South Tyneside Council

Reference:	ST/0417/24/HFUL
Location:	32 Shelley Avenue Boldon Colliery NE35 9EA
Ward:	Boldon Colliery
Description:	Retrospective construction of a brick wall with brick piers and proposed repositioning of timber fencing between piers
Recommendation:	Grant Permission Householder with Conditions
Case Officer:	Casey Scott
Case Officer Contact No.:	0191 4246780 or 07442 655446

Description of the Site

The application relates to 32 Shelley Avenue, which is a semi-detached dwelling located within the built up residential area of Boldon Colliery.

Description of the Proposal

This application seeks part retrospective planning permission for the construction of a brick wall with brick piers, and proposed planning permission for the repositioning of existing timber slats within panels located above the brick wall and between the brick piers. The means of enclosure is around the front garden of the property, and planning permission is required by virtue of the height of the wall.

During the course of the application, amendments were received to address concerns relating to visual permeability with the timber fencing panels, with slats to be repositioned at a 45 degree angle to the brick wall. Residents where not notified of the change, having regard to the Councils Statement of Community Involvement (SCI).

Relevant Planning History

No planning history recorded.

Summary of Consultation Responses

The following responses were received in response to the statutory consultation period which ended on 23/08/2024.

Highway Authority

No issues arise from the proposal.
The amendments submitted have been reviewed and are considered acceptable. This is on the basis that the fencing boards are now proposed to be set at an angle to allow inter-visibility between emerging drivers from the adjacent highway and pedestrians walking along the adjacent footway, approaching and crossing the driveway access area. The Highway Authority therefore has no objections to the proposals, subject to a suitably worded planning condition, requiring the fence to be modified in accordance with the approved plan and thereafter maintained at that arrangement, 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 of the Council's adopted Local Development Framework (LDF) development plan documents. Those LDF documents of relevance to this application comprise of the Core Strategy 2007, a Development Management Policies Development Plan Document (DPD) 2011 and a Site Specific Allocations Development Plan Document DPD 2012.

The following policies of the South Tyneside Local Development Framework Core Strategy 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 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.

SPD 9 part 16 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 streetscapes.' 'The design, height and materials of walls and fences should always complement the original character and materials of the property and neighbourhood'.

Paragraph 16.5 within SPD 9 goes on to state 'with regard to front gardens, it is advised that boundary treatments should not exceed 1m in height. Any structure above this height will often require planning permission and may not be approved. This also includes infill panel railings and gateposts above this height'.

The application seeks retrospective planning permission for the construction of a brick wall and proposes the repositioning of timber fencing slates within panels between the brick piers. The development was constructed without planning permission, therefore permission (in part) is being sought retrospectively.

The brick wall measures a height of 0.85m, and the fencing measures a height of 0.95m set on top of the brick wall. The total height of the fencing and the brick wall is 1.8m. The combination of the use of brick and timber is considered, in this instance, in keeping with the materials used within the immediate area and as such is considered to be acceptable.

Given the height of the development around the front garden, it demonstrates a high expanse of brick and timber fencing which would be contrary to guidance contained within paragraph 16.5 of SPD 9. Notwithstanding this, the means of enclosure has been well designed with a combination of brick and timber fencing with brick piers, which provides some variance and breaks up the expanse of fencing panels.

During the course of the application, to accommodate comments from the Highway Authority, as detailed further within this report, the timber fencing slats within the panels are proposed to be repositioned at a 45 degree angle to the brick wall, to enable visibility into the site to protect highway and pedestrian safety. This amendment will allow for greater visual permeability into the site and lessen the impacts of the height of the fencing.

Having regard to the above, it is considered that the development undertaken and amendments proposed has resulted in limited harm to the visual amenity of the area by virtue of its overall height, however based on the design and the amendments to improve permeability, this would not be significant enough to warrant refusal. The amendments proposed under this application to reposition the timber fencing slats within the panels will increase visual permeability into the site and lessen the impacts of the proposed development.

As such, it is considered that the proposed development would be in general accordance with LDF Policy DM1 (A) and SPD 9.

Impact on Residential Amenity

LDF Policy DM1 (B) seeks to preserve residential amenity. SPD 9 sets out guidelines for householder developments. Whilst the means of enclosure would be visible from neighbouring occupiers, there is considered to be a sufficient separation distance from habitable room windows, including those of the adjoining neighbour, to ensure no loss of amenity from over dominance, loss of outlook, and loss of light / over shadowing.

Having regard to the above, the proposed development is considered to have no significant harm to the residential amenity of neighbouring properties as a result of the means of enclosure and is considered to be in accordance with LDF Policy DM1 (B).

Impact on Highway Safety

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

The Council's Transport Development Officer has been consulted on the scheme and raised initial concerns about the form of development undertaken on site. It was considered that the boundary wall with solid timber panels, would obstruct intervisibility at the north-east corner of the site from drivers emerging from the adjacent highway and pedestrians walking along east-to-west along the highway footway. The Transport Development Officer recommended that a 2m section of the fence in each direction of the north-east corner of the site have its vertical timber panels and boards re-set at an angle to allow inter-visibility through the site.

As such, amended plans have been submitted by the applicant to demonstrate they will remove this part of the timber fencing and reposition the timber slats in accordance with the comments from the Highway Authority.

As such, amended plans have been received which demonstrate on a site plan that the timber fencing will be repositioned at a 45-degree angle in line with the requirements by the Highway Authority. These amended plans have been reconsidered by the Highway Authority which now raise no objection to the proposal, subject to a suitably worded planning condition which would require the fence to modified in accordance with the approved plan and thereafter maintained at that arrangement. A condition has been recommended in this regard.

Having regard to the above, and subject to a condition, the proposed development is considered to have no significant harm to the highway safety of the area and is considered to be in accordance with LDF Policy DM1 (G).

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 for the above it is considered that the development undertaken and the proposed works to amend the timber panels results in no significant harm to the visual amenity of the area, the residential amenity of any neighbouring properties or the highway safety of the area.

As a result, it is considered that the development complies with all relevant local and national planning policy and guidance. Consequently, this application is recommended for approval.

Recommendation

Grant Permission Householder with Conditions

Conditions

1 The development to which this permission relates must be commenced not later than 3 years from the date of this permission.

As required by Section 91 of the Town and Country Planning Act 1990 and to ensure that the development is carried out within a reasonable time.

2 The development shall be carried out in accordance with the approved plan(s) as detailed below:

Drg no A-314-0624-01 Site Block Plan as Existing and Proposed – received 08.07.2024
Drg no A-314-0624-02 Site Plan as Existing and Proposed – received 08.07.2024
Drg no A-314-0624-03 North Elevations as Existing and Proposed – received 08.07.2024
Drg no A-314-0624-04 East Elevations as Existing and Proposed – received 08.07.2024
Drg no A-314-0624-05 South and West Elevation as Existing and Proposed – received 08.07.2024
Drg no A-314-0624-06 Updated site plan with re-positioned timber – received 05.09.2024

Any minor material changes to the approved plans will require a formal planning application under S73 of the Town and Country Planning Act 1990 to vary this condition and substitute alternative plans.

In order to provide a procedure to seek approval of proposed minor material change which is not substantially different from that which has been approved.

3 Within 2 months from the date of this permission, the works to modify and reposition timber fencing panels in accordance with Drg. no A-314-0624-06 Updated site plan with re-positioned timber – received 05.09.2024 shall be completed and thereafter maintained in perpetuity in that arrangement.

In the interests of highway and pedestrianl safety, in accordance with South Tyneside LDF Development Management Policy DM1.

Informatives

01. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

    Further information is also available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority

02. Approval of a Biodiversity Gain Plan NOT REQUIRED before development commences

    The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition "(the biodiversity gain condition") that development may not begin unless:

    (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
    (b) the planning authority has approved the plan.

    However, based on the information available, this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements are considered to apply - please refer to Biodiversity net gain: exempt developments - GOV.UK (www.gov.uk).

Case officer: Casey Scott

Signed: C.Scott

Date: 05.09.2024

Authorised Signatory: Helen Lynch

Date: 06/09/2024