

- a) **DOV/16/01132 – Erection of a 2-metre high boundary fence - 8 Riverdale, River, Dover**

b) **Summary of Recommendation**

Planning Permission be GRANTED.

c) **Planning Policy and Guidance**

Dover District Core Strategy (CS)

Policy DM1 seeks to encourage development to be carried out within the urban confines.

National Planning Policy Framework (NPPF)

Core Principal Para 17 – seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings

Para 56 onwards – refers to the value of achieving design quality, visually attractive developments as a result of good architecture

Paragraphs 126 onwards conserving and enhancing the Historic Environment

d) **Relevant Planning History**

CH/2/71/0060 – The erection of 49 dwellings and conversion of existing building into two cottages - Permitted

DO/80/0593 – Addition of Balcony – Permitted

DOV/92/433 – Two-Storey Side Extension – Granted

DO/16/1403 – Certificate of Lawfulness for a 2 Meter Fence - Refused

There have been a number of applications relating to works to trees on the site and the area as a whole some of which have been allowed others not.

Conditions and Covenants

There is no condition on the base planning permission requiring that the development be kept free of fences and other means of enclosure to the front of the houses – known colloquially as an ‘open plan’ condition. It is understood that there is a covenant on the deed of the property that prohibits fencing forward of the building line.

Covenants are legal agreements between buyers and sellers of property to which the Council is not a party. Such covenants are not enforced by the Council nor are they a material planning consideration.

e) **Consultee and Third Party Responses**

The Heritage Team has no comments on the application.

In response to the original scheme River Parish Council:

The Parish Council could not support the scheme because:

The application conflicts with Clause 8 of the original covenant on the building;
There are concerns about loss of direct sunlight to the patio area at 9 Riverdale;
Also, because of the overbearing nature of the proposed fence, which, if approved could set a precedent for the whole development

In response to the revised scheme River Parish Council:

Welcomes the alterations to the scheme but still has concerns about the height of the fence and feels that a height of one metre would be sufficient for the needs as stated (especially the front panel) whilst not causing loss of light to the patio area of the neighbouring property

Third party responses to the original scheme

The original scheme as submitted attracted a total of seven letters/emails of support. The thrust of all the letters/emails of support relate to the safety of the children of the applicant whilst at play in the front garden area.

A total of nine letters/emails of objection from local residents were received in respect of the original scheme summarised as follows:

- Contrary to a Covenant on the Household deeds of the estate
- Would harm the 'open plan' nature of the estate,
- Loss of sunlight to a patio area in the afternoon
- Inaccuracy of Plans and information
- Proposed sleepers are unsightly
- Loss of light to rear garden of neighbour
- The proposed fence would set an unfortunate precedent
- The front garden fence will not make this area any safer for children

Some objectors made the point that a lower fence may ensure the safety of the children whilst protecting the amenity of the neighbour

Third party responses to the revised scheme

Following the initial consultation a revised scheme was submitted which reduced the height of the fence slightly in the area towards the front of the neighbours dwelling. The revised scheme was re-advertised and the following comments received:

One email of support was received from an original supporter welcoming the amendments and offering continued support

Three communications of objection were received from original objectors reiterating and amplifying previous statements and concerns

f) The Site and the Proposal

1 The Site

- 1.1 The application site comprises a three storey detached brick and tile dwelling of modern 1970's style. The ground floor comprises a garage with the first floor being the main living area. There is a balcony at first floor level and a small rear patio area. The house is set on land sloping upward to the rear and against a backdrop of wooded landscape. To the front of the house the garden slopes downwards less steeply to the roadside.

- 1.2 The property benefits from a side extension pursuant to a 1992 permission, which extends the property to within about half a metre of the boundary of the property on the south eastern flank (number 9 Riverdale). There is also an open balcony on the front first floor level granted permission in 1980
- 1.3 The house is situated slightly to the rear of its immediate neighbour of number 9 Riverdale by about three metres, which lies to the south-east. This neighbour's house is also lower (by almost a metre) than the applicant's house. This neighbour at number 9 also has a tiered garden with a small rear patio area but the occupants do however occasionally use a small area to the side of their house as a sitting out area in the afternoon sun.
- 1.4 The primary characteristic of the estate as a whole is its open nature at the front of the houses, which are set against the backdrop of steeply rising ground and the trees to the rear. It has a spacious feel and a pleasant aspect. There are however a number of hedges demarcating various front gardens. It is likely that one of the reasons it has remained open and spacious is because of the impact of the covenant mentioned above.
- 1.5 The site lies within the River Conservation Area although the estate was built subsequent to designation

2 The Proposal

- 2.1 The revised proposal is for a close-boarded fence (a means of enclosure) running along part of the boundary between number 8 Riverdale (the application site) and number 9 Riverdale. The fence would start from an existing small fence that abuts the existing side extension towards the rear of that extension. It would then run forward, being tiered down in two steps, to a point about 1.75 metres behind the front elevation of number 9 Riverdale
- 2.2 The fence would run initially just behind the top of a retaining wall between the two properties for about two thirds of its overall length. The height of the existing retaining walls in this area varies between 1.7 and 1.37 metres high. The height of this part of the fence would be 1.9 metres measured from the top of the wall.
- 2.3 The remaining one third of the overall length would be 1.8 metres above the level of the neighbour's patio area and would partly comprise railway sleepers at the base as a retaining wall element. This element would measure about 2.6 metres in length measured from the end of the retaining wall.
- 2.4 In places the resultant means of enclosure would exceed 2 metres in height above the natural land level of the property at number 9 Riverdale and therefore require an express planning permission.

3. Main Issues

- The Street Scene
- Heritage Issues
- The safety of the applicant's children
- Effect on living conditions of the immediate neighbour
- The fall back position

4. Assessment

Street Scene Issues

- 4.1 The proposed fence would run between the front wall of the side extension to the applicant's house and a point about 1.75 behind the front wall of the neighbour's house at number 9. The total length of the fence would be about 9.75 metres.
- 4.2 The fence would be visible in the street scene mainly in views from towards the end of the cul-de-sac looking the south easts. It would however be set well behind the 'building line' comprising the front wall of number 9 Riverdale. Subject to a condition that the fence be stained and retained a light natural wood colour I consider that the fence would not cause unacceptable harm to the street scene nor would it intrude into the open aspect of the estate as a whole

Heritage Issues

- 4.3 The site lies within the River Conservation Area. Although the estate was built subsequent to designation, the duty of the Local Planning Authority to preserve and enhance such areas remains.
- 4.4 For reasons similar to those raised in paragraph 4.3 above the proposed fence would have a neutral effect on the Conservation Area

The safety of the applicant's children

- 4.5 The applicants stated need for the fence is to ensure the safety and security of her children. Clearly this is an important consideration and the majority of letters of support raise this issue. On the other hand one objector points out that: "I lived at this address as a child and had no issues with safety playing outside"
- 4.6 Towards the rear of the applicants front garden and abutting the applicant's house are two small and relatively narrow areas, probably originally intended as landscaping, that are difficult to access for any child and probably undesirable as an area for a child to play. The main danger should a young child get onto these area is falling from one level to another within the applicants own garden - but no attempt has been made to physically exclude children from these areas. It is however true that a child falling sideways off these 'platforms' or the narrow approach to them may be at risk but it is considered that a one metre high picket style fence would be sufficient to ensure the safety of the child should it climb onto the platforms
- 4.7 In the case of the lower level of the garden, the gentle slope between the applicants garden and the neighbours patio area would not be likely to pose any serious danger to playing children.
- 4.8 Overall, whilst accepting that the safety and welfare of children is of paramount importance I consider that the proposal is a rather heavy handed approach to address this issue which could be solved in the main by a sturdy one metre high picket style fence

Residential Amenity

- 4.9 The neighbour most affected by the proposal is the occupant of number 9 Riverdale which lies immediately to the south east and is set forward of the applicant's property.
- 4.10 The rear section of the fence, comprising about four and a half metres of its overall length, is set against the backdrop of the two storey extension on the applicants property granted in 1992. In view of this, and the bulk of number 8 Riverdale, I do not feel that this length of fence will cause an undue sense of dominance and overshadowing over and above that created by the extension itself.
- 4.11 The central section of the fence comprising about two and a half metres in length would have its top at 3.25 above the neighbours ground level. This area does not appear to be used primarily as a sitting out area and is in any case screened to a small extent by an existing tree. There is potential for overshadowing mid afternoon but again this area is significantly overshadowed by the bulk of number 8 Riverdale
- 4.12 The forward length of fence is about two and a half metres and sits alongside a patio area used by the neighbour to catch the afternoon sunshine. The potential interference with the enjoyment of this area is a major concern to the neighbour.
- 4.13 There is a gap of just over 2 metres between the flank wall of the neighbour's property and the boundary on which the fence would be positioned. As originally proposed the fence would have ran along the full length of this patio and would have been two metres high the lower part of which would have comprised a railway sleeper retaining element. The revised scheme now envisages a fence 1.8 metres high running just over half of the length of the patio area.
- 4.14 The orientation of the patio is such that the occupant can currently expect to enjoy sunlight from about one o'clock onward depending upon the time of year. The proposed fence would reduce this sunlight towards the rear of the patio during the late afternoon - again depending upon the time of year.
- 4.15 Overall, the proposal would cause some overshadowing and loss of sunlight to the neighbour but this must be considered against the fall back position set out below

The Fall Back Position

- 4.16 Class A of Part 2 (Minor Operations) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 allows for the "Erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure"
- 4.17 The height of such a fence is limited to two metres in height except where it is adjacent to a highway used by vehicular traffic where it is limited to one metre in height.
- 4.18 Problems associated with fences have been the subject of a number of Planning and Enforcement appeal decisions over the years. These appeal

decisions clarify that 'height' is to be taken from natural ground level on the applicant's land. Any artificial raising of land levels is not taken to be 'natural ground level' nor is erecting the fence on artificial features such as existing walls etc.

- 4.19 In the case of this application the ground level is sloping as set out above. For some of its length the top of the retaining walls is above immediately adjacent ground level on the applicant's side of the wall. The result is that where the base of the fence runs adjacent to, or level with the top of the retaining walls, it is greater than two metres above ground level in some areas. Having said that in some areas it is less than two metres above the natural ground level especially in the area of the neighbour's patio.
- 4.20 Should the applicant choose to construct a two metre high fence behind the wall, sloping down and follow the contours on her own land rather than the tiered fence that is currently proposed it could be permitted development and not require the benefit of an express planning permission.
- 4.21 A permitted development fence would likely to be higher than the development proposed especially in the sensitive area adjacent to the neighbour's patio

5. Conclusion

- 5.1 Overall the submitted scheme is likely to cause less harm to residential amenity and to other interest of planning importance than the implementation of a 'permitted development' scheme.
- 5.2 I therefore recommend planning permission be granted.

g) Recommendation

- I Planning permission GRANTED subject to conditions to include: i) time; ii) compliance with plans; iii) treatment of the fence with natural staining.
- II Powers be delegated to the Head of Regeneration and Development to settle any necessary issues in line with the matters set out in the recommendation and as resolved by Planning Committee.

Case Officer

Tony Jarvis