

Appeals & Complaints Committee

A meeting of Appeals & Complaints Committee was held on Monday, 16th April, 2012.

Present: Cllr David Wilburn(Chairman), Cllr Norma Wilburn(Vice-Chairman), Cllr Ian Dalgarno, Cllr Robert Gibson, Cllr Alan Lewis, Cllr Maurice Perry, Cllr Andrew Sherris

Officers: Richard Bradley, Craig Willows(DNS), Julie Butcher,Michael Henderson, Allen Squires (LD)

Also in attendance: Mrs Janet Clancy

Apologies:

ACC 1/12 **Declarations of Interest**

There were no declarations of interest.

ACC 2/12 **Minutes of Meeting held on 24 February 2012.**

Consideration was given to the minutes of the meeting held on 24 February 2012.

RESOLVED that the minutes be signed as a correct record.

ACC 3/12 **Procedure**

The Committee considered a proposed procedure for the meeting.

RESOLVED that the procedure be agreed

ACC 4/12 **Boundary Fence - 69 Norton Avenue, Norton**

The Committee met to consider representations relating to a boundary fence at 69 Norton Avenue, Norton.

Members noted that the owner/resident, Mr Clancy, of 69 Norton Avenue had authorised his mother, Mrs Clancy, to make representations on his behalf.

Council Officers outlined the representations on behalf of the Care for your Area service as follows. Members were provided with a short report that provided some background and presented a number of appendices

In the 1970's Stockton-on-Tees Borough Council had installed a wire mesh fence around the perimeters of Norton Recreation Ground and, over the years, residents had erected their own fences. Members were provided with photographs of the boundary to the rear of 69 Norton Avenue taken over the last few weeks, which showed a newly installed fence behind which there was a second, inner, fence.

Officers explained that Mrs Clancy had stated that, in the mid to late 1990's, she had paid a sum of money under a Council scheme to have a fence installed to the rear of 69 Norton Avenue. Members noted photographs that showed the fence on the Norton Recreation side of the Council's chain link fencing.

Officers confirmed that the Council was not aware of any other property that had had a fence put up in accordance with such a scheme and no records had been found at Stockton-on-Tees Borough Council regarding any payment by Mrs Clancy or any agreement between the Council and Mrs Clancy for the erection of the fence.

The properties adjacent to the recreation area were privately owned and had not been part of the right to buy scheme. By 2007 the boundary fence had become dilapidated and members noted photographs at Appendix 4 which showed damage to the fence. The fence was on council land and in poor condition, with evidence of a fire nearby and an amount of rubbish and debris was to be found between the inner and outer fences, increasing the risk of fire to the fence and the recreation ground. Officers pointed out that the fence encroached very slightly on to Council land but this was not a major concern. However, when the fence was damaged the Council was obliged to take action and, in November 2007 a decision to remove the fence and the rubbish and debris, that created the fire risk, was taken

It was explained that in January 2008 Mr Clancy complained to the Council regarding removal of the fence and a copy of his letter was provided. Officers pointed to the last sentence which stated that "my home and security are at risk with no fence". Officers reminded Members that there was already a second, inner, fence to the rear of the property. Officers referred to the Council's response to Mrs Clancy's letter, which detailed the reasons for the Council's actions and an indication that the Council would plant a range of whips and bushes to the rear of the property which would, eventually, provide an additional barrier

By March 2008 Mr Clancy reported that the whips had been removed, following which the Council replaced the whips and erected wire fencing to protect them. Officers pointed out that the Council was not under any obligation to carry out either piece of work but took reasonable actions to assist Mr Clancy. Officers provided a photograph showing the vandalism to the wire fence, the photograph also showed that the secondary fence remained in good condition.

In April 2009, the Council received a further complaint from Mrs Clancy and the note of the telephone call and the Council's reply was provided. The reply asked Mrs Clancy to forward any documentation she might have regarding the agreement with the Council regarding the erection of the fence. No further correspondence was received from Mr or Mrs Clancy until May 2011 when Mrs Clancy contacted the Council. At about the time of this contact the Council had carried out some works in the area, including the installation of CCTV. Mrs Clancy asked the Council to fund a new secondary fence behind 69 Norton Avenue. The Council's reply was provided as an appendix.

In July 2011, the local Ward Councillor asked the Council to write to Mrs Clancy regarding any legal issues in respect of fencing and to carry out Land Registry checks to see if any reference was made to maintenance. The resulting letter, sent to Mrs Clancy, was provided. Subsequently, Mr Clancy submitted a formal complaint about the removal of the boundary fence. Officers directed Members to e mails regarding CCTV monitoring in the area and a leaflet dropped to residents containing an out of office telephone number for any anti social incidents. Members noted photographs of a new fence which has been

installed, by Mr or Mrs Clancy, since at least October 2011.

Officers did acknowledge to the Committee that when the fence was removed in November 2007 it would have been advisable to have contacted Mr or Mrs Clancy regarding the removal but, unfortunately, this had not been done.

Members asked some questions of clarification following the end of the officers' summary. It was confirmed that the original post and wire fence constituted the natural boundary line and that the distance between the inner fence and outer fence would be approximately 2-3 feet.

Mrs Clancy was then invited to make her representations to Committee. Mrs Clancy started by making the point that she agreed that the Council should have spoken to them about the fire damage to the fence.

Mrs Clancy told the Committee that the Fire Brigade were only present on Norton Recreation Ground for 20 minutes and that, despite the Council saying the fence went up in flames, it could be seen, from the photographs, that the fence was only used as firewood, and the fence itself was not set on fire or was in a derelict condition. She referred Members to the fire being put out by a bucket of water and that there was no fire report regarding the incident.

Mrs Clancy considered that the Council was trying to say that the reason for removing the fence was that it was not on the boundary line. She was complaining that the Council took a fence, she had paid for, away and didn't tell her. Mrs Clancy stated that she had a letter saying that the inner fence was her responsibility, which she agreed with. She claimed this fence had been damaged because the Council took away the outer fence. Mrs Clancy stated that the whips and wire fence the Council had placed had only lasted one day. Mrs Clancy stated that, as the Council had tried to put something up, it showed she was entitled to the same security as everyone else.

Mrs Clancy referred to a discussion, in the 1990's, with the then local Councillor, regarding a Council initiative and this initiative had resulted in the Council providing a fence following a payment by her. She stated that she had paid a man who she thought was from Stockton Borough Council and he put the fence up. Mrs Clancy indicated that she'd obviously made a mistake in this regard.

Mrs Clancy considered that she owned the fence not the Council. She added that the fence was a shared boundary line and that this dispute had gone on for four years.

The removal of the outer fence had led to damage to the inner fence. She pointed Members to photographs showing the boundary line of wooden fences put up by residents. Mrs Clancy stated that she had to put the new secondary fence up and hoped that the Council did not take it down.

Mrs Clancy told the Committee that there was another derelict fence in the vicinity but the Council hadn't taken that one down and she didn't know why the Council only took her fence down.

The Committee was then directed to the officers' report which confirmed that on the 5 November 2007, prior to the removal of the fence, Mr Clancy had

contacted the Council and reported the fence to be damaged again and that was the reason why the Council specifically visited the fence to the rear of 69 Norton Avenue.

Members were then invited to ask questions of the complainant or officers of the Council. When asked whether Mrs Clancy had a particular concern regarding safety or why people may be attracted to the rear of her garden, Mrs Clancy responded that there was a big tree at the rear of the property, where youths congregated and the area attracted anti social behaviour. When she heard about the fence initiative she had thought it was a good idea. When Members asked Mrs Clancy what she was seeking from the Committee she indicated that, as removal of the fence had reduced security at the property, and the fence had had to be replaced, she sought a contribution towards the costs of that replacement..

Officers were asked to confirm the purpose of removing the fence and it was confirmed that it was due to the hazard presented following vandalism and the fire risk caused by the debris between the two fences. Removal had nothing to do with any encroachment along the boundary. Mrs Clancy, when asked by Members, agreed that contact had been made to the Council from her son regarding the damage to the fence when it had been used as firewood.

At this point Mrs Clancy and the officers representing the Care for Your Area Service left the meeting room

Members gave careful consideration to the documents contained in the agenda papers and to the representations made by officers of the Council and Mrs Clancy at Committee. Members were mindful of the fact that 69 Norton Avenue was a private property and the owner was responsible for its own security and maintenance and would be expected to pay for their own fencing or boundary treatment. The Council had made a number of attempts to replace some form of boundary treatment following the removal of the derelict fence including the planting of whips and wire fencing on at least two occasions. The Council had acted entirely reasonably in doing so, having no legal obligation to provide a boundary treatment or to repair the fencing that had been put up by Mrs Clancy. Members were also mindful that there was a substantial inner fence to the property and now also a substantial outer fence. Members agreed that the Council had no legal obligation to contribute towards the cost of a boundary fence for the property and had discharged all duties in a reasonable way. They did however feel that the customer care was poor in not communicating the removal of the fence to Mr Clancy at the time and offered an apology for this. However, Members felt they could not uphold the complaint in that the Council acted appropriately and had the right to remove the fence and not replace it.

RRESOLVED that it be recommended to the Head of Direct Services that the complaint be not upheld.