

E/09/0139/A – Alleged failure to comply with a planning condition requiring an increase in height of fence panels at 30 Maze Green Road, Bishops Stortford, CM23 2PJ.

Parish: BISHOP'S STORTFORD

Ward: BISHOP'S STORTFORD SILVERLEYS

RECOMMENDATION

That Members reconsider this matter and that the Director of Neighbourhood Services be authorised to take no further enforcement action in this respect.

Reason why it is expedient to take no further action:

The addition of a trellis structure complies with the requirements of the planning condition to increase the height of the existing fence panels and does not compromise the reason for that condition which relates to the privacy of occupiers of the adjoining property.

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1.0 Background

- 1.1 Members may recall that this matter was considered at the meeting of the Development Control committee on the 6th May 2009. A copy of that previous report is attached as Appendix A.
- 1.2 Officers had recommended that no further action should be taken in this matter but, after some debate, Members felt that enforcement action should be taken to remedy the apparent breach of planning control by requiring the provision of solid boundary fencing (rather than the trellis panels which have been installed) to comply with the aims of condition 1 of planning permission 3/08/2049/FO.
- 1.3 The reason for the decision was that the committee considered that the addition of trellis to the fencing on the boundary would not adequately safeguard the privacy of the neighbouring property, contrary to the provisions of policy ENV1 of the East Herts Local Plan Second Review April 2007.
- 1.4 Following the committee meeting, Officers met with the owner of the property with the objective of reaching a solution to this matter without the need for the service of an enforcement notice. The owner was adamant

however that he had complied with the condition (it not specifically requiring solid fencing) and that there would be no overlooking of the adjoining property from the flank kitchen window in question.

- 1.5 Officers also reviewed the situation on site and remained of the opinion that the view of the neighbour's property from the subject window was very limited and that it did not compromise the privacy of the adjoining neighbour. Mindful of government advice in Circular 10/97 that enforcement action should only be taken where it is considered expedient; Officers discussed the matter with the Chairman of the Development Control Committee who offered to visit the site to view the fencing. Having done so, he agreed that this further report be put before Members asking them to further consider the matter. It may also be pertinent to note that at the time of the site visit it was evident that the neighbours had erected their own solid screen adjacent to the trellis. Notwithstanding that, however, Officers consider that, in any event, the trellis added above the existing fencing would have complied with the condition and was sufficient to safeguard the privacy of the neighbouring property.

2.0 Conclusion

- 2.1 Whilst it is quite legitimate for Members to come to a decision contrary to the officers recommendation, taking into account all the necessary issues and assigning weight as appropriate, the reason for issuing an enforcement notice in this case is likely to be challenged at appeal and Members will also be aware that if it is found that the Council has behaved unreasonably in respect of the service of an enforcement notice, it will be at risk of an award of costs being made against it.
- 2.2 I do have concerns regarding the reason for taking enforcement action in this case and I consider that the Council could be criticised for acting unreasonably if it pursues the matter. The condition imposed on application 3/08/2049/FO sought the increased height of the two fence panels in order to "*safeguard the privacy of occupiers of the adjoining property*". The neighbours have objected to the trellis erected and consider that this does not adequately screen their property from view or prevent overlooking. However, the site has now been viewed by several planning and enforcement officers and also by the Chairman who are of the opinion that the trellis fencing does adequately prevent overlooking and that there is no loss of privacy to the adjoining occupiers as a result. As such, it is considered by Officers that it is not expedient to issue an enforcement notice in this case.

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2.3 Members are therefore asked to assess this new information, together with the content of the previous report, and to reconsider the decision to take enforcement action in this matter.

2.4 Officers remain of the view that, for the reasons sets out in the previous committee report; it is not expedient to pursue formal enforcement action in this case and it is recommended therefore that no further action is taken.