

**ROYAL BOROUGH OF WINDSOR & MAIDENHEAD
PLANNING COMMITTEE**

WINDSOR URBAN DEVELOPMENT CONTROL PANEL

6 November 2019

Item: 4

Application No.:	18/03213/FULL
Location:	6 Franklyn Crescent Windsor SL4 4YT
Proposal:	Side/rear boundary fence (Retrospective)
Applicant:	Mr Holliday
Agent:	Not Applicable
Parish/Ward:	Windsor Unparished/Park Ward

If you have a question about this report, please contact: Joshua Clayman on 01628 682978 or at joshua.clayman@rbwm.gov.uk

1. SUMMARY

- 1.1 The application is for retrospective permission for the installation of a side and rear boundary fence. The design of the fence and its position enclosing previously open land are considered to be harmful to the character and appearance of the surrounding area. The fence is also installed in close proximity to two protected Oak trees and no information has been submitted to demonstrate that the works have not caused any harm to the health of these trees.

It is recommended the Panel refuses planning permission for the following summarised reasons (the full reasons are identified in Section 9 of this report):

- | | |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | The development fully encloses previously open land laid to lawn, representing a reduction in public visual amenity. This adversely impacts the appearance of the street scene and surrounding area, which is characterised by open plan soft landscaped areas to the sides of properties occupying corner plots. Furthermore, the fence itself is of poor design and furthermore by virtue of its height and positioning is contrary to policy. |
| 2. | No arboricultural information has been submitted with the application and the development therefore has an unknown, potentially adverse, impact on the roots of the two adjacent protected oak trees. |

2. REASON FOR PANEL DETERMINATION

- At the request of Councillor Bicknell, if the recommendation of the Head of Planning is to refuse the application. The stated reason is 'Resident Disputes'.

3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 3.1 The application site contains a detached dwelling with spacious garden areas to the front (east), side (south) and rear (west) of the property. It occupies a 'corner' plot on the inside curve of Franklyn Crescent, towards the end of this cul-de-sac located in south-western Windsor. The character of the area is a green generally open-plan residential estate, which the RBWM Townscape Assessment denotes as being Late 20th Century Suburbs (1960s onwards). There are a number of mature trees (mixed species) in the surrounding area protected under Tree Preservation Order Woodland 002/1960/TPO, including two mature oaks on the application site.
- 3.2 Prior to the development, the area to the south of the property was open land laid to lawn, with boundary treatment adjacent to the pavement consisting only of low shrubbery. The private rear

garden of the property was separated from this land by a brick wall. The fence considered under this application encloses the open area of land. It has already been constructed and is described in section 4.1.

4. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY

- 4.1 The application seeks retrospective planning permission for the retention of the existing side/rear boundary fence. According to the application form, it has been completed since 2nd October 2017. This is a brown willow screen installed up to the edge of the adopted highway pavement of Franklyn Crescent. It continues into the site, attaching to the side brick wall, and it also partially runs along the rear boundary with 8 Franklyn Crescent. The original block plan submitted with the application only showed the part adjacent the highway but the new block plan received on 18th February 2019 shows the full extent of the constructed fence. The full fence constructed measures roughly 35 meters in total length. The height of the side fence has been measured as 1.80 metres above ground level by the Case Officer. Since the receipt of this planning application, a section of the rear fence (annotated on the block plan) has been reduced to roughly 1.5 metres high and immediately behind the fence a hedge has been planted.
- 4.2 The fence is considered to constitute development under Section 55 of the Town and Country Planning Act 1990 as it is a building operation. It does not constitute permitted development under Schedule 2, Part 2, Class A (gates, fences, walls etc.) of Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This is because it is adjacent to a highway used by vehicular traffic and has a height above ground level of 1.80m. It has not been in place for a period of more than 4 years. It follows that it is open to enforcement action and planning permission is required for its retention.
- 4.3 Whilst the application form references the fence having been erected ‘temporarily’, this retrospective planning application is for the permanent retention of the fence in situ. Please see paragraphs 6.15 – 6.16 of this report for a discussion of temporary planning permission conditions, which are not considered appropriate in the case of this development.
- 4.4 There is no relevant planning history for the site. The original planning permission for the estate is not available.

5. MAIN RELEVANT STRATEGIES AND POLICIES RELEVANT TO THE DECISION

5.1 Royal Borough of Windsor and Maidenhead Local Plan 1999 (Inc. Adopted Alterations 2003)

The main strategic planning considerations applying to the site and the associated policies are:

	Within settlement area	Highway Safety	Protected Trees
Local Plan	DG1	T5	N6

These policies can be found at:

https://www3.rbwm.gov.uk/downloads/download/154/local_plan_documents_and_appendices

5.2 Borough Local Plan: Submission Version 2018

Issue	Borough Local Plan Policy
Design in keeping with character and appearance of area	SP2, SP3
Acceptable impact on protected trees	NR2
Safe sustainable transport	IF2

The NPPF sets out that decision-makers may give weight to relevant policies in emerging plans according to their stage of preparation. The Borough Local Plan Submission Document was

published in June 2017. Public consultation ran from 30 June to 27 September 2017. Following this process the Council prepared a report summarising the issues raised in the representations and setting out its response to them. This report, together with all the representations received during the representation period, the plan and its supporting documents have now been submitted to the Secretary of State for examination. The Submission Version of the Borough Local Plan does not form part of the statutory development plan for the Borough. However, by publishing and submitting the Borough Local Plan for independent examination the Council has formally confirmed its intention to adopt the submission version. As the Council considers the emerging Borough Local Plan to be sound and legally compliant, officers and Councillors should accord relevant policies and allocations significant weight in the determination of applications taking account of the extent to which there are unresolved objections to relevant policies. Therefore, the weight afforded to each policy at this stage will differ depending on the level and type of representation to that policy. This is addressed in more detail in the assessment below.

Available at: https://www3.rbwm.gov.uk/info/201026/borough_local_plan/1351/submission

5.3 Other Local Strategies or Publications

Other Strategies or publications relevant to the proposal are:

- RBWM Townscape Assessment - Chapter 10: Late 20th Century Suburbs (1960s onwards)

5.4 National Planning Policy Framework (NPPF) 2019

Section 2: Achieving sustainable development

Section 4: Decision-making

Section 9: Promoting sustainable transport

Section 12: Achieving well-designed places

Section 15: Conserving and enhancing the natural environment

Available at:

<https://www.gov.uk/government/collections/revised-national-planning-policy-framework>

6. EXPLANATION OF RECOMMENDATION

6.1 The key issues for consideration are:

- Whether the proposal causes harm to the character and appearance of the street scene and surrounding area
- Whether the development has an acceptable impact on protected trees
- Whether the development adversely affects highway safety

Character and Appearance

6.2 The appearance of a development is a material planning consideration. Section 12 (Achieving well-designed places) of the NPPF 2019, Local Plan policy DG1, and Borough Local Plan policies SP2 and SP3 all advise that development should seek to achieve a high quality of design that improves the character and quality of an area.

6.3 The application site forms part of a residential estate consisting of medium to large detached properties. The majority have moderate sized plots but those on the corner generally sit in comparatively larger plots, frequently with gardens to the front, side and rear. The enclosure by the fence has resulted in a direct loss of the characteristic open soft landscaping space to the side of 6 Franklyn Crescent. This is an important visual amenity feature within the existing street scene and therefore the enclosure of this area with this fence is detrimental to the character and appearance of the area. This is exacerbated further by the fencing being positioned immediately adjacent to the pavement on a prominent corner plot location.

- 6.4 The RBWM Townscape Assessment for Late 20th Century Suburbs recommends development *'retains the open character of front gardens, which is an important part of townscape character, avoiding enclosing walls, fences'* and *'respects the existing building line, including the retention of grass verges'*. The development results in the enclosure of open garden and does not respect the building line, hence it is not in accordance with this character assessment.
- 6.5 It is noted that a hedge is being grown along this boundary immediately behind the fence, also to enclose the land. Nevertheless, it is of material relevance that using a hedge as boundary treatment is less visually stark, more open in nature and more in keeping with the green character of the area than the fence. As discussed in 6.13, the hedge is not subject to planning controls. The existing fence, by virtue of its height of 1.80 metres is also considered to have a more significant adverse visual impact than any fence in this location permissible under permitted development, which could only be up to 1 metre above ground level.
- 6.6 In an email from the applicant dated 26th January 2019, various photographic examples of boundary treatments in the surrounding area are identified. Where corner plots are shown, these photos generally show open plan lawn to the side of the property, with boundary treatment limited to low planting. These photos ultimately support the view that the prevailing character of the estate is open plan and green, especially in the case of corner plots.
- 6.7 The willow roll fence appears as an incongruous physical boundary treatment. Whilst it is made up of thin individual slats with narrow gaps between, from a distance of roughly 3 metres and greater, it appears completely opaque. Hence, it is visually stark in its appearance and unduly prominent. Furthermore, the material used in the construction of the fence is flimsy and therefore it bows out rather than standing straight, marginally encroaching over the adopted highway pavement. It follows that, in addition to the harm caused to the character and appearance of the area by the enclosure of this land, the fence itself is regarded as of poor design. Whilst objections have been raised regarding the poor construction of the fence this is not a material planning consideration.
- 6.8 In conclusion, the development fully encloses previously open land laid to lawn, representing a reduction in public visual amenity. This adversely impacts the appearance of the street scene and surrounding area, which is characterised by open plan soft landscaped areas to the sides of properties which occupy corner plots. Furthermore, the fence itself is of poor design which has a negative visual impact. By virtue of its height, positioning and design, the development is contrary to saved Local Plan policy DG1, Borough Local Plan Submission Version policies SP2 and SP3 and Section 12 (Achieving well-designed places) of the NPPF 2019.

Protected Trees

- 6.9 Saved Local Plan policy N6 requires *'applications for new development to submit a detailed Tree Survey as part of a planning application wherever existing trees are a feature of the site'*. Borough Local Plan Submission Version policy NR2(5) states *'Where trees, hedgerow or woodland are present on site... applications will need to be accompanied by an appropriate tree survey, constraints plan, tree protection plan, and ecological assessment... The tree survey, tree constraints and tree protection plans shall comply with BS5837'*.
- 6.10 No arboricultural information has been submitted with the application to ascertain whether the fence has caused damage to the tree roots of the two adjacent oak trees covered by Tree Preservation Order Area 2 of 1960. The fence has an unknown, potentially adverse, impact on the health of these protected trees, which make a significant contribution to the character and amenity of the locality. Therefore, the development is concluded as being contrary to Local Plan policy N6 and Borough Local Plan Submission Version policy NR2.

Highway Safety

- 6.11 The fence does not stand straight and as a result the top of it marginally overhangs the inside edge of the pavement. However, the Highways team have not raised a concern in this regard and it is concluded that this overhang is not significant enough to have any adverse safety impact on pedestrians using the pavement.
- 6.12 It is concluded that the development has an acceptable impact on highway safety, therefore complying with saved Local Plan policy T5 and Borough Local Plan Submission Version policy IF2.

Other considerations

- 6.13 It is noted that a hedge is being grown along this boundary immediately behind the fence, also to enclose the land. 2 letters received raise an objection to this hedge. However, hedges do not constitute 'development' and since the original planning permission for the estate is not available, no planning condition restricting the planting of this hedge has been found. Any covenants or other non-planning agreements/consent, even those relevant to the construction of boundary fences, are not a material consideration in the determination of this planning application.
- 6.14 3 letters received also make reference to the completed construction of an outbuilding within the previously open grassed area. This planning application only concerns the side/rear boundary fence and therefore the outbuilding is not a material consideration in this application.

Use of temporary planning conditions

- 6.15 The applicant has indicated in section 4 of the application form that the fence has been constructed temporarily so as to support the growth of hedges to provide security, although the RBWM Trees Consultation Response indicates the fences are *'reducing the amount of sunlight reaching the laurel hedge planted behind and therefore will compromise the growth of the hedge at the lower levels'*.
- 6.16 This planning application is for permanent retention of the fence and would only be a temporary planning permission if a planning condition was added to this effect. Government guidance suggests "A condition limiting use to a temporary period only where the proposed development complies with the development plan, or where material considerations indicate otherwise that planning permission should be granted, will rarely pass the test of necessity". Suggested exceptions to this include *'where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period'*. Neither of these exceptions are applicable to the development. Furthermore, the retention of the fence for a temporary period would not overcome the identified ongoing planning policy conflicts discussed elsewhere in this report. Therefore, approval subject to a temporary retention condition is not deemed appropriate for this planning application.

7. CONSULTATIONS CARRIED OUT

7.1 Comments from interested parties

12 neighbouring properties were notified directly of the application by post.

The Planning Officer posted a site notice advertising the application at the site on 20th December 2018.

6 letters were received objecting to the application. These letters are summarised as:

Comment		Where in the report this is considered
1.	Enclosure of land by high fence negatively impacts open character of area.	6.2 – 6.8
2.	New outbuilding constructed in previously open area.	6.14

3.	Hedges planted on boundary.	6.13
4.	Fence supposedly temporary but it has been in place since 2017 and this planning application is for permanent planning permission.	6.15 - 6.16
5.	Site plan does not show full extent of fence.	4.1
6.	Contrary to property covenants	6.13
7.	Fence is of poor design and construction.	6.7

7.2 Other consultees

Consultee	Comment	Where in the report this is considered
RBWM Trees	<p>Extracts from initial consultation response:</p> <p><i>Tree Preservation Order 2 of 1960 covers the property and in particular protects the two oak trees growing on the frontage. The bamboo fence has been installed up to the edge of the highway, but because it is flimsy it is bowing out and encroaching over the adopted highway pavement, causing a partial obstruction. It is also reducing the amount of sunlight reaching the laurel hedge planted behind and therefore will compromise the growth of the hedge at the lower levels.</i></p> <p><i>The installation of the fence, due to the supports, may have potentially caused some very slight damage to the roots of the Oaks, where within the trees root protection areas closest to their stems. However, it appears the supports are not so robust, and this could lead to pressure in future to upgrade. Any upgrade could cause damage to tree roots.</i></p> <p><i>Given the above, I therefore object to the retrospective proposal under N6 and DG1.</i></p> <p>Follow up consultation response:</p> <p><i>This is more difficult because it is a retrospective, but we would have recommended the fence be moved further away from the two prominent Oak trees, to ensure the installation of fence posts would not conflict with roots. Alternatively, for details of fence post holes and method of installation (including precautions to be taken to ensure roots over 1cm diameter are not damaged) to be submitted for approval – this could potentially have been conditioned. To determine whether damage has already been caused would require the fence posts to be removed and an examination of the holes to be carried out.</i></p> <p><i>Given the likelihood of the fence/supports to be upgraded in future, there is potential for damage to occur, so the preferable option would be to position the fence further away from the trees.</i></p> <p><i>The lack of arboricultural information, a BS5837 tree survey and details to demonstrate how the Oak trees can be adequately protected, could be a reason to refuse the</i></p>	6.9 and 6.10

	<i>application under policy N6.</i>	
RBWM Highways	<p>Access Arrangement: <i>The existing vehicle and pedestrian access is to be retained. The introduction of the fence will not have an impact on the existing access arrangements or visibility splays. The forward visibility splays will also not be affected.</i></p> <p><i>From undertaking a recent site visit the side/rear temporary fence is positioned off the public highway in front of the existing high laurel hedge.</i></p> <p>Parking Provision / Requirement: <i>Not affected by the proposal.</i></p> <p>Summary: <i>The Highway Authority offers no objection to the proposal.</i></p>	6.11 – 6.12

8. APPENDICES TO THIS REPORT

- Appendix A – Amended block plan received on 18th February 2019.
- Appendix B – Photograph taken by Case Officer on 4th October 2019.

Documents associated with the application can be viewed at <http://www.rbwm.gov.uk/pam/search.jsp> by entering the application number shown at the top of this report without the suffix letters.

This recommendation is made following careful consideration of all the issues raised through the application. The Case Officer has sought solutions to these issues where possible to secure a development that improves the economic, social and environmental conditions of the area, in accordance with NPPF 2019.

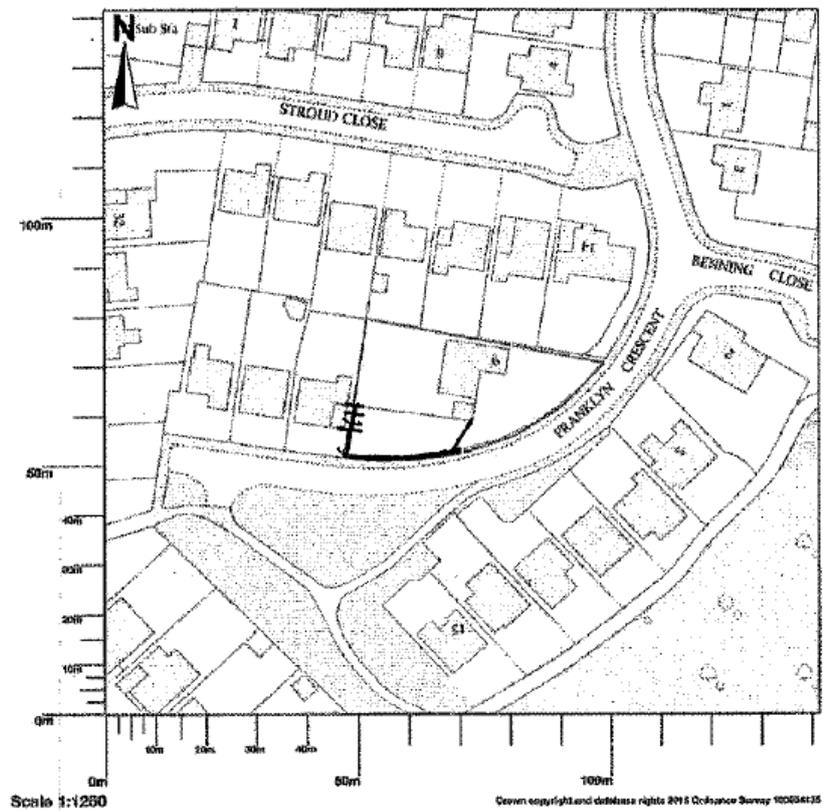
In this case the issues have been unsuccessfully resolved.

9. REASONS RECOMMENDED FOR REFUSAL

- 1 The development fully encloses previously open land laid to lawn, representing a reduction in public visual amenity. This adversely impacts the appearance of the street scene and surrounding area, which is characterised by open plan soft landscaped areas to the sides of properties occupying corner plots. Furthermore, the fence itself is of poor design and furthermore by virtue of its height and positioning is contrary to saved policy DG1 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (Including Adopted Alterations 2003), Borough Local Plan Submission Version 2018 policies SP2 and SP3, and Section 12 (Achieving well-designed places) of the NPPF 2019.
- 2 No arboricultural information has been submitted with the application and an inspection of the fence installation has not been undertaken to ascertain whether the fence has caused damage to the tree roots of the two adjacent oak trees covered by Tree Preservation Order Area 2 of 1960. The fence has an unknown, potentially adverse, impact on the health of these protected trees, which make a significant contribution to the character and amenity of the locality. Therefore, the development does not comply with saved policy N6 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (Including Adopted Alterations 2003) and Borough Local Plan Submission Version 2018 policy NR2.

Appendix 1 – Block Plan submitted on 18th February 2019

6 Franklyn Crescent, Windsor, SL4 4YT



Appendix 2 – Photograph taken by Case Officer on 4th October 2019

