

REPORT OF:	ASSISTANT DIRECTOR PLANNING, BUILDING CONTROL AND REGULATORY SERVICES
TO:	DEVELOPMENT MANAGEMENT COMMITTEE
DATES:	29TH FEBRUARY 2024

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ENFORCEMENT ACTION

Case Reference: PLE/23/0058

Issue: Enforcement Notice: Unlawful Erection of a Fence

At 59 Marsden Hall Road, Nelson

Case Officer: NW

Issue

In January 2023 unlawful development took place in the form of the erection of a fence. Contact was made with the developer, but the fence remained in situ.

An enforcement notice was served date 24th May 2023. That required the removal of the part of the fence that required planning permission within 2 months form when the notice took effect. The reason for the notice was due to the poor design of the fence and the deleterious impact the fence was having on the area.

The notice was appealed. That included a ground “a” appeal that planning permission should be granted for the development. The appeal was dismissed with the Inspector concluding that the development causes “significant harm to the character and appearance of the area”.

The Inspector also concluded that the time period for compliance of 2 months was an appropriate timescale. The decision letter was issued on 1st November 2023. The notice should have been complied with by 1st January 2024.

The developer spoke at the Nelson Area Committee on 5th February 2024. The request was that no enforcement action be taken. The Committee resolved not to take any action. No planning justification was given in making that decision why, on planning grounds, no action should be taken. Personal circumstances of the developer were advanced which influenced the decision not to take action. Settled law, Lord Scarman in Great Portland Estates, is that personal circumstances should not be taken into account in planning decision. That is unless a decision is finely balanced on planning grounds. For the reasons set out below this is not a case where the issues are finely balanced and as such no weight should be given to personal circumstances as that would be an unlawful approach to decision making.

The Council has served an enforcement notice based on legitimate planning grounds about the harm a development is having on an area. That has been independently examined and significant harm has been found to occur. The place to challenge the planning merits of a case is at appeal. Once that decision has been made the Planning Act 1990 precludes any further challenges to the validity of the Notice. That means that should the Council decide to prosecute for non-compliance it is unlawful for the developer to seek to challenge the planning merits of the case and it is equally unlawful for the court to consider this.

The planning merits of the development have been deemed to be unacceptable by the Council in deciding to issue the enforcement notice. Actual harm to the environment has been accepted to have occurred.

To now not take action would bring the Council into disrepute. It would also lead to a situation where the Council, if challenged, would be maladministering the application of its planning powers. Having itself identified public harm, served an enforcement notice to remedy that harm requiring the removal of the fence, had that independently confirmed to be the correct application of planning policy and the law then for unexplained reasons decide that the whole process was wrong and not to take action would be a perverse planning decision to take.

The developer has had a full opportunity to appeal the merits of the case. Unless there has been a material change in prevailing planning policy or law that would warrant reconsideration of the case the proper approach is to require compliance with the notice.

Planning policy or law has not changed. The developer has had more time than required to remove the fence but has not done so. The recommendation below is that a prosecution is instigated unless the fence is removed within 7 days.

RECOMMENDATION:

That the developer be given 7 days to fully comply with the requirements of the enforcement notice. Should the notice not be complied with in full the developer should be prosecuted without further reference to them.