

Report by the Director for Economy

ENFORCEMENT REPORT

15 Wyke Avenue, Worthing

UPDATE – Unauthorised erection of a fence

WARD: CENTRAL

1. CURRENT SITUATION

- 1.1 At the February 2015 meeting of the Committee, planning permission was refused for a retrospective application for trellis fixed to existing front garden wall on north/east boundaries (application reference) AWDM/1412/14. At the same meeting, members also resolved to take enforcement action to secure the removal of the fence, voting against a proposal to hold enforcement action in abeyance to allow planting to establish.
- 1.2 An Enforcement Notice was subsequently served to which the occupiers of the property subsequently appealed against. (They could also have appealed against the refusal of the planning application but did not pay the required fee).
- 1.3 In February of this year, the appeal was dismissed by the Planning Inspectorate. Amongst the relevant points of the decision notice were:

Paragraph 4:

From my observations in the vicinity it is evident that the trellis fencing erected is out-of-keeping with the low flint walls that characterise the area. It is an incongruous feature which detracts from the character and appearance of the Warwick Gardens Conservation Area in which the property is situated. The visual harm is exacerbated by the prominent corner location and the overall impact is one which is detrimental to the street scene. I have taken account of the presence of a short section of timber panel fencing at the neighbouring property in Warwick Gardens but this is not typical of the front boundary treatment that characterises the area and in any case is significantly less intrusive.

Paragraph 6:

I am not persuaded that the planting suggested would overcome the harm I have identified or the reasons given for issuing the notice. The situation I observed is that the trellis fencing targeted by the notice is bare and there is no ivy or other planting growing up or over it. Any new planting however fast growing would need a significant length of time to get established. I consider it would take a number of years to grow to the extent that it would provide a green cloak to the fencing. Throughout this period it would remain an incongruous feature in the street scene, marring the character and appearance of the conservation area. Consequently, I do not consider that the lesser step advanced should be substituted instead and I find that the requirement stated in the notice is not excessive.

Paragraph 7:

I would add that the Council still has the discretion to decide whether it wishes to enforce the notice when it takes effect and is also able to vary the notice extending the period for compliance should it wish to undertake further discussions with the appellants on possible alternative solutions.

- 1.5 The period for compliance began when the appeal was dismissed (February) and subsequently your Officers have been in discussion with the occupiers to ascertain if any alternative solutions could be reached.
- 1.6 After some discussion, the occupiers proposed the following:
*'We propose to reduce the height to a level of 34cm above the boundary wall – this being in line with the bottom of the lower tier of the existing brick piers and 129cm above pavement level.
This would mean a 66% reduction in the height of the trellis.
The benefits are as follows:*
 - *A neat and attractive finish between the existing piers would be provided*
 - *The significant reduction in height would eliminate the 'incongruous' nature of the trellis with immediate effect*
 - *Planting has already taken to the lower part of the trellis in some areas – and we would encourage them to continue and spread*
 - *We maintain some level of protection along our boundary'*
- 1.7 Your Officers advised that, in principle, the proposals may be supported but that it would be necessary to submit a planning application to secure approval for the changes.
- 1.8 Regrettably, the occupiers advised that they did not wish to submit a planning application but advised that the works as proposed above would be carried out by the end of August. A site visit undertaken on 9 September confirmed that the works have been carried out, albeit the planting stated to have taken the lower part of the trellis has had little visual impact.

1.9 In the absence of a planning application, and since the fence even as altered is unauthorised (as it exceeds 1 metre in height) it is therefore necessary to consider whether any further action should be taken. As the original decision to take enforcement action was taken by members, it is felt appropriate to bring the matter back to the Committee for their consideration.

2. PLANNING ASSESSMENT

2.1 As stated above, it is regrettable that the occupiers do not wish to submit an application but, as such, there is no legal requirement for them to do so (the occupiers are aware and have acknowledged that the failure to submit an application may show up on future searches of the property). It therefore falls upon the Council to consider whether any further action is necessary.

2.2 Although no planning application was submitted, it is appreciated that the occupiers have carried out the works and by definition the fact that the fence has been significantly reduced from that previously in situ means that it has far less impact than the higher fence that had previously been erected. The question remains, though, whether with the amendments, the retention of the fence would have been granted planning permission.

2.3 Your Officers are of the view that the works undertaken represent a significant improvement. Most importantly, the reduced height of the fence is now in line with the lower part of the brick piers that flank the path to the front door and both ends of the property whereas previously the fence exceeded the height of the pillars by some distance.

2.4 The fence is previously installed, therefore, integrated poorly with the existing brick wall and piers but now fits in far better. Although additional fencing in the locality is unusual, there are some examples as noted by the Inspector in paragraph 4 of his decision letter previously. The key point is that the Inspector felt that such fencing was less intrusive than that originally installed at number 15, but your Officers feel that such is the extent of amendment now, that the revised design of fence is in fact less intrusive than any other sporadic examples in the locality.

2.5 The occupiers have previously stated that they will allow planting to grow up and along the fence. While previously, it was felt essential that planting would be necessary to screen the fence, your Officers are of the view that the reduction in height no longer necessitates a formal requirement for such planting.

3. LEGAL SECTION

Section 172(1) Town and Country Planning Act 1990 (as amended) states that a 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) it is expedient to issue an enforcement notice, having regard to the provisions of the development plan and to any other material considerations. Section 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990 states in exercising any functions under the Town and Country Planning Act 1990, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Paragraph 207 National Planning Policy Framework reiterates that enforcement action is discretionary, and local planning authorities should act proportionately in responding to breaches of planning control.

Paragraph: 003 Reference ID: 17b-003-20140306 Planning Practice Guidance states “The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.”

Paragraph: 005 Reference ID: 17b-005-20140306 Planning Practice Guidance states:

“Effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.”

4. OTHER IMPLICATIONS

- 4.1 There are no significant direct race relations, equal opportunity, environmental or community safety implications arising in this report.

5. CONCLUSION

- 5.1 It is considered that the fence as amended is now acceptable and that there are no further amendments necessary that could result in a material improvement to the character of the area.

6. RECOMMENDATION

- 6.1 **It is recommended that for the reasons set above, the fence as now altered is acceptable and it is not expedient to pursue the previous Enforcement Notice or consider any further action and accordingly the file on this matter should now be closed.**

Schedule of other matters

1.0 Council Priority

1.1 To support and contribute to the health, safety and well-being of the area

2.0 Specific Action Plans

2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

3.1 The location at this level in a flood zone is unsustainable.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 None in this context.

6.0 Human Rights Issues

6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those affected by proposed developments and the relevant considerations which may justify interference with human rights have been considered in the planning assessment.

7.0 Reputation

7.1 Decisions are required to be made in accordance with the Town & Country Planning Act 1990 and associated legislation and subordinate legislation taking into account Government policy and guidance (and see 6.1 above and 14.1 below).

8.0 Consultations

8.1 As referred to in the above report.

9.0 Risk Assessment

9.1 As referred to in the above report.

10.0 Health & Safety Issues

10.1 As referred to in the above report.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

12.1 Matter considered and no issues identified.

13.0 Legal

13.1 Powers and duties contained in the Town and Country Planning Act 1990 (as amended) and associated legislation and statutory instruments.

14.0 Financial implications

14.1 Decisions made which cannot be substantiated or which are otherwise unreasonable having regard to valid planning considerations can result in an award of costs against the Council if the land owner is aggrieved and lodges an appeal. Decisions made which fail to take into account relevant planning considerations or which are partly based on irrelevant considerations can be subject to judicial review in the High Court with resultant costs implications.