

**Report to** Planning applications committee

**Item**

6 March 2014

**Report of** Head of planning services

4(12)

**Subject** Enforcement Case EH13/36490 – 514 Earlham Road, Norwich NR4 7HR

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### **SUMMARY**

**Description:** Unauthorised erection of fence along front boundary fronting Earlham Road. The fence panels currently stand at 1.1m high but the fence posts stand at 1.85m high. The gates have been removed.

**Reason for consideration at Committee:** No enforcement action recommended.

**Recommendation:** Given the removal of the gates and reduced height of the fence not to take formal enforcement action at this time.

**Ward:** University

**Contact Officer:** Richard Divey

### **INTRODUCTION**

#### **The Site and Context**

1. The property is a detached two-storey residential dwelling with side and rear extensions sitting within a wide plot. The site is located on the southern side of Earlham Road which is located to the west of the city.
2. At this point, Earlham Road is very wide and is lined with mature trees and a deep grass verge on both sides. The area is predominantly made up of detached and semi-detached residential dwellings set well back from the road. Most of the houses near to this property are of a matching and distinctive 1930s style and have small 0.5-1m high walls along their front boundaries.

## **Planning History**

<b>4/1997/0684</b>	Erection of single storey side and rear extensions (Refused 30/10/97)
<b>4/1997/0907</b>	Erection of single storey rear extension. (Approved 31/12/97)
<b>4/2001/1080</b>	Single storey side extension and conservatory to the rear. (Approved 21/06/02)
<b>13/02009/F</b>	Erection of single and first floor extensions and car port. (Pending decision)

## **Purpose**

3. The front boundary treatment does not fall within permitted development rights since it fronts a highway and stands at more than 1m in height (see The Town and Country Planning Act (General Permitted Development) Order, Part 2, Class A.1 1995 (as amended)).
4. A planning application for the fence has been requested several times but has not come forward. However in recent weeks the fence has been lowered and the gates removed. The gate posts remain (see photos on display at committee).
5. The report seeks a committee decision on whether to take any enforcement action.
6. Whilst this matter would normally be dealt with under delegated powers, these powers are discretionary and this report is being brought before the planning applications committee given the concerns raised by members in considering a related application (13/02009/F) at the last committee.

## **Breach**

7. The erection of fences and gates is considered to be operational development for which planning permission would be required under section 171A(1)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). The erection of the fence and gate posts falls outside of The Town and Country Planning (General Permitted Development) Order 1995 (as amended) which allow for boundary treatments up to 1m in height adjacent to the highway.
8. Norwich City Council has photographic and written evidence that the above breach of planning control has occurred within the last four years and is not therefore immune from enforcement action. At the time of writing this report the gates had been removed and the fence lowered to 1.1m in height. The fence posts are 1.85m in height and the boundary treatment incorporates an evergreen hedge behind the fence.
9. For information the need for consent for a vehicular access to the frontage has also been investigated. Evidence suggests that access has been gained across the whole frontage for 10 years or more without any formal enforcement action being taken in which case the access to the highway becomes lawful and no enforcement action for the creation of a new access to the highway is possible.

## **Relevant Planning Policies**

### **National Planning Policy Framework**

Statement 7 – Requiring Good Design

Paragraph 207 – Enforcement

### **Relevant policies in the Joint Core Strategy for Broadland, Norwich and South Norfolk (Adopted March 2011)**

Policy 2 – Promoting good design

Policy 6 – Access and transportation

### **Relevant policies in the City of Norwich Replacement Local Plan – saved policies (Adopted November 2004)**

HBE12 – High quality of design in new developments

TRA5 – Design for vehicle movement

TRA14 – Enhancement of the pedestrian environment

### **Emerging Development Management Policies**

DM3 – Delivering high quality design

DM30 – Access and highway safety

DM31 – Car parking and servicing

## **Procedural Matters Relating to the Development Plan and the NPPF**

10. The Joint Core Strategy and Replacement Local Plan (RLP) have been adopted since the introduction of the Planning and Compulsory Purchase Act in 2004. With regard to paragraphs 211 and 215-216 of the National Planning Policy Framework (NPPF), both sets of policies have been subjected to a test of compliance with the NPPF. The 2011 JCS policies are considered compliant, but some of the 2004 RLP policies are considered to be only partially compliant with the NPPF, the policies, referred to in this case, are considered to be compliant with the NPPF. The Council has also reached submission stage of the emerging new Local Plan policies, and considers most of these to be wholly consistent with the NPPF.

## **Assessment**

11. In determining if it is appropriate to take enforcement action it is necessary under section 172 of The Town and Country Planning Act to consider if it is expedient to issue an enforcement notice, having regard to the provisions of the development plan and to any other material considerations.
12. Paragraph 207 of the NPPF details that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.
13. It follows that if planning permission would otherwise be granted for the development which has taken place that it is not likely to be expedient to taken enforcement action.
14. In the circumstances of this case the fence is only just above permitted development allowances and in practice is not considered to have a

materially different impact to a 1m high fence which would be permitted development. Indeed there are likely to be large numbers of similar fences which just exceed permitted development allowances in the city.

15. In relation to the timber posts, it is noted that neighbouring properties also have brick piers extending higher than 1m in height and although the substantial timber posts are different in appearance to the brick piers commonly seen in the area it is not considered that these are harmful to either highway safety or the visual amenities of the area.
16. The gates have been removed and therefore at the time of writing this report there is no breach in respect of the gates. Should the gates be re-erected and exceed the height of the neighbour fence, the case would be reviewed.

### **Equality and Diversity Issues**

17. The Human Rights Act 1998 came into effect on 2nd October 2000. In so far as its provisions are relevant:
  - (a) Article 1 of the First Protocol (the peaceful enjoyment of ones possessions), is relevant in this case. Parliament has delegated to the Council the responsibility to take enforcement action when it is seen to be expedient and in the public interest. The requirement to secure the removal of the unauthorised building works in the interests of amenity is proportionate to the breach in question.
  - (b) Article 6: the right to a fair hearing is relevant to the extent that the recipient of the enforcement notice and any other interested party ought to be allowed to address the Committee as necessary. This could be in person, through a representative or in writing.

### **Conclusions**

18. It is not considered that the development would be harmful to either highway safety or the visual amenities of the area and therefore it is not considered expedient to take enforcement action in this case.

### **Recommendations**

That the report is noted and that no enforcement action is taken in respect of this enforcement case EH13/36490 – 514 Earlham Road, Norwich NR4 7HR.



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Planning Application No Enforcement  
Site Address 514 Earham Road

Scale 1:1,000



**NORWICH**  
City Council  
PLANNING SERVICES

