

Case No. ENF/16/00075/UNLD

Grid Ref: 276952 107675

Address:

Corner Close, Morchard Bishop, CREDITON, EX17 6PG

Alleged Breach:

Failing to properly maintain land at Corner Close. Wall has collapsed and is now adversely affecting the amenity of the area.

Recommendations:

That the Legal Services Manager be authorised to take any appropriate legal action including the service of a Notice or Notices, seeking the repair of the boundary wall at Corner Close. In addition, in the event of a failure to comply with any Notice served, authorisation for prosecution, direct action and/or authority to seek a court injunction.

Site Description:

Corner Close, Morchard Bishop, CREDITON, EX17 6PG

Corner Close is a development of 9 dwellings within the Morchard Bishop Conservation Area. The southern and western boundaries of the site are formed of a stone wall which runs adjacent to Footpath 50.

Site Plan:



Site History:

05/02347/FULL Erection of 9 dwellings and continuation of new vehicular and pedestrian access (Revised Scheme) PERMITTED

Development Plan Policies:

National Planning Policy Framework

Reasons/Material Considerations:

The development at Corner Close, Morchard Bishop was approved following an application in 2005 and was completed by R & M Peters of Crediton. It consists of 9 separate dwellings with some communal land on the site and the boundary wall that surrounds the western side of the development.

At the beginning of 2015, it was brought to the attention of the Local planning Authority that a short section of the boundary wall had collapsed into the site. The wall bounds footpath 50 in Morchard Bishop and is used regularly by residents.

Initial enquiries suggested that the wall was the responsibility of the Management Committee, details of which were submitted as a requirement of a condition on the original approval (05/02347/FULL). This information was obtained from Mr Michael Peters, one of the original developers. However, it turned out that no formal Management Committee was ever formed and Mr Peters was acting on its behalf until such time as one was set up. There was a suggestion that funding might prove quite difficult because of the lack of a formal Management Committee and Mr Peters himself sought legal advice regarding the ownership of the wall.

The seeking of legal advice delayed matters for several months and when the matter was again raised with Mr Peters in January 2016, he stated his intention to write to all the owners in Corner Close in an attempt to raise funds for the repair of the wall.

An enquiry in March 2016 revealed that no letter was sent.

It is your officers' opinion that, in light of the fact that there is no formal Management Committee, responsibility for the communal aspects of the development must fall back to the developer and that the state of the wall does adversely affect the visual amenity of the area.

The service of a Section 215 Notice requiring that the wall be repaired to match the undamaged wall on either side of the breach in the wall, would resolve this issue.

Human Rights and Equality Issues:

The taking of any formal enforcement action can be said to impact on the land/property owner/occupiers human rights under the provisions of Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998. In this case, the alleged contravener is a company and the Local Planning Authority believes it is pursuing a legitimate aim in seeking compliance with the provisions of the Town and Country Planning Act 1990 (as amended), so as to prevent demonstrable harm to the interests of acknowledged importance and to protect the environment.

Options for action or remedy:

The list of options available is as follows:

Take no action:

To take no action would not be appropriate in this case. Your officers have worked hard to persuade the developer to take action to resolve this issue, but there has been a reluctance to do so. In addition, the lack of a functioning Management Committee increases the pressure to ensure that some action is taken.

Serve a Section 215 Notice seeking the repair of the wall to match the undamaged wall on either side of the breach - This would be your officers' preferred choice of action. Efforts to resolve the matter amicably have failed.

Reasons for Decision:

The development at Corner Close is relatively new, but lies within the Morchard Bishop Conservation Area. The boundary wall to the Corner Close development has partially collapsed along a short length of wall, adjacent to Footpath 50 which runs along the south and western boundaries of Corner Close. There is an obvious impact on the visual amenity in this area and that would justify the service of a Section 215 Notice seeking the repair of the wall.

Steps Required:

1. Rebuild the breach in the wall, using stone which has remained on site, matching in height and width with the undamaged wall on either side of the breach.

Period for Compliance:

1. Two months from the date the Notice comes into effect.