

2022/0236

Mr Anthony Foster

Lawful development certificate for proposed development of construction of boundary wall and fence

8 Vicar Crescent, Darfield, Barnsley, S73 9LB

Site Description

The dwelling is a detached bungalow located in Darfield. The dwelling is of redbrick construction and features a pitched roof. Vicar Crescent has a fairly uniform street scene consisting of other detached bungalows that are of similar construction all be it with some variations in materials. All of the properties have some form of boundary treatment to the front, the majority being low bricked walls. The dwelling has an integral double garage with parking area on the front elevation as well as detached garage and small driveway set to the northwest corner of the plot.

Planning History

B/80/0053/DA - Erection of garage (private) (Historic)

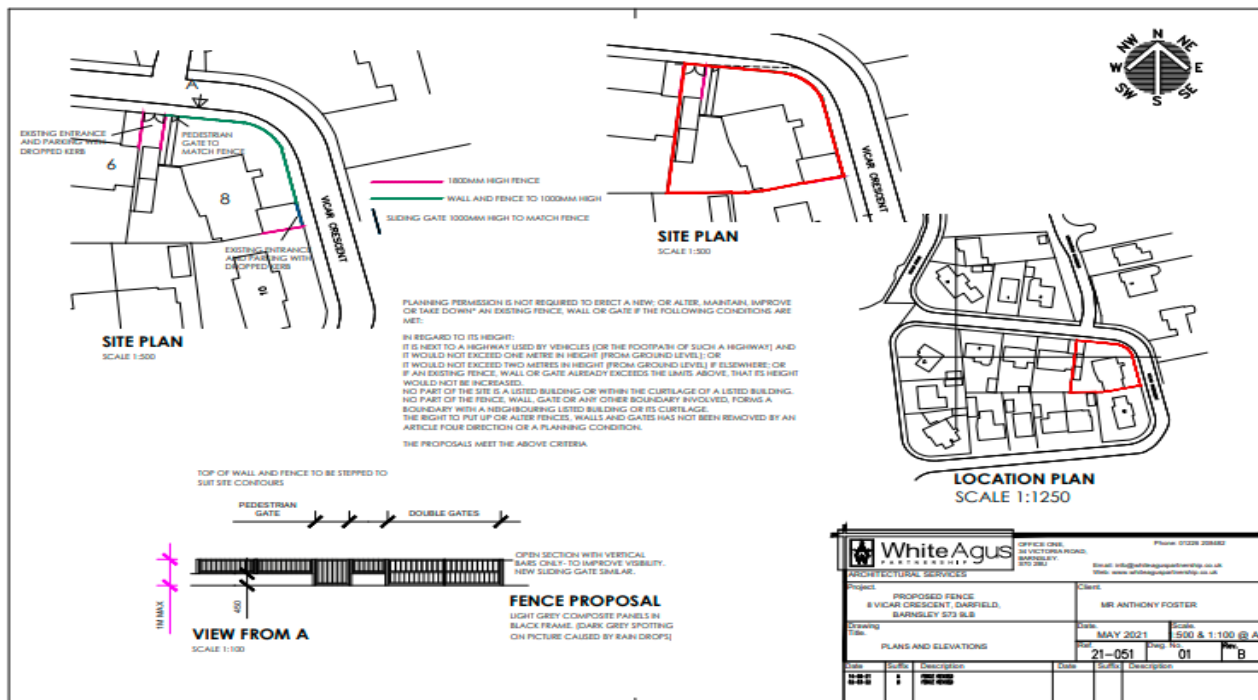
B/90/0454/DA - Erection of garage extension (Historic)

2021/0801 - Proposed boundary wall and fence (Refuse)

2021/1266 - Proposed boundary wall and fence (Refuse) (Dismissed at appeal)

Permitted development rights have not been removed.

Proposed Development



The application is for a certificate of lawfulness for the construction of a boundary wall and fencing to the dwelling at 8 Vicar Crescent, under Section 192 of the Town and Country Planning Act 1990. Section 192 (1) provides that if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, may make an application for the purpose to the local planning authority (LPA) specifying the land and describing the use or operations in question. Section 192(4) then provides that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application.

The applicant has submitted the following plans in support of the LDC application:

Project No.: 21-051

Drawing Nos.: 01 Rev. B

On the submitted plans, the proposed front boundary wall will have a height of 1 meter and the three adjacent fences heights of 1.8 meters.

Planning Context

Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) allows for the construction of a new wall, fence or other means of enclosure up to a maximum of 2 metres in height on land except where in a location which is adjacent to a highway.

Development is not permitted by Class A if—

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

Consultations

The LPA's Legal department was consulted and recommended the lawful development certificate be refused as the proposed fencing is greater than 1 meter in height and adjacent the highway.

Assessment

The case put forward by the applicant is that the development is lawful under Schedule 2 Part 2 Class A of the GDPO which allows for the construction of a new fence or other means of enclosure up to a maximum of 2 metres in height on land except for that which is adjacent to a highway.

The main issue of contention is whether the proposed 1800mm fences (marked in pink on the submitted plan) are adjacent the highway. The term "adjacent" is not defined in the GDPO. There is no guidance on how near a fence needs to be to the highway for it to be considered "adjacent". This is a matter of fact and degree and has been the subject of various appeals. However, it's clear from caselaw that the fence doesn't need to be in contact with the edge of the highway for it to be considered adjacent. It may be some distance back provided it is close enough to maintain the perceived function of forming a boundary between a highway and a property. Distances of up to 6 meters have been held to be adjacent. The primary purpose behind the limitation is clearly to safeguard satisfactory sightlines.

A previous application at this site (2021/1266) featured the same fencing (at a height of 1800mm) but with the front boundary wall at a height of 1200mm (instead of 1000mm as now proposed). This application was refused and dismissed at appeal with the inspector agreeing with the LPA that the proposal would unacceptably increase the safety risk for users of the highway. It is therefore established that the proposal has a relationship to the highway.

Furthermore, the inspector refers to all the fencing as boundary treatment (in paragraph 6 of the appeal decision) and notes that boundary treatment up to 1 meter tall could be installed without planning permission. There is no mention of the 2-metre limit (not adjacent to the highway) therefore indicating the whole proposal to be sufficiently adjacent to the highway.

Schedule 2 Part 2 Class A of the GDPO permits the construction of a new wall, fence or other means of enclosure where certain criteria are met. Having checked these specifications, as well as other supplementary specifications of the plans within Schedule 2 Part 2 Class A of the GPDO, the proposed 1800mm fencing would not comply with this legislation and would not meet the criteria for permitted development and therefore the lawful development certificate should be refused.

Recommendation

Refuse