

**Development Control Committee
4 October 2005**

Report by Enforcement Officer

1. **Access, r/o 28A Station Road, Morton.**

A complaint has been received concerning the construction of an access to the rear of 28A Station Road, Morton. Gates have been erected to the rear of 28A Station Road and access is gained onto a private track/road which serves two properties to the rear, 30 and 30A Station Road, Morton.

Background to complaint

On 2 February 1965, a Mr R G Garfoot submitted an outline planning application (SK.3850) for four dwellings to be sited off Station Road. The site is quite a long narrow area having a frontage to Station Road. The layout plan shows a 14ft wide accessway where a private track/road serves two premises to the rear of the site, plots 3 and 4 (30 and 30A Station Road). Plots 1 and 2 (28 and 28A Station Road) face onto the frontage of the development site and are adjacent Station Road. There is a private track/road which is east of plot 2 and runs in a southerly direction parallel to the western boundary of plot 2 and serves plots 3 and 4. Outline planning permission was approved with three conditions attached to the planning approval.

The conditions that were attached to the planning approval were:

1. No building operations shall be carried out until detailed drawings showing the siting, design and external appearance of the building including particulars of the materials to be used for external walls and roofs have been submitted to the local planning authority.
2. No new vehicular access to a road shall be formed until details of the siting and design have been submitted to and approved by the local planning authority.
3. The service road to plots 3 and 4 shall be a minimum of 14ft in width and adequate provision shall be made for vehicles to turn within the sites 3 and 4 shown in the layout submitted.

The reason for condition 2 was that the application was submitted only as an outline application.

Later, on 21 June 1966, Mr Garfoot submitted a further application (SK.4407) showing detailed drawings of the dwelling to be built on plot 4 (30A Station Road).

On 8 September 1966, Mr Garfoot submitted a further planning application (SK.4463) showing details of the bungalow on plot 3 (30 Station Road).

When both premises were occupied it became evident that the property owners and the developer, Mr Garfoot, became involved in a dispute over obstruction of the private track/road and the provision of a turning bay.

In October 1970, an enforcement report was submitted before South Kesteven Rural District Council. It recommended that enforcement proceedings be instigated against the property owner of 30 Station Road. It required compliance with the planning permission by leaving an uninterrupted access and turning bay on the private carriageway.

On 6 January 1971, a letter was forwarded from the County Planning Officer to the Treasurer, South Kesteven Rural District Council, Wake House, North Street, Bourne. It stated that the planning officer had checked with the Clerk's Department and was informed that the enforcement notice would be served on the proprietor of 30 Station Road this week.

No details of an Enforcement Notice has been registered on the property.

In March 1971 a planning application was submitted for plots 1 and 2 (28 and 28A Station Road) (SK.6058). Both these properties faced onto Station Road. The block plan for this application indicated that the formation of new accesses would need to be created to gain access to both plots.

Details of the complaint

The current proprietor of 30 Station Road, Morton, has taken issue with a recently constructed access which has been formed to the rear of 28A Station Road. The gates that form the access leads onto the private track/road and turning bay area. This turning area was a requirement when the original planning permission was submitted in 1966 for plot 3 (30 Station Road). The current owner of 28A Station Road has been gaining access over this private carriageway, much to the annoyance of the occupier of 30 Station Road. She has indicated that the occupier of 28A Station Road has no legal right over this private track/road. The complainant has sought legal advice about this matter. Reference has been made to a court case in 1971 which she states ordered an Inquiry into why one of the conditions had not been met, namely the turning bay in plot 4. She further stated that the second condition of the outline planning permission was amended to read that any application for an access must be made through the High Court.

Further, she highlights why has there been no enforcement action undertaken regarding the access when there is a condition attached to the planning permission (SK.3850) which states no new vehicular access to the road shall be formed until details of the siting and design have been submitted to and approved by the local planning authority.

Officer Comments

The initial planning permission (SK.3850) was an outline planning application. This gave the concept that planning permission would be acceptable in its current form for four dwellings and garages within the specified area.

The outline planning permission submitted in this case was approved in principle and requested further details of siting and design of buildings and access. This is normal practice in such instances and these details plus any further outstanding material issues would be submitted when the applicant submits a further Reserved Matters application.

Plots 1 and 2 were situated adjacent Station Road which was a classified road. The Reserved Matters application for plots 1 and 2 highlighted details that new access would be created off this road. This was in compliance with the conditions set out in the outline planning permission.

Plots 3 and 4 were served off a private track/road. Should an access be created off a private road, from a planning perspective, no planning permission would be necessary. The access that leads onto the private road from the rear of 28A Station Road is considered acceptable in both planning and highway terms.

Currently the Lincolnshire Design Guide for residential areas states that a limited number of dwellings can be served from a private shared carriageway. Normally no more than five dwellings should be served by a private carriageway.

Based on the information provided by the Lincolnshire Design Guide and discussions with the Senior Highways Officer, a further access created off the private carriageway falls within the guidelines of the Design Guide.

The occupier of 30 Station Road, Morton has stated the only persons who have legal easement over the private carriageway are the occupiers of 30 and 30A Station Road. Whilst the occupier of 28A Station Road has gained access over this private road this is considered to be a private matter for the relevant parties to resolve.

The complainant has made reference to the High Court making a ruling at sometime through the planning and enforcement process. A thorough check of all planning permissions to this site has been undertaken and I have been unable to locate any reference to any High Court issues. An enforcement report was submitted to the then South Kesteven Rural District Council requesting enforcement proceedings to be instigated to allow uninterrupted access over the private road and turning bay as shown in the relevant planning permission. A letter was forwarded to the Treasurer of South Kesteven Rural District Council stating the enforcement notice would be served within the week.

A thorough investigation has been undertaken in the plotting room, Local Land Charges and Legal Services to establish whether there is a record of an enforcement notice having been served on 30 Station Road, and also whether there has been a High Court ruling concerning this case.

Legal Services have undertaken a check of their enforcement notices served and have no record of an enforcement notice having been served on 30 Station Road.

Local Land Charges do not have an entry in their Planning Enforcement Register for an Enforcement Notice having been served on 30 Station Road. In 1974 there was a re-organisation of local authorities and there is the possibility the notice may not have been transferred or not served.

There is no record of an enforcement notice having been served according to records on the plotting sheets.

Conclusion

Details submitted with the original outline planning permission was conditioned indicating should further accesses be formed then further details of siting and design would need to be submitted. It is apparent this criteria would have been necessary for plots 1 and 2. Plots 3 and 4, whilst they have the same condition attached to the outline planning approval, they are served off a private carriageway and no planning permission would have been necessary for a new access. The road is not classified and the access is acceptable from a highway perspective.

The new access which has been formed falls within current planning guidelines and is within the parameters of the Lincolnshire Design Guide.

Access being gained over the private road is a private matter for both parties to resolve as the local authority is unable to take further action. Ultimately it is a matter than can only be resolved through the courts.

The complainant has made comments about High Court implications concerning the case. I have been unable to locate any details concerning High Court action. It is apparent from my investigation that an enforcement notice was submitted. This required that the private track/road had an uninterrupted access and turning bay. This is still the case.

No record can be established that an enforcement notice was served on 30 Station Road. It is considered the content of the notice would have had no bearing on the outcome of the current complaint determined by this local authority.

RECOMMENDATION

It is considered, based on the facts established, that the access created to the rear of 28A Station Road, Morton has not created any public safety considerations and is acceptable from a highway perspective. I therefore conclude it is not expedient to initiate any enforcement action regarding the access as it is considered that there has not been a breach of planning control and the situation does not raise highway safety concerns.

RELEVANT CONSIDERATIONS OF THIS REPORT			
	SIGNIFICANT	MINOR	NONE
STATUTORY POWERS	*		
COUNCIL STRATEGIES		*	
COUNCIL POLICIES		*	
T & C PLANNING	*		
BEST VALUE		*	
HUMAN RIGHTS		*	

2. Hairdressing Salon, 53 Frognall.

The Site

This is a residential premises located on the north side of the village road. The village road itself is narrow and runs from west to east through the village.

Breaches of Planning Control

In October 2004 a complaint was received concerning the movement and parking of vehicles to and from 53 Frognall where a hairdressing salon was being conducted.

In October 1996 the occupants had submitted a letter making inquiries whether planning permission was required for the use of their garage as a hairdressing salon. They submitted relevant details highlighting various aspects indicating how the business would be conducted. These were:

- she wished to retain a few friends and loyal clients who had remained with her at her previous premises when she carried out hairdressing;
- she would be working school hours only, which would be from 9.30 am until 3.00 pm;
- she would be working Wednesday to Friday, and possibly on Saturday;
- it was anticipated that she would have no more than six clients a day and there will be only one client at a time;
- there will be no employment of staff and no deliveries;
- no advertisement would be displayed for the business.

On 22 October 1996, Mr M Hubbard, Planning Case Officer replied to the query and indicated that no planning permission was required for the small scale business. He further indicated that should circumstances change and the business expand it was expected they would inform the authority.

On receipt of a complaint I undertook an investigation into the hairdressing business at 53 Frognall. The following facts were established:

- up to 10-12 clients visit per working day;
- staff are employed at the premises;
- the hours of working were not being adhered to as their letter of October 1996;
- the days of operation are being exceeded and do not accord with their letter of October 1996.

Planning Policy

Policies EN1 and E5 of the Local Plan deal with Small Business and Protection and Enforcement of the Environment. Policy EN1 seeks to protect and enhance the built environment where the highway system can adequately and safely accommodate the volume and nature of traffic likely to be generated by the business. Policy E5 seeks to give planning permission for the development of small businesses as long as the scale and nature of the development is compatible with existing neighbouring land uses.

Office Comments

The letter submitted by the occupants of 53 Frognall in October 1996 indicated a restricted business use of the garage with limited visiting clients and a limitation on the hours of working and days of operation.

It is evident from the information gathered that there has been an intensification of the hairdressing salon. It is considered the number of clients visiting during working hours – the additional day and hours of operation and the employment of staff are having an impact on the street scene of this village environment.

RECOMMENDATION

That authority be given for appropriate enforcement action to be taken.

R W Edwards
Development Control Services Manager

RELEVANT CONSIDERATIONS OF THIS REPORT			
	SIGNIFICANT	MINOR	NONE
STATUTORY POWERS	*		
COUNCIL STRATEGIES	*		
COUNCIL POLICIES	*		
T & C PLANNING	*		
BEST VALUE	*		
HUMAN RIGHTS		*	