

**PLANNING APPEAL DECISION**

**Lead Officer:** John Groves – Head of Nuclear, Energy & Planning

To inform Members of a recent appeal decision in respect of Swallows Barn, Lowca, Whitehaven.

**Recommendation:** That the decision be noted in the context of the Council's Local Plan Policies and also in relation to performance monitoring.

**Resource Implications:** The appellant's might successfully apply for an award of costs against the Council

**1.0 SUPPORTING INFORMATION**

- 1.1 A fence was erected, in close proximity to the highway, in January 2012 which was approximately 1.85 metres high. Fences that are erected in close proximity to the highway require planning permission if they are over one metre in height or they result in a threat to highway safety. The Council was made aware of the development by a member of the public and Cumbria Highways provided advice to the Council that the fence did represent a threat to highway safety. Therefore the Council contacted the owners of the property to ensure that the breach of planning control was remedied.
- 1.2 After negotiations with the Council the owners agreed to modify the fence to ensure that the fence was reduced to approximately 1.1 metres in height near the highway junction. After the modifications were carried out Cumbria Highways agreed that the fence was no longer dangerous and the Council ceased taking enforcement action.
- 1.3 In 2013 the owners reversed the modifications and the fence was again considered to be a dangerous obstruction to highway users by Cumbria Highways. The Council served an Enforcement Notice in July 2013 to ensure the fence was reduced in height once more. The owners appealed the Enforcement Notice on the basis that the fence was not a threat to highway safety and therefore did not require planning permission.
- 1.4 The Planning Inspectorate allowed the appeal and therefore the Enforcement Notice has been quashed.
- 1.5 The decision to take action was based on advice from County Highways, non-compliance with expected standards and consequent threat to highway safety. In most cases it would be expected that advice from a specialist highway advisor that a threat to highway safety exists will prompt the planning authority to take action. There would need to be a clear justification not to take enforcement action.

- 1.6 The Inspector has concluded that there is no threat to safety as a result of obstruction to visibility and that the fence is therefore permitted development – planning permission is not required.
- 1.7 It is considered that some of the Inspector’s assumptions about vehicle speeds, traffic conditions are arguable and not based on any evidence submitted during the process of the appeal. It is not however considered that the decision produces of dispute so as to merit pursuing the matter further.

**Contact Officer:** David Wright – Planning Enforcement Officer

**Background Papers:** A copy of the Inspector’s decision letter is appended.