

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No: 2019/62/90248/W
Site Address: 2, Mendip Avenue, Lindley, Huddersfield, HD3 3QG
Description: Erection of fence
Recommending Officer: William Simcock

DECISION - REFUSE

I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Emma Thompson

AUTHORISED OFFICER

Date: 27-Mar-2019

Officer Report

Site Description

2 Mendip Avenue is a two-storey detached house built in brick with a tiled roof, on a corner site. It is bounded by Brecon Avenue to the south and Mendip Avenue to the west. The dwelling is sited near the centre of the plot, with a large part of the amenity space being to the west and south, between the house and its road frontages. It forms part of an estate of modern detached houses, with different designs but of the same age and similar palette of materials.

Description of Proposal

The proposal is for the application of a boundary fence enclosing part of the front and side garden. The works have already been carried out so the application is retrospective. It is constructed in timber with concrete posts at intervals. There are three lengths of fencing forming an approximate rectangle – the front fence (9.6m) which comes to within a few centimetres of the footway, a short length of fencing connecting the south-western end of the front fence to the south-eastern corner of the house, and a short length connecting the front fence to an existing brick wall further back near the eastern curtilage boundary, 4.6m and 5.0m respectively. The fence varies between 1.8 and 1.9m in height. The application form states that the reasons for erecting the fence were to provide more useable garden space and that it has also benefitted children's safety, improved property security and prevented dog fouling.

History of negotiations/amendments received

Due to the nature of the application, in so far as the works have been completed, it has not been considered relevant to engage with the applicant despite Officer concerns.

Relevant Planning History

87/03552 – Reserved matters application for erection of 80 no. dwellings. Approved and implemented.

COMP/18/0199 – Enforcement: alleged unauthorised erection of fence. Retrospective application submitted.

Representations

Final publicity date Expires: 27-Feb-2019

Representations received from 7 local residents. Summary of concerns raised:

- Fence is harmful to visual amenity and out of keeping with the rest of the avenue;
- Contrary to the deeds which say they have to have open-plan gardens;
- Blocks the view at the junction for other road users and affects visibility for the property when emerging from their drive on to Mendip Avenue;
- Built without planning permission which contradicts part (4) of the application form;
- The applicant claims to need additional enclosed space to grow vegetables but there are allotments less than 100m away;
- It does not make the property any more secure because parts of it are unfenced; a burglar alarm might be more effective;
- It may establish a precedent for similar applications on this estate.

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

Highways Development Management – No objections.

Police Architectural Liaison Officer – Do not object in principle but request some changes.

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is without designation on the Kirklees Local Plan.

Kirklees Local Plan (LP):

- **PLP 1** – Achieving sustainable development
- **PLP 2** – Place shaping
- **PLP 24** – Design

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 19th February 2019, the Planning Practice Guidance Suite (PPGS)

first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Chapter 8 – Promoting healthy and safe communities
- Chapter 12 – Achieving well-designed places

Assessment

The following matters are considered in the assessment below –

- 1) Principle of development
- 2) Impact on visual amenity (including any heritage considerations)
- 3) Impact on residential amenity
- 4) Impact on highway safety
- 5) Other matters – e.g. trees/ecology (e.g. bats)
- 6) Representations
- 7) Conclusion

1 – Principle of development: There are no policies in the Local Plan specifically about fences or boundary treatments. It will be assessed having regard to the requirements of Policy PLP24 which states that the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape.

Also of relevance is PLP21 (highway safety).

Under Chapter 8 of the NPPF, planning decisions should aim to endure that crime and disorder, and the fear of crime, do not undermine quality of life.

2 –Impact on visual amenity: It appears that most houses forming part of this estate original had gardens open to the street and not enclosed by fences, and the majority still do. Further west up Brecon Avenue, where the established development appears to date from the early 1960s or 1950s, street boundaries are typically formed by artificial stone walls no more than 500mm high. There is just one example of a boundary fence built close to or on the highway boundary on this estate, at 2 Brecon Avenue. Potentially, there may be a permitted development fall-back position for some forms of new boundary treatment under Part 2 Class A of the General Permitted Development Order, but not for a fence of over 1m adjacent to a highway used by vehicular traffic.

The character of this estate is open-plan and any new fencing on or close to the highway boundary, especially of a height close to 2m, and in solid materials, will have a marked impact on visual character. The fence does not enclose the whole garden, and is of hit and miss design, which is slightly better than a completely flat close-boarded fence, but it still looks very imposing and out of character with the estate. The concrete posts are an unattractive feature and compound the harm done.

A fence of reduced height, in more visually permeable materials, and set back further from the highway frontage, or some combination of these approaches, might in principle be considered acceptable, but as the application is retrospective it would not be appropriate to enter into negotiation to design an improved scheme at this stage.

In conclusion, it is considered that a fence in this location and of this height and style is detrimental to visual amenity or the character of the area and contrary to the aims of Policy PLP24(a).

3 – Impact on residential amenity: It is considered that the fence does not give rise to reduced levels of amenity to any neighbouring properties arising from loss of light or overbearing impact.

4 – Impact on highway safety: The fence does not compromise sight lines at the nearby junction between Brecon Road and Mendip Avenue. The fence is also set approximately 2m from the common boundary with no. 3 Brecon Avenue and based on the Highways Officer's advice this is sufficient to avoid compromising inter-visibility either between motorists or between vehicles and pedestrians at the entrance to the private drive. It is therefore considered it would not adversely affect highway safety and would accord with the aims of PLP21.

5 – Other matters:

Crime and disorder:

Open-plan estates may give rise to complaints about nuisance or anti-social behaviour because there is no clear boundary between public and private space. In the absence of independent evidence that problems of this nature occurred before the fence was built, and since the fence leaves a substantial part of the lawn unprotected anyway, only very limited weight can be placed on this factor. Furthermore, an effective boundary can be provided by a hedge, wall, fence or rail of only 1m in height or less, as this should prevent intruders casually wandering across people's front gardens.

If the aim of erecting a boundary fence is to prevent theft of garden produce (such as vegetables) then it may need to be higher than this to act as an effective deterrent, although even this would not necessarily provide justification for a high fence situated forward of the front elevation of the house.

Solid fences used on highway frontages also have the undesirable effect of reducing natural surveillance and may not lead to improved security overall. In this case, the design of the fence allows a limited view through from certain angles but prevents any effective natural surveillance. However, historic street-view images show that the rear garden was already screened from the front by a fairly high screen fence, and the new fence does not screen any

side doors or windows that could provide access points to the dwelling, so it is considered that from a security point of view it has little impact one way or the other.

In conclusion, although the fence is not ideal from the point of view of security, it is considered that notwithstanding the advice of the Police Architectural Liaison Officer it would not amount to a reason for refusal in this instance.

General:

The supporting images indicate that the applicant intends to establish a polytunnel in the front garden although this does not form part of the application description. This is proposed to be 1.9m high and not permanently fixed to the ground and so it is unlikely that it would be classed as a building.

6 – Representations:

Fence is harmful to visual amenity and out of keeping with the rest of the avenue;

Response: Noted – see part 2 of the Assessment above.

Contrary to the deeds which say they have to have open-plan gardens;

Response: This is not enforceable through the planning system and cannot be treated as a material consideration.

Blocks the view at the junction for other road users and affects visibility for the property when emerging from their drive on to Mendip Avenue;

Response: This issue has been examined in part (4) of the Assessment.

Built without planning permission which contradicts part (4) of the application form;

Response: Filling in “no” instead of “yes” was likely to be a clerical error. Officers undertook a site visit and assessed the proposals on their merit.

The applicant claims to need additional enclosed space to grow vegetables but there are allotments less than 100m away;

Response: This application has been determined principally on the basis of visual, highway safety and crime prevention considerations rather than on perceived need.

It does not make the property any more secure because parts of it are unfenced; a burglar alarm might be more effective;

Response: Security aspects of the proposal are considered in part (5) of the Assessment above.

It may establish a precedent for similar applications on this estate.

Response: This is a valid concern, although any future applications of this nature would have to be determined on their own merits.

7 – Conclusion: The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

Recommendation

Approve

Decision Authorisation - Delegated Powers

Application Number: 2019/90248

Officer Recommendation: Refuse

Reason for refusal

1. The fence, by reason of its height, design, and siting, forms an imposing feature that is out of character with its surroundings, which consist of dwellings with predominantly open-plan front gardens, and would be harmful to the street scene and visual amenity, contrary to the aims of Policy PLP24(a) and Chapter 12, paragraph 127, of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			30-Jan-2019
Location plan	100047474		30-Jan-2019
Supporting information (annotated photographs)			30-Jan-2019
Annotated aerial photograph			30-Jan-2019

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The case officer did not undertake negotiations with the applicant as the fence has been erected it is considered relevant to consider the proposals on the basis of the submitted plans.

Report Dated: 26-Mar-2019