

THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE : **7 SEPTEMBER, 2022**

REPORT OF THE HEAD OF REGENERATION AND PLANNING

5. ENFORCEMENT ACTION

b) THE OLD CHAPEL, THE RHIW, GRAIG PENLLYN, COWBRIDGE, CF71 7RS

Executive Summary

This report seeks authorisation to issue an Enforcement Notice under section 172 of the Town and Country Planning Act 1990 (as amended) in respect of the trellis fencing that has been erected along the southern boundary of the property.

The report recommends that an Enforcement Notice is issued requiring the removal of the trellis fencing and supportive posts and the repairing and making good of any damage caused to the wall with a material to match the colour and texture of the wall. Authorisation is also sought to pursue legal proceedings in the event that the Enforcement Notice is not complied with.

Background and Site Description

1. Trellis fencing exceeding one metre in height adjacent to a vehicular highway has been erected along much of the southern boundary of The Old Chapel in Graig Penllyn.
2. The property is a detached dwelling set within the settlement boundary of Graig Penllyn and the Upper and Lower Thaw Valley Special Landscape Area. A double garage sits in the south-eastern corner of the plot, with an associated vehicular access onto the adjacent lane. The property benefits from a stone wall along its western and southern boundary onto which a trellis fence has been attached. The property is marked red, and the location of the trellis fence is marked blue on the plan below.



3. The surrounding area is predominantly made up of detached dwellings set within spacious plots. Low lying stone walls with planting atop are typical boundary treatments that front the highway and public realm in the immediate locality. One exception to this is the public house opposite that has a courtyard enclosed by a low-lying brick wall with close board fencing inserts.

#### Details of the Breach

4. Trellis fencing and its supportive posts have been attached to the outside face of the south-western stone boundary wall as shown in the photos below.





The photograph below shows the site prior to the erection of the trellis:



5. The Town and Country Planning (General Permitted Development) Order 1995 as amended permits means of enclosures to be erected to a height of one metre when adjacent to a vehicular highway without the need to obtain planning permission from the Local Authority. A means of enclosure is to be measured from the ground level it has been erected on; in this instance, the height of the trellis fence is to be taken from the adjoining highway land and will be inclusive of the height of the stone wall.
6. The height of the fencing, inclusive of the height of the wall exceeds one meter. Planning permission has not been sought or granted for the installation of the trellis fencing and it therefore constitutes a breach of planning control and is unauthorised.
7. The length of the boundary where the trellis fence is located is adjacent to a vehicular lane and a junction where the lane and two other roads meet.

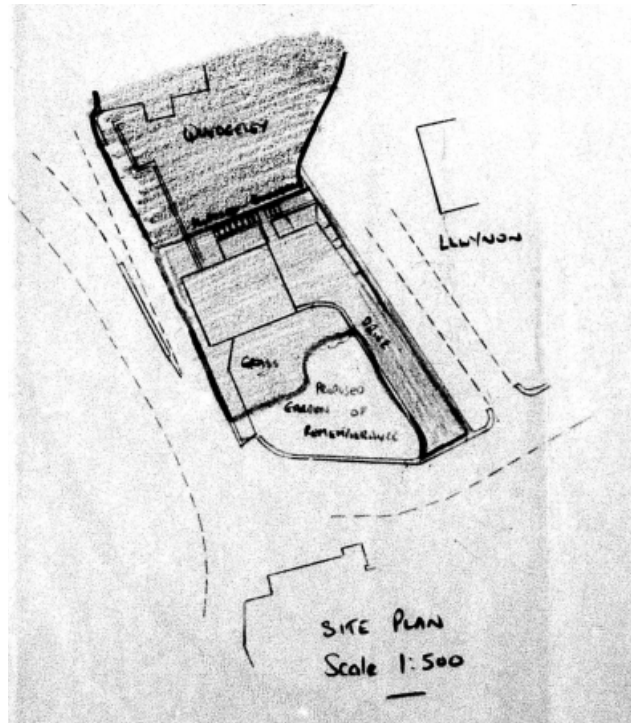
#### Action Pursued to Date

8. Site visits have been undertaken to assess development. The owner has been contacted to advise the erection of the fencing constitutes a breach of planning control. It has been requested that the fencing is removed or a retrospective planning application submitted. No action has been forthcoming and the owner has been contacted to advise that the fence is considered unacceptable by officers in planning terms.

#### Planning History

9. 1984/00075/FUL, Address: Old Chapel, Craig Penllyn, Cowbridge, Proposal: Conversion to residential use within shell of existing building, Decision: Approved

At the time the above planning application was approved, it was confirmed that the curtilage of the proposed 2-bedroom dwelling would include part of the adjoining memorial ground. This is shown in the triangular section of the plan below as 'proposed garden of remembrance' and is the area which has now been enclosed by trellis fencing.



It appears from the planning history and aerial and street view images of the site that a dense conifer hedge was previously planted at the site to separate the area which was intended to be used as a private amenity area from the memorial ground. Therefore, although this area appears to have been included as part of the garden associated with the Old Chapel for a number of years, it has not previously been enclosed and has been defined by the existing low stone wall along the boundary that is characteristic of other boundary treatments in the area.

### Planning Legislation

10. Section 173 of the Town and Country Planning Act 1990 states that in relation to the contents and effect of an enforcement notice:
  - (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
  - (4) Those purposes are -
    - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or

(b) remedying any injury to amenity which has been caused by the breach.

- (5) An enforcement notice may, for example, require -
- (a) the alteration or removal of any buildings or works;
  - (b) the carrying out of any building or other operations;

### Policy and Guidance

11. Welsh Government advice on the enforcement of the planning control is found in the Development Management Manual (Revision 2, May 2017). This states that 'Where an LPA considers that an unauthorised development is causing unacceptable harm to public amenity, and there is little likelihood of the matter being resolved through negotiations or voluntarily, they should take vigorous enforcement action to remedy the breach urgently or prevent further serious harm to public amenity.'

### **Local Development Plan:**

12. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026, which was formally adopted by the Council on 28 June 2017. The plan identifies the site as being within the settlement boundary of Graig Penllyn. Applicable policies include:

#### *Strategic Policies*

POLICY SP10 – BUILT AND NATURAL ENVIRONMENT states development must preserve and where appropriate enhance the rich and diverse built environment and heritage, including Special Landscape Areas.

#### *Managing Growth Policies:*

POLICY MG17 – SPECIAL LANDSCAPE AREAS states development will be permitted where it is demonstrated that it would cause no unacceptable harm to the important landscape character of the area.

#### *Managing Development Policies:*

POLICY MD2 – DESIGN OF NEW DEVELOPMENT states development should be of a high standard design that positively contributes to the context of the surrounding built environment and protects existing features of townscape interest. It also states development should safeguard existing public and residential amenity. It further states development should have no unacceptable impact on highway safety.

POLICY MD5 – DEVELOPMENT WITHIN SETTLEMENT BOUNDARIES states development within the identified settlements should be of a form and character that are sympathetic to and respects its immediate setting and does not unacceptably impact upon the character and appearance of the locality.

## **Designation of Special Landscape Areas – Background Paper 2013:**

13. The paper outlines a number of key policy and management issues, one of which is the need to improve development to ensure rural detailing and character are maintained.

## **Future Wales: The National Plan 2040:**

14. Future Wales – the National Plan 2040 is the national development plan and is of relevance to the determination of this planning application. Future Wales provides a strategic direction for all scales of planning and sets out policies and key issues to be considered in the planning decision making process.

## **Planning Policy Wales:**

15. National planning policy in the form of Planning Policy Wales (Edition 11, 2021) (PPW) is of relevance to the matters considered in this report.
16. The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales.
17. The following chapters and sections are of particular relevance in the assessment of this planning application:

18. Chapter 3 - Strategic and Spatial Choices

- Good Design Making Better Places

Section 3.9 states ‘The special characteristics of an area should be central to the design of a development. The layout, form, scale and visual appearance of a proposed development and its relationship to its surroundings are important planning considerations’.

19. Chapter 6 - Distinctive and Natural Places

- Recognising the Special Characteristics of Places (The Historic Environment, Green Infrastructure, Landscape, Biodiversity and Ecological Networks, Coastal Areas)

Section 6.3.3 states ‘all the landscapes of Wales are valued for their intrinsic contribution to a sense of place, and local authorities should protect and enhance their special characteristics, whilst paying due regard to the social, economic, environmental and cultural benefits they provide, and to their role in creating valued places’.

## **Technical Advice Notes:**

20. The Welsh Government has provided additional guidance in the form of Technical Advice Notes. The following are of relevance:

- Technical Advice Note 12 – Design (2016)

### **Supplementary Planning Guidance:**

21. In addition to the adopted Local Development Plan, the Council has approved Supplementary Planning Guidance (SPG). The following SPG is of relevance:
- Residential & Householder Development

### **Welsh National Marine Plan:**

22. National marine planning policy in the form of the Welsh National Marine Plan (2019) (WNMP) is of relevance to the determination of this authorisation. The primary objective of WNMP is to ensure that the planning system contributes towards the delivery of sustainable development and contributes to the Wales well-being goals within the Marine Plan Area for Wales.

### **Other relevant evidence or policy guidance:**

- Manual for Streets (Welsh Assembly Government, DCLG and DfT - March 2007)
- Welsh Office Circular 24/97 - Enforcing Planning Control
- Welsh Government Development Management Manual – Section 14 Annex “Enforcement Tools”

### **Well Being of Future Generations (Wales) Act 2015:**

23. The Well-being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council’s duty and the “sustainable development principle”, as set out in the 2015 Act. In reaching the recommendation set out below, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

### Reasons for Serving an Enforcement Notice

24. Boundaries fronting the highway in the immediate area are predominantly characterised by low lying stone walls with planting atop. As detailed above, at the time the Old Chapel was converted, it was intended for this area to continue to be defined by the low stone wall which defined the curtilage of the property. The trellis is particularly prominent in the street scene and has a stark and visually incongruous appearance. It has an appearance which is discordant and alien in the context of the surrounding built environment and consequently it is considered to detract from the open aspect of the site and character of the surrounding area. The height and prominent positioning of the trellis, in combination with the design and appearance, is considered to be harmful to the character of the immediate built environment. Furthermore, the nature in which the fencing has been bolted to the external face of the existing stone wall represents poor quality design and is detrimental to the visual amenities of this very prominent part of the village.



25. Furthermore, due to the location and height of the fencing, it obscures views of drivers egressing from the garage. Vehicles egressing from the garage in both a forward and reverse gear would need to edge out into the highway to obtain adequate lines of sight prior to driving away. The trellis fencing also obscures views of drivers using the surrounding highway network, namely those flowing in a southerly direction and turning eastwards at the junction. With no designated pedestrian walkway, the fencing obscures views of pedestrians walking along the road immediately adjacent the fencing. The above results in an increased likelihood of conflict with other road users and is considered to be detrimental to highway safety.
26. For the reasons noted above, the development is contrary to Policies SP10, MG17, MD2 and MD5 of the LDP.

### Conclusions

27. The trellis fencing constitutes a breach of planning control due to its height exceeding one metre adjacent to a vehicular highway. The fence is of a visually insensitive design and is detrimental to the character of the immediate built environment and visual amenity of the area. Furthermore, the fence restricts the visibility of vehicles using the adjacent vehicular highway and those egressing from the garage resulting in an increased chance of conflict between road users and/or pedestrians, to the detriment of highway safety. The development is therefore contrary to Policies SP10, MG17, MD2 and MD5 of the LDP.
28. It is considered that the decision would comply with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well-being of Future Generations (Wales) Act 2015.

### Resource Implications (Financial and Employment)

29. Any costs involved in drafting and issuing Notices, attending enquiries and undertaking monitoring work can be met within the departmental budget. There are no employment issues.

### Legal Implications (to include Human Rights Implications)

30. If an Enforcement Notice is served, the recipient has a right of appeal under Section 174 of the Town and Country Planning Act 1990 (as amended).
31. The Action is founded in law and would not be considered to breach any of the rights referred to in the Human Rights Act.

### Equal Opportunities Implications (to include Welsh Language Issues)

32. None.

### RECOMMENDATION

- (1) That the Head of Legal Services be authorised to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended) to:

- (i) Remove any part of the trellis fencing including its supportive posts that is above one metre in height above ground level.
  - (ii) Repair and make good any damage to the boundary wall as a result of step (i) above with a suitable material to match the colour and texture of the existing wall.
- (2) In the event of non-compliance with the Notice, authorisation is also sought to take such legal proceedings as may be required.

#### Reason for Recommendation

- (1) It appears to the Council that the above breach of planning control constituting the erection of a trellis fence has occurred within the last 4 years.
- (2) The trellis fencing due to its height, design and prominent positioning represents an visually harmful and insensitive form of development that is detrimental to the character of the area, contrary to Policies SP10, MG17, MD2 and MD5.
- (3) The location and height of the fencing obscures views of drivers using the immediate highway network as well as those egressing from the garage. This coupled with the highway network not benefitting from a pedestrianised walkway results in an increased chance of conflict between road users and/or pedestrians, which is detrimental to highway safety contrary to Policy MD2.
- (4) It is considered that the decision complies with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well Being of Future Generations (Wales) Act 2015.

#### Background Papers

Enforcement File Ref: ENF/2021/0132/PC

Contact Officer - Mr. B Worrall, Tel: 01446 704 651

#### Officers Consulted:

All relevant Chief Officers have been consulted on the contents of this report.

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HEAD OF REGENERATION AND PLANNING