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:	**2023/62/91083/W**
Site Address:	32, Gernhill Avenue, Fixby, Huddersfield, HD2 2HR
Description:	Alteration to height of boundary wall
Recommending Officer:	Teresa Harlow

DECISION – Decline to Determine

I hereby authorise that this application is declined to be determined for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Lee Stoney

AUTHORISED OFFICER

Date: 04-May-2023

Officer Report

Site Description

32 Gernhill Avenue, Fixby, Huddersfield, HD2 2HR

The site relates to a part single storey/part two storey dwellinghouse constructed from stone under a tile roof. The dwelling is set back from the highway with a driveway to the front of the dwelling. There was previously a relatively low boundary wall to the front of the site shared with the highway boundary. The gates of a greater height were previously at the site. The site and surrounding land slopes down from west to east, and as a result the previous front boundary wall was stepped.

The site is sited towards the end of a residential cul-de-sac comprising detached dwellings, ranging from single storey to two storey in height. Dwellings tend to be set back from the road and the locality has a suburban and pleasant character. To the west side and rear of the site is land allocated for housing in the local plan (HS12), with the land to the west forming an access to this allocation. There is permission on this allocation for housing with this access being approved as an access.

The site is not within a conservation area and is not within close proximity to any listed buildings.

Description of Proposal

Retrospective planning permission is sought for the alteration to the height of the boundary wall to the front of the site on the shared boundary with the highway. There has been an increase in height to the wall, which now varies in height and is stepped due to the changes in land levels, but at parts it is ~2 metres in height. The vast majority of the wall is also rendered, with this being above a lower stone element. The gate piers have also been increased in height, with the west pier being 5 courses of stone higher on the east pier 3 courses higher. The gate remains unchanged.

The latest submission is an amended proposal to the earlier application, which was refused and subsequently dismissed at appeal. The revised proposal would not alter the height of the wall, but proposes to clad the upper rendered sections in vertical timber.

A supporting statement submitted with the application sets out:

The application is retrospective for the alterations to the height of a front boundary wall at the above address.
An application for a similar proposal were refused in August 2022 and dismissed on appeal in January 2023. An appeal against an Enforcement Notice served by the Council under Ground G remains undetermined.
The applicant has attempted to deal with the matters raised within the appeal decision by proposing to clad the wall in timber boarding. This will match the timber boundary treatments that have been put in place by the developer of the adjacent residential development.
Whilst the matter of height remains unaltered, it is the applicant's view that the visual impact of the scheme means that the wall will be less conspicuous and less visible in the street scene. It will therefore not stand out as a dominant and obtrusive feature.
No 28 Gernhill Avenue has a relatively tall front boundary wall and No 31 opposite also has a high front boundary wall. However, the key consideration here is the boundary fence that is adjacent to the application site to the north, and by cladding the wall, this visual context will continue.
Therefore, the amended scheme does not conflict with Policy LP24 of the Kirklees Local Plan part (a), in that it promotes good design by ensuring that the form, scale, layout and details of the development respects and enhances the character of the area.

History of negotiations/amendments received

None with the current application. With application no. 2022/90406 the case officer commented that:

Officers raised significant concerns with the height and design of the wall to the applicant. The applicant set out that the wall was required for privacy and security, but this was not considered sufficient reasoning to justify the harm caused. Officers provided constructive advice to the applicant, but it became apparent over the processing of the application that Officers and the applicant were of a difference of opinion regarding the acceptability of the wall and the applicant has been informed of their right to appeal.

Relevant Planning History

Application site

2022/90406 – alterations to height of boundary wall (retrospective application). Refused for the following reason:

The wall, by virtue of its siting adjacent to the highway, its large scale and incongruous materials, results in a prominent utilitarian, stark and visually jarring feature within the street scene. The development therefore causes detrimental harm to the visual amenities and character of the area, contrary to Policy LP24(a) of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and Principle 1 of the Council's adopted House Extensions

and Alterations Supplementary Planning Document.

An appeal was subsequently lodged against this refusal of planning permission. The appeal was dismissed on 13th January 2023 under ref APP/Z4718/D/22/3311034.

COMP/21/0262 – enforcement investigation into reported breach of planning control. This being that "Without the benefit of planning permission, the alteration of an existing front/side boundary wall by increasing its height". Enforcement notice served 29th November 2022. This requires the following actions to remedy the breach:

"Dismantle and permanently remove the alterations to the wall, including the increased height of the existing wall and gate piers, and the rendering. Thereby returning the condition of the land to its state prior to the development commencing, as is shown as the "Wall Existing Plan" (shown in Appendix 1) and on the Google Maps Street View image from September 2020 (shown in Appendix 2)".

An appeal was lodged against the enforcement notice. This appealed on ground g. The appeal was dismissed on 19th April 2023 and the notice is upheld. There are 60 days from the date of the appeal decision to remedy the breach in accordance with the terms of the enforcement notice.

Representations

Final publicity date Expires:
Neighbour letters, if this application was to be determined, would expire on 22nd May 2023.

At the time of compiling this report, no representations had been received.

Consultation Responses

KC Highways Development Management (previous application): The increase in the height of the wall will not affect visibility for vehicles exiting the site or the neighbouring dwelling onto Gernhill Avenue given the width of the footway so HDM offer no objection to the application and therefore the proposals are considered acceptable from highways perspective with no specific conditions.

Assessment

The current Planning application ref. 2023/91083 proposes the alterations to the wall previously refused, and enforced against, but with timber cladding added. Aligning with what has been previously mentioned in the enforcement notice, this development would still be contrary to Policy LP24 of the Kirklees Local Plan, Principle 1 of the House Extension and Alterations SPD and Chapter 12 the National Planning Policy Framework.

Furthermore, the revised proposal is still of the same height and mass and although timber cladding would be added. This would not overcome the Inspector's previous conclusions in the appeal against the refusal of 2022/90406 that cosmetic alterations to the wall "would do nothing to address the structure's overall height and bulk and so would fail to mitigate its unsatisfactory visual impact to any great extent".

The supporting statement also makes reference to other boundary treatments in the vicinity at nos. 28 and 31. However, these have been previously considered in the Inspector's report in dismissing the appeal against 2022/90406 as follows:
"Whilst No 28 Gernhill Avenue has a relatively tall front boundary wall, it is topped with railings thereby reducing its bulk and maintaining some openness to that property's frontage. No 31 opposite the appeal property also has a high front boundary wall, but this is constructed entirely in stone and the property occupies a less prominent position at the end of Gernhill Avenue. As such, and since I am not aware of the circumstances that led to their development, I am not persuaded that these existing boundary enclosures justify the appeal scheme".

Under such circumstances it is considered the Inspector would reach the same conclusion should this application be refused by the LPA and a further appeal is lodged.

Following Chesterton v Wokingham BC [2018] EWHC 1795 (Admin), it is clarified that S70C is not concerned with the existence of differences between two developments, but with the existence of similarities. Thus, the discretion to decline to determine application is available to the Local Planning Authority where any part of an enforcement matter is involved in the application regardless of whether the application would involve consideration of different planning merits.

It is clear *Chesterton* is relevant in this instance as the application is seeking permission for the development enforced against in light of the planning submission and plan. There is no doubt that the development for alterations to the boundary wall is the same unauthorised development that is sought under the current application. Consequently, there can be no argument that the permission sought for the alterations to the boundary is the same boundary wall enforced against. Section 70C is therefore engaged if it is considered the applicant is seeking permission for a development already considered and enforced against by the Local Planning Authority.

In fact, there are no material differences in the circumstances or other mitigating measures proposed by the applicant or the agent, save for the application of timber cladding. This would not overcome the reasons planning permission was refused under application no. 2022/90406 and subsequently dismissed at appeal or enforcement action taken under ref COMP/21/0262.

By virtue of the lack of material differences since the initial decision and appeal decision in application **2022/90406** and its Enforcement Notice – **COMP/21/0262**, it appears the applicant is attempting to seek a further decision on a development the Local Planning Authority has made a decision on.

Consequently, it is appropriate for the LPA to lawfully decline to determine this application in light of the planning history and its decision.

The basis for not determining, as set out above, is under section 70C is by reason the applicant is seeking permission for development which forms part of development specified in a pre-existing enforcement notice the Local Planning Authority is using its discretion to do so on the same development.

5. Recommendation – Decline to Determine

5.1 In accordance with Part 3, Section 70C (1) of the Town and Country Planning Act 1990, the Local Planning Authority exercise its discretion to decline to determine application no. **2023/91083**.

Decision Notice Text

The Local Planning Authority exercises its discretion under section 70C of the Town and Country Planning Act 1990 to decline to determine the application no. **2023/91083** by reason that the granting of planning permission would involve granting permission for a development to which a pre-existing enforcement notice relates.

This decision is based on the following plans/documents:-

Plan Type	Reference	Version	Date Received
Location Plan.		Unamended.	12/04/2023
Photograph of existing wall			12/04/2023
Photograph of fence to adjoining development			12/04/2023
Photograph of front wall with timber cladding added			12/04/2023
Photograph of side wall with cladding added			12/04/2023
Climate Change Statement			17/04/2023

Block Plan			12/04/2023
Existing wall plan			12/04/2023
Supporting Statement			12/04/2023