

THE HIGHLAND COUNCIL

**CAITHNESS, SUTHERLAND & EASTER ROSS PLANNING
APPLICATIONS COMMITTEE – 22 September 2009**

Agenda Item	5
Report No	44/09

**ENFORCEMENT ITEM
13 FIRHILL ALNESS**

Report by Area Planning and Building Standards Manager

SUMMARY

Description : Unauthorised timber screen fence at 13 Firhill, Alness

Recommendation - SERVE ENFORCEMENT NOTICE

Ward : 7 – Cromarty Firth

Development category : Local

Pre-determination hearing : Not applicable

1. BACKGROUND

- 1.1 In late 2007 it was brought to the attention of the Planning Authority that a high fence had been erected to the front of a mid-terraced property at 13 Firhill in Alness. On investigation it was discovered that, following advice given by a housing officer, the householder at 13 Firhill had erected the fence thinking no planning permission was required. The house is privately owned.
- 1.2 A formal letter complaining about the height of the fence was received from the neighbouring householder at 14 Firhill in May 2008. Concern was expressed in that letter that the fence at over 2m replaced one of only 0.7m and was cutting out light. The letter also expressed concern over the unsightly appearance of the fence in a row of terraced houses where all other fences are only 0.7m.
- 1.3 Housing Services acknowledged that a mistake had been made. A letter had been sent to the householder at 13 Firhill in August 2007 advising that, further to consultation with Planning and Building Standards, there was no height restriction on a fence in planning terms but above 2m a fence would require a building warrant. Consultation had been undertaken with a building standards officer who gave advice relating to the need for a building warrant but also clearly advised the housing officer to speak to a planning officer. Unfortunately no such consultation was undertaken and this part of the advice was not passed on to the householder.

- 1.4 The matter was left with Housing Services to approach both householders involved in order to try to achieve a satisfactory compromise. It is however understood that despite Housing officials visiting both parties and offering to have the fence reduced in height at the Council's expense and/or to install a light at No 14, neither party was prepared to accept any compromise or assistance offered.
- 1.5 Three further letters have been received from the householder at 14 Firhill, dated 21 October 2008, 17 January 2009 and 20 July 2009, expressing frustration that the fence remains *in situ* and that no action has been taken by the Planning Authority to have it removed or reduced in height.
- 1.6 Letters have however been written to the householder at 13 Firhill on 10 September 2008 and 29 April 2009 clearly explaining that a formal application for planning permission is required and that two courses of action were open to her as follows: either reduce the height of the fence to no more than 1m (the maximum height to which a fence can be erected in this location without planning permission); or submit a retrospective application for planning permission for the fence at its current height for the Council's formal determination.
- 1.7 A letter of response was received from solicitors on behalf of the householder on 4 June 2009 stating the opinion that as the Council as Housing Authority had sanctioned the erection of the fence then it could not as Planning Authority seek to have it removed. The Council's solicitor advised that this assertion is in fact not the case and that it is perfectly competent for the Council as Planning Authority to pursue this case particularly given the continuing concerns expressed by the neighbour. Again the householder was advised by way of letter dated 24 June to her solicitor that she should either reduce the height of the fence or submit a retrospective application for planning permission, although it was pointed out that such application, if for the fence at its current height, would be unlikely to receive officer support.

2. PLANNING APPRAISAL

- 2.1 There is no doubt that the fence at its present height requires planning permission. For explanation, fences and walls have permitted development rights up to a maximum height of 2m except within 20m of a road or footpath where the height limit is 1m only.
- 2.2 The householder at 13 Firhill has been told on numerous occasions, dating back to December 2007, that the fence should either be removed or reduced in height to no more than 1m. She has also been advised that it would be open to her to submit a retrospective application for planning permission for the fence at its present height for the Council's formal consideration. She has chosen not to take any action.
- 2.3 It is acknowledged that this situation has arisen due to wrong advice initially offered. However, Housing Services has attempted to mediate by meeting both parties and offering to pay/carry out the work to achieve a reduction in height which would be acceptable to both sides and to install a light outside the neighbour's front door to overcome issues relating to loss of light. This attempt at mediation has proved unsuccessful.

2.4 It is therefore for the Planning Authority to determine whether it is reasonable to pursue enforcement action in such circumstances. In this respect, the fence has been erected around the front garden of a mid-terraced house where all existing front fences are less than a metre in height. Therefore notwithstanding the direct impact of the fence on the immediate adjoining property, which is apparent from the letters of objection from No 14 adjacent, there is also an issue of impact on wider public amenity. In this respect, the Firhill housing development has been designed with high back garden fences and low fences to the fronts of the properties. On the opposite side of the public footpath which adjoins the site, the back gardens of the properties to the immediate north have a high close-boarded timber fence running along this boundary. It is therefore important that the fences on the other (south) side of the path remain lower to allow light and visibility to the footpath, retaining a safe and welcoming pedestrian route. The existing fence also appears unsightly and out of place within the context of adjoining lower fences.

3. CONCLUSION

3.1 It is regretted that erroneous advice from another Service of the Council resulted in the initial erection of the fence without the necessary planning permission. However, the householder involved has been given a considerable period of time to regularise the situation and has chosen not to take any action.

3.2 It is considered that the fence at its current height is unsightly and detrimental to wider public amenity. It also has an unacceptable direct impact on the light and amenity previously enjoyed by the adjoining property of 14 Firhill. If the Council decides to accept the fence at its current height it is submitted that this would set an undesirable precedent which may lead to the erection of high fences along the remainder of this footpath. This would result in the creation of an enclosed dark public space, making it unattractive to pedestrians and more likely to attract crime. This is not in the wider public interest.

RECOMMENDATION

It is recommended that an Enforcement Notice is served on the householder at 13 Firhill requiring the fence to be either removed or reduced in height to no more than 1m above existing ground level with a period of two months to carry out the works to the satisfaction of the Planning Authority.

Signature: Allan J Todd
Designation: Area Planning & Building Standards Manager (C,S & ER)
Author: Dorothy Stott
Designation: Principal Planning Officer
Report Date: 09.09.2009

Background Papers: Correspondence between Highland Council and Mr and Mrs Christodoulatos, 13 Firhill, Alness;
Correspondence between Highland Council and Ms Isobel Macdonald, 14 Firhill, Alness;
Correspondence between Highland Council and The Mackenzie Law Practice

Relevant Plans: Plan 1 – Location Plan

