

Conservation Area: Not applicable.

4 Statutory and Non Statutory Consultations

5 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: 3

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: Several, all from owner and letting agent of No 27

Comment	Officer Comment
Considerable communication has been received from both the letting agent of, and owner of No 27, which can be summarised as follows:	
Object to the wall that has been built by No. 28 in between our properties. This horrendous wall has unfortunately been built with no regard for the impact it will have on ourselves and our safety, and has been erected without planning permission or respect for local regulations. Our main concerns are with both safety and aesthetics. <u>Safety:</u> The wall has been built as a seemingly free standing structure, from a thermo-lite block which is not suited to this type of wall, and is somewhat higher than the permitted 2m limit, standing at around 2.27m. It is not connected to the building and not supported by sufficient buttresses, and has plainly been built by someone with no building experience. The lower layers of block were pointed to a basic standard, but as the wall went higher things become decidedly and increasingly worse. A thorough report by building control is surely essential before any consideration can be given with	See considerations below for responses to these issues

regards to granting retrospective planning permission.

The wall was obviously completed from one side and no access was requested in order to work from our side. This raises the important question of the soundness of the foundations for this wall. How were the foundations built to support this oversized structure? If the foundations were only built up to the boundary of No. 28, and the wall is obviously sitting on the very edge of this property, then this would mean that the wall is sitting precariously on the edge of the concrete foundation. This would mean that it will, in time, start leaning over and then the obvious conclusion would be that it could fall into our garden and possibly injure or kill someone.

From the photos it can also be seen that many of the blocks have a distinct lack of mortar between them and others are jutting out or simply don't fit properly. The higher blocks seem like they are not secured properly.

If planning permission is granted, however, then we would assume that this is to mean the Council is satisfied with the safety of the wall, and in the case of the wall causing personal injury or damage to our property, Havant Borough Council would have to be held legally responsible.

Aesthetics:

From an aesthetic point of view, anyone can see that the wall has been not been finished with any thought given to its attractiveness on our side. I would expect that common courtesy would require a neighbour to consider the appearance on the other side of the wall as well. I am sure that on their side it is a lot more attractive (although still not safe). It has been built haphazardly with a mix of bricks and blocks, with too much mortar in some places and a lack of it in other, a D.I.Y. project that appears to have gone wrong. The height at 2.27m, as well as affecting the safety, is also very oppressive and is of course much higher than other fences that surround the property.

<p>Retrospective granting of planning permission would, in this case I believe, be a mistake. The dangers of the wall falling over seem obvious and if anyone was in our garden at the time it could certainly cause serious injuries, even death. It is also more than likely to have an effect on property value, not just through poor appearance but also when a building survey highlights the danger of the wall.</p>	
---	--

6 **Planning Considerations**

6.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development and Permitted Development Heights
- (ii) Appropriateness of design and effect on neighbouring properties
- (iii) Safety issue

(i) Principle of development and Permitted Development Heights

6.2 The application site is located within the defined urban area, therefore development is considered acceptable in principle subject to development management criteria. Under Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015, an outbuilding could be erected right up to a shared boundary up to a height of 2.5m. Infact, in the north western corner adjacent No 29, a shed having a height of 2.45m has been erected under Permitted Development. It is considered that the fall back position of alternative development is a valid material consideration in this instance. If the outbuilding had been on the south-eastern boundary then the permitted development height would be 2.5m. The wall has been constructed at 2.27m high, which is 0.27m in excess of that permitted under Part 2, Class A, but 0.23m lower than a Class E permitted development outbuilding.

6.3 It should be noted that the applicants have advised that the wall was built by a reputable builder with foundations and supporting piers (there are 3 along the length with No 27) and the whole wall, including foundations was built within their own site i.e. there is no overhang of foundations to No 27. Therefore the wall is set in on No 28's land and in effect No 27 has marginally gained some land.

(ii) Appropriateness of design and effect on neighbouring properties

6.4 It is not disputed that the visual appearance of the wall facing No 27 is poor - the pointing between the breeze blocks oozes on the side facing No 27. The visual appearance facing No 27 is not of a good quality and unattractive and is considered harmful to their visual amenity. However this harm could be overcome with appropriate mitigation - and the applicants have offered to visually improve the wall facing No 27 by applying some fence panels and trellis to the wall within an agreed time period - this could, normally, be conditioned. But the owner of No 27 is denying them access to implement this improvement. As linked detached properties it is impossible for the applicants to make any improvement to the facade facing No 27 without appropriate access. Therefore it would be inappropriate to

apply a condition requiring this visual improvement because such a condition would fail the tests set out in the NPPF - if there is no realistic chance of the applicants being able to comply with the condition it would be unreasonable to impose such a condition.

- 6.5 Therefore it is necessary to make a judgement as to the level of harm resulting from the wall in its current breeze block form without a mitigation condition and whether this is sufficient to refuse the application. It is relevant to consider that the wall would be permitted development if reduced to 2m and for the whole 2m high could then remain as breeze block. If the top 0.27m, which is just over one course of blocks, were removed, then the poorly finished facade facing No 27 would remain and not be a planning matter. Therefore the additional visual harm of just 0.27m i.e. one and a bit courses of blockwork, is considered very marginal.
- 6.6 The additional height is not considered unduly oppressive or overbearing when in the garden of No 27 - there are other higher walls by virtue of the sites orientation relative to the properties to the rear in Rosina Close - an attached pitched roofed garage sits on the rear boundary higher than the wall on the side boundary.
- 6.7 On balance it is considered that the actual visual harm of the additional 0.27m of breeze block wall above the permitted development height of 2m, especially considering that an outbuilding could be erected along part of the boundary at 2.5m high, would have very limited additional harm on the amenity of the neighbours at No 27. The visual harm is caused by the poor quality workmanship of the pointing on the side of No 27 rather than the wall itself, and it is regrettable that the owners of No 27 will not allow access to make the offered mitigation works. In the circumstances it is considered that the material harm of the additional 0.27m does not warrant a planning refusal and is not so significant as to be considered contrary to Policy CS16 of the HBLP (Core Strategy) and neither is it considered expedient to take any associated Enforcement proceedings.
- 6.8 Accordingly it is recommended that the wall be allowed to remain in its current form without any mitigation condition on the south-eastern boundary with No 27 and also be allowed to be increased in height to 2.27m on the north-western boundary with No 29. The occupiers of No 29 have not objected and it is understood to be on good terms with the applicants and agreed to the increase in height.

(iii) Safety issue

- 6.9 The owner of No 27 has repeatedly objected on safety grounds, alleging the wall to be unsafe and liable to fall and cause injury. However planning does not cover the safety or structural stability of development. The matter has been discussed with the Council's Building Inspectors who advise that a garden wall of 2.27m high and of this length does not require Building Regulations Approval. The stability and safety aspect is therefore a private matter between the 2 parties involved, not a Council matter. Notwithstanding this the applicants have advised that the wall was built with foundations, entirely within their own land, and there are 3 buttress/piers along the length of the wall.
- 7.5 Consequently, it is considered that the proposal is unlikely to appear overbearing or lead to overlooking and would have limited and acceptable impact on the properties immediately adjacent to the application site and the properties opposite or to the rear, meeting the requirements of Policy CS16 of the HBLP (Core Strategy). It is noted no letters of objection were received with respect to the scheme.

7 Conclusion

- 7.1 Whilst it would be preferable to mitigate against the visual harm of the walls appearance facing No 27, since the owners of No 27 will not allow access for this to take place and any such condition would therefore be unreasonable, on balance it is considered the

actual harm of the development is limited and not refusable. Therefore the application is recommended for approval.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT PLANNING PERMISSION IN RETROSPECT** for application APP/17/00162

(A) subject to the following conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

1:1250 Site Location Plan
Block Plan 1:200
Photographs with dimensions

Reason: - To ensure provision of a satisfactory development.