South Tyneside Council

Reference:	ST/0278/24/HFUL
Location:	7 Luss Avenue Jarrow Tyne and Wear NE32 4AR
Ward:	Bede
Description:	Retrospective: wooden fence around front and side garden.
Recommendation:	Refuse Permission
Case Officer:	Casey Scott
Case Officer Contact No.:	0191 4246780 or 07442 655446

Description of the Site

This application relates to 7 Luss Avenue, Jarrow. The application property is a semi-detached dwelling, located in the built-up residential area of Jarrow. The property is on a corner plot at the junction of Luss Avenue and Glasgow Road, and the area is characterised by similar semi-detached properties. The application site has an existing driveway to the front of the property from Luss Avenue and a further driveway to the west, accessed from Glasgow Road.

Prior to the works being completed to the boundary treatment the original boundary treatment comprised a low stone wall with hedging located behind and low metal gates to the driveway to the west, which was in keeping with the host property and the immediate locality.

Description of the Proposal

This application seeks full householder retrospective planning permission for the erection of a wooden fence, including pedestrian access gate (fronting onto Luss Avenue), above an existing stone boundary wall (varying in height from 45-70cm), located around the front and side garden of the property. Part of the front curtilage to the property, including a driveway and paved area has not been enclosed by fencing. Following receipt of amended plans, decorative metal gates to a height of 0.75m to the existing western driveway from Glasgow Road have been detailed

As seen on site on the 4th June 2024 the wooden fencing has already been erected and painted in a grey colour. The height of the fencing above the stone wall (also painted grey) varies slightly between 1.84m to 1.98m including the existing stone wall around the site due to topographical changes. The metal gates, referenced above, were not installed at the time of the case officer's initial site visit, however these have been subsequently installed.

Indicated on both the amended existing and proposed plans, the metal gates, previously forming part of the means of enclosure to the property have been reinstalled. Due to the height of the gates, this element does not require planning permission therefore it has not been added to the description of the proposal.

Relevant Planning History

No recorded planning history.

Summary of Consultation Responses

The following responses were received in response to the statutory consultation period which ended on 11/06/2024.

Highway Authority
From the second consultation with highways with amended plans they have provided the following response: *'Concerns could be overcome by submission and approval of amended plans or additional information before any permission is granted. Whilst some matter raised in our earlier responses have been satisfactorily addressed, others have not and will require further amendments to be provided as indicated below:*

- *The proposed sections of high boundary fencing will obstruct inter-visibility at the retained vehicular accesses located at the north-east and south-west corners of the site, where presently inter-visibility is unobstructed due to low boundary treatments for those sections of boundary to be modified. Drivers emerging from the adjacent driveways and pedestrians walking along the highway footway emerging from behind any new high fence and crossing the driveway areas, would have their vision obstructed by the high fencing. This could result in pedestrian strikes and risk of injury to pedestrians due to the lack of inter-visibility.*

- *To overcome the above highway pedestrian safety concerns, it will be necessary to provide 2m x 2m inter-visibility splays to the sides of the existing driveways where the new fencing is proposed to provide the necessary inter-visibility splays, as shown below. Alternatively, the sections of fence could be lowered so that the total boundary height would be no higher than 1m in height, within 2m of the driveway edge, in the interests of pedestrian safety.'*

Summary of Representations

No responses received.

Relevant planning policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permission must be determined in accordance with the adopted development plan, unless material considerations indicate otherwise.

The statutory development plan comprises the Council's adopted Local Development Framework (LDF) development plan documents. Those LDF document of relevance to this application comprises a Development Management Policies Development Plan Document (DPD) 2011.

The following LDF policies are relevant to this planning application:

- LDF Policy DM1 (A, B, G)

The following policies and guidance are also relevant to this planning application:

- Supplementary Planning Document 6 (Parking Standards)
- Supplementary Planning Document 9 (Householder Development)

A Regulation 19 version of the South Tyneside Local Plan was recently subject to consultation from 15/01/2024 to 03/03/2024 and this marked the second of two statutory consultation periods in the plan-marking process. While the draft Local Plan is now at a more advanced stage of preparation, with the Regulation 19 consultation completed, the extent to which there are unresolved objections to particular policies is currently being assessed and therefore only very limited weight can be afforded to policies in the emerging local plan at the current time having regard to paragraph 48 of the NPPF. As such, any relevant emerging local plan policies that are listed below are not appraised in detail in the assessment set out below:

- LP Policy SP1 - Presumption in favour of Sustainable Development
- LP Policy 1 - Promoting healthy communities
- LP Policy 47 - Design Principles

National planning policy is also a material consideration in determining this planning application. Relevant national policy comprises the National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG), the National Design Guide and the National Model Design Code.

Assessment

The key issues in the assessment of this planning application are as follows:

- Impact on Visual Amenity
- Impact on Residential Amenity
- Highway Safety

Impact on Visual Amenity

LDF Policy DM1 (A) seeks to preserve visual amenity. It states that the Local Planning authority will ensure, '*development, including new buildings, extensions and alterations to existing buildings, is designed to convey sensitive consideration of its surroundings, and where possible enhance its local setting and reinforce local identity, having particular regard to scale and proportions, alignment, form, use of materials and architectural detailing.'*

The proposal seeks retrospective permission for fencing (including a pedestrian gate) erected above an existing stone wall, which varies in height between 1.84m to 1.98m around the front / side garden (excluding front driveway and paved area). The fencing and existing stone wall has been painted a grey colour. During the course of the application, metal gates have been added to the western boundary to the site to a height of approximately 0.75m. As stated above, this element does not require planning permission therefore it has not been added to the description of the proposal.

Part 16 of SPD 9 for Householder Development refers to boundary treatments. This sets out that '*walls, fences and gates, particularly to front and side boundaries can have a significant effect on the appearance of a property and streetscape. The design, height and detailing of boundary walls, fences and gates therefore play an important role in defining the character*

and appearance of residential areas, houses and streetscape.' Furthermore, it states that '*the design, height and materials of walls and fences should always complement the original character and materials of the property and neighbourhood'. 'Expanses of high close-board fencing bordering public areas should also be avoided. With regard to front gardens, it is advised that boundary treatments should not exceed 1 metre in height'*.

Given the nature of the development on a corner plot in the built-up residential area, the fencing is highly visible and prominent within the public domain. LDF Policy DM1 (A) sets out that the development should be designed to convey sensitive consideration of its surroundings, and where possible enhance its local setting and reinforce local identity, having particular regard to scale and proportions, alignment, form, use of materials and architectural detailing.

The fencing, by virtue of its location on a prominent corner, its height above the stone wall, its design comprising a solid slatted fence with no visual permeability through the site, the extent / amount of fencing, with lengths extending for 10.14m to the north, 3.16m on the north-west and 8m on the western elevation (total 21.56m) and its grey finish, has resulted, in an unacceptable form of development within the street scene. It is considered that the development has a negative impact on the visual amenity of the area and it does not demonstrate sensitive consideration for the immediate area, which is characterised by similar semi-detached properties with low front / side boundary treatments and hedging.

A supporting statement forms part of the planning submission. This sets out that the previous hedging located around the front and side garden had to be removed due to rubbish being often left on it, and the applicant's dogs were not able to use the front garden. The statement also outlines further reasoning for the fencing to increase privacy around the front garden, aid in reducing noise levels from traffic, and increase security around the property. Whilst the fencing has provided a more solid means of enclosure to part of the property, it is noted that the metal gates, to a height of 0.75m, which are in alignment to habitable windows within the side elevation of the property, does not offer any further privacy than previously. The property, whilst located on a corner plot is within a residential area and therefore it is not considered that there would be an unacceptable level of vehicular traffic and resultant noise experienced to necessitate a high solid boundary treatment. It is considered that the reasoning and justification provided by the applicant to support the application, in this instance does not outweigh the visual harm arising as a result of the development.

Furthermore, during the course of the application, the applicant has highlighted alleged similar development in the area. The majority of these relate to different situations where high fencing is enclosing rear garden areas on corner plots. A certain number of these relate to high front boundary treatments that would require planning permission from the Council with such permission not having been obtained. As such, it is not considered that any of these other boundary treatments would support a grant of permission for the currently erected boundary treatment on the application site.

Therefore, on the basis of the above, the proposal is not considered in be in accordance with LDF Policy DM1 (A) with respect to the visual impact of the development and the associated guidance contained within SPD9.

The development is also considered to fail to accord with the design policies in the National Planning Policy Framework and the objective of achieving high quality design as a key aspect of sustainable development, in particular paragraphs 131, 135 and 139, which seek to create and maintain high quality places and achieve development that is sympathetic to local character.

Impact on Residential Amenity

LDF Policy DM1 (B) seeks to preserve residential amenity, stating that the Local Planning Authority will ensure *'development is acceptable in relation to any impact on residential amenity*.' SPD 9 sets out guidelines for householder developments.

The fencing, which is located around the front / side garden of the property, whilst visible from neighbouring properties both within Luss Avenue and Glasgow Road, is located a sufficient distance away from habitable windows and openings in neighbouring dwellings to ensure no loss of amenity through loss of light, over shadowing or loss of outlook.

It is therefore considered that the development would not result in an unacceptable negative impact in terms of these aspects of residential amenity. Therefore, it is considered that the proposal is not contrary to LDF Policy DM1 (B).

Impact on Highway Safety

LDF Policy DM1 (G) seeks to preserve highway safety.

SPD9 paragraph 16.6 states that both the visual and road safety aspects of a wall or fence will be assessed when proposals are being considered.

NPPF paragraph 115 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The Council's Transport Development Officer has been consulted on the application and has noted in their original consultee response that additional information was required to provide a suitable and substantive response. Points of clarification and concern were highlighted for which more information was requested.

Amended plans have been submitted that demonstrate the gate on the western driveway, and the plans can now be accurately scaled.

Within their latest response, they set out that they have concerns with the proposal that could be overcome by submission and approval of amended plans or submission of additional information. They have set out that: *'the proposed sections of high boundary fencing will obstruct inter-visibility at the retained vehicular accesses located at the north-east and south-west corners of the site. Drivers emerging from the adjacent highway and pedestrians walking along the highway footpath emerging from behind any new high fence and crossing the driveway areas, would have their vision obstructed by the high fencing. This could result in pedestrian strikes and risk of injury to pedestrians due to the lack of inter-visibility.'*

As a result they have set out, to overcome the highway pedestrian safety concerns, *'it would be necessary to provide 2m x 2m inter-visibility splays to the sides of the existing driveways where the new fencing is proposed to provide the necessary inter-visibility splays, as shown below. Alternatively, the sections of fence could be lowered so that the total boundary height would be no higher than 1m in height, within 2m of the driveway edge, in the interests of pedestrian safety.'*

The applicant has been advised of the required amendments to make the proposal acceptable in highway terms, and they do not wish to submit amended plans to overcome the concerns.

Therefore, the development as constructed on site, is considered to be contrary to Policy DM1 (G) with respect of highway safety.

Other matters

In deciding whether to grant planning permission the Council must have due regard to the 3 equality aims contained in Section 149 of the Equality Act 2010 (the public sector equality duty). A preliminary assessment of the potential equality impacts of any grant of planning permission in this case has been undertaken. There are no apparent equality impacts of the proposed development which give rise to the need to undertake a more detailed equality impact assessment.

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Conclusion

Having regard to the above, it is considered that the development as carried out on site and detailed within the submitted amended plans has not resulted in harm to the residential amenity of neighbouring properties in terms of loss of light, overshadowing or loss of outlook. Whilst it has been acknowledged that the application and the development works undertaken could be amended to ensure the provision of a necessary 2m x 2m inter-visibility splay the applicant does not wish to amend the fencing to provide for such splays and therefore in its current form the development results in harm to highway safety contrary to LDF Policy DM1 (G). Furthermore, the development has resulted in harm to the visual amenity of the area. As a result, the proposal is contrary to LDF Policy DM1 (A) with respect to visual impact and therefore it is recommended that planning permission is refused.

Recommendation

Refuse Householder Permission

Refusal Reasons

1 The fencing, by virtue of its siting, height and design in this prominent corner location, and having regard to the prevailing character of existing frontage boundary treatments in the surrounding area, constitutes an incongruous and out of character feature in the street scene which results in significant harm to the visual amenities of the locality. This is contrary to Policy DM1(A) of the South Tyneside Local Development Framework, the Council's SPD9 Householder Development guidance and the NPPF.

2 The fencing, by virtue of its siting, height and design gives rise to inadequate visibility of pedestrians on the adjacent footway for drivers exiting the driveway from the application property onto Glasgow Road resulting in significant harm to highway safety. This is contrary to Policy DM1(G) of the South Tyneside Local Development Framework, the Council's SPD9 Householder Development guidance and the NPPF.

List of plans etc. for standard note on decision

Luss Elevation Plan View A (North) – received 14.07.2024
Luss Elevation Plan View B (West) – received 14.07.2024
Luss Elevation Plan View C (North West) – received 14.07.2024
Statement in Support of Erecting a Fence – received 29.04.2024
TQRQM24114145238605 Proposed Site Plan – received 14.07.2024

Case officer: Casey Scott

Signed: C.Scott

Date: 23.07.2024

Authorised Signatory: G.Horsman

Date: 24/07/2024