

PLANNING COMMITTEE

Thursday 21 March 2019

ENFORCEMENT OF PLANNING CONTROL – OS 9634, BROOK LANE, FRAMLINGHAM, SUFFOLK, IP13 9BA (PC 13/19)

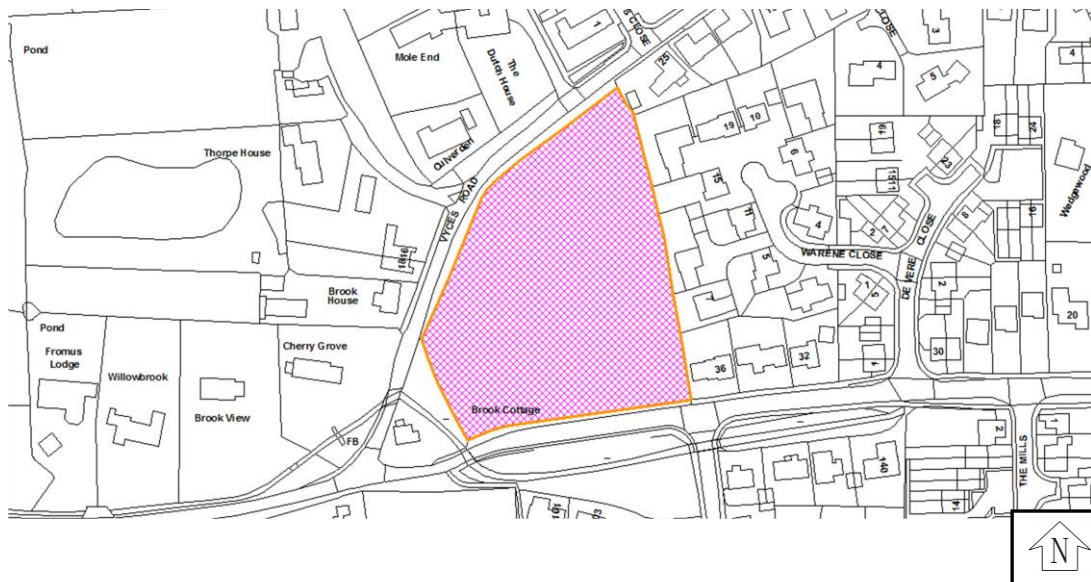
Report of the Head of Planning and Coastal Management

ENF/2017/0405/COND - Os 9634, Brook Lane, Framlingham.

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Is the report Exempt?	Open or Open
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EXECUTIVE SUMMARY

- 1 This report relates to a rise in ground levels to a footpath to the east of the site, not built in accordance with the approved plans of planning permission DC/15/0960/FUL and Condition 15 of DC/16/3133/DRC.
- 2 It considers the planning merits of the development against Government advice, Human Rights and the powers available to the local planning authority under the Town and Country Planning Act 1990, as amended, to determine the expediency of formal action against the unauthorised development.
- 3 The report advises the Committee that it is not considered expedient to take any further action in relation to this enforcement breach.

Wards Affected:	Framlingham
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For further information, please contact Peter Thompson, Assistant Enforcement and Planning Officer, on 01394 444297 or peter.thompson@eastsoffolk.gov.uk

1. Introduction

- 1.1 The alleged breach of planning control relates to the raising of ground levels along a section of path and adjacent land towards the eastern side of the site. These ground levels and the pathway are alleged to not be constructed in accordance with the approved plans, contrary to the planning permission DC/15/0960/FUL, and details approved under Condition 15 of DC/16/3133/DRC.
- 1.2 The potential impact of the alleged breach is that due to the raise in ground levels on and around the path, the adjoining neighbouring properties will now suffer from a potentially negative effect on their residential amenity.

1.3 Site Description

- 1.4 This report relates to a triangle of grassland located between Vyses Road in the north and Brook Lane in the south. The site lies outside the physical limits of Framlingham, but abuts the physical limits boundary on its eastern side. A portion of the southern section of the site lies within designated Flood Zone 2.
- 1.5 The path is on the eastern boundary of the site. It is located 5m from the rear boundary, and 7m from the western elevation of the nearest dwelling (6 Warene Close). The path is also 4m from the rear boundary and 11m from 7 Warene Close (the next nearest dwelling).

2. Planning History

2.1 The lawful use of the site is residential and was planning permission for the erection of 14 Almshouse dwellings and vehicular access granted in 2015, planning reference number: DC/15/0960/FUL. Planning Permission DC/15/0960/FUL was granted subject to conditions, including several that required the submission and approval of further details (conditions 3, 4, 5, 6, 7, 13, 15, 17 and 18).

2.2 Condition 15 on this planning permission stated:

“No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc indicating lines, manholes, supports etc); retained historic landscape features and proposals for restoration, where relevant. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed number/densities where appropriate; implementation programme.

Reason: To ensure the provision of amenity afforded by appropriate landscape design.”

2.3 An application seeking to discharge these conditions, including the above condition, which as set out above, included a requirement for details of levels and materials in relation to pedestrian access areas/pathways, was submitted under reference DC/16/3313/FUL. The details submitted included drawing Plan 16-080-300 C. This drawing has a topographical survey base that denotes levels in the form of spot heights along the route of the pathway as they existed prior to development. There were no details of any proposed changes to these levels.

2.4 The discharge of condition application was approved, and therefore the levels on drawing 16-080-300 C, are those which were agreed and therefore should have been adhered to, when undertaking the residential development, and the laying of the pathway.

3. Enforcement History

3.1 The site has no other reported cases relating to alleged enforcement breaches.

4 Planning Considerations

4.1 The initial complaint was made by local residents through a Planning Agent. The nature of the complaint was that the ground levels have been raised in excess of 1 metre and neighbouring properties on Warene Close are now suffering from a significant reduction in privacy.

- 4.2 The alleged increase in ground levels of the footpaths where initially measured on site by Officers using a hand held laser measure. These ground levels were compared to those shown on Typographical Survey 20941/001 Rev A, approved as 'appendix E' on Discharge of Condition Application DC/16/3313/DRC. At its highest the footpath appeared to have been raised by 1.9m when using the measurement recorded using the laser level.
- 4.3 To establish a more accurate understanding of the changes made to the ground levels, officers requested a topographical survey of spot heights along the pathway as constructed. The Architects representing the Developer subsequently employed a third party survey company and to provided the Council with a Typographical Survey of the levels along the path.
- 4.4 The recently surveyed levels have been overlaid on the original topographical survey drawing, so that both the before and existing levels are shown on the one drawing. This demonstrates ground levels have been increased between a minimum of 0.15m and a maximum of 1.34m. The section of path closest to 7 Warene Close has been raised by 0.75m.
- 4.5 The visual impact of the footpath in relation to neighbouring residential properties amenity has been considered. A site visit was undertaken by officers to understand the views from the path towards the gardens and rear elevations of the two dwellings nearest the path (nos 6 and 7 Warene Close). The key Local Planning Policy for consideration is DM23. It states that developments will be acceptable where it would not cause an unacceptable loss of amenity to adjoining or future occupiers of the development, in terms of matters such as privacy/overlooking.
- 4.6 Number 6 Warene Close, has a single first floor window on the elevation facing the path, and ground floor level openings. Its main private amenity area lies to the north of the building. There is a hedgerow along the boundary with the garden of this property, which is taller towards its northern end, adjacent to the main private amenity area. The hedgerow provides screening, and limits views from the path into the private amenity spaces and ground floor level rooms of this dwelling.
- 4.7 To the south of no 6, lies number 7 Warene Close, which has a single rear conservatory extension, a ground floor opening on the original rear elevation and three dormer windows on the western elevation facing the path. The path is 4m from the boundary and 11m from the original rear elevation of number 7 (the wall to which the conservatory is attached). There is a hedgerow along the boundary of this property, which is lower than that along the boundary of number 6, and therefore there are views over this section of hedgerow towards the rear garden and rear elevation of number 7.
- 4.8 Although the ground levels have changed, the open space with a public access path across it in this location existed prior to the development. Therefore the distance between the dwellings to the east and the area of public access has not altered. The only change is the ground levels along the route of the path.
- 4.9 The existing hedgerow on the boundary of no 7 is under the control of the owners of that property. If the owners/occupiers are concerned about views from the path, the hedgerow could be allowed to grow to a similar height to that of the adjacent dwellings (no 6 Warene

Close and no 36 Brook Lane) without the need for consent. Permitted Development Rights also exist, which would allow for the erection of a 2m high fence in this location.

- 4.10 Due to the pre-existing use, the distance between the path and number 7, and the ability for the householder to control the boundary treatment, it is considered that the potential impacts upon privacy/overlooking, are insufficient to warrant formal enforcement action being taken.
- 4.11 The other dwellings that share a boundary with the eastern side of the site also have established hedges and fences along their boundaries, which adequate screen views from the path towards their rear gardens and ground floor windows on their western elevations. Therefore officers have no significant concerns in terms of residential amenity to these properties.
- 4.12 Officers have concluded that an application could be invited for the retention of the increase in ground levels of the land around and along the footpath. There is a sufficient separation distance and appropriate boundary treatments between the path and rear elevations of the dwellings to adequately reduce the potential for direct views into the residential properties. Many of the existing properties also have established hedging and the potential to erect boundary fencing of up to 2m without the requirement for planning permission. Taking these factors into consideration, an application would likely be considered favourably. However, no such application has been submitted.
- 4.13 In investigating and considering this alleged breach of planning control, officers have considered national policy and guidance.
- 4.14 The National Planning Policy Framework (NPPF) states
- “Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control”.*
- 4.15 In Planning Practice Guidance – Ensuring Effective Enforcement, it states
- “Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies, will vary from case to case. In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal action where there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area; development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development”.*
- 4.16 Whilst Planning Policy Guidance 18: Enforcing Planning Control, is now extant it made a useful statement in relation to unauthorised development, it stated that:

"While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits, but for which permission has not been sought".

4.17 In accordance with the above policy/guidance, officers therefore consider that it is not expedient or in the public interest to pursue the alleged breach of planning control, in connection to the raising of ground levels of the land around and beneath the footpath of between 0.15m and 1.34m.

4.18 In reaching this recommendation, the Council has considered the human rights of the owners and occupants of the site and adjacent dwellings.

Article 1 of the First Protocol to the Convention may protect a person's Right to peaceful enjoyment of his possessions but does not prohibit the enforcement by the authorities of laws deemed necessary to control property in the public interest.

5. Representations

5.1 The complaint came from a local resident via a Planning Agent on the 24 October 2017.

6. Conclusions

6.1 As explained above, the path with public access existed across this site prior to the residential development approved under DC/15/0960/FUL. The majority of the dwellings located to the east have fences and hedgerows of a height which prevents direct views from the path towards their gardens and rear elevations. No 7 Warene Close has the lowest hedgerow. However, the owners/occupiers of no 7 have control over this hedgerow and therefore can allow it to grow and/or erect a 2m high fence without the need for consent.

6.2 In the view of officers, if a planning application were to be invited to retain the path and associated land at its current height it would likely be looked upon favourably, as it would comply with the relevant local and national planning policies.

6.3 For the above reasons it is considered not in the public interest to pursue this enforcement breach any further.

7. Recommendation

7.1 That the Head of Planning and Coastal Management be authorised to take no further action.

BACKGROUND PAPERS

Enforcement File Ref:- ENF/2017/0405/COND.