

Enforcement Reference Number E/21/0186

Applicant: Barwoods
Breach: Development not constructed in accordance with plans approved under P/19/1766/2
Location: Land Off Cropston Road,
Anstey,
Leicestershire
LE7 7FF
Parish: Anstey
Case Officer: Sarah Hallam
Ward: Anstey
Tel No: 07912093326

This case has been brought to plans committee as it has been called in by Councillor Taylor and Councillor Baines on the grounds that they do not support the proposal to take no further action in relation to the breaches of planning control identified.

Description of the Site

The site is located on the south eastern side of Cropston Road, Anstey and this site was granted planning permission (P/17/0881/2) for the erection of 46 dwellings which was superseded by application P/19/1766/2 for the variation of conditions 2 and 3 of P/17/0881/2 (Section 73 application).

Description of the Unauthorised Works

During the construction of the development various minor alterations to the approved scheme (changes to the location of plots etc.) were undertaken and the variations (including the exact amount the dwellings and garages have been moved within the designated plots) are included below;

Plot	Changes undertaken
3	Plot moved 290mm and garage moved 187mm south of approved planning layout
4	Plot moved 152mm and garage moved 241mm south of approved planning layout
5	Plot moved 215mm south of approved planning layout
6	Plot moved 116mm south and garage moved forward 1180mm of approved planning layout
7	Garage moved forward 1180mm to avoid damaging neighbours' existing trees/ roots
8	Garage moved forward 1330mm to avoid damaging neighbours' existing trees/ roots
9	Garage moved forward 1330mm
10	Garage moved forward 1358mm to avoid damaging neighbours' existing trees/ roots
11	Plot moved 699mm west of approved planning layout, to avoid foundations contravening sewer easement

12	Plot moved 699mm west of approved planning layout to avoid foundations contravening sewer easement
13	Plot moved 699mm west of approved planning layout to avoid foundations contravening sewer easement
14	Plot moved 998mm north of approved planning layout
15	Due to changes to plots 11-14, the boundary at plot 15 was adjusted
21	Garage rotated approx. 20 degrees
22	Plot moved 149mm south of approved planning layout to make parking and garage accessible in a straight line
32	Garage moved back approx. 903mm to accord with boundary line and avoid unusable space
33	Garage moved back approx. 903mm
42	Plot moved 528mm south of approved planning layout Garage moved 379mm north
43	Garage moved 247mm south to accord with boundary line and avoid unusable space

In essence the three main planning breaches that have been identified are as follows;

- Change to the location of the fence to the rear of plots 3-15
- Realignment of dwellings and garages within the designated plots (detailed in the table above)
- Installation of solar street lighting bollards

The approved layout plan is attached to this report and the changes detailed in the table above are shown in purple. In addition, the conveyance plan, which details the land purchased with each plot, is attached and on this plan the changes to the location of the boundary fencing are highlighted in green. The above information and plans attached have been provided by the developer upon the request of the Local Planning Authority. On site spot checks with the plans provided have been undertaken to ensure Councillors can have confidence that the information now provided by the developer is accurate.

Development Plan Policies

Charnwood Local Plan Core Strategy (adopted 9 November 2015)

The following policies are relevant to this application:

Policy CS1 – Development Strategy sets out the development strategy and directions of growth for the borough. For Service Centres, (of which Anstey is one), provision is made for at least 3,000 new homes between 2011 and 2028. These homes must on balance be sustainable, meet need, be in line with strategic vision, make effective use of land and comply with the Core Strategy as a whole

Policy CS2 – High Quality Design requires developments to make a positive contribution to Charnwood, reinforcing a sense of place. Development should respect and enhance the character of the area, having regard to scale, massing, height, landscape, layout,

materials and access; protect the amenity of people who live or work nearby, provide attractive well managed public and private spaces; well defined and legible streets and spaces and reduce their impact on climate change.

Policy CS13 – Biodiversity and Geodiversity seeks to conserve and enhance the natural environment and to ensure development takes into account impact on recognised features.

Policy CS25 Presumption in favour of sustainable development echoes the sentiments of the National Planning Policy Framework in terms of sustainable development.

Borough of Charnwood Local Plan (adopted 12 January 2004) (saved policies)

The saved policies relevant to this proposal include:

Policy ST/2 – Limits to Development – This policy seeks to restrict development to within the existing settlement limits to ensure that development needs can be met without harm to the countryside or other rural interests.

Policy EV/1 – Design – This seeks to ensure a high standard of design and developments which respect the character of the area, nearby occupiers, and which are compatible in mass, scale, layout, whilst using landforms and other natural features. Developments should meet the needs of all groups and create safe places for people.

Policy CT/1 General Principles for areas of the countryside, green wedge and local separation. The policy restricts new development to that which is small-scale and where it meets certain criteria.

Policy CT/2 Developments in the Countryside – indicates in areas defined as countryside, development acceptable in principle will be permitted where it would not harm the character and appearance of the countryside and safeguards its historic, nature conservation, amenity and other local interest.

Other Material considerations

The National Planning Policy Framework 2012 (NPPF)

The NPPF is a material consideration in planning decisions. The NPPF contains a presumption in favour of sustainable development.

The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development and that there are 3 dimensions to this:

- An economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places to support growth and innovation;
- A social role – supporting strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations, and by creating a high quality built development with accessible local services;
- An environmental role – contributing to protecting and enhancing our natural, built and historic environment.

Paragraph 59 - Enforcement - 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.

Section 12: Achieving well-designed places

Paragraph 135 states Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.

Design Supplementary Planning Document January 2020

This document encourages and provides guidance on achieving high quality design in new development.

Chapter 3 Design Principles

Principle 1 – Respecting and enhancing the local character

Paragraph 3.58 states; In considering the design and siting of boundary treatments, a balance should be struck between privacy, safety and aesthetics. Boundaries should respond positively to the character of the buildings and spaces they surround. Existing, well-established boundaries in the form of hedgerows or low wooden fencing should generally be preserved, particularly in the countryside where they often will contribute towards the rural character.

Principle 6 – Protecting the amenity of existing and future occupiers

Paras 3.164 and 3.165 - Separation distance between dwellings

For privacy where rear building elevations containing main habitable room windows a distance of 21 metres is considered sufficient to protect loss of privacy.

To avoid overbearing impact where elevations containing main ground floor habitable room windows would face windowless flank walls, the following distances provide a guide to avoid over dominance: 9.5m minimum distance between the two elevations where a flank wall is single storey; Single storey flank walls can be sited closer where a hipped roof form is proposed. Where there is a difference in ground levels the separation distance should be adjusted by 1m for every 1m level variation.

Other Material Considerations

The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the authorisation of enforcement proceedings.

The issue of **human rights** is also a material consideration in the determination of planning applications and enforcement issues. Article 8 of the Human Rights Act 1998 requires respect for private and family life and the home while Article 1 of the First Protocol provides an entitlement to peaceful enjoyment of possessions. However, these rights are “qualified” and it is necessary to consider whether refusing planning permission and/or issuing an enforcement notice would interfere with the developer’s human rights. If it would, the Committee must decide whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The impact on the human rights of the developer must be balanced against the public interest in terms of protecting the environment and the rights of other people living in the area. In this case, the minor changes to the development are not considered to have an adverse impact upon the visual amenity of the area, highway safety or the amenity of the occupiers of the neighbouring properties.

Relevant Planning History

App No.	Description
P/17/0881/2	Erection of 46 dwellings
P/18/2578/2	Discharge of Condition 7 and 8 of P/17/0881/2 regarding Construction Method Statement and Rothley Brook Mitigation Strategy
P/19/0185/2	Discharge of conditions 3, 4, 5, and 9 of P/17/0881/2 - regarding finished floor levels, contamination survey, ground gas monitoring and an ecology construction method statement.
P/19/0255/2	Discharge of condition 18 of P/17/0881/2 - relating to building materials
P/19/0461/2	Discharge of Conditions 7 and 8 of P/17/0881/2 regarding Construction Method Statement and Surface Water Discharging
P/19/0739/2	Discharge of condition 18 of P/17/0881/2 - relating to materials
P/19/1211/2	Discharge of condition 9 of P/17/0881/2 regarding submission of a Landscape & Ecology Management and an Ecological Construction Method Statement
P/19/1392/2	Discharge of condition 3 of P/17/0881/2 regarding finished floor levels
P/19/1393/2	Variation of condition 6 of P/17/0881/2 to amend the wording of the condition
P/19/1766/2	Variation of Conditions 2 & 3 of P/17/0881/2. (Section 73 application)
P/19/2441/2	Discharge of Conditions 10, 11, 12, 13 & 14 of P/17/0881/2
P/19/2441/2	Discharge of Conditions 10, 11, 12, 13 & 14 of P/17/0881/2
P/20/1807/2	Discharge of conditions 7, 8, 9, and 11 of application P/19/1766/2.
P/20/2353/2	Discharge of Condition 7 of P/19/1766/2

Responses of Statutory Consultees

In respect of the solar street lighting bollards, the County Council Highway Authority has the following comments:

- Advised that they would not support the lighting installed but as the roads on the site are not being adopted by them they cannot require any improvements to the highway lighting within the site.

And the Council's Senior Ecologist has the following comments

- Raised no concerns and confirmed that the lights would not have any impact upon the local ecology.

Other Comments Received

Both Ward Councillors were uncomfortable agreeing that no further action should be taken in respect of the breaches of planning control that have been identified. They felt it was considered particularly unfair that the residents of plots 3-15 had a section of land in their ownership that was located behind a fence, to which they did not readily have access and therefore it would be very difficult for them to maintain.

Residents have raised concerns that the land they have purchased is not as detailed on the approved plans. For some plots the resident's ownership encompasses the rear boundary fence and an area of land beyond that fence, which is not contained within their useable garden area and therefore in their opinion is an unusable area of land, and not easily accessible by the owners of that land.

Consideration of the Planning Issues

Change to the location of the fence to the rear of plots 3-15

In March 2021 a resident contacted the Council as it had come to their attention that the area of land that they had purchased and that had been conveyed to them appeared not to reflect what was shown on the approved plans. The size of their garden, in some instances, was approximately 1.7 metres smaller than detailed on the approved plan.

After investigation into these claims it transpired that the developers had set the rear boundary fences for the properties (plots 3-15) up to approximately 1.7 metres in from the neighbouring boundary fences. The developer advised that the reason for this was down to a building that had been erected on the neighbouring boundary and an existing boundary hedge on the site that they felt was important to retain. The developer therefore decided to set the boundary fence of the new build properties in, away from this building and the existing hedge. As this building and hedge was at a slightly higher ground level, rather than installing a 1.8-metre-high fence, as shown on the approved plans, a low brick wall with a fence on top was installed.

When the new build properties were sold, the land between the rear boundary of the new dwellings and the neighbouring boundary was conveyed to the residents of the new build dwellings. Their deeds clearly detailed their land ownership. Therefore, when the residents moved into these properties, if the residents were not happy with the location of the rear

boundary fence and the section of land outside of their usable garden not being easily accessible, it fell to them to take this matter up with their solicitor and the developers at the time of purchase.

It is understood that prior to purchase of the new dwellings, the residents were aware that they were purchasing land which was located behind their rear boundary fence. The Council have been provided with a copy of the 'external levels plan' that the residents were shown by the developer prior to purchase and this plan details the location of the as built boundaries for each plot. The developer has also shared with officers documentation showing that each of the residents signed a reservation checklist to confirm that they had reviewed the external levels plan prior to purchase. It is understood that some residents even viewed the location of the boundary fences on site prior to completion of the sale of their properties. The developer maintains that they did not hide this from the residents, despite allegations to the contrary by the complainant.

It is understood that initially the complainant went to the developer with their concerns but when they failed to achieve a satisfactory resolution they brought the matter to the Council's attention. The developers have advised the home owners that they can remove the fencing if they wish but that this would be at their own expense in light that they purchased their property in full knowledge of the location of the rear boundary fence. Officers discussed the potential for the developers to move the fence element off the boundary wall back to the boundary shared with the residents on Cropston Road so that the residents would have access to the land, with a raised bed at the bottom of their gardens.

The developer has been reluctant to carry out any further works given they intended to retain the hedge. Since residents have moved in, parts of the hedge were then removed by the residents. The developer maintains that the residents were fully appraised of the situation prior to purchase so had the opportunity to pull out of the sale, if they wished.

In general, the plots that have been affected are plots 3-15 and the useable gardens for these plots have been reduced with the worst affected being approximately 1.7 metres shorter in length. There is however no policy regarding minimum garden sizes for dwellings. The Design Supplementary Planning Document 2020 details separation distance between dwellings for privacy and the minimum distance is 21 metres where rear building elevations contain main habitable room windows. The separation distances in this instance fully comply with this guidance. It is unfortunate that the developers have not placed the rear boundary fencing of plots 3-15 on the boundary of the purchased land however the design of the boundary treatment and its location is considered to comply with policy and there are no justifiable reasons to take enforcement action to require the boundary treatment to be moved back to the purchased boundary of each plot

This case is complicated by the civil matters that exist between the residents and the developer. The actual breach of planning control is that the location of the rear boundary fence is not as shown on the approved plans. The conveyancing issues are civil disputes and the planning regulations cannot be used to overcome a civil dispute. For clarity the civil dispute is that the residents feel that they were miss-sold their dwellings and were unaware that their gardens extended past the rear boundary fence. In addition, they do not have easy access to maintain this land. In this instance the planning breach (location of the rear boundary fence) needs to be considered as to whether it causes harm to the environment or residential amenity and in this case it is not considered to have a detrimental impact on the environment or residential amenity.

It is considered that if an application had been submitted for the fence line in its current location, consent would have been forthcoming. The Council fully understand the predicament that the land owners now face but in this instance it is considered not expedient for the local planning authority to take formal action to move the boundary treatment back to the approved location.

Councillors must be reminded that if they choose to take enforcement action, justifiable material planning reasons will need to be provided to support such action. It is considered that whilst the situation is unfortunate and there has been deviation from the approved plans without planning permission, it is not expedient to take any further action in this regard.

Movement of dwellings and garages within the designated plots

Following investigations into the location of the boundary at plots 3-15, the developer made the Council aware of alterations to the location of the dwellings and garages at a number of plots on the site. These alterations have been made for a variety of reasons which are outlined in the table at the start of this report. The site plan attached visually shows these changes in purple. No application was made for the deviation from the approved scheme, which is what would normally be expected. No resident has raised concern with regard to these changes; however, the planning authority, once aware of the changes, has a duty to consider whether or not they are acceptable and whether there is a need for any further action to be taken. In this instance the changes that have occurred, even though these have occurred to a number of plots on the site, are not considered to be unacceptable and are not considered to cause any detriment, to the visual amenity of the area, residential amenity, highway safety or ecology and in planning terms are deemed to be acceptable. It is therefore proposed that no further action is pursued in relation to this issue.

Installation of solar street lighting bollards

The solar lights installed on the development have not been approved by the Council. When planning permission (P/18/2576/2 amended by P/19/1766/2) was granted, Condition 9 was attached which states:

“No occupation of any dwelling shall take place until a scheme for external lighting on the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with these agreed details. REASON: The site adjoins a Local Wildlife Site and it is important to ensure that any outdoor lighting does not have an adverse impact on ecology.”

This condition was discharged under P/20/1807/2 where the developer advised that there would not be any external lighting within the site. A plan was provided in respect of the relocation of an existing lighting column at the entrance to the site and this was granted as part of the discharge of this condition.

Condition 9 was imposed for ecological reasons. Therefore, as part of this investigation the Council's Ecologist has been consulted on the lights that have been installed. No concerns have been raised regarding the low level solar lights and it has been confirmed that they will not have any detrimental impact upon the local ecology.

As Condition 9 has been discharged and no lighting was proposed, the Council does not have any enforcement powers to require lighting to be installed. Whilst the lighting that has been installed does not have planning permission it is not considered they cause any detriment to residential amenity or ecology on the site therefore no action is proposed to secure their removal.

The County Council Highway Authority have been consulted and advise that they would not support the lighting installed but as the roads on the site are not being adopted by them they cannot require any improvements to the lighting currently installed within the site.

The only course of action for the council in terms of enforcement would be to secure removal of the solar lighting; however, taking into account the above it is not considered expedient to pursue this matter any further.

Conclusion

Councillors are reminded it is the Local Planning Authorities (LPA) role to identify whether there is a breach of planning control and if there is, consider whether the development that has been undertaken is acceptable. In this instance the developer has provided the planning authority with a list and plans detailing the changes that have occurred during the construction of the site and it is confirmed this covers the main issues identified. Most changes would appear to have been undertaken for technical reasons such as the need to ensure compliance with the building regulations or to protect neighbouring tree roots etc. Paragraph 59, of the NPPF advises local planning authorities that taking enforcement action is discretionary and it should be used proportionately. Whether or not the developer has misled the purchasers over the sale of their properties or whether it is right and just, is unfortunately not what the Council is here to consider. The Council must consider the actual breaches, assess whether they comply with policy and whether there are any material planning considerations which indicate the works are unacceptable in planning terms.

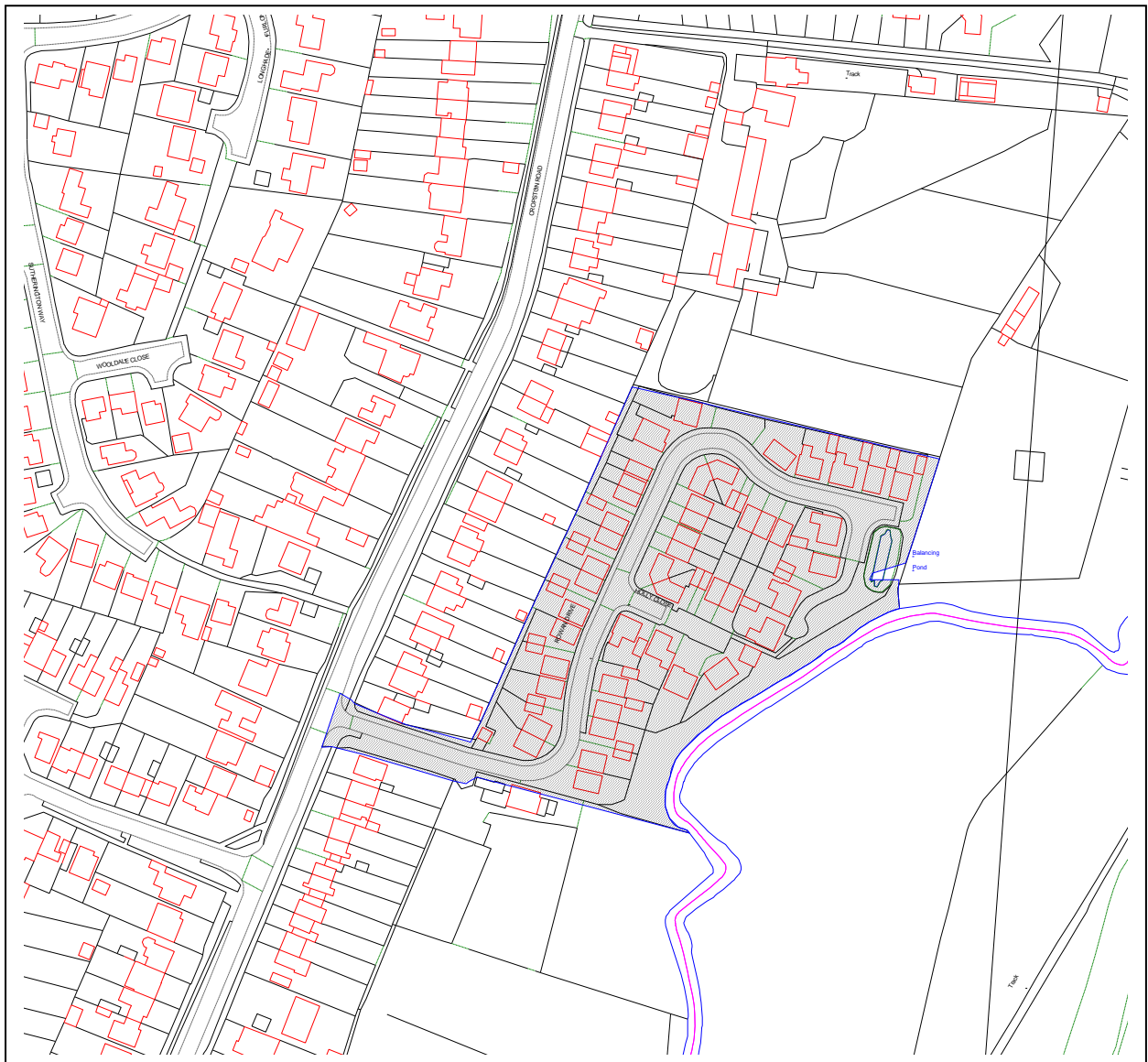
In this case it is important to note that, had an application been submitted for the minor changes to the plots, the relocation of the boundary fence to the rear of plots 3-15 and the retention of the solar lighting bollards it is considered that the development would comply with policies CS1, CS2, CS13 and CS25 of the Core Strategy, EV1, ST2, CT1 and CT2 of the Local Plan, Design Supplementary Planning Document and the National Planning Policy Framework and therefore planning permission would have been granted. Taking this into account, and as the breaches are not considered to be detrimental to residential, highway safety, ecological or visual amenity, it would be disproportionate to take any formal action.

It should be noted that a decision to take no further action does not authorise these breaches of planning control.

Recommendation

Therefore, for the reasons stated above, it is considered that it is not expedient for the local planning authority to take formal action in this instance and it is recommended that no further action be taken.

Land Off Cropston Road, Anstey
Scale 1:2500



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