

Southend-on-Sea Borough Council

Agenda
Item

Report of the Corporate Director of Place
To
Development Control Committee
On
09th December 2015

Report(s) Enforcement of Planning Control

A Part 1 Public Agenda Item – Town and Country Planning Act 1990 Section 172

Reports prepared by: Enforcement Officers

1 Introduction

1.1. This report relates to alleged breaches of planning control. Recommendations are made at the conclusion of each item.

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Enforcement Report			
Eastwood	EN/15/00147/UCOU-B	16 Cornec Chase Eastwood, Leigh-on-Sea	2

Reference:	EN/15/00147/UCOU-B
Ward:	Eastwood
Breach of Control	Without planning permission, the change of use of land from public highway to form part of the residential curtilage of 16 Cornec Chase and the erection of a boundary fence which exceeds 1.0m in height.
Address:	16 Cornec Chase, Eastwood, Leigh-on-Sea, Essex
Case Opened:	8 th June 2015
Case Officer:	Neil Auger
Recommendation:	AUTHORISE ENFORCEMENT ACTION



1 Site and Surroundings

- 1.1 Two-storey end-of-terrace dwellinghouse lying to the east side of Cornec Chase almost opposite its junction with Bowman Avenue.

2 Lawful Planning Use

- 2.1 The lawful planning use is as a single dwellinghouse within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

3 Present Position

- 3.1 On 2nd June 2015, a complaint was received by the Council in which it was alleged that a fence had been erected so as to incorporate an area of highway verge into the residential curtilage of this property.
- 3.2 A site visit was undertaken on 12th June 2015 by a planning enforcement officer when it was established that the allegation was correct. A close boarded wooden fence with concrete posts and gravel boards having an approximate height of 2.0m had been erected so as to incorporate the area of highway verge, lying to the west of the rear garden of 16 Cornec Chase into its curtilage.
- 3.3 A letter was sent on 16th June 2015 informing the owner/occupier that planning permission was required to retain the development and advising that this would probably not be granted. The occupier was advised to arrange for the removal of the fence within 42 days.
- 3.4 The owner/occupier exercised his right to submit a retrospective application for planning permission to retain the development and the first documents were received dated 28th July 2015. The application was initially invalid but was eventually validated upon receipt of further documentation dated 25th August 2015.

3.5 Application reference 15/01248/FULH was assessed on its merits in accordance with normal practice and refused under delegated powers on 28th October 2015 on the grounds that:

1. *The development has caused the loss of public amenity space which contributed positively to the character of the site and the surrounding area. The proximity of the fencing to the boundary of the site makes it prominent within the streetscene and therefore unduly dominant to the detriment of the character of the surrounding area. The development is therefore contrary to the NPPF, policies KP2 and CP4 of DPD1 (Core Strategy), policy DM1 of DPD2 (Development Management) and SPD1 (Design and Townscape Guide).*
2. *The proposed development would represent the loss of highway land and therefore obstruct visibility splays within the adjacent highway to the detriment of highway safety. The development is therefore contrary to the NPPF, policies KP2 and CP3 of DPD1 (Core Strategy) and policy DM15 of DPD2 (Development Management).*

4 Appraisal

- 4.1 The material considerations which should be taken into account here are the design and impact of the development on the character and residential amenities of the area and on highway safety.
- 4.2 Good design is a fundamental requirement of new development to achieve high quality living environments. Its importance is reflected in the NPPF, policies KP2 and CP4 of DPD1 (Core Strategy) and policy DM1 of DPD2 (Development Management). The Design and Townscape Guide (SPD1) also states that *“the Borough Council is committed to good design and will seek to create attractive, high quality living environments”*.
- 4.3 In the NPPF it is stated that *“good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people”*.
- 4.4 The Development Management DPD, policy DM1 states that development should *“add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use and detailed design features”*.

- 4.5 The character of the surrounding area here is defined by the presence of two storey terraced dwellings, which lie parallel to, or perpendicular from, the highway of Cornec Chase. In many cases, due to the arrangement of the dwellinghouses, the rear and side boundaries of the plots are defined by fences which are prominent features of the streetscene. In this context, it is considered that the presence of grassed verges and areas of informal open spaces are important to provide soft landscaped gaps between the residential properties and the public highway.
- 4.6 It is considered that the unauthorised enclosure and change of use of land here is detrimental to the character of the area in that it has resulted in the loss of a significant area of soft landscaping which contributed positively to the character of the site and the surrounding area and an unacceptable increase in the overall visual impact of fencing within the public domain.
- 4.7 The Highway Authority has advised that the land enclosed by the householder previously formed part of the visibility splays of Cornec Chase and, as such, its enclosure has restricted visibility to the detriment of highway safety. For this reason, any application to stop-up this part of the highway would not be supported.
- 4.8 Consequently, the unauthorised erection of a fence and the change of use of the land enclosed thereby is considered to be detrimental to the character and visual amenities of the area and to highway safety in that it has resulted in an unacceptable loss of public open space, a structure which is prominent and unduly dominant within the area and the obstruction of visibility splays contrary to the National Planning Policy Framework (NPPF), Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance), Policies DM1 and DM15 of DPD2 (Development Management) and the Design and Townscape Guide (SPD1).
- 4.9 Taking enforcement action in this case may amount to an interference with the owners' and/or occupiers' Human Rights. However, it is necessary for the Council to balance the rights of the owners and/or occupiers against its legitimate aims to regulate and control land within its area. In this particular case it is considered reasonable, expedient, proportionate and in the public interest to pursue enforcement action on the grounds set out in the formal recommendation.

5 Relevant Planning History

None.

6 Planning Policy Summary

- 6.1 The National Planning Policy Framework (NPPF).
- 6.2 Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).

6.3 Development Management DPD Policies DM1 (Design Quality) and DM15 (Sustainable Transport Management).

6.4 Design and Townscape Guide 2009 (SPD1).

7 Recommendation

7.1 **Members are recommended to: AUTHORISE ENFORCEMENT ACTION** to secure the removal of the fence erected adjacent to the public footway and the restoration of the land thereby enclosed to its lawful planning use as operational highway land/public open space on the grounds that the unauthorised development is detrimental to the character and visual amenities of the area and highway safety by reason of its unsightly appearance, the loss of a significant area of public open space and the obstruction of visibility splays in the highway contrary to the National Planning Policy Framework (NPPF), Core Strategy DPD Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance), Policies DM1 (Design Quality) and DM15 (Sustainable Transport Management) of the Development Management DPD and the Design & Townscape Guide (SPD1).

7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Act and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of the Enforcement Notice.

7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. In this case, the necessary remedial works would be relatively straightforward to arrange so a compliance period of 28 days is considered reasonable.