

Hinckley & Bosworth Borough Council

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990 (“the Act”)

(As amended by the Planning and Compensation Act 1991)

ENFORCEMENT NOTICE – OPERATIONAL DEVELOPMENT

ISSUED BY: HINCKLEY & BOSWORTH BOROUGH COUNCIL (“The Council”)

1. THIS NOTICE is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A (1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land at 17 Forest Rise, Desford, Leicestershire LE9 9DX (the “Land”) shown edged in red on the attached plan (the “Plan”).

3. THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission, the erection of a close boarded timber fence exceeding 1 metre fronting a highway on the Land (the “unauthorised development”), the location of which is marked with a blue line on the Plan and shown in the photographs under **Appendix 1** of this notice.

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last ten years.

The unauthorised development results in an incongruous, visually obtrusive and unattractive addition to the street scene. This has a significantly adverse and detrimental effect on the otherwise attractive, spacious and verdant character and appearance of Forest Rise and the local distinctiveness of the wider estate.

The unauthorised development conflicts with Policy H7 of the ‘made’ Desford Neighbourhood Plan, Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), the principles of the adopted Good Design Guide Supplementary Planning Document (2020) and the overarching national design principles of the

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NPPF (2023) with particular regard to paragraph 139 therein. No other material considerations indicate that the policies of the development plan should not prevail.

The Council does not consider that planning permission should be given for this development, because planning conditions could not overcome the objections to the development.

5. WHAT YOU ARE REQUIRED TO DO

Either;

- a. Remove the unauthorised fence and fence posts in their entirety, or
- b. Reduce the fence and fence posts to a height not exceeding 1 metre from ground level.

6. TIME FOR COMPLIANCE:

For 5a or 5b above, three months from the date this notice takes effect.

7. DATE WHEN THIS NOTICE TAKES EFFECT

This notice will take effect on the 13th January 2025 unless an appeal is made against it beforehand.

Signed:

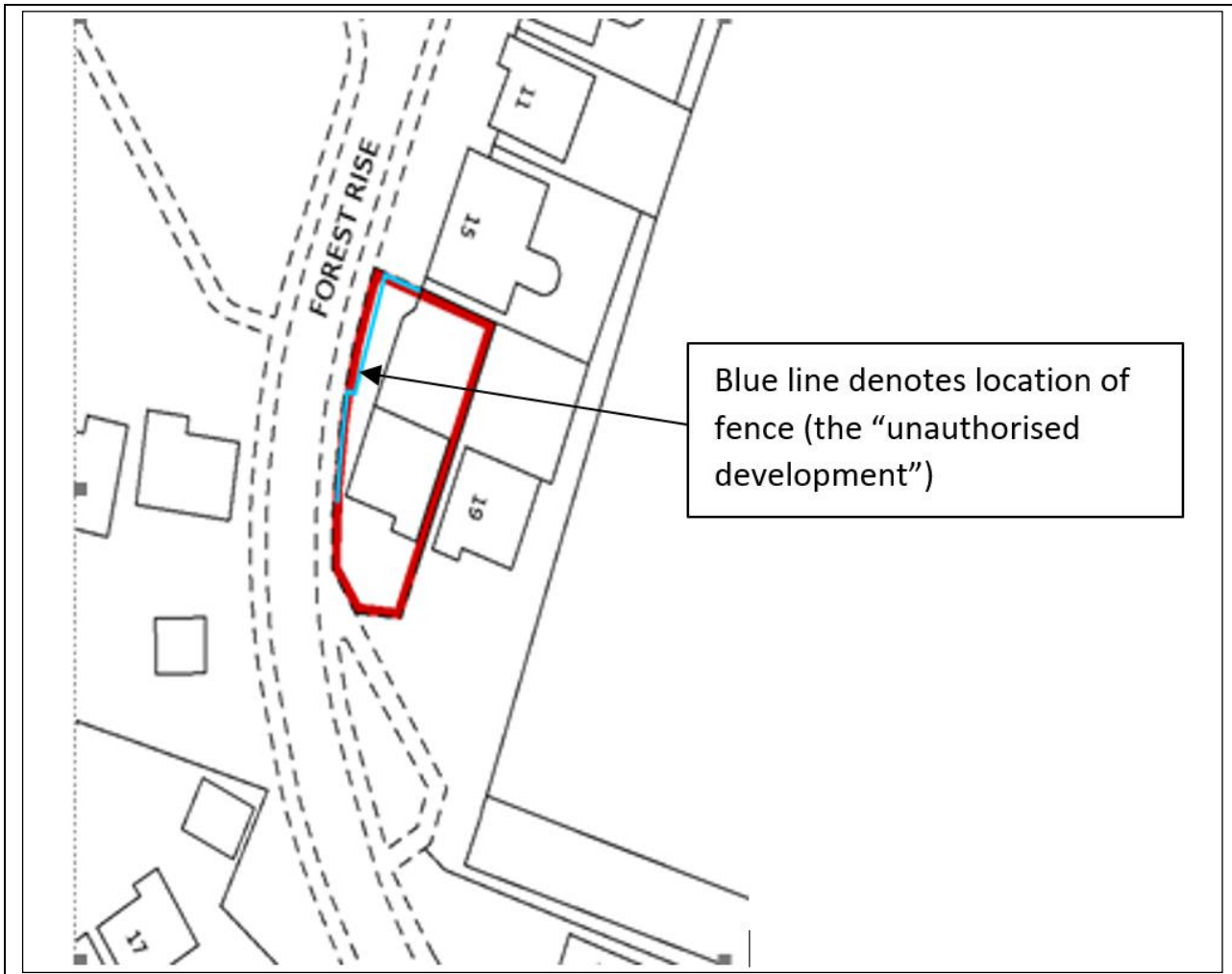
C. Brown.

Dated: 14th November 2024

Duly Authorised Officer
Hinckley & Bosworth Borough Council
Hinckley Hub
Rugby Road
Hinckley
Leicestershire
LE10 0FR

The Plan

Land at 17 Forest Rise, Desford, Leicestershire LE9 9DX.



Appendix 1



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ANNEX

Explanatory Note

Hinckley & Bosworth Borough Council has issued an enforcement notice relating to 17 Forest Rise, Desford, Leicestershire LE9 9DX and you are served with a copy of that notice as you have an interest in the land. Copies of the notice have also been listed on the parties listed at the end of this Annex.

You can submit your appeal on-line through the Planning Portal using the Planning Casework Service. This is an on-line service that gives people in England and Wales wider and easier access to the planning system. It allows you to track the progress of your case.

For more information about the Planning Casework Service, visit:

<https://www.gov.uk/appeal-planning-inspectorate>

Planning Inspectorate customer support team 0303 444 5000 enquiries@pins.gsi.gov.uk

The Planning Inspectorate MUST receive your appeal before the effective date on the enforcement notice which is the **13th January 2025**

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

RELEVANT SECTIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)

Sections 171A, 171B and 172 to 177 of the Town and Country Planning Act 1990 (as amended) provide the statutory basis for the enforcement appeal process and the matters covered in these explanatory notes. A copy of these sections are attached for your information.

LOGGING AN APPEAL

The grounds of appeal are set out in section 174 of the Town and Country Planning Act 1990 (as amended) and you may appeal on one or more of the following grounds:

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by section 172;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which

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may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all of these grounds may be relevant to you.

STATEMENT OF APPEAL

If you decide to appeal, you must submit to the Planning Inspectorate, either when giving notice of your appeal or within 14 days from the date on which the Planning Inspectorate sends notice to you requiring you to do so, a statement in writing:-

- (i) Specifying the grounds on which you are appealing against the notice; and
- (ii) Stating briefly the facts on which you propose to rely in support of each of those grounds.

CHARGES PAYABLE FOR DEEMED PLANNING APPLICATIONS

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of **£206** to the Council.

Cheques should be made payable to "Hinckley & Bosworth BC and sent to Environment & Planning, Hinckley & Bosworth Borough Council, Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR. Alternatively payment can be made over the phone by telephoning 01455 238141. Please quote ref: **24/00091/UNHOUS** when making payment. Joint appellants need only pay one fee.

Only one person need appeal the enforcement notice. The effect of the notice is suspended until the appeal is determined. However, if only one appeal is made, and is subsequently withdrawn, the enforcement notice will take immediate effect.

PERSONS SERVED WITH THIS ENFORCEMENT NOTICE

The Owner, Occupier, and any other person with an interest in the land at 17 Forest Rise, Desford, Leicestershire, LE9 9DX.

Benjamin Brian William Perkins – 17 Forest Rise, Desford, Leicestershire, LE9 9DX.

Martha Mary May Coley – 17 Forest Rise, Desford, Leicestershire, LE9 9DX.

Bank of Scotland PLC (Scot.Co.Regn.NO.SC327000) of Halifax Division, 1 Lovell Park Road, Leeds, LS1 1NS,

EXTRACTS FROM THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING AND COMPENSATION ACT, 1991):-

Section 171A Expressions used in connection with enforcement

- (1) For the purposes of this Act –
 - a) carrying out development without the required planning permission; or
 - b) failing to comply with any condition or limitation, subject to which planning permission has been granted, constitutes a breach of planning control.
- (2) For the purposes of this Act –
 - a) the issue of an enforcement notice (defined in section 172); or
 - b) the service of a breach of condition notice (defined in section 187A), constitutes taking enforcement action.
- (3) In this Part “planning permission” includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

171B Time limits

In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
 - within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
 - within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
 - within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024
 - within 10 years for any other breach of planning control (essentially other changes of use) after the end of the period of ten years beginning with the date of the breach.
- (4) The preceding subsections do not prevent –
 - the Local Planning Authority from taking of “further” enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported action) in respect of the same breach. This includes the situation where earlier enforcement action has been taken, within the relevant time limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time limit for such action has since expired. It also includes the situation where an enforcement warning notice is issued within the relevant time limit but further enforcement action is subsequently required. This is known as the “second bite” provision
 - where the local planning authority consider there has been deliberate concealment

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of a breach of planning control, in making an application for a planning enforcement order to allow them to take action after the time limits in section 171B have expired

- the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect.

172 Issue of enforcement notice

- (1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them –
 - a) that there has been a breach of planning control; and
 - b) that it is expedient to issue the notice, having regard to the provision of the development plan and to any other material considerations.
- (2) A copy of an enforcement notice shall be served –
 - a) on the owner and on the occupier of the land to which it relates; and
 - b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
- (3) The service of the notice shall take place –
 - a) not more than twenty-eight days after its date of issue; and
 - b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.

173 Contents of enforcement notice

- (1) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.
- (2) An enforcement notice shall also specify –
 - a) any steps the local planning authority require to be taken in order to remedy the breach; and
 - b) any such steps as are mentioned in subsection (4) which the authority requires to be taken.
- (3) In this section “steps to be taken in order to remedy the breach” means (according to the particular circumstances of the breach) steps for the purpose –
 - a) of restoring the land to its condition before the development took place; or
 - b) of securing compliance with the conditions or limitations subject to which planning permission was granted, including –
 - (i) the demolition or alteration of any building or works;
 - (ii) the discontinuance of any use of land; and
 - (iii) the carrying out on the land of any building or other operations.
- (4) The steps referred to in subsection (2) b) are steps for the purpose –

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- a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or
 - b) of removing or alleviating any injury to amenity which has been caused by the development.
- (5) An enforcement notice shall specify the period within which any such step as is mentioned in subsection (2) is to be taken and may specify different periods for the taking of different steps.
- (6) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.
- (7) The Secretary of State may by regulations direct –
- a) that enforcement notices shall specify matters additional to those which they are required to specify by this section; and
 - b) that every copy of an enforcement notice served under section 172 shall be accompanied by an explanatory note giving such information as may be specified in the regulations with regard to the right of appeal conferred by section 174.
- (8) Where –
- a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and
 - b) the notice has required the taking of steps for a purpose mentioned in subsection (4) b); and
 - c) the steps have been taken, for the purposes of the planning Acts planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the local planning authority.

173A Variation and withdrawal of enforcement notices

- (1) The local planning authority may –
- a) withdraw an enforcement notice issued by them; or
 - b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The local planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

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- (4) The withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further enforcement notice.

174 Appeal against enforcement notice

- (1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.
- (2) An appeal may be brought on any of the following grounds –
- a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
 - b) that those matters have not occurred;
 - c) that those matters (if they occurred) do not constitute a breach of planning control;
 - d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
 - e) that copies of the enforcement notice were not served as required by section 172;
 - f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
 - g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
- (3) An appeal under this section shall be made either –
- a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
 - b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.
- (4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing –
- a) specifying the grounds on which he is appealing against the enforcement notice; and
 - b) giving such further information as may be prescribed.
- (5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4) b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.
- (6) In this section “relevant occupier” means a person who –

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- a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence; and
- b) continues so to occupy the land when the appeal is brought.

175 Appeals: supplementary provisions

(1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 174 and, in particular, but without prejudice to the generality of this subsection, may –

- a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
- b) specify the matters to be included in such a statement;
- c) require the authority of the appellant to give such notice of such an appeal as may be prescribed;
- d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) The notice to be prescribed under subsection (1) c) shall be such notice as in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated.

(3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the local planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) Where an appeal is brought under section 174 the enforcement notice shall, subject to any order under s.289 (4A) be of no effect pending the final determination or the withdrawal of the appeal.

(5) Where any person has appealed to the Secretary of State against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under any other provisions of this Act.

176 General provisions relating to determination of appeals

(1) On an appeal under section 174 the Secretary of State may –

- a) correct any defect, error or misdescription in the enforcement notice; or
- b) vary the terms of the enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

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(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.

(3) The Secretary of State –

- a) may dismiss an appeal if the appellant fails to comply with section 174(4) within the prescribed time; and
- b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph a), b), or d) of section 175(1) within the prescribed period.

(4) If the Secretary of State proposes to dismiss an appeal under paragraph a) of subsection (3) or to allow an appeal and quash the enforcement notice under paragraph b) of that subsection, he need not comply with section 175(3).

(5) Where it would otherwise be a ground for determining an appeal under section 174 in favor of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

177 Grant or modification of planning permission on appeals against enforcement notices

(1) On the determination of an appeal under section 174, the Secretary of State may –

- a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;
- b) discharge any condition or limitation subject to which planning permission was granted;
- c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 191.

(1A) The provisions of sections 191 to 194 mentioned in subsection (1B) shall apply for the purposes of subsection (1) c) as they apply for the purposes of section 191, but as if –

- a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
- b) references to the local planning authority were references to the Secretary of State.

(1B) Those provisions are: Sections 191(5) to (7), 193(4) (so far as it relates to the form of the certificate), (6) and (7) and 194.

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(2) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provision of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

(3) The planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part III.

(4) Where under subsection (1) the Secretary of State discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under section 174, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.

(5A) Where –

- a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2) a) of that section;
- b) any fee is payable under regulations made by virtue of section 303 in respect of the application deemed to be made by virtue of the appeal; and
- c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if the fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(6) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of Section 69 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.