

Delegated Report

Planning Ref: 23/01163/HOU
Applicant: Mr Arman Hambarsoonian
Ward: Twycross Sheepy & Witherley



Hinckley & Bosworth
Borough Council

Site: 24 Kennel Lane Witherley Leicestershire

Proposal: New boundary wall and gates

1. Recommendations

- 1.1. **Refuse planning permission** for the reasons at the end of this report.

2. Planning application description

- 2.1. This householder application seeks planning permission for the construction of a new brick boundary wall with brick pillars, infill timber fencing panels and double timber access gates at Cherry Cottage, 24 Kennel Lane, Witherley.
- 2.2. The proposal would comprise a 0.6 metres high brick base wall with 1.8 metres high brick pillars with 2.5 metres intervals and solid close boarded green stained timber infill panels to a height of 1.8 metres. The proposed timber double gates would span a 4 metres wide vehicular access and be 1.8 metres in height. The proposals would extend for a length of approximately 27 metres in total and extend around the front corner and along the side garden boundary of a corner plot to enclose the dwellings garden/amenity area.
- 2.3. The boundary is currently defined by a hedge/vegetation which would be removed to enable the construction of the new boundary wall/fence along the applicant's legal boundary. A section of existing hedgerow at the front boundary would be retained. Two replacement trees and bird boxes are included within the proposal.

3. Description of the site and surrounding area

- 3.1. The application dwelling is located within the settlement boundary of Witherley in a residential area and on a prominent corner plot at the junction of Kennel Lane and Post Office Lane. It is a two storey detached cottage style dwelling with dual pitched gable sided main roof form and a long two storey rear range with dual pitched roof forming a rear gable. The dwelling is constructed with white painted roughcast rendered walls, red/brown roof tiles and dark grey cottage style windows. There is a lean-to roofed garage/outbuilding to the rear boundary with access through 2.5 metres wide gates off Post Office Lane.
- 3.2. The garden extends to the front and south side of the dwelling only. It is currently enclosed by hedgerow and planting of varying forms, width and appearance and to a height of approximately 2 metres or over. The planting currently partially encroaches over the tarmacadam highway footway along the site frontage with Kennel Lane and completely overhangs the strip of unmade highway verge along the side boundary with Post Office Lane.
- 3.3. Other than the application plot and the opposite corner plot which has a tall well-maintained conifer hedgerow to its highway garden boundary, the highway boundary treatments are predominantly either low level brick walls or open frontages with occasional metal railings.

4. Relevant planning history

93/00623/4

- Extension to dwelling

- Permitted
- 27.08.1993

75/01407/4M

- Extension to dwelling
- Permitted
- 21.10.1975

75/00929/4M

- Extensions to dwelling
- Refused
- 29.07.1975

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents and placed on the weekly planning list.
- 5.2. As a result of public consultation responses to the application have been received from 3 different addresses. The responses received raise the following concerns and objections:
- 1) Significant change in vista from hedgerow removal
 - 2) Not in keeping with character of old cottage or neighbouring property boundaries
 - 3) Overly imposing and not aesthetically fitting
 - 4) Proposal will reduce visibility at the junction and with lack of pedestrian footway will increase risk to pedestrians and other road users
 - 5) Lack of footway on Post Office Lane, where is boundary and who would have responsibility for making good and installing pavement
 - 6) Existing hedge already provides privacy and protection for the property
 - 7) Significant destruction/loss of natural/wildlife habitat
 - 8) New trees and bird boxes proposed will not compensate for loss of hedgerow and existing planting
 - 9) Potential land grab with wall/fencing being placed further forward than the property boundary.

6. Consultation

- 6.1. Witherley Parish Council are against the removal of hedging as it is a natural wildlife habitat. If the hedge is removed how will LCC Highways and the Borough identify where the boundary is.

7. Policy

- 7.1. Core Strategy (2009)
- No relevant policies
- 7.2. Site Allocations and Development Management Policies (SADMP) DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM10: Development and Design
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards

7.3. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2023)
- Planning Practice Guidance (PPG)

7.4. Other relevant guidance

- Good Design Guide (2020)
- National Design Guide (2019)
- Local Highway Authority Design Guide

8. Appraisal

8.1. Alterations to existing domestic properties within settlement boundaries are generally considered to be sustainable development in principle. The key issues in respect of this application are therefore:

- Design and impact upon the character of the area
- Impact upon highway safety and parking provision
- Impact upon neighbouring residential amenity
- Other matters

Design and impact upon the character of the area

8.2 Policy DM10 of the adopted SADMP requires new development to complement or enhance the character of the surrounding area with regard to scale, layout, mass, design, materials and architectural features and for building material to respect existing/neighbouring buildings and the local area generally. The Council's adopted Good Design Guide Supplementary Planning Document (2020) provides further advice in respect of boundary treatments to residential development and states:

'Boundary treatments are a significant feature of local character, the loss of which can have a highly detrimental impact on local distinctiveness. Fencing is often selected as a cost effective means of creating a boundary treatment. Consideration should be given to its potential negative impact on the wider street scene, particularly where this would entirely block through views and create dead frontages. Use of slimmer vertical fence posts, with relief can reduce the sense of oppression often created by long runs of fences. Low fences, used in partnership with soft landscaping can provide a more sensitive form of delineation of boundaries.'

8.3 Concerns have been raised that the proposed removal of the existing hedgerow and its replacement with a 1.8 metres high wall/fence would significantly change the vista and would not be in keeping with the character of the old cottage or neighbouring property boundaries and would be imposing and not aesthetically fitting.

8.4 The entrance to Post Office Lane currently has a verdant character with hedgerow and planting extending around the corner plots on either side. The proposal would comprise a 0.6 metres high brick base wall with 1.8 metres high brick pillars with 2.5 metres intervals and solid close boarded green stained timber infill panels to a height of 1.8 metres. New timber double gates would span a 4 metres wide vehicular access and also be 1.8 metres in height. The proposals would extend for a length of approximately 27 metres in total and extend around the front corner and along the side garden boundary of a corner plot to enclose the dwellings only garden/amenity area.

- 8.5 It is considered that the existing boundary hedge/planting adds significantly to the character of the site and its immediate setting. Its proposed replacement with a 1.8 metres high formal solid structure of approximately 27 metres in length would create a dead frontage to the site and completely change the setting to the significant detriment of its overall character and appearance. It is considered that the proposed use of green stain to the fence panels would not be sufficient to overcome this in visual terms. It is recognised that this is the only garden/amenity space serving the dwelling and that the applicant seeks to improve the privacy and security of the site. However, there are alternative options readily available, including supplementary planting or the erection of an additional structure on the garden side of the existing hedge/planting that would retain the existing verdant character and appearance of the site. There are no other walls/fences of the proposed height, design or extent within the street scene.
- 8.6 By virtue of the height, length and appearance of the proposed wall/fencing it is considered that the proposal would neither complement nor enhance the character or appearance of the site or surrounding area, instead having a significant detrimental effect on the character and appearance of the site and surrounding area, and would therefore be contrary to Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the principles of the adopted Good Design Guide Supplementary Planning Document (2020) and the requirements of paragraph 139 of the National Planning Policy Framework (Dec 2023).
- Impact upon highway safety and parking provision
- 8.7 Policy DM17 of the adopted SADMP supports development that would not have any significant adverse impacts on highway safety. Policy DM18 of the adopted SADMP seeks to ensure an appropriate level of parking provision of appropriate design.
- 8.8 Concerns have been raised that the proposal will reduce visibility at the junction and with the lack of a pedestrian footway along Post Office Lane will increase the risk to pedestrians and other road users.
- 8.9 The submitted proposed site plan clearly shows that the wall/fence would be constructed in line with the existing access gateposts and set back behind the strip of highway verge land below the currently overgrown hedge/planting along Post Office Lane, and at the back of the tarmacadam highway footway along Kennel Lane. It is considered that there would be a potential minor highway gain in respect of visibility from the removal of the currently overgrown hedge/planting covering the strip of highway verge and with its removal also an opportunity for pedestrians to step off the highway carriage way onto the verge to avoid vehicles should the need arise. There is also an existing tarmacadam highway footway along the opposite side of the lane available to pedestrians.
- 8.10 In respect of vehicular access gates, the current local authority design guide states:
'A need to ensure gates are set back (from the highway) is not usually justified on residential estate roads because the relatively low flow of traffic along the road. Any consequential short-term 'obstruction' of the road is of much less concern than on a busy 'main' road. However, any gates erected to any access, including in an estate road, must be of a type other than outward opening in order to protect the passing public, particularly pedestrians.'
- 8.11 In this case the proposed access would have a width of 4 metres between the new access gate pillars which would be in excess of the 2.75 metres required for a standard residential access within the highway authority design guide. However, when considering a disabled user, a width of 3.6 metres is recommended to enable additional space to easily access and exit a vehicle.

- 8.12 Whilst the site is not located within an 'estate', it is nevertheless within a residential area of a rural village and with the access being off Post Office Lane, a relatively lightly trafficked lane within the village, rather than Kennel Lane, which is likely to be a busier through road, it is considered that a standard gate set back would not be critical to highway or pedestrian safety in this particular case in line with the local highway authority design guidance.
- 8.13 Highway related conditions could be imposed to require the provision and retention of only inward opening access gates to prevent obstruction of the public highway and permeable hardbound surfacing of the access drive to an appropriate depth to prevent loose stones etc. from being deposited in the highway. Subject to appropriate highway related conditions, it is considered that the proposal would not result in any significant adverse impacts on highway or pedestrian safety and that it would therefore be in accordance with the principles of Policy DM17 of the adopted SADMP.
- 8.14 The proposed layout would provide space for one disabled user off-street parking space on the 8 metres long driveway measuring the recommended 6 metres in length and with enough space to enable both of the inward opening 2 metres wide access gates to be opened/closed. The proposal would provide only one such space and therefore would not meet the off-street provision standards within the local highway authority design guide for a dwelling of this size. However, it would meet the needs of the current occupiers and would improve the current much more constrained single off-street parking space serving of the site. It is therefore considered to be acceptable in respect of Policy DM18 of the adopted SADMP in the particular circumstances of this case.

Impact upon neighbouring residential amenity

- 8.15 Policy DM10 of the adopted SADMP and the adopted Good Design Guide require that development would not have a significant adverse effect on the privacy and/or amenity of nearby residents and occupiers of adjacent buildings.
- 8.16 By virtue of its siting, scale and separation distances the proposal would not result in any adverse impacts on the residential amenity of the occupiers of any neighbouring properties.

Other matters

- 8.17 Concerns have been raised regarding the need to remove the hedge/planting as it already provides a level of privacy and protection for the property. However, the applicant states that the hedge/planting is not a proper hedge and that there are gaps in it that allow access to the garden from the road and that it is not a secure boundary treatment.
- 8.18 Concerns have been raised that the removal of the hedge/planting would result in a significant destruction and loss of natural/wildlife habitat and that the new trees and bird boxes proposed will not compensate for the loss of the existing hedge/planting. There is no definitive assessment of the biodiversity value of the existing hedge/planting, however, it is clearly likely to provide a higher level of biodiversity value than the proposed wall/fence.
- 8.19 Concerns have been raised regarding the position of the site boundary, potential enclosure of additional (highway) land and who would be responsible for making good and installing a pavement. The legal site boundary will be shown on both the applicant's property deeds and the local highway authority public highway records. The existing strip of highway verge land outside of the proposed wall/fence would be cleared of overgrowing vegetation but otherwise would be unaffected. No new pavement is implied or included in the proposal. The submitted proposed site plan

clearly shows that the wall/fence would be constructed along the original boundary in line with the existing access gateposts and set back behind the existing strip of highway verge land below the overgrown hedge/planting along Post Office Lane and the tarmacadam highway footway along Kennel Lane.

9. Equality implications

9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

9.3 The equality implications arising from this application relate to the protected characteristics of the applicant in respect of limited mobility and is addressed within the assessment with reference to Policies DM17 and DM18 of the adopted SADMP and local highway authority design guidance in respect of the recommended standards therein and their special consideration in the circumstances of this particular case.

9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

10.1. The proposal is for an alteration to the highway boundary of an existing dwelling within the settlement of Witherley where there is a general presumption in favour of sustainable development as set out in Policy DM1 of the adopted SADMP and the overarching principles of the NPPF.

10.2. By virtue of its siting, scale, layout and design and the context of the site on a relatively low trafficked lane within a rural village, the proposal would not result in any significant adverse impacts on highway or pedestrian safety and would provide an enhanced access and off-street parking space of suitable dimensions for a disabled user. By virtue of its siting, scale and separation distances the proposal would not result in any adverse impacts on the residential amenity of the occupiers of any neighbouring properties.

10.3. However, by virtue of the height, length and appearance of the proposed wall/fencing and the removal of the existing boundary hedgerow, which adds significantly to the character of the site, the proposal would have a significant adverse impact on the character and appearance of this prominent corner plot and its immediate setting to the detriment of the visual amenities of the street scene. It is considered that the proposal would neither complement nor enhance the character

or appearance of the site or surrounding area and would therefore be contrary to Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the principles of the adopted Good Design Guide Supplementary Planning Document (2020) and the requirements of paragraph 139 of the National Planning Policy Framework (Dec 2023). The proposal is therefore recommended for refusal of planning permission for these reasons.

11. Recommendation

11.1 Refuse planning permission for the reasons at the end of this report.

11.2 Reasons

1. By virtue of the height, length and appearance of the proposed wall/fencing and the removal of the existing boundary hedgerow, the proposal would have a significant adverse impact on the character and appearance of this prominent corner plot and its immediate setting to the detriment of the visual amenities of the street scene. The proposal would neither complement nor enhance the character or appearance of the site or surrounding area and would therefore be contrary to Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the adopted Good Design Guide Supplementary Planning Document (2020) and the requirements of paragraph 139 of the National Planning Policy Framework (Dec 2023).

11.3 Notes to applicant

1. This householder planning application has been assessed and determined having regard to the following submitted documents: Planning Application Form, Location Plan, Block Plan, Existing and Proposed Site Plans and Proposed Wall/Fence Elevations Drawing No. HGD23-145-1.1 received by the local planning authority on 4 December 2023, Certificate of Entitlement received 11 December 2023 and having regard to consultation responses received as a result of public consultation.