

PLANNING COMMITTEE

CHAIRMAN: Cllr Dennis Smith

DATE: 20 March 2018

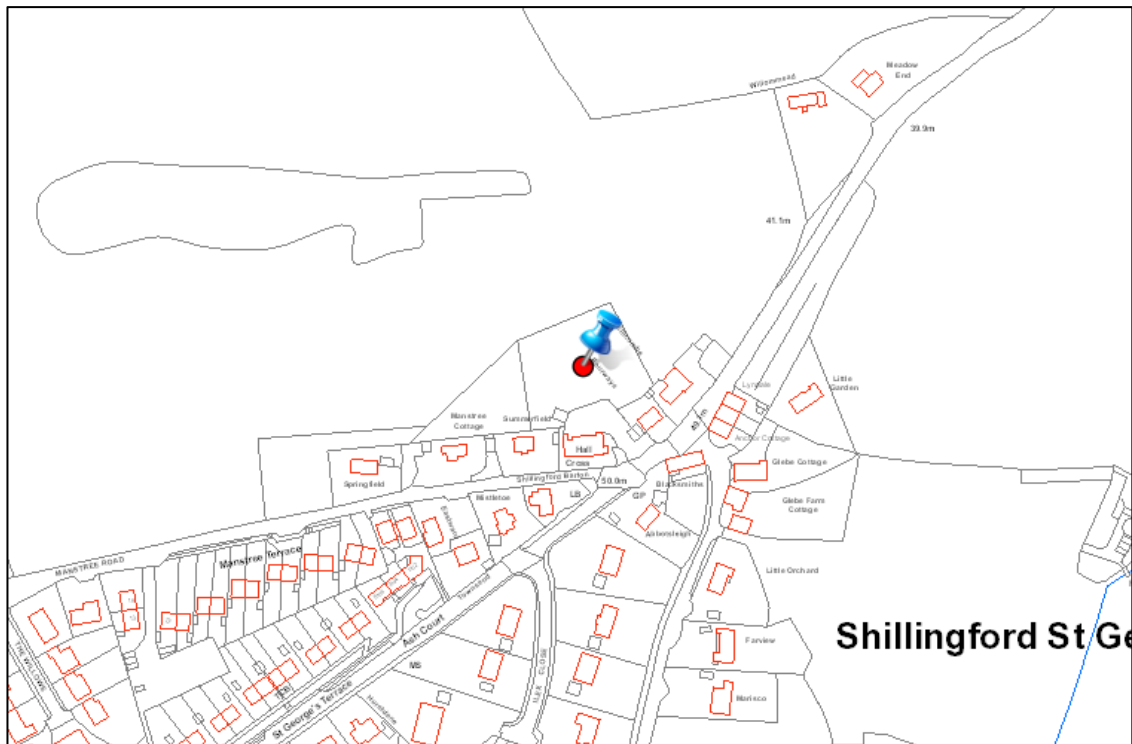
REPORT OF: Business Manager – Strategic Place

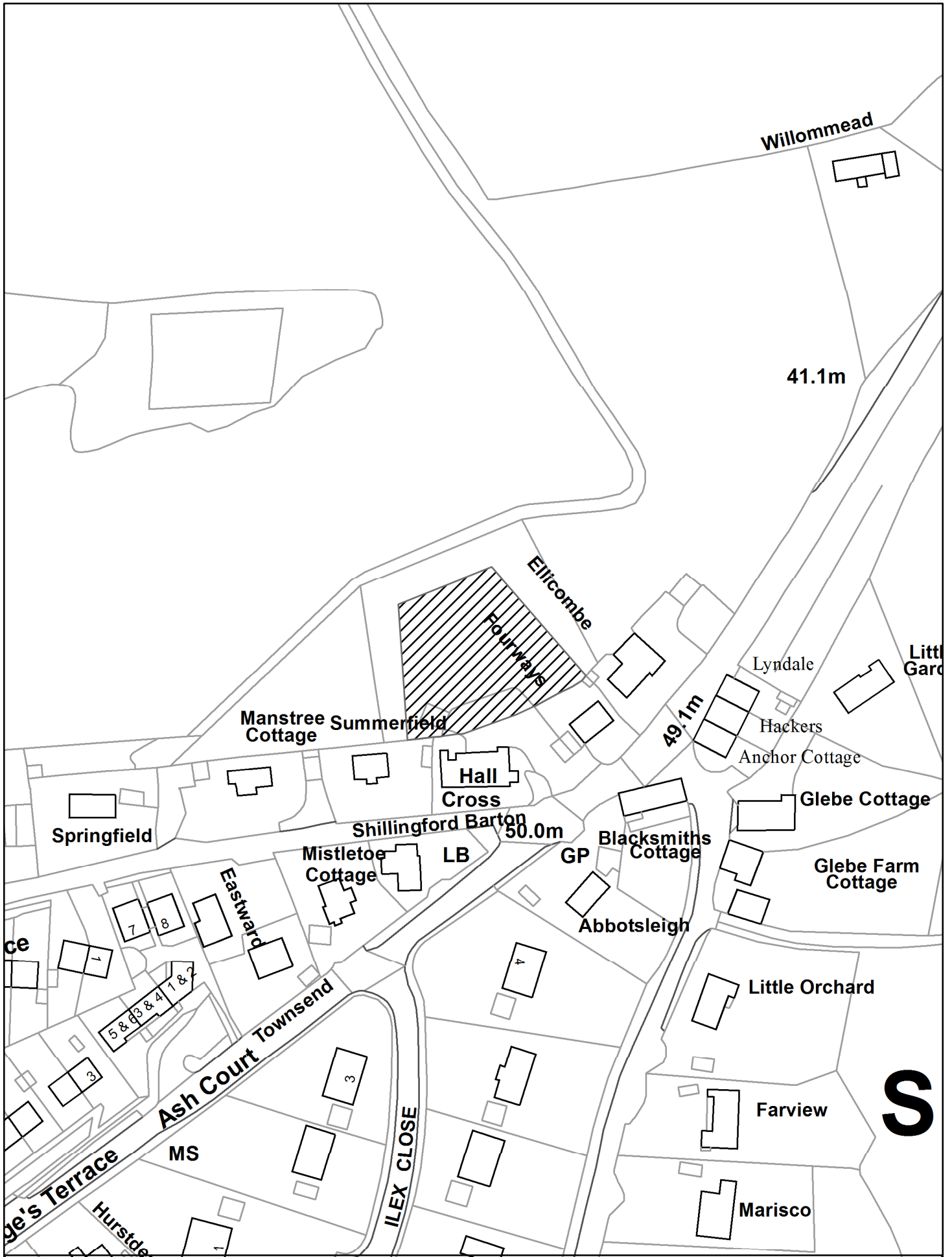
ENFORCEMENT REPORT

REFERENCE NO: 17/00438/ENF

DESCRIPTION OF DEVELOPMENT

SHILLINGFORD: Land rear of the Village Hall, Shillingford St George





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OBSERVATIONS

1. In December 2017 the Council received a complaint regarding a new fence being erected across the car park on land to the rear of the Village Hall, Shillingford St George.
2. From an investigation it was noted that a new post and rail fence had been erected across the car park. When planning permission (reference 01/03875/COU) was granted in December 2001 for the change of use from agricultural land to recreational including erection of a storage shed, a Condition was attached that prevented any fences or other means of enclosure being erected without planning permission. Condition 2 states:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no buildings or structures, fences, gates or walls shall be erected within the curtilage of the site (other than those expressly authorised by this permission)
REASON:- To protect the character and appearance of the area
3. As no planning permission had been granted to erect the fence the Council contacted the Trustees of Shillingford St George Millennium Village Green who appeared to own the land, and were responsible for the fence. They were advised to remove the fence or submit a planning application to determine whether the fence could be retained.
4. In response the Trustees contacted the Council to explain that the fence was erected to prevent people parking on the village green. It seems that there has been a dispute between the Trustees and the Parish Council and that, despite attempts to resolve the matter, they felt that they had to take the action they took and the fence was erected. Despite further correspondence with the Trustees it seems that they do not propose to remove the fence and no planning application has been received for its retention.
5. From the investigation it is clear that there is a breach of the planning condition by the erection of the fence. Where a planning breach has occurred the Council must decide whether it is expedient to take enforcement action to remedy the breach. This is set out in the Councils adopted Planning Enforcement Policy.
6. As the fence erected is contrary to a planning condition any action taken must relate to the reason for the imposition of the condition. In this instance the condition was imposed to protect the character and appearance of the area. Therefore, when deciding on whether to take enforcement action it is necessary to demonstrate that the fence erected has a detrimental impact on the character and appearance of the area.
7. Having viewed the fence, which is a simple post and rail fence that includes gates for both vehicle and pedestrian access, it is not considered to be out of keeping with the surrounding land and as such does not have a detrimental

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impact on the character and appearance of the area. It is noted that the position of the fence does impact on the day to day use of the land and the Village Hall by reducing the amount of space to park cars and access the Village Hall, particularly for disabled people. However, these were not the reasons for imposing the planning condition.

8. It is clear that a planning breach has occurred. The options for enforcement are either a Breach of Condition Notice (BCN) or an Enforcement Notice for the non-compliance with the planning condition. If a BCN was served, there is no right of appeal, but non-compliance with the BCN would involve the matter being placed before the Courts. The decision to serve a BCN could be challenged by Judicial Review if it was considered to have been issued for the wrong reasons.
9. An Enforcement Notice could be served requiring the fence to be removed. However, there is a right of appeal to the Planning Inspectorate against the service of an Enforcement Notice. This could take a number of months to be determined and it would be difficult for the Council to successfully defend an appeal as there are no planning reasons to demonstrate that the fence has a detrimental impact on the character of the surrounding area.
10. It is recognised that the erection of the fence has resulted in a high level of objection from local residents, including a petition. The objections point out that it has resulted in difficulties in parking for events at the Village Hall, resulting in on road parking and dangerous reversing manoeuvres on and off the highway. The lack of parking is causing difficulty for the public who wish to access the Village Green.
11. The fence has been erected due to a disagreement between the Village Hall Committee and the Trustees of Shillingford St George Millennium Village Green. Whilst it is possible to serve a BCN or an Enforcement Notice, it would be difficult to defend such action on planning grounds, bearing in mind the original reason for imposing the condition. It should be borne in mind that even if planning enforcement action did result in the removal of the fence this would not necessarily overcome the dispute between the Village Hall Committee and the Trustees. Until this is resolved there is the possibility that other action may be taken to demarcate the separate land ownerships and regulate how the land is used. Planning enforcement action is therefore unlikely to be the best way to provide a lasting remedy for this problem. What is necessary is for the Trustees and the Village Hall Committee to come together to agree to find a way forward that is beneficial for all those involved, including the local residents who benefit from the use of the Millennium Green and the Village Hall.

RECOMMENDATION

The Committee is recommended to resolve that no planning enforcement action is taken.

WARD MEMBERS: Cllr Goodey and Lake, Kenn Valley