

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: P/ENA/270/61
- Site address: Neibheis Cottage, 5 Baikie Place, Thrumster, Wick, Caithness, KW1 5TE
- Appeal by Mr & Mrs N Scobie against the enforcement notice dated 6 April 2009 served by Highland Council
- The alleged breach of planning control: The erection of a timber fence which has not been approved by the Planning Authority as required by the terms of condition 4 of planning consent no. 03/00340/FULCA.
- Date of site visit by Reporter: 15 July 2009

Date of appeal decision: July 2009

Decision

I allow the appeal and direct that the enforcement notice dated 6 April 2009 be subject to the variation of the terms of the notice by the deletion of the words: "Dismantle the wooden fence and remove dismantled materials from the site" and the substitution therefor of the words: "Reduce the height of the fence to no more than 1 metre along the northern boundary of the garden where it coincides with that of the adjacent Crescent House".

Background

The enforcement notice arose out of apparent action by the developer of the appeal and neighbouring properties to construct boundary fences 1.8 metres high around some of the gardens, without reinstating a stone boundary dyke. The dyke has subsequently been reinstated and parts of the fences reduced in height. There are suggestions in submissions that the enforcement notice may have been incorrectly served and may be a nullity. I have considered this carefully and found nothing to suggest this to be the case.

Reasoning

1. The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:
 - (a) That in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitations ought to be discharged.

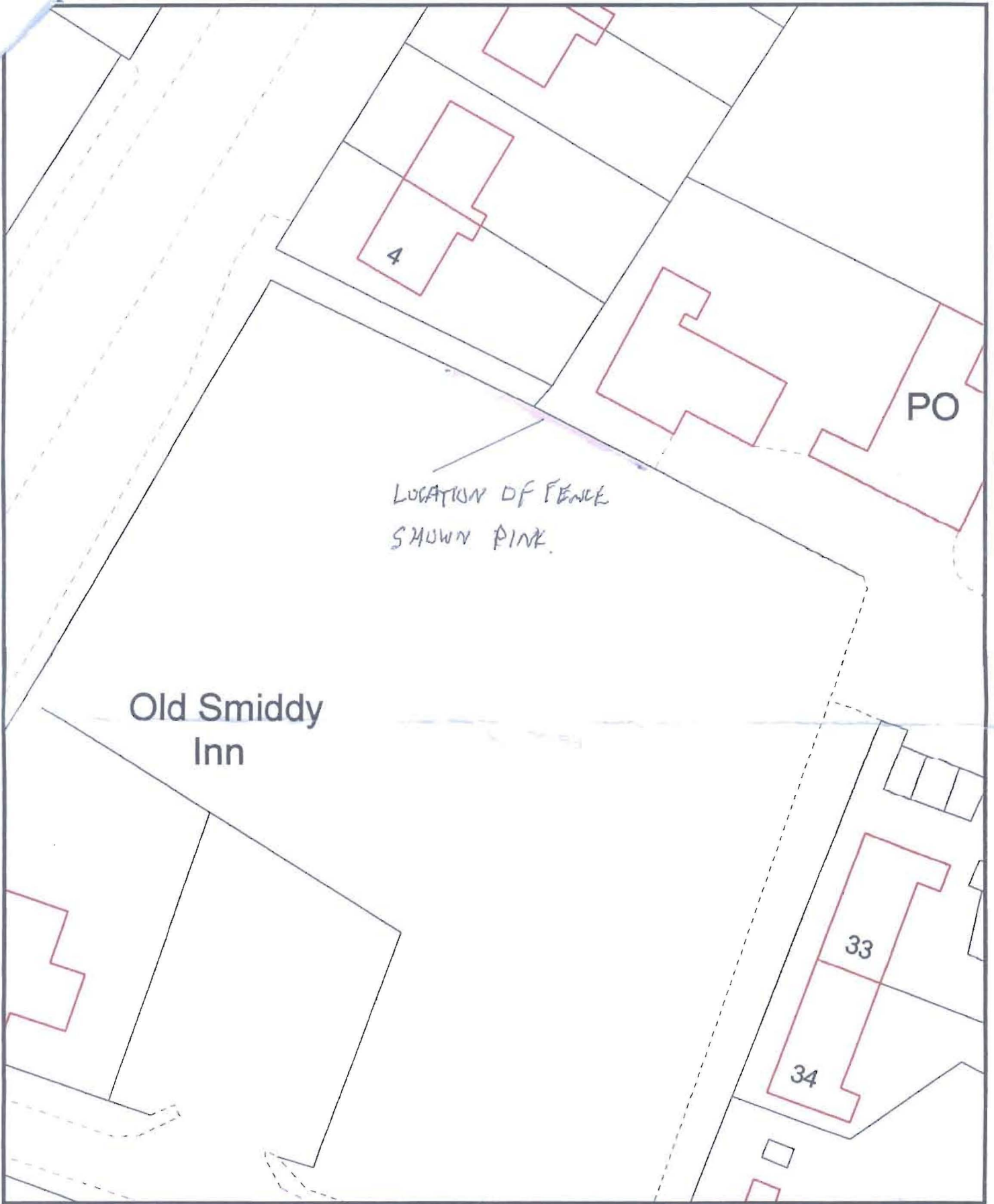
2. Since the enforcement notice was served a meeting has been held, convened by the local MP, together with the occupiers of nos. 5 and 6 and representatives of Norscott Joinery Limited (the developer) and the planning authority. At the meeting it was agreed that Norscott would submit a planning application including, amongst other fence works, regularising the fence along the north garden boundary of the appeal property. This would involve retaining the fence at 1.8 metres high along the western part of the northern boundary, extending as far east as the eastern end of the garden shed; and reducing the height of the remaining portion of 1.8 metre fence to no more than 1 metre, where the garden ground is adjacent to that of the neighbouring Crescent House. The remaining part of the garden ground, presently unfenced, would be bounded by a 1 metre fence, but this latter part of the application does not affect the appeal. The planning application has now been submitted but not yet determined by the council.

3. In its submission the council suggests the fence be allowed as described in the above paragraph. No development plan issues arise, and this is a common sense solution, answering the objections of neighbouring occupiers whilst giving a properly fenced garden for the appellants that does not impact adversely on any residential amenity. The appeal under ground (a) therefore succeeds, and this can be dealt with by an amendment to the wording of the notice.

4. For the avoidance of doubt a plan showing the length of fence affected by the notice is attached.

This is a true and certified copy of the decision issued on 27 July 2009.

Trevor A Croft
Reporter



LOCATION OF FENCE
SHOWN PINK.

Old Smiddy
Inn

4

PO

33

34

50

0



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Highland
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Comhairle na
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