



**Report of the Chief Planning Officer**

**SOUTH AND WEST PLANS PANEL**

**Date: 19 FEBRUARY 2015**

**Subject: ERECTION OF A FENCE/STRUCTURE ON LAND AT COLLEGE HILL HOUSE  
BURRAS LANE OTLEY.**

**APPLICANT**  
N/A

**DATE VALID**  
N/A

**TARGET DATE**  
N/A

**Electoral Wards Affected:**

**Otley**

Yes

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

**RECOMMENDATION:**

**(1) Members to note this report.**

**(2) Members are requested to determine that it is not expedient to take enforcement action.**

**1.0 INTRODUCTION**

1.1 This report is brought before Members to advise of a breach of planning control and to determine based on the information contained within this report, whether it is expedient to take enforcement action. Normally compliance matters are dealt with under delegated powers, however, this report is exceptionally brought before Plans Panel at the request of Councillor Campbell given the unusual circumstances of the juxtaposition of the dwellings in question.

**2.0 DESCRIPTION OF THE STRUCTURE**

2.1 College Hill House is a house located in Otley Conservation Area; it is not a listed building. A structure was erected within the front garden of College Hill House to support a Russian Vine. It was constructed of vertical posts approximately 2 metres in

height with wire supports in between to which the Russian Vine could be attached to and grown around. It was around 2 metres from the rear wall of Musgrave Hall, (a listed building) a dwelling to the south. Following the erection of the structure, solid wooden panels were added to the top of it and provided a more solid appearance to it. The maximum height of the panels is 2.17 metres above adjacent sloping ground level.

### **3.0 LOCAL REPRESENTATION**

3.1 A local resident complained to the City Council about the structure and its impact on their residential amenity and impact on their listed building. Their points of objection can be summarised below:

1. Consider the structure an unsightly fence and can be seen from their rear windows
2. Has a negative impact on the setting of their listed dwelling.
3. Has an adverse impact on the Conservation Area
4. Risk of Russian vine growing out of control and they have no access to cut it back
5. Loss of light

### **4.0 BREACHES OF PLANNING CONTROL**

4.1 Guidance on breaches of planning control and effective enforcement action are set out in central government's Planning Practice Guide (PPG). A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

4.2 In order to ascertain if there has been a breach of planning control as a result of the erection of this structure, we have to look at the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Under schedule 2, minor operations, Class A relates to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. If this structure was considered to be a 'fence' then at over 2 metres in height it would require planning permission and it would be considered that there has been a breach of planning control.

4.3 Case law is clear about what is considered to be a fence. The leading case in this matter is *Prengate Properties Ltd v Secretary of State* 1973. In this case it was held that a fence or wall had to have the function of enclosure for it to be considered under the minor operations class. The structure at College Hill House does not enclose anything; it is freestanding and is not attached at either end to other boundary treatment. It acts as a screen to prevent overlooking between two residential properties and to support a Russian vine. The structure does not fall under the definition of a fence but acts as a screen or privacy shield.

4.4 It is considered that the structure would be controlled under the provisions of Class E of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008. This class states:

The provision within the curtilage of the dwelling house of—

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such, or the maintenance, improvement or other alteration of such a building or enclosure; or

(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

The Order advises that a structure would be interpreted as a 'building operation' for the provisions of this class. That being the case the structure would require planning permission in its own right as it falls foul of subsection b which states:

(b) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwelling house;

4.5 The works carried out at College Hill House fall within the first bullet point at para 4.1 above. The home owner is unwilling to take down the structure or apply for planning permission for it to remain. Officers of the City Council together with a local Ward Councillor have tried to encourage the two parties to agree to mediation but that has not been forthcoming.

## **5.0 POTENTIAL NEXT STEPS**

5.1 Government Planning Practice Guidance (PPG) sets out that local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest. There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.

5.2 Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. Accordingly a local planning authority has to first consider whether there has been a breach of planning control and then move on to consider whether the harm (the environmental effects) caused to matters of public interest are such that it warrants the taking of enforcement action to remedy that harm. The taking of enforcement action is not justified by the fact that there has been a breach of planning control.

5.3 The PPG progresses to set out that in deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

5.4 The LPA could serve an Enforcement Notice requiring the structure to be removed from the site within a specified period. The owner would have the right of appeal against any notice.

5.5 The owner of College Hill House wishes the structure to remain in situ in its present location and in its present form. The owners of Musgrave Hall want it to be removed or as a minimum the solid panels removed. If the owner of the structure extends it to the boundaries (with a gate for access), it will become a means of enclosure and could be retained at a height of 2 metres, under the minor operations provisions described above in para. 4.2. There would be no controls over what the panels could be constructed from. If this happened then the neighbours would have views of a longer structure which would be visible from more windows in their dwelling. This could be considered a worse situation than the one they presently find themselves in.

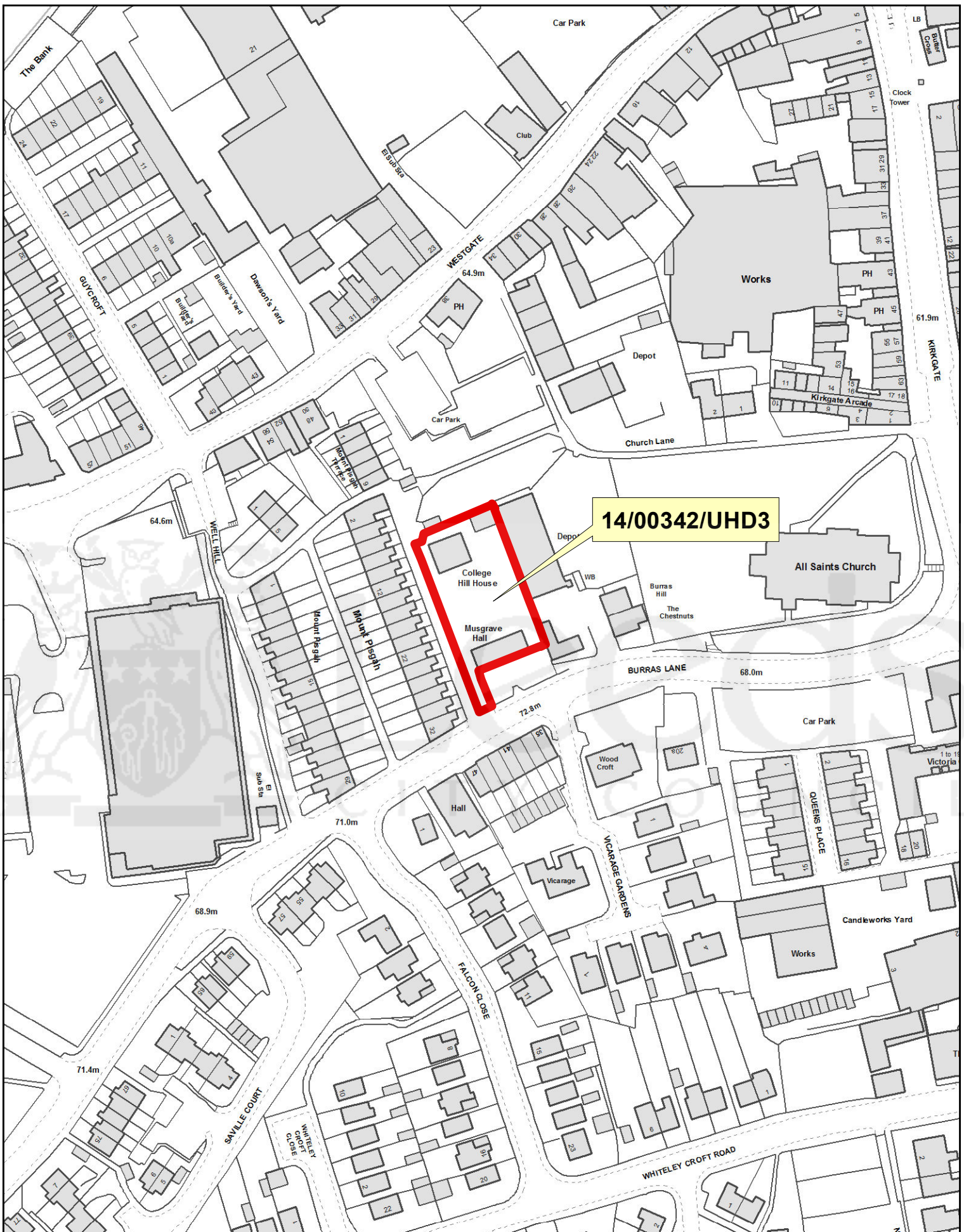
5.6 The structure is not within the grounds of a listed building, it is in the Conservation Area but there are not many views of it from public vantage points. The fencing panel elements of the structure consist of interwoven timber panels which are commonly used for garden boundary fences. The structure impacts on the residential amenity of the occupants of one dwelling, but it is not however considered that in planning terms this impact is harmful to a significant extent. It is recognised however that the complainants strongly object to it. As highlighted above, it is possible that the structure could be readily increased in length and with only a minor reduction to its maximum height by 17cm, would be considered to be Permitted Development. At that point the LPA would have no control over it or its appearance.

## **6.0 CONCLUSION**

6.1 It is recommended to Members that it is not expedient to take any enforcement action in respect of the structure given its limited impact on the adjoining dwelling and the real prospect that an alternative solution falling outside planning control would have a similar or greater impact on those affected by the structure. Members are requested to note this report and then to reach a view on the taking of enforcement action.

### **Background Papers:**

None



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