

23 JULY 2013

ENFORCEMENT REPORT

UNAUTHORISED EXCAVATION WORKS TO THE FRONT GARDEN AND THE UNAUTHORISED ERECTION OF FENCES AT THE FRONT OF 73 SANDFORD GROVE ROAD, SHEFFIELD, S7

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform Committee Members of a breach of planning control and to make recommendations on any further action required.

2. BACKGROUND AND BREACH

- 2.1 73 Sandford Grove Road is a two storey end terrace property located within a residential area, it has a small garden to the front and back with a right of access to other properties in the terrace, at the side. The site lies within a Housing Area as designated in the Sheffield Unitary Development Plan.
- 2.2 Previously enforcement action has been taken against the owner for the unauthorised erection of an extension at the rear of the property and for the unauthorised excavation works at the front of the property. The previous notices were not complied with and the owner was prosecuted and the works were subsequently carried out under direct action by the Council.
- 2.3 A recent complaint has been received regarding a repeat of the excavation works to the front of the property and that a high fence has been erected. Officers have visited the site and noticed that the front garden of the property is being substantially excavated again to create an entrance into the basement. A fence has been erected which is over two metres in height between 73 and 75 Sandford Grove Road and a further fence had been erected adjacent to the highway which is over one metre in height.
- 2.4 It is considered expedient that this matter is reported directly for enforcement action because of the nature of the problems and the fact that the owner has been un-cooperative in the past with this property and the Council has had to take legal and direct action to resolve these issues.

3. ASSESSMENT OF BREACH OF CONTROL
- 3.1 73 Sandford Grove Road is located within a Housing Area as designated in the Sheffield Unitary Development Plan.
- 3.2 Planning permission is required for the substantial excavation works that are being carried out and for the fences that have been erected. It is officer's opinion that the excavation works to the front of the property constitute engineering works requiring planning permission.
- 3.3 There are no other examples of excavated front gardens along this stretch of Sandford Grove Road and thus excavation is a stark contrast to the common attractive treatment of a small front garden with stone walls and often hedging. The result is that the excavation is detrimental to the character of the property and harmful to the visual amenity of the local area. Whilst this harm is mitigated by the screening in part by the fences to the front of the property, the fences themselves constitute breaches of planning control.
- 3.4 Planning permission is required for fences that would be over one metre in height when adjacent to a highway used by vehicles or over two metres in height elsewhere. In this case the fence adjacent to the highway is over one metre and the fence between No. 73 and 75 is above two metres in height.
- 3.5 The fence between No. 73 and 75 is an unattractive overly tall feature that dominates the views of the front of the property, and is imposing upon the neighbour at No.75, whose front entrance door is immediately adjacent to the fence. The fence adjacent to the highway is also out of keeping with this area as majority of properties in this area are of a similar character with a small wall and a hedge. Whilst mitigating in part the harm to amenity caused by the excavation the fences are themselves a separate cause of harm to amenity.
- 3.6 Unitary Development Plan Policy H14 'Conditions on Development in Housing Areas' states that development must be well designed and keeping with the locality, must not have a detrimental impact on the living conditions of neighbouring occupiers.
- 3.7 Unitary Development Plan Policy BE5 'Building Design and Siting' states that new development should complement the scale, form, and architectural style of surrounding buildings.
- 3.8 The Photographs below show the property in question and clearly demonstrates the excavation works and fences are out of keeping with the property and the street scene.



4. REPRESENTATIONS

- 4.1 A number of complaints have been received regarding the unauthorised works at this property.

5. ASSESSMENT OF ENFORCEMENT OPTIONS

- 5.1 Section 172 of the Town and Country Planning Act 1990 enables the Local Planning Authority to issue Enforcement Notices where there has been breach of planning control. In this case the notice would require the reinstatement of the ground to its original level at the front of the property and the removal of the fence between No 73 and 75 and the fence adjacent to the highway. There is a right of appeal to the Planning Inspectorate against the service of an Enforcement Notice. However it is considered that the Council would be able to successfully defend any such appeal.
- 5.2 Section 183 of the Town and Country Planning Act 1990 provides for the service of a Stop Notice in conjunction with an Enforcement Notice, (S172). The Stop Notice would take effect within 3 days after the date of service, and an offence would be committed for any failure to comply with the Stop Notice. In this case the Stop Notice would require the cessation of the excavation works. A successful appeal against a stop notice can lead to a costs award against the Council for any losses incurred because work was stopped, but only if there was found to be no breach of control, or the notice is withdrawn.
- 5.3 Section 171E of the Town and Country Planning Act 1990 provides for the service of a Temporary Stop Notice, if it is expedient to require a breach of planning control to be stopped immediately. The temporary stop period lasts for 28 days to allow the Council time to decide or implement further enforcement action, if necessary. There is no right of appeal against a Temporary Stop Notice. In this case a Temporary Stop Notice can be served, to stop further excavation works.
- 5.4 S187B of the Town and Country Planning Act 1990 enables the Local Planning Authority to apply to the County Court or the High Court for an injunction. An application can be made whether or not the Local Planning Authority have exercised, or proposed to exercise, any of their other powers to enforce planning control. In this case it is considered expedient given the history of this property to apply to the County Court for an Injunction. In this case the injunction would require the cessation of the excavation works and the reinstatement of ground to its previous level. The decision to grant an injunction is within the discretion of the Courts, who may take into account all the circumstances of the case, including non-planning matters, unlike a planning Inspector. Failure to comply with an injunction could lead to committal to prison.

5.5 It is considered in this case that an injunction issued in the County Court would be an appropriate form of action given that the owner is a repeat offender who has ignored previous enforcement action in the past. The Planning Service has previously prosecuted the owner for non-compliance with enforcement notices and this was shown not to be effective as the Council had to take direct action on two separate occasions to resolve other similar breaches of control by this owner at this property.

5.6 The application for an injunction in respect of excavation to the front of the property can be made in parallel to the issue of enforcement notices for the excavation and the breaches of planning control in relation to the fences.

6. FINANCIAL IMPLICATIONS

6.1 The issue of an injunction under Section 187B would require the payment of the issue fee of £175.00 to the County Court, the service of the injunction of the Court Bailiff would be between a further £60.00 - £90.00, depending upon the method of service use by the court Bailiff.

6.2 The Council would be automatically liable to the civil courts costs jurisdictions under the Civil Procedure Rules (CPR) upon issue of an injunction under Section 187B, but so would the owner. An award of costs may therefore be made in favour of the Council, or in favour of the owner depending upon the outcome of the case and the conduct of the parties. An award of costs is far more likely under the CPR than in respect of an appeal to a Planning Inspector.

7. EQUAL OPPORTUNITY IMPLICATIONS

7.1 There are no equal opportunities implications arising from the recommendations of this report.

8. RECOMMENDATIONS

8.1 That authority be given to the Director of Development Services or Head of Planning to take all necessary steps, including enforcement action, service of a temporary stop notice, stop notice and the institution of legal proceedings, including injunctive action, if necessary, to secure the cessation of the excavation works, the reinstatement of the ground levels and the removal of the fences at 73 Sandford Grove Road.

8.2 The Head of Planning is delegated to vary the action authorised in order to achieve the objectives hereby confirmed, including taking action to resolve any associated breaches of planning control.

D Caulfield
Head of Planning

12 July 2013

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