

Grounds for Appeal of the Enforcement Notice dated 2nd May 2019 in respect of:

River Cottage, Tiddington Road, Stratford upon Avon CV377AE – 17/00392/HHENF

Dear Sir/Madam

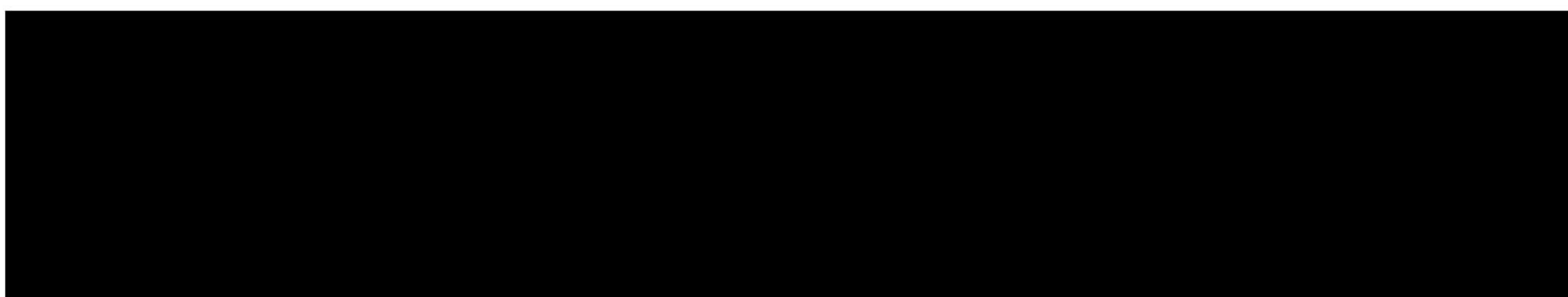
This appeal is made under ground a) that planning permission should be granted for what is alleged in the notice.

The site of the house (River Cottage), subject to the enforcement notice, is located on the banks of the River Avon and is the first house that was constructed on Tiddington Road and built before Tiddington Road was a public highway. The house is unique in its orientation as (unlike any other house in Tiddington Road) the front of the house is the south west elevation on the plan attached (looking towards Clopton Bridge and the Theatre) and the rear elevation is situated at the north east of the plan. This orientation makes the elevation bordering the highway as the right elevation. Consequently, the land contained within the points A – B is located in our rear garden and the house is 'side on' to Tiddington Road.

By stating that the 'reasons' for issuing the enforcement notice are because of the 'height, materials and finish' of the fence and gate, the council are contradicting other decisions to permit similar enclosures within the locality (dealt with below). Similarly, it is disputed that the fence and gate adversely impact on the character of the locality when in reality the fence and gate enhance the character far and above the original unkempt spindly hedge (photo attached) that existed prior to the erection of the 1 metre wall under permitted development. Equally, a simple comparison with other 'fences' and 'gates' in the locality [REDACTED] proves that the height, materials and finish of River Cottage [REDACTED] are far superior than others in the 'locality'. There is no 'open character' to be respected within the locality and therefore the fence and gate do not contravene Policy CS.9 as alleged.

Similarly, as the 'open character' does not exist as suggested, proven by the fact that every domestic premises, apart from one within view of my premises, either has a fence, wall or high hedging to the front of their property adjacent to the highway (photos attached) Policy CS.8 is not applicable.

I note that the council admit that they consider the fence and gate introduces 'less than substantial harm' however, they have not considered the relevant material considerations of this dwelling when deciding (at its discretion) to issue the enforcement notice. I understand that an enforcement notice should only be issued where the local planning authority is satisfied that it appears to them that there has been a breach of planning control **and** it is expedient to issue a notice, **taking into account** the provisions of the development plan **and any other material considerations** which, in relation to this house are:



- [REDACTED]
- Existing site uses and features (the area contained within the boundary A – B is a rear garden for private family use. Without a wall/fence/gate of 1.8 m the area is open to public view from the many pedestrians and vehicles passing by. Every other house in the locality has its rear garden situated away from public view and retains privacy for occupants.
- Layout, Design and Amenity Matters (the house is the only house 'side on' to Tiddington Road)
- Precedent (Similar structures have been granted planning permission within the locality)
- Issues affecting Human Rights (In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action) European Convention on Human Rights – Article 8 Right to respect to private and Family life is contravened by this enforcement notice. [REDACTED]
- The Planning History (of the locality)

History

We have owned River Cottage since February 2006 and have spent many years renovating it to its present high standard (please see the before and after photographs). Previously, the house was a 'run down' completely rendered house, an ugly building with an unkempt privet hedge and push open metal gates running the length of the adjoining pavement.

[REDACTED]

Just as they were completed the River Avon broke its banks and the house was completely flooded [REDACTED]. One important aspect is that the garage which borders the roadside [REDACTED] was flooded and water was able to enter the house through the garage because the privet hedge running along the garden could not hold back the water flowing along Tiddington Road. The house was finally repaired (again) late in 2008.

Over the next few years, having had plans passed in 2008 we set about a major refurbishment which was finally completed in the summer of 2017. [REDACTED]

[REDACTED]

[REDACTED]

The wall and gate were a separate project commencing in October 2016 designed to complement the refurbishment work on the house. The hedge was removed, and a one metre wall erected. This was, I am advised, permitted development.

The gate to the drive was discarded as it was difficult to operate, was unsightly and detrimental to the project having had a new resin drive laid. Of significance, if the council's objection to the new electric sliding gate is because of a perceived hazard to other road users that can be countered very simply. When the original gate was in situ and closed, in order to access the drive we had to stop the vehicle with part of it remaining on the road, leave the vehicle, go to the gate and particularly in the dark, negotiate the difficult opening mechanism. Then open the gate, return to the vehicle, get in and drive in. That would take minutes, whereas now the operation of opening the gate takes seconds using the remote control and without the need to leave the vehicle. [REDACTED]

[REDACTED] the process of leaving and re-entering the vehicle and opening the old gate described above would take substantially longer. With regard to exiting the property there is no difference between the old gates or the new so there cannot be any issue about the replacement.

On 2nd November 2016 I applied for Planning Permission to erect a 1.8 m rendered wall to be built between points A – B. The Planning Department advised me that that would be unacceptable. I withdrew the application on 20th January 2017 and built the rendered wall to the height of 1m (as shown on the attached photograph). A privacy screen (seen in the photo) had to be erected in the rear garden for privacy as the road is used by many pedestrians and cars. As the (new) kitchen window is completely visible from the highway,

[REDACTED]

Whilst the present enforcement notice does not provide any guidance as to what 'height, materials and finish' would be acceptable to the council, I have attached the email traffic between myself and the Planners commencing in November 2016 as the wall was being built (the gate has never featured in an application as at the time of the application I had not decided what to install). As stated above, I withdrew the application to build a 1.8 metre 'rendered wall' as I knew that Ms Gardner (Planning Officer) would refuse it as she made clear in her emails. However, as to what would be acceptable in terms of 'height, materials and finish', you will notice in her email of 24th January 2017 she states, 'The (rendered – my addition) wall will be out of character and overly prominent from the streetscene.' However, she did support the idea of a brick wall up to 1.8 m or a wooden trellis fence at the same height as she continued, 'I consider a brick wall up to a height of 1.8 metres may be more appropriate. Alternatively perhaps a 1 metre high brick wall with some trellis above to allow natural growth and to reduce the visual impact from the streetscene.' I decided to follow her advice and created a trellis of wooden panels (of attractive red Canadian cedar) which blend in with the replacement gate to create a natural effect. It was

reasonable for me to conclude that the advice I was being provided was 'formal' advice as it was being provided by the Planning Officer deciding specifically on my particular case. I am aware that where any advice is provided by the Planning officers on an 'informal basis' then it has to be identified as such. This was not advised in my case and therefore was considered as formal advice.

Equally and importantly, at the other end of the house a further garden fence exists alongside the pavement. My fence, to the left of the house when looking from the road, extends a long way along the footpath at 1.8m and is 'close boarded' wood. It is located between points C and D on the plan. Therefore the wooden upper trellis fence and wooden gate between points A and B (that are subject of the enforcement notice) are merely a mirror of what is existing at the other end of the house (that is not in dispute).

[REDACTED]

As Ms Gardiner had declared (in her email of 24th January 2017) that an 'enclosure' of 1.8 m (a brick wall) would be appropriate then there was no suggestion that the height of the gate would be an issue for the council (as it now appears to be).

The installation of the gate and height of the trellis wall has enhanced the security of my premises as [REDACTED]

[REDACTED]

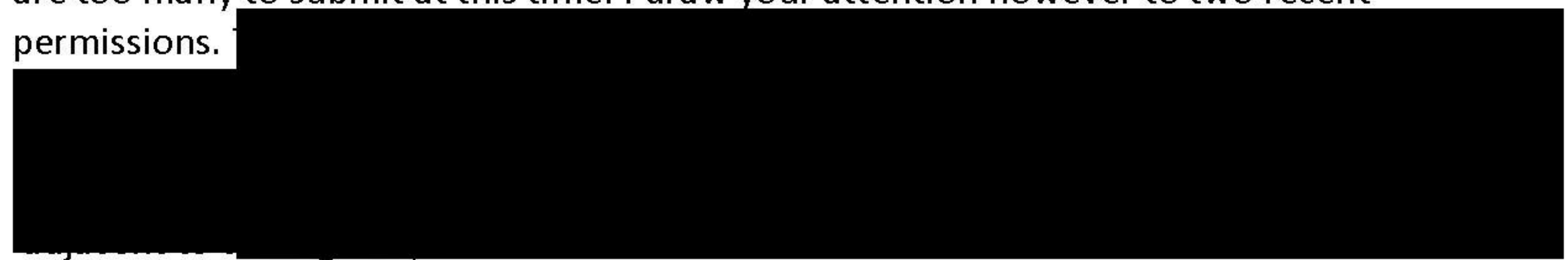
I was advised by the Planning Enforcement Department of the council that public interest is a consideration in the decision making process as to whether enforcement action should be taken. I was advised that personal circumstances are not considered as public interest. However, as I explained to them, it is clearly in the public interest to prevent crime [REDACTED] and the fear of crime by ensuring the security and safety of property [REDACTED]. Therefore, I submit that the matters described above are relevant in regard to the issue of an enforcement notice.

Having surveyed the whole of Tiddington Road (the locality), of all the many properties, the majority have either boarded 1.8 m high wooden fences (such as 43 Tiddington Road marked H – J on the plan), brick walls or high hedges. The example of my immediate neighbour (albeit some yards away and marked G on the plan) [REDACTED] (photos of 43/45 Tiddington Road are attached). The only open properties immediately around me are one house on the opposite side of the road (7

Tiddington Road) and its two neighbouring businesses, one a dentist (9 Tiddington Road) and the other called Oxford House College (8 Tiddington Road). I submit that the rationale for the appearance of the front of these businesses is unlike that of a domestic property. The dentist for example receives a large amount of vehicular traffic entering, leaving and parking in their premises throughout the day. Similarly, the College (the dentist's next door neighbour) receives a great number of students and vehicles entering and leaving during the day. The one domestic property that is 'open' is positioned away from the road and pavement and the rear garden and house interior cannot be viewed, unlike River Cottage. Equally, land on the riverside within 30 metres of me is bounded by a 1.8 m close boarded wooden fence. To repeat, Ms Gardiner had indicated her approval to a 1.8m high wall enclosing the area marked A – B on your plan provided.

I have been in contact with Ms Erin Weatherstone of the Planning Enforcement department of the council. She has refused to withdraw the enforcement notice despite having been presented with all the information contained herein. Significantly, the enforcement notice states that the reasons for issuing the notice are that: 'the unauthorised **fence and gate** (only – my addition) by reason if its height, materials and finish is considered to introduce an adverse impact on the character experienced within the 'locality' of the site'. However, in her response to my request for the notice to be withdrawn she has introduced another dimension to the issue of the notice which is not contained within the notice. She states that, 'The existing enclosure on the land was assessed **as a whole** as it forms one boundary treatment along the edge of the property. For ease the gates **and the wall** with fence above were addressed separately as they differ in design, materials and finish.' This statement is contrary to the description of the breach in the notice which merely refers to the fence and gate. Ms Weathersone is attempting to introduce the (permitted) wall in to the assessment when it does not feature as part of the breach in the notice. It is not acceptable for the council to attempt to stray outside the details of the enforcement notice to justify its action.

To further support this appeal, I have attached a list of addresses in Tiddington Road where the council have previously permitted similar developments and which exist at this time without interference from the council. I have attached a number of photographs but there are too many to submit at this time. I draw your attention however to two recent permissions.



Yours sincerely

R McLachlan (Mr)

