

DELEGATED

AGENDA NO:

**REPORT TO PLANNING
COMMITTEE**

DATE: 19th APRIL 2006

**REPORT OF CORPORATE
DIRECTOR OF DEVELOPMENT
AND NEIGHBOURHOOD
SERVICES**

**OPEN PLAN ESTATES IN THE BISHOPSGARTH & ELM TREE WARD -
UNAUTHORISED FRONT WALLS & FENCES.**

SUMMARY:

Further to the previous Planning Committee agenda item 14 dated 26th October 2005 as agreed consultations have now taken place with the local ward councillors and the local residents over the issue of walls & fences of 1 metre in height or below in the open plan estates for the Bishopsgarth & Elm Tree ward.

After the latest investigation, it is the purpose of this report to consider the open plan nature of the ward and consider whether the open plan condition relating to front boundary enclosures is still relevant and could be enforceable if the Local Planning Authority decided it is expedient to do so.

RECOMMENDATION:

It is recommended that Members resolve that: -

- 1. That the open plan condition is no longer appropriate to enforce and for the roads listed in appendix 1 and only require planning permission for a front boundary enclosure where it exceeds 1 metre in height adjacent to a public highway.**

BACKGROUND:

1. The local ward councillors had contacted the Planning Enforcement Section after previous investigations into front walls and fences in open plan estates in the ward had generated interest / queries concerning this issue plus the various planning committee resolutions dated 7th January 1994, 12th

November 1999, 30th March 2001 and 26th October 2005. It was agreed that the local ward councillors would consult local residents over this issue and pass comments back to the Enforcement Section.

2. On completion of local consultation through the local councillors newsletter the responses were quite clear that residents wanted walls or fences where the open plan nature of the road / area had already been lost, but in areas where the open plan nature still existed residents wanted it to be kept.
3. On advice from the local ward councillors it was agreed that the roads listed in appendix 1 had all lost their open plan appearance over time and that the open plan condition for this area should be relaxed and permitted development rights for front boundary enclosures of 1 metre or below should now be allowed plus any front boundary enclosures already erected of 1 metre or below in this area should not be enforced against.

CONSIDERATIONS:

4. Whilst it is clear planning permission would have been required for any front boundary walls or fences erected of 1 metre or below in this area (listed at appendix 1), this in itself is not sufficient justification for pursuing enforcement action.
5. It is necessary to assess the impact of the wall or fence in terms of the impact on the area and if there are any justified planning reasons for the development to be removed. Ultimately the Council does have the power to issue an enforcement notice but it is only appropriate to do so if planning permission was required and would have been refused. Also in this case enforcement action cannot be taken against properties where the enclosure has been erected for 4 years or more as they are now exempt from any legal action through time limitations under The Town & Country Planning Act 1990.
6. Further considerations were given to the fact that in a recent planning appeal decision (in Norton) for a 1 metre high fence in an open plan estate, the inspector states quite clearly that in essence the street appears as a cluster of dwellings which happen to have had boundary treatment omitted from front gardens and therefore the design & layout of the street is not unusual that openness is something which ought to be preserved at all costs. He allowed the appeal & also stated that although the proposed development would change the nature of the street to a minor degree, that change would not be harmful and not in conflict with the development plan.
7. The Development Control Manager is also of the opinion that taking into account the above information a Planning Inspector would dismiss any proposed enforcement action against new front boundary fences of 1 metre or below in this area (appendix 1) as the nature of the street scene had changed

and is clearly now not open plan with various designs / styles of walls & fences. This also highlights the problem there could be of trying to enforce the previously agreed design brief for the area of Elm Tree.

THE DEVELOPMENT:

8. Various front boundary walls & fences of 1 metre in height or below situated in the roads listed in appendix 1.

PLANNING POLICY CONSIDERATIONS:

9. Section 54a of the Town and Country Planning Act 1990 acknowledges that all planning approvals should be in accordance with the provisions of the development plan (1997) and alteration number 1(2004) unless material considerations mediate otherwise.

Policy GP1:

Proposals for development will be assessed in relation to the policies of the Cleveland Structure Plan and the following criteria as appropriate:

- i) The external appearance of the development and its relationship with the surrounding area;
- ii) The effect of the amenities of the occupiers of nearby properties;
- iii) The intention to make development as accessible as possible to everyone;
- iv) The quality character and sensitivity of existing landscapes and buildings.
- v) The need for a high standard of landscaping.
- vi) The desire to reduce opportunities for crime.
- vii) The intension to make development accessible as possible to everyone.
- viii) The quality, character and sensitivity of existing landscapes and buildings.
- ix) The effect upon wildlife habitats.
- x) The effect upon the public rights of way network.

MATERIAL PLANNING CONSIDERATIONS:

10. The issues which should be considered in this case are whether the erection of the front boundary walls & fences of 1 metre or below have had detrimental impact on the area and the amenities of neighbouring properties.

11. The majority of the front enclosures in this area are now exempt from any enforcement action the Local Planning Authority can take. This clearly emphasises that the open plan nature of this area has now diminished and it would now be virtually impossible for the Local Planning Authority to justify taking enforcement action against other new front boundary enclosures of 1 metre or below within this area.
12. It has also highlighted the fact that local residents want front boundary enclosures for various reasons for example: -
 - a. Trespass by humans or dogs
 - b. Security of property
 - c. Privacy and litter
 - d. Demarcation of ownership
13. Taking into account all the above information it would seem reasonable to remove the open plan condition relevant to this area (See Appendix 1) in the Bishopsgarth & Elm Tree Ward and restore the original permitted development rights of only requiring planning permission for a front boundary enclosure where it exceeds 1 metre in height adjacent to a public highway.
14. It should also be noted that front boundary enclosures of 1 metre or below covered by the open plan condition in other areas of the ward (where not exempt) will still be judged on its own merits.

CONCLUSION:

15. The Head of Planning is of the opinion that, taking into account all the above information, it would seem reasonable & justified to not enforce the open plan condition relevant to the area listed at appendix 1 and only require planning permission for a front boundary enclosure where it exceeds 1 metre in height adjacent to a public highway.

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Financial Implications.

Possible costs in defending an appeal should enforcement action be pursued.

Environmental Implications.

As Report.

Community Safety Implications.

Not Applicable.

Human Rights Implications.

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.

Background Papers.

Complaint file 15.0.1
Stockton-on-Tees Local Plan 1997

Ward(s) and Ward Councillors(s).

Bishopsgarth & Elm Tree	Councillor Mrs S Fletcher Councillor J M Roberts
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