner in October 2013 advising that planning permission was required for the works. Prior to the works a 1m high fence previously provided the boundary between numbers 34 and 36.
- 12.2 Officers were approached by an agent engaged by the owner to prepare a planning application, following discussions with the agent a planning application for retention of the rear garden boundary fence and patio was received in March 2014 (14/0403/FL). Public consultation and a site visit were undertaken. Officers advised the agent that they felt support could not be given to the application and due to the availability of permitted development rights it was recommended works were undertaken to revert to these allowances. In response the planning application was withdrawn in May 2014.
- 12.3 Further discussions took place and additional information was provided which questioned the original ground level measurements stated on the planning application drawings. Officers exposed the original ground level within the neighbour's garden and as a result provided the owner with further advice in October 2014 about how to address the breach of planning control.
- 12.4 In November 2014 a further planning application was submitted (14/1698/FL) for the retention of rear garden boundary fences and patio. The drawings submitted were identical to the previous application, but this time the owner did not engage the service of an agent. This application was refused planning permission in 30<sup>th</sup> September 2015 for the following reason:

The height and appearance of the fence creates a prominent and incongruous feature, which is out of character with its surroundings. The combination of the fence and raised patio has an overbearing impact and results in a loss of both privacy and outlook of the occupiers of 36 Laneside Avenue to the detriment of residential amenity. The development is therefore contrary to the aims and objectives of the National Planning Policy Framework, policy ENV3 of the Black Country Core Strategy and saved policies GP2, 3.6 and ENV32 of Walsall's Unitary Development Plan and policy DW3 of Supplementary Planning Document Designing Walsall.

- 12.5 Accompanying the planning refusal a covering letter explained the right of appeal (an appeal would need to be submitted by 23/12/15) and that reverting to permitted development allowances was still an option available. Officers also explained it was intended to report the matter to the 5<sup>th</sup> November Planning Committee seeking authorisation for enforcement action and sought written comments from the owner of how they intend to address the issue. The

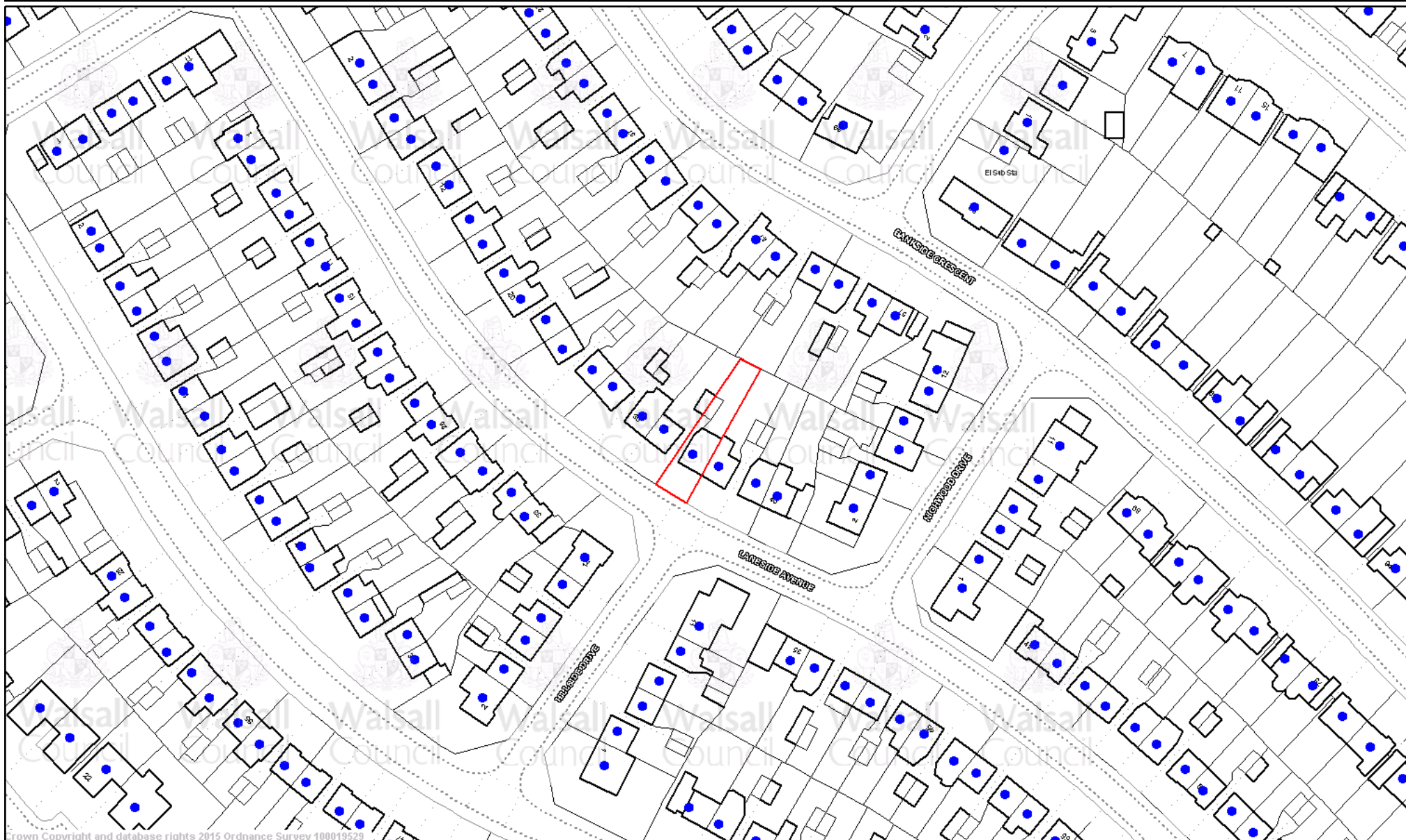
opportunity to speak at the meeting was also provided. At the time of writing this report, no comments have been received.

- 12.6 The rear garden of the property drops by approximately 0.9m over the distance of the rear garden towards the rear boundary and has a detached garage at the upper part of the garden. Prior to the change in ground level, erection of boundary fence and raised patio works it is understood a patio was already in-situ. Works were undertaken to extend the patio by approximately 4m to the rear for its full width towards the garage. The patio is 0.57m above rest of the garden. The remaining garden levels have also been raised up by 0.4m.
- 12.7 Above these increased ground levels, the boundary fence separating the gardens of number 34 and 36 has been erected. This fence has one step in it; within the garden of 34 Laneside the fence appears as a typical garden fence around 1.90-1.97m in height. Due to the raised ground levels at some locations along the boundary from the garden of number 36 the fence is 2.4m in height.
- 12.8 Due to its height when viewed from the natural ground level of number 36 the fence appears as an incongruous feature unrelated to its surrounding and which has an overbearing impact upon the amenity of the occupiers of number 36. In addition the side to the neighbour at number 36 is untreated and is the rear of the fence where the supporting battens are exposed and in places the timber has warped. The combination of these factors means that the proposal causes harm to both the visual and residential amenities of the area and is contrary to the aims and objectives of the policies of the development plan and NPPF.
- 12.9 Officers consider that the raised garden height at the bottom half of the garden of approximately 0.4m given the position of the detached garage and lawful boundary fence with number 32 and the boundary fence and separation distance to properties along Bankside Crescent would not cause sufficient harm for it to be expedient to pursue enforcement action in this instance. The boundary to number 34, subject to the boundary being reduced to no more than 2m above the original ground level, as recommended, it is considered sufficient screen would be provided to protect residential amenity. Under section 172 of the Town and Country Planning Act it is open to the LPA to 'under enforce', where it is expedient to do so. It is not expedient, in these circumstances to pursue the raised garden levels.
- 12.10 The patio area has been extended in length by approximately 4m into the garden, which due to the drop in ground levels to the rear, results in a raised platform of 0.57m at its highest point. Permitted development rights for raised platforms allow for up to 30cm in height. Guidance clarifies that ground level is the surface of the ground immediately adjacent to the building in question (building including any structure or erection) and where ground level is not uniform (e.g. if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building. Taking the original ground level next to the building (the patio at this point has been raised by 5cm), the raised patio has not been raised by more than 30cm above the ground level. Therefore the patio would be permitted development. While it is acknowledged that someone standing on the edge of the 0.57m high patio would be seen above a 2m high boundary to number 36, having considered case law on the matter the

LPA would not be able to mitigate against this impact other than choosing not to enforce against the existing 2.4m high fence. Due to the loss of outlook that the fence causes, this would not be reasonable.

- 12.11 Because of the harm the fence is causing, as explained above, it is considered expedient that enforcement action is now taken through the issue of an enforcement notice requiring its reduction in height. Officers therefore request that authorisation is given to take this course of action.

## 34 Laneside Avenue



**Walsall Council**

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