

28 MARCH 2023 PLANNING COMMITTEE

6e PLAN/2022/1126

WARD: Byfleet and West Byfleet

LOCATION: 212 High Road, Byfleet, West Byfleet, Surrey, KT14 7BT

PROPOSAL: Retention of boundary fence. (Retrospective)

APPLICANT: Mr Carlo Castonovo

OFFICER: Russell Ellis

REASON FOR REFERRAL TO COMMITTEE:

The decision on whether to issue an Enforcement Notice falls outside the Management Arrangements and Scheme of Delegations.

SUMMARY OF PROPOSED DEVELOPMENT

The proposal is a householder planning application relating to a detached property on High Road, Byfleet.

The proposal is to retain (works complete) a 2+m high close boarded fence to the side and rear of the property and partial front but not the front boundary. The property and surrounding area have a restrictive planning condition attached that any new additions of this type require consent but there are additional issues given below.

PLANNING STATUS

- Urban Area
- Byfleet Neighbourhood Area
- Thames Basin Heaths SPA Zone B (400m-5km)
- EA Flood zone 2
- High Archaeological Potential

RECOMMENDATION

Refuse planning permission and authorise formal enforcement proceedings.

SITE DESCRIPTION

The proposal relates to a detached property on the corner of High Road and Grasmere Way Byfleet. The area is predominantly residential though close to local amenities and was/is part of a smaller development from a 1965 permission.

RELEVANT PLANNING HISTORY

DC 0019959

ERECTION OF 27 DETACHED HOUSES & GARAGES & 33 TERRACED HOUSES & GARAGES.

Permitted

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DC 82/0329

ERECTION OF A 6FT HIGH BRICK WALL.

Refused

DC 82/0535

ERECTION OF A 6FT HIGH BRICK WALL.

Refused

Planning Appeal

AP 82/0329/A Appeal to Planning Inspectorate relating to refusal 82/0329

Appeal Dismissed 22 September 1982 (Council refusal upheld).

CONSULTATIONS

None.

REPRESENTATIONS

One representation received opposing the development on the grounds the estate was designed to be “open” and encompassing amenity land that previous occupants applied twice for and were both refused.

One representation of support stating no objection to the fence and its appearance.

RELEVANT PLANNING POLICIES

National Planning Policy Framework (NPPF) (2021):
Section 12 – Achieving well-designed places

Woking Core Strategy (2012):
CS21 – Design
CS24 – Woking’s Landscape and Townscape

Development Management Policies DPD 2016

Policy DM2 – Trees and Landscaping

Supplementary Planning Documents:
Design (2015)
Outlook, Amenity, Privacy and Daylight (2022)

PLANNING ISSUES

1. The planning issues that need to be addressed in the determination of this application are; whether the erection of the boundary fence is of detriment to the character of the area, whether the development would infringe on the amenities enjoyed by surrounding neighbours, and would it lead to a proliferation of similar in the area.

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2. Additionally, the area that has been encompassed is actually classed as amenity land, despite being owned by No212, a common feature in modern open plan estates. The area was bounded by a high hedge which on its own would not require permission and unfortunately no evidence has been produced that the amenity land had been continuously used as private garden for 10 years or more (which would make it immune from enforcement or the issuing of a Certificate a formality).
3. As only a householder application for retention of the fence was submitted rather than a Change of Use, the local planning authority can only deal with this and no part of the decision will infer how the land can be used other than its original designation.
4. The original consent for the wider development had a restrictive condition on application DC 0019959 as follows:

4. Notwithstanding the provisions of Article 3 of the Town and Country General Development Order, 1963, no buildings, structures, or erections of any kind shall be erected on the land the subject of the application, without the consent in writing of the Council first being obtained.

Reason

To ensure that the open land planned to surround any buildings erected on the site after approval of detailed plans shall not be used for the erection of any sheds or temporary buildings or any structures or erections without reference to the Council.

5. Whilst the fence can be considered development in this case as above, it is also worth noting it would be outside the realms of permitted development and therefore planning permission if required.

Impact on Character:

6. The Woking Core Strategy 2012 Policy CS21 requires development proposals to *“respect and make a positive contribution to the street scene and the character of the area in which they are situated, paying due regard to the scale, height, proportions, building lines, layout, materials and other characteristics of adjoining buildings and land”*. Section 7 of the National Planning Policy Framework 2012 states that *“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions”* and requires proposals to *“respond to local character and history, and reflect the identity of local surroundings and materials...”*.
7. The application site forms the corner plot on High Road and Grasmere Way with what would have been an open area of soft-landscaping (‘amenity-space’) matching the area on the opposite side of Grasmere Way as well as the general area being “open” with regard to frontages etc.
8. A 2+ metre high close timber fence has been erected to the rear, side and partial front (not forward of the front elevation of the property) where a previous hedge existed. Historically, this hedge was the boundary between the amenity land to the side of the property and the footpath on Grasmere Way.
9. It appears the current owner acquired the property relatively recently and while property deeds show this area as being “owned” by No 212, deeds do not show/illustrate use. A

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previous owner had two failed planning applications to erect a wall in a similar position, though set back slightly, and one additionally upheld by the Planning Inspectorate on appeal.

10. In part of their summation the Inspector stated:

Appeal Ref T/APP/5394/A/82/06536/G4 22.09.1982

“3. A particular feature of the layout of the housing in the estate, and which contributes much to its character, is the amount of space between houses and the road. This open nature would be reduced by the provision of a walled enclosure extended out nearly to the highway boundary. I consider the character of the estate would be harmed and the adverse impact would be strengthened because of the prominent position of your house on the corner site at the entrance to the estate.”

11. Residential areas, such as this part of High Road leading into Grasmere Way then Rivermead and Millmead, were designed distinctly with a relatively compact nature with large verdant frontages and parcels of open green spaces in a bid to retain an open aspect.
12. Large sections of amenity land, such as the area inadvertently enclosed, are vital to this open aspect as they hold the most prominent positions and largest plots. Whilst it is accepted a tall hedge was present prior, as stated this on its own did not require permission and overall was a softer, greener outlook.
13. The Council's Supplementary Planning Document 'Outlook, Amenity, Privacy and Daylight' 2008 advises in section 4, amongst other things, that the amenity of the public realm should be protected and seeks sympathetic treatment of landscaped margins which reflects the characteristic pattern of development in the area.
14. Further to this, as there are numerous parcels of land similar to that of the proposed/existing and allowing the fence would potentially attract further applications from the area. In the event that this application were to be approved, it would leave it difficult to resist (although each application is determined on its own merits) and would have an unacceptable impact on the open character of the area and street scene.
15. It is therefore concluded that the retention of the 2+ metre high close timber fence, by reason of adversely affecting the spacious layout and character of the area and the LPA being unable to establish the lawful use of the amenity space and its use for residential purposes, would be contrary to provisions outlined in the National Planning Policy Framework, Policy CS21 of the Woking Core Strategy 2012 and Supplementary Planning Documents 'Outlook, Amenity, Privacy and Daylight' 2008 and 'Design' 2015.

Expediency of Enforcement Action

16. The local planning authority has been consistent in its approach to both fencing over 1m high adjacent to a highway and the encompassing of amenity land without consent and has robustly and effectively defended decisions with the Inspectorate.
17. The owner is aware the fence in its current state exceeds permitted limits but is holding off on incurring any additional expense until what is/isn't required is clarified.

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18. If the necessary evidence is forthcoming in relation to the use of the amenity land, a Certificate of Existing Use can be submitted and issued if the Council have no evidence to the contrary.

LOCAL FINANCE CONSIDERATIONS

19. The proposal is not Community Infrastructure Levy (CIL) liable.

CONCLUSION

20. Considering the points discussed above, the 2+m close timber board fencing sited mainly adjacent to the highway and enclosing amenity area has an unacceptable impact on the character of the area. Its positioning on such a prominent position along High Road/Grasmere Way is in complete contrast to the remaining area and becomes a dominant feature in its own right and is out of character.
21. The development is therefore contrary to Section 7 of the National Planning Policy Framework, Policy CS21 of the Woking Core Strategy 2012, Policy DM2 of the Development Management Policies DPD 2016 and Supplementary Planning Documents 'Outlook, Amenity, Privacy and Daylight' 2008 'Design' 2015 and is accordingly recommended for refusal.
22. For the above reasons the fence constitutes a breach of planning control and it is considered expedient to take enforcement action against the unauthorised development and issue an Enforcement Notice.
23. It is therefore recommended that planning permission is refused and enforcement proceedings authorised
24. Section 59 of the National Planning Policy Framework (NPPF) states 'effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control'. It is considered that enforcement action is proportionate for the reasons listed above.

BACKGROUND PAPERS

1. Site visit photographs
2. Previous applications and Inspectors Comments
3. Original Site Layout
4. Original Site Layout with Annotations
5. Original permission (See Condition 4)

RECOMMENDATION

Refuse planning permission for the following reasons:

01. The fencing, by reason of its size and scale, incongruous and harsh appearance adversely affects the spacious layout and character of the area contrary to provisions outlined in the National Planning Policy Framework, Policy CS21 of the Woking Core Strategy 2012, Policy DM2 of the Woking Development Management Policies DPD (2016), Supplementary Planning Documents 'Outlook, Amenity, Privacy and Daylight' 2008 and 'Design' 2015 and is accordingly recommended for refusal.

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It is further recommended:

- a) That the Director of Legal and Democratic Services be instructed to issue an Enforcement Notice under Section 172 of The Town & Country Planning Act 1990 (as amended) and officers be authorised in the event of non-compliance to prosecute under Section 179 of the Act, or appropriate power, and/or take direct action under Section 178 in the event of non-compliance with the Notice.
- b) Enforcement action be authorised to issue an Enforcement Notice in respect of the above land requiring the following within three months of the notice taking effect:
 - i) Permanently remove from the land those parts of the fence panels and posts erected along the front and side boundary that are in excess of 1 metre in height measured from the adjacent ground level, and
 - ii) Remove from the land all material, rubble, debris and paraphernalia arising from compliance with the above.