
Application Number: APP/11/00925

Ward: Stakes

Site Address: 8 Gloucester Road, Waterloooville, PO7 7BJ

Applicant: Mr D Wibberley

Team: 1

Agent: N/A

Case Officer: Mrs R Hebden

8 Week Date: 12/06/2011

Reason for Committee Consideration: Enforcement action recommended

Proposal: Construction of fencing and gate to front boundary (retrospective application).

EHPBE Recommendation: **A) REFUSE PERMISSION**
B) TAKE ENFORCEMENT ACTION

1 Site Description

- 1.1 Gloucester Road is a residential cul-de-sac in Waterloooville. The cul-de-sac contains pairs of regularly spaced, two storey, semi-detached dwellings. The properties are set back from the front of their plots and have front gardens of which several incorporate areas for parking cars. The majority of the properties within Gloucester Road do not have physical means of enclosure at the front of their plots, although a couple have hedges, and as a result Gloucester Road has an open character.
- 1.2 No. 8 Gloucester Road is a two storey property which contains an integral garage. The property is set back from the front of the plot by 8m with a hard standing providing parking for two cars. The remaining land to the front of the property is laid to lawn. The boundary to the front of the property consists of a brick retaining wall of up to 0.62m with sections of picket style fencing to the top and gates fronting the drive. The fencing and gates are the subject of this application.

2 Planning History

- 2.1 In February 2011 the Council received a complaint regarding fencing and gates erected to the front of 8 Gloucester Road. There had been no previous planning applications relating to this site.

3 Proposal

- 3.1 The application seeks consent to retain the picket style fencing and gates along the south and south west boundary. The picket fencing and vehicular gate which are directly south of No. 8 are both 1.22m in height. The picket fencing to the south west of No. 8 increases to a height of 1.9m as it is positioned on top of a retaining wall.

4 Policy Considerations

National Planning Policies

PPS1 (Delivering Sustainable Development)

PPG13 (Transport)

PPG18 (Enforcing Planning Control)

Havant Borough Core Strategy 2011 forming part of the Local Development Framework

CS16 (High Quality Design)

5 Statutory and Non Statutory Consultations

Arboriculturalist

The gate and fencing has had no impact on the TPO which is positioned to the rear of the neighbouring property.

Development Engineer

Comments not yet received.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at Minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 10

Number of site notices: 0

Statutory advert: No

Number of representations received: 5 (1 in objection and 4 of 'no complaint')

Summary:

- 6.1 The fencing does not intrude onto other people's properties or cause an obstruction to motorists in the same way that hedges can.
Comment: Noted.

- 6.2 The gate and fencing is unsightly and not in keeping with the other properties in Gloucester Road.
Comment: The effect of the fencing on the street scene is considered in section 7.1(ii).

- 6.3 Granting Planning Permission for the gate and fencing would set an undesirable precedent.
Comment: Each application is assessed on its individual merits.

7 Planning Considerations

7.1 The development plan identifies the main considerations in relation to the proposal as:

- (i) Principle of development;
- (ii) Effect on the character of the streetscene;
- (iii) Highways.

(i) Principle of Development

7.2 The site is located within an urban area as identified by the Havant Borough Core Strategy 2011, therefore the gates and fencing are acceptable in principle providing they satisfy the criteria of the development management policies listed in section 4.

(ii) Appropriateness of design and effect on the streetscene

7.3 The retaining wall and fencing together extend to 1.9m in height. The vehicular gate is 1.22m in height. The retaining wall is constructed of red and brown bricks. The fencing is of a picket style and together with the vehicular gate have been left a natural light colour.

7.4 The majority of the properties within Gloucester Road do not have formal front boundaries, with the exception of a couple of properties which have hedges, which are not subject to the same planning controls as boundary walls and fences. There is a fence along the boundary between No's 8 and 10, however this is a side boundary and is also not subject to the same planning restrictions as a boundary that is adjacent to a highway. The absence of front boundary walls or fences results in the area having a distinctively open and spacious character.

7.5 In this context, the presence of the vehicular gates and the picket style fencing which has been erected above the existing retaining wall, is considered to be out of keeping with the open character of the locality.

(iii) Highways

7.6 The views of the Development Engineer are awaited in respect of the application, and members will be updated as to this issue prior to the Committee meeting.

8.0 Enforcement Considerations

8.1 Planning Policy Guidance Note 18, Enforcing Planning Control, indicates that enforcement powers are discretionary and should not simply be used, for example, to regularise a technical breach of planning control. However, enforcement action by Local Authorities should be taken where it is expedient to do so. When considering the merits of taking action, Councils should look at whether a breach of control unacceptably affects public amenity, or the existing use of the land and buildings merits protection in

the public interest. Enforcement action should always be commensurate with the breach of planning control and as such the following must be considered.

- 8.2 (i) Alleged breach of Planning Control;
(ii) Human Rights;
(iii) Fall back position;
(iv) Compliance period.

(i) Alleged breach of Planning Control

- 8.3 Within the last 4 years and without the benefit of Planning Permission the following development has taken place on the land:

-Erection of vehicular gate of 1.22m in height and fencing of up to 1.9m in height.

(ii) Human Rights

- 8.4 The Human Rights Act confers a number of rights, of which the following are relevant in this case.

First Protocol, Article 1: the right to peaceful enjoyment of possessions. It is necessary to balance the right to use this land as the owner wishes, against the need to protect the character of the area. The erection of the gates and picket fencing is considered contrary to the Council's adopted policies for the reasons set out above.

It is considered that a requirement to secure the removal or reduction in height of the fencing and gates is proportional to the intended objective of the Local Development Framework to protect the character of the area from inappropriate development.

Article 6: Right to a fair trial. If the recipients of the notice are aggrieved by the Local Planning Authority's (LPA) decision there is the right of appeal to the Planning Inspectorate, which is an independent body. It is therefore considered, that the decision making process falls within the requirements of Article 6.

Article 14: Prohibition of discrimination. Prohibits discrimination on grounds such as sex, race, colour, language, religion, political opinion, national or social origins, property birth or other status. By taking enforcement action the LPA would be treating the occupiers no differently from any other member of society. Conversely, by not taking formal action this could be considered to be an act of positive discrimination.

(iii) Fall back position

- 8.5 It is considered that there is a 'fall back' position which would allow the erection of a fence and/or gates of up to 1m in height adjacent to a highway used by vehicular traffic under Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) Order 1995. The reduction of the height of the fencing and vehicular gate to a height of 1m would therefore not require Planning Permission and in this case is the fall back position.

(iv) Compliance period

- 8.6 A compliance period of two months is considered to be reasonable in this case as the fencing and gates can be reduced in height without too much complexity.

9 Conclusion

- 8.1 It is considered that the fencing is out of keeping with the distinctive open character of Gloucester Road. It is therefore recommended that the application is refused. As set out in section 8 above, it is considered expedient to take enforcement action to require the fencing and vehicular gate to be reduced to a height of 1m (measured from ground level).

RECOMMENDATION:

(A) That the Executive Head of Planning and Built Environment be authorised to **REFUSE PERMISSION** for application APP/11/00925 for the following reason:

- 1 The picket style fencing and gates by reason of their height and prominent location constitute an incongruous feature within the streetscene to the detriment of the distinctive character and visual amenities of the locality. As such the development conflicts with policy CS16 of the Havant Borough Core Strategy 2011 and Planning Policy Statement 1.

(B) In view of it appearing that without the benefit of Planning Permission a picket style fence of 1.9m in height and vehicular gates of 1.22m in height have been installed to the south and south western (front) boundary of No. 8 Gloucester Road, the Solicitor to the Council be authorised to issue an enforcement notice under sections 172 and 173 of the Town and Country Planning Act 1990 (as amended) such as to require within a compliance period of 2 months that the fencing and vehicular gates be reduced to a height not exceeding 1m above ground level, it being expedient to do so having regard to the provisions of the development plan and reasons set out in this report.

Appendices:

- (A) OS location plan
(B) Photographs of the unauthorised development
(C) Site plan showing position of fencing to be removed
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