



DEVELOPMENT CONTROL COMMITTEE

Date: 30th January 2007

Report of Head of Planning and Building Control - Regeneration

Woodland Spinney adjacent number 2 Bella Pais Close, off Beacon Road, Aldridge Ref: E06/0647

1.0 PURPOSE OF REPORT

To inform Members of a breach of planning control, and to request authority to take planning enforcement action against this breach, whilst also requesting delegated authority to take enforcement action, where necessary, against any related additional breaches.

2.0 RECOMMENDATIONS

- 2.1 That authority is granted for the issuing of an Enforcement Notice and a Requisition for Information under the Town and Country Planning Act 1990 (As Amended), the Enforcement Notice to require remedial actions to be undertaken as shown below in 2.2.
- 2.2 That authority be delegated to the Assistant Director - Legal and Constitutional Services, in consultation with 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 :

Details of the Enforcement Notice

The Breach of Planning Control:-

Operational development comprising the erection of a steel palisade security fence (incorporating a pair of gates), approximately 1.95 metres high and adjacent to a highway.

Steps required to remedy the breaches:-

Dismantle the fencing and gates.

Dig up the fence posts and reinstate the ground to its previous level.

Remove all resultant components and debris from the land.

Period for compliance:-

1 month.

Reasons for taking Enforcement Action:-

By reason of its height, length and utilitarian design, the security fencing (incorporating gates) is visually intrusive and harmful to the character of the surrounding rural area. This area forms part of the Green Belt and also part of the Great Barr Conservation Area. By reason of the factors identified above the fencing and gates are also harmful to the open-ness of the Green Belt, and fail to enhance or preserve the character and appearance of the Conservation Area. They are therefore in conflict with policies GP2, ENV32, ENV2 and ENV29 of the adopted Walsall Unitary Development Plan.

- 2.3 That authority is delegated to the Assistant Director - Legal and Constitutional Services, in consultation with the Head of Planning and Building Control, for the drafting and serving of any additional Enforcement Notice which they consider expedient to serve in response to any further breach of control which may arise or be identified.
- 2.4 To authorise that the decision as to the institution of legal proceedings, in the event of non-compliance with the Notice(s) or the non-return of Requisitions for Information, be delegated to the Assistant Director - Legal and Constitutional Services, in consultation with the Head of Planning and Building Control.
- 3.0 **FINANCIAL IMPLICATIONS**
None arising from the report.
- 4.0 **POLICY IMPLICATIONS**
The report recommends enforcement action in order to seek compliance with planning policies.
- 5.0 **LEGAL IMPLICATIONS**
None arising from the report.
- 6.0 **EQUAL OPPORTUNITY IMPLICATIONS**
None arising directly from this report.
- 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**
Officer contacts in Regeneration and Transportation
- 10.0 **CONTACT OFFICER**
Philip Wears - Planning Enforcement Team: 01922 652527 / 01922 652411
- 11.0 **BACKGROUND PAPERS**
Enforcement file not published.

D Elsworthy
Head of Planning and Building Control

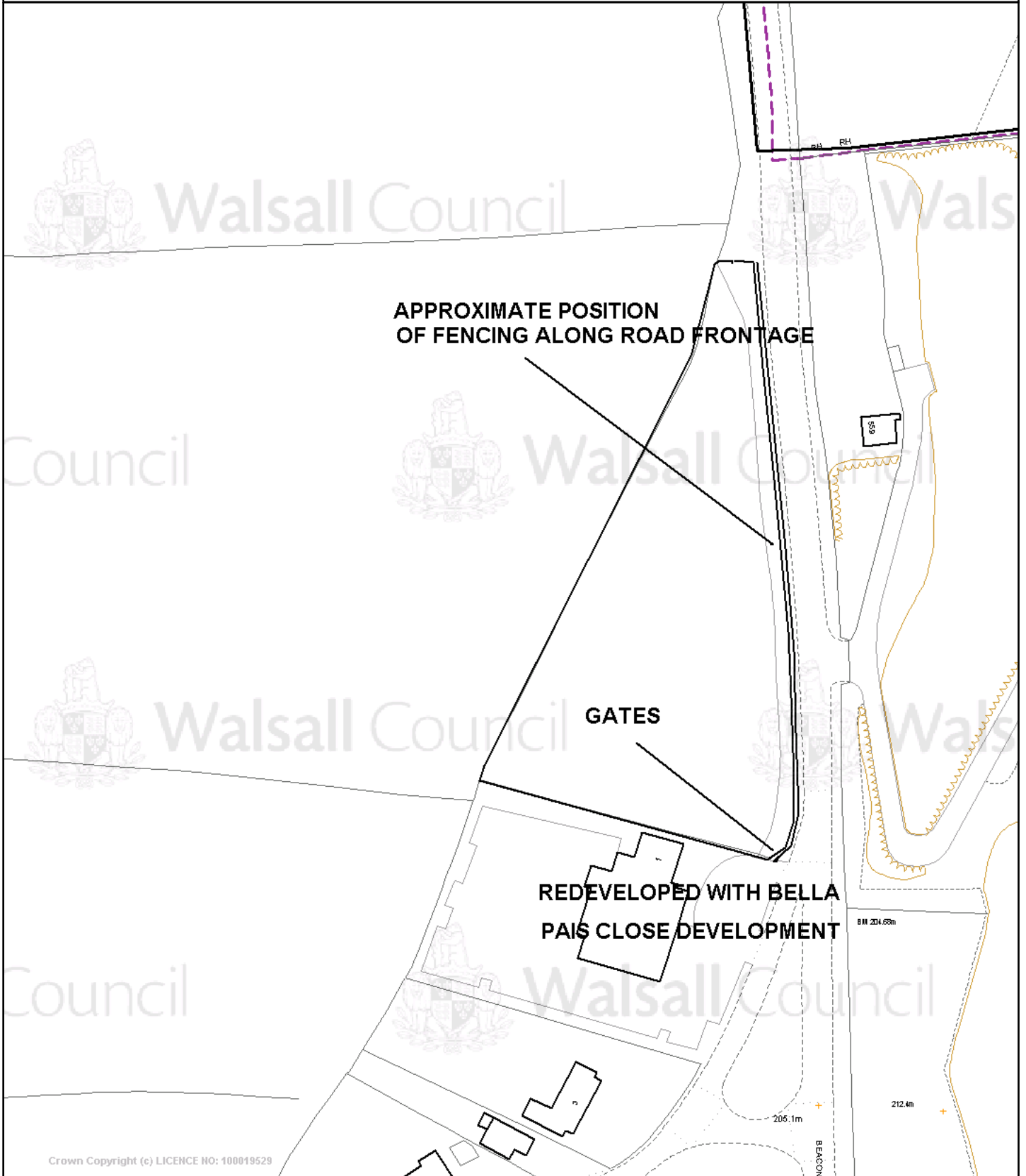
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12 BACKGROUND AND REPORT DETAIL

- 12.1 The fencing in question has been erected along the frontage of a woodland spinney, adjacent to Beacon Road in a rural part of the Borough, which forms part of the Green Belt and at the same time is part of the Great Barr Conservation Area. It is understood that this spinney has been purchased by the owners of number 2 Bella Pais Close whose back garden adjoins the spinney. Bella Pais Close is a small new housing development carried out on the site of the former 'Fast Eddies' restaurant on Beacon Road. A plan showing the location of the spinney, the fencing, and gates is attached to this report.
- 12.2 The fencing adjacent to Beacon Road runs for about 130 metres and is set back about 2.15 metres from the vehicular carriageway. It is metal palisade security fencing, about 1.95 metres high, with a galvanised, unpainted finish. Matching double gates 4.4 metres wide have been incorporated in the fence, close to the approved rear garden of the house. No planning application has been received.
- 12.3 Until recently the spinney contained dense mature tree cover which had not been managed for some years. In September 2006 consent was granted pursuant to the existing Tree Preservation Order and legislation to remove dead, dying and dangerous trees, and also carry out some crown thinning. The clearance work has inevitably had a visually dramatic effect, and now only around 15 mature trees remain, with some limited replanting so far.
- 12.4 The fencing was erected in December following the tree clearance. The fencing and gates are in breach of planning control because they exceed the maximum height of 1 metre which is allowed 'adjacent' to a highway under the permitted development regulations. Case-law makes it clear that 'adjacent' (the term in the legislation) does not mean 'adjoining', and your officers are satisfied that the fencing is in breach of planning control. The same style of fencing has also been commenced along the opposite (rear) boundary of the land but this is allowed under the permitted development rights because it is not adjacent to the highway, and it therefore cannot be enforced against.
- 12.5 The owner states that the fencing is intended to be followed by the planting of a hedgerow of hawthorn, blackthorn and holly which will grow through the fence and considerably reduce its visual impact. However, in your officers opinion such planting would require some years to reach sufficient height, and sufficient density, to have any significant effect on the appearance of the fencing, and after that the fencing would remain visible to some extent. Officers consider that the height and very utilitarian character of the fencing make it visually intrusive in the rural surroundings, and seriously harmful to the open-ness of the Green Belt and the character and appearance of the Conservation Area.

- 12.6 Officers therefore consider that enforcement action to remove the fencing is appropriate. Permitted development rights exist to replace it with fencing not exceeding 1 metre high, or the Council can consider any alternative scheme that is put forward, e.g. as part of a planning application.
- 12.7 Although the fencing along the rear boundary is of similar construction and is permitted development which cannot be enforced against, it is not considered that this invalidates action against the length of fence adjacent to the highway. Much of the rear fencing on this land is many metres away from the highway. It has less visual impact from the vantage point of the highway. Where the site tapers to a narrow width the rear boundary fencing is of course more visible. It could be argued that the authorised presence of the rear fence means the visual amenity of the area is damaged and there is no justification for acting against the front fence. Overall, officers advise the effect of the front fence is so great that action is justified. The rear fence is regrettable, but does not justify the breach which has taken place. The planning authority should take whatever action is possible to reduce the overall level of harm that is caused.
- 12.8 The gates incorporated in the fencing suggest an intention to form a new vehicular access, but have not so far been accompanied by other access works such as hard surfacing and 'dropped' kerbs. The gates, as part of the fencing, are subject to the enforcement action recommended above, and therefore there is no basis, at present, to consider additional action against a new access at present.
- 12.9 Fencing and access works on agricultural land and woodland can be an indication that a change of use is taking place. In this particular case the owners have been advised that planning permission is necessary for change of use of the woodland to create for example a garden extension. No further changes are expected without the necessary planning permission. However if something does occur this is addressed by the delegated authority recommended at paragraph 2.3 above.

Spinney adj 2 Bella Pais Close, off Beacon Road, Aldridge



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