

# REPORT

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**FLAT 1, 3 KELSEY ROAD, SALISBURY SP1 1JP**

## **Report Summary:**

To consider the expediency of enforcement proceedings in respect of:

garden-boundary fence at the above address

## **Introduction:**

In February 2003 the owner of the subject premises erected a tall, close-boarded fence with trellising above behind the dwarf wall marking the boundary with the highway of both Kelsey Road and Manor Road in breach of planning control. His response to the Enforcement investigation was to submit a retrospective application, notwithstanding LPA advice that consent was unlikely to be forthcoming. This application was dismissed and the owner exercised his right to appeal, which appeal was in turn dismissed by notice dated 3 December 2003. Recent inspections have revealed that the unauthorised fence remains in situ; and the owner has failed to respond to LPA correspondence reminding him of his obligations and the likelihood of formal enforcement action to remove the fence.

This report is being brought before Members to seek the necessary authorisation for enforcement to secure a resolution of this ongoing breach.

## **Site and surroundings:**

The site lies on the corner of Manor Road with the junction of Kelsey Road within the Salisbury Conservation Area. 3 Kelsey Road is an attractive, substantial red-brick Victorian three-storey end-of-terrace house divided into flats, the subject flat occupying the ground-floor. Its corner plot is highly visible, making the property especially prominent in the street scene. Front-boundary enclosures of the adjoining terraced houses are mainly restricted to low walls. Few houses in the area have wooden fences, 3 Kelsey Road being a notable exception.

## **Planning policies:**

Replacement SDLP – D3 (Extensions/ancillary buildings); CN8 (Development in conservation areas)

## **Planning application decision:**

Planning application S/2003/594 was registered 17 March and refused by notice dated 2 May 2003 for the following reasons:

*The fencing by reason of its overall height and length creates an undue sense of enclosure to the front of the property which is out of keeping with the general pattern of surrounding development and having regard to its unsympathetic materials and the prominent corner location of the site, appears as an unduly alien and incongruous feature in the street scene, which seriously detracts from the character and appearance of the Salisbury Designated Conservation Area. All the above is contrary to policies G1 (i) and CN12 of the 1996 Adopted Salisbury District Local Plan and policies D3 and CN8 of the 1998 Replacement Salisbury District Local Plan.*

#### **Appeal decision:**

In his decision notice, the Planning Inspector considered the main issue to be the effect on the character and appearance of the Conservation Area. In his view, the size, design and materials of the fencing were alien to the prevailing character of the area. He considered the fence to be both prominent and incongruous. As such, the Inspector concluded the fence failed to preserve and enhance the character or appearance of the Conservation Area and was contrary to CN8 of the Local Plan. Whilst appreciating the benefits afforded to the appellant by the fence, the Inspector considered these insufficient to outweigh the harm he had identified. Similarly, he concluded there was no violation of his human rights: the legitimate aim of safeguarding the Conservation Area could only be safeguarded by dismissing the appeal.

#### **Considerations:**

For the avoidance of doubt, it is confirmed that, whilst constituting minor development, the fence in question does require express planning permission.

In the absence of any change of circumstances, it is considered that the above adequately discloses the issues bearing upon the matter to be decided, with one exception: the expediency of enforcement action. The refusal of the retrospective application has been supported by the Planning Inspectorate; it only remains to consider whether there are any practical or personal circumstances why this acknowledged unacceptable breach should not be subject to formal resolution. Officers believe there to be none of the former, and the owner's failure to disclose any entitles the LPA to assume there is none of the latter either. Accordingly, the human rights implications of enforcement are unchanged: a justified and proportionate measure.

#### **Conclusions**

The owner has had ample opportunity since the appeal was determined to address this breach of planning control but has failed to do so to date, or to respond to subsequent Council attempts to secure resolution. It is evident that he has no intention of removing the unauthorised fence. The issue of an Enforcement Notice is considered to be a necessary and proportionate remedy.

#### **Recommendation:**

**That the Head of Legal & Property Services be authorised to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended) and serve it on the appropriate person.**

#### **Alleging the following breach of planning control:**

**without planning permission the erection of boundary fence**

#### **Requiring the following steps to be taken:**

**take down the said fence and permanently remove the resulting materials from the site**

#### **Reasons for serving the Notice:**

1. It appears to the Council that the development has occurred within the last four years;
2. the fencing creates an undue sense of enclosure at the front of the property out-of-keeping with the pattern of local development, while its unsympathetic materials contribute an alien and incongruous feature to the street scene at a prominent corner site, seriously detracting from the character and appearance of the Conservation Area; and
3. the unauthorised development is contrary to policies D3 and CN8 of the Local Plan.

**Time For Compliance:**

**four weeks.**

**Implications:**

- **Financial: None**
- **Legal: Detailed in the report**
- **Human Rights: Detailed in the report**
- **Environmental implications: Detailed in the report**
- **Council's Core Values: Protecting the environment; fairness and quality**
- **Wards Affected: St Mark and Stratford**