

BRINTON – PF/20/1278 – Removal of condition 3 (hedge retention) of planning permission PF/93/0561, to regularise position following removal of hedge, Knockavoe, New Road, Sharrington, Melton Constable for Sally Orr

- Target Date: 24 September 2020

Case Officer: Darryl Watson

Minor Development

RELEVANT SITE CONSTRAINTS

- Countryside LDF
- Landscape Character Area – Type:
- Tourism Asset Zone LDF
- Unclassified Road

RELEVANT PLANNING HISTORY

PF/93/0561: Erection of bungalow and garage. Approved

THE APPLICATION

Is for the removal of Condition 3 of the planning permission (PF/93/0561) for the dwelling now known as Knockavoe states that: *“except as required to construct an access the hedge on the front boundary and the young trees within the site shall be retained and shall not be topped, lopped, felled, uprooted or otherwise destroyed without the prior written consent of the Local Planning Authority”*.

REASONS FOR REFERRAL TO COMMITTEE

At the request of Councillor Andrew Brown on the grounds that fencing is an unwelcome form of creeping urbanisation affecting rural settlements.

PARISH/TOWN COUNCIL

Brinton Town Council: Objects

Removal of the hedge is in breach of the original planning permission for the dwelling. The PC wishes to uphold the retention of the hedge and agree with the original reason for the condition being 'in order to safeguard the character and amenity of this pleasant rural area'. The PC considers hedges and hedgerows form an important part of what makes Sharrington unique. The majority of properties and field boundaries, of which there are many in the Sharrington, are formed by hedges which help to give the village its rural character. New Road is bordered by hedges on both sides which give this lane a particularly attractive rural appearance. The construction of a concrete and wooden fence is deemed inappropriate and harmful.

CONSULTATIONS

Landscape Officer: Objects

Objects to the removal of the condition as it is contrary to Policy EN4 which has now superseded the policy at the time of the original permission. It is clear from the consultee and public comments that the hedge had amenity value and added to the landscape character of the area. The continuous soft edge of the development along New Road leading into the village has been broken by the urban fence. An equivalent condition to retain the hedge and protect amenity and local character would be recommended for a similar application if it was received now.

The Agent's supporting statement details other fencing in the area but this is not considered relevant as the Council had no control over the construction. Three options are suggested to address the removal of the hedge:

- remove the fence and replant a new hedge or,
- re-position the fence further back away from the property boundary and replant a new hedge or,
- retain the new fence and use vertical planting techniques to screen it.

REPRESENTATIONS

Two received **supporting**:

- The new fence is a vast improvement to the hedge it replace which was getting very thin and tired looking. As the hedge on the opposite side of the road is not cut as often as it used to be, the fence gives a sense of more light and space to the road;
- The fence replaced an ailing hedge. It has no untoward impact on the character of the road and is a welcome replacement for the hedge.

One received **objecting**:

- The character of this rural area in and around Sharrington is such that the majority of properties and field boundaries are formed by hedging: this is what helps to give and maintain its rural character. The increasing tendency to replace hedging with harder landscaping materials such as wooden fencing is leading to an increasingly suburban rather than rural look and 'feel' for the village
- The property borders the Sharrington Conservation Area, which could be extended to include the other properties on New Road which are currently outside the Conservation Area, as part of the Appraisal Review Programme for these areas. Hedges and hedgerows form an important part of what makes Sharrington unique and distinctive, and therefore any erosion of this needs to be resisted.
- A new hedge could be planted on the road side of the new fence.

HUMAN RIGHTS IMPLICATIONS

It is considered that the proposed development may raise issues relevant to Article 8: The Right to respect for private and family life.
Article 1 of the First Protocol: The right to peaceful enjoyment of possessions.

Having considered the likely impact on an individual's Human Rights, and the general interest of the public, approval of this application as recommended is considered to be justified, proportionate and in accordance with planning law.

CRIME AND DISORDER ACT 1998 - SECTION 17

The application raises no significant crime and disorder issues.

PUBLIC SECTOR EQUALITY DUTY

In making its recommendation, the Local Planning Authority have given due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010 to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

STANDING DUTIES:

Due regard has been given to the following additional duties:

Natural Environment & Rural Communities Act 2006 (S40)

The Conservation of Habitats and Species Regulations 2017

Planning Act 2008 (S183)

Planning (Listed Buildings and Conservation Areas) Act 1990 (S66(1) and S72)

Local Finance Considerations:

Under Section 70(2) of the Town and Country Planning Act 1990 the council is required when determining planning applications to have regard to any local finance considerations, so far as material to the application. Local finance considerations are not considered to be material to this case.

RELEVANT POLICIES

North Norfolk Core Strategy (Adopted September 2008):

EN 2 - Protection and enhancement of landscape and settlement character

EN 4 - Design

EN 8 - Protecting and enhancing the historic environment

National Planning Policy Framework (NPPF):

Section 2 – Achieving sustainable development

Section 4 – Decision-making

Section 12 - Achieving well-designed places

Section 15 - Conserving and enhancing the natural environment

Supplementary Planning Documents

North Norfolk Design Guide SPD (2008)

MAIN ISSUES FOR CONSIDERATION

Whether any significant harm would arise from the removal of the condition.

APPRAISAL

It is important to note that what is being considered through this application is only what has been applied for, i.e. the removal of the condition. This report cannot assess the effect of the fence that has replaced the hedge, that fence requires planning permission and may be considered via a separate application. If no application is made then consideration will be given as to expediency of enforcement action to demur, amend or remove the unauthorised fence.

Members are requested to consider Condition 3 of the planning permission (PF/93/0561) for the dwelling now known as Knockavoe states that: *“except as required to construct an access the hedge on the front boundary and the young trees within the site shall be retained and shall not be topped, lopped, felled, uprooted or otherwise destroyed without the prior written consent of the Local Planning Authority”*.

The reason for the condition was *“in order to safeguard the character and amenity of this pleasant rural area”*.

Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should only be used where they satisfy the following six tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

All need to be satisfied for each condition which an authority intends to apply.

Whilst the purpose of the condition is clear from the reason relating to it, it is considered the condition is poorly drafted and fails to demonstrably meet all of the above six tests. Those technical weaknesses make enforcing the condition problematic, further that defending a reason for refusal in the event of an appeal is considered to be high risk.

In particular, there is a lack of precision around the requirement for the hedge to be maintained at a specific height, and no requirement whatsoever for replaced should the hedge die or was damaged for example. In addition there is no record of how high the hedge was when the condition was imposed, or the species that constituted the hedge. The submitted Planning Statement only refers to the hedge being non-native *Elaeagnus* plants. The enforceability of the condition is questionable.

The condition is also considered to be unreasonable because the wording is such that consent from the local planning authority is required before any trimming or basic tidying of the hedge is carried out. Trimming or tidying may be as frequent as 3 or 4 times a year. The condition requires authorisation on each case. It is therefore considered that the condition does not satisfy tests 4, 5 and 6 above and as such it is recommended that the application is approved.

Members may note the Landscape Officer's comments, it is likely an equivalent condition to retain the hedge (if it was of sufficient quality) to protect amenity and local character may be recommended for a similar proposal if it was received now. Importantly any such a condition would now include requirements relating to the minimum height at which the hedge should be retained and for replanting should it die for example. The historic condition fails to include such precision.

Members please note any approval of this condition variance application would not grant permission for the fence.

Officers are minded that the fence that has been erected following the removal of the hedge requires planning permission as it is adjacent to a highway and exceeds 1 metre in height. The fence is not permitted development under Schedule 2, part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Although the fence is set back behind a grass verge and is about 3 metres from the near edge of the surfaced part of the carriageway, the highway boundary extends to the back edge of the verge and the fence sits on it, with no physical or visual barrier such as a hedge between.

The only matter for consideration is the removal of the condition. Consideration of the fence and matters such as its effect on the character and appearance of the area would need to be via a subsequent planning application for its retention should an application be submitted.

Conclusion

For the reasons stated it is considered that the condition is poorly drafted and does not satisfy all of the 6 tests for a condition. It is therefore recommended that the application is approved.

RECOMMENDATION:

APPROVAL. No conditions are considered to be necessary.