

Item No. 7

Enforcement No: E/09/0300

Type:	Other structures	Date of Complaint:	30 th September 2009
Developer:	Mark Jarvis Racing		
Breach:	Unauthorised construction of fencing adjacent to highway		
Location:	Land to the rear of 1 The Nook, Anstey		
Parish:	Anstey	Ward:	Anstey
Case Officer:	Miss S J Coleman	Extension:	01509 634773

Description of the Unauthorised Development

The unauthorised development comprises metal palisade fencing of approximately 2 metres high from ground level that has enclosed the existing staff car parking area for the betting shop at 3 The Nook. This area measures approx 100 sq m and the land level for the parking area is lower than the street and the fencing has been constructed inside an existing brick retaining wall and this wall on its eastern and southern sides was reduced in height prior to the new fence being erected.

The parking area has its frontage onto Latimer Street, a predominantly residential area that also includes a primary school and therefore the development is clearly visible from the public highway and also appears as a dominant feature in this part of the street. There are also residential flats above the row of shops along The Nook and recently built residential accommodation adjacent to the site although with frontages alongside Bradgate Road the rear windows do afford the occupiers the potential to overlook this area.

This area is defined as a District Centre in the Borough of Charnwood Local Plan.

- **Development Plan Policies**

Borough of Charnwood Local Plan (adopted 12th January 2004)

EV/1 - Design

- **Other Policies**

PPG 18, Enforcing Planning Control, gives advice about planning enforcement. It advises that the decisive issue in considering enforcement action should be whether the breach of control is unacceptably affecting public amenity or the existing use of land or buildings.

- **Other Material Considerations**

The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the authorisation of enforcement proceedings.

The issue of **human rights** is a material consideration in the determination of planning applications and enforcement issues. Article 8 of the Human Rights Act 1998 requires respect for private and family life and the home while Article 1 of the First Protocol provides an entitlement to peaceful enjoyment of possessions. However, these rights are “qualified”. It is necessary to consider whether refusing planning permission and/or issuing an enforcement notice would interfere with the developer’s human rights. If it would, the Committee must decide whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The impact on the human rights of the developer must be balanced against the public interest in terms of protecting the environment and the rights of other people living in the area. In this case, the balance points to protecting the visual amenity of the occupiers of neighbouring properties and the surrounding area.

Relevant Planning History

None relevant

Responses of Statutory Consultees

None relevant

Other Comments Received

This matter was brought to our attention by a Borough Councillor.

Consideration of the Planning Issues

It is considered that the appearance of the fencing, by reason of its prominent position within the street scene, the materials used and design is incompatible with the predominantly residential locality, does not provide a positive and attractive built frontage and is detrimental to the visual amenity of the occupiers of neighbouring residential properties and the surrounding area.

For these reasons it is considered that the fencing does not comply with Policy EV/1 and it is therefore recommended that formal action is taken to ensure its removal from the site.

RECOMMENDATION:

Authorise Enforcement Notice

It is **RECOMMENDED** that the Committee:

authorise the Director of Development and the Director of Governance and Procurement to take enforcement action under the Town and Country Planning Act 1990 and the Director of Governance and Procurement to institute and conduct any legal proceedings necessary to secure compliance with the enforcement notice;

give the following reasons why it is expedient to authorise enforcement action:

- a) It appears to the Council that the above breach of planning control has occurred within the last 4 years.
- b) It is considered that by reason of its design, location and materials, the fencing is incompatible with the locality, does not provide a positive and attractive built frontage in the street scene and is detrimental to the visual amenity of the occupiers of neighbouring residential properties and the surrounding area. In these ways the development conflicts with saved Policy EV/1 of the Borough of Charnwood Local Plan.
- c) The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections.

confirm that the notice will require the following steps to be taken:

1. remove the metal palisade fencing from the site edged red on the attached plan
2. remove all resulting debris from the land

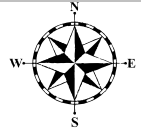
give the following period for compliance with the notice:

1 month

for the purposes of any appeal proceedings, resolve that, had a planning application been received in relation to the unauthorised development described above, permission would have been refused for the reasons set out in the preceding section of this report.



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Location: Land to the rear of 1 The Nook, Anstey
Scale: 1:500

