

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 17/00308/FUL
APPLICANT : Mr Marc Ridgway
AGENT :
DEVELOPMENT : Erection of boundary fence (retrospective)
LOCATION: 33 Justice Park
Oxton
Scottish Borders
TD2 6NZ
TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
EMAIL 26 JUNE 17	Location Plan	Refused
	Site Plan	Refused
	Other	Refused
	Photos	Refused

NUMBER OF REPRESENTATIONS: 0

SUMMARY OF REPRESENTATIONS:

No representations.

Roads Planning Section: advises that Roads suggested at the time of the earlier application, that the fence should either be set back 1m, or reduced in height to no greater than 1m. It is confirmed that the proposal to do both of these options, while unusual and while liable to result in an area of garden ground which is difficult to maintain, raises no objections.

PLANNING CONSIDERATIONS AND POLICIES:

SBC LDP 2016

Policy PMD2
Policy HD3

Recommendation by - Stuart Herkes (Planning Officer) on 26th June 2017

This application is a successor to Planning Application 16/01554/FUL, which was refused in February this year on the grounds that the proposed boundary fence at No 33 Justice Park was is contrary to Policy PMD2, specifically in that:

(i) there is an adverse impact on road safety due to the fence (as a consequence of height and siting) being liable to obstruct the view of pedestrians who are crossing the road or entering the shared surface area at this point; and

(ii) it is not compatible with, and does not respect, the open plan nature and character of the surrounding area, in that it is overbearing relative to the adjacent public footway, and is an incongruous form of development within the context of the wider street scene.

The Applicant's current proposal now describes the proposed fence in plan, in three sections: one being highlighted in blue; one in green; and one in orange.

With respect to the section of fence described in blue, the Applicant proposes that this should be reduced to 1m in height. Given that this does not require planning approval, the Applicant's concern to maintain a fence of 1m in height in this particular location raises no concerns, and an informative would usefully advise that this is the case. The Applicant is though still to reduce the fence over this section to that height, and the informative should point out that this would require to be addressed in order to make the fencing so described, a permitted development.

The section of fencing described in green, which it is advised would be 1.82m (6ft) in height, if set back 1m from the property boundary with the public road verge, would address Roads' concern. Although the proposal that this should itself be set behind, and within, a 1m high fence is not ideal, it relates to a small section of fencing in an ancillary, rear garden location. In itself, I would not therefore see this proposal as being objectionable but I do share Roads' concerns that such an area might be difficult to maintain.

The Applicant originally omitted the longer section of fencing, which is now described by the section highlighted in orange on the amended site plan. The Applicant has confirmed that he does wish this section of fencing to be included within the current application, and has advised that he proposes that this fencing should be maintained as it has been erected; which is to say, on the line described by the line highlighted in orange, and at a height of 1.82m (6ft). At the time of the previous planning application it was considered that the erection of a high fence immediately adjacent to the public road (including pavement) would have a significantly negative impact upon the visual amenities of the site and wider area, which is characterised by an open plan layout, with high fencing being kept to a minimum, most often in ancillary areas. I have suggested to the applicant that even an allowance of one metre of set back from the pavement's edge would allow for the establishment of some soft landscaping to soften the appearance of the fence, and help mitigate the stark appearance that a high fence adjacent to the pavement would otherwise have. He is however concerned that the particular area identified for enclosure should be maintained, and is not agreeable to the fence being set back 1m behind the orange line. Accordingly, I cannot say that the second of the reasons identified for the refusal of Planning Application 16/01554/FUL has been addressed with the current version of the proposal, and this reason for refusal can only be maintained in full, notwithstanding that Roads does not consider the same impact to be objectionable in road safety terms.

Accordingly, and while the current proposal is an improvement upon the proposal that was the subject of the previously refused application (16/01554/FUL), the Applicant has not incorporated sufficient revisions within this current version of the proposal to address the previously identified reason for objection with respect to the impacts upon the visual amenities of the site and surrounding area. Accordingly this reason for refusal is maintained.

REASON FOR DECISION :

The proposal is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016 in that it is not compatible with, and does not respect, the open plan nature and character of the surrounding area, in that it is overbearing relative to the adjacent public footway, and is an incongruous form of development within the context of the wider street scene.

Recommendation: Refused with informatives

- 1 The proposal is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016 in that it is not compatible with, and does not respect, the open plan nature and character of the surrounding area, in that it is overbearing relative to the adjacent public footway, and is an incongruous form of development within the context of the wider street scene.

Informatives

It should be noted that:

- 1 **INFORMATIVE NOTE 1:**

The proposal in its current form is unacceptable and has therefore been refused. The Applicant must now remediate the position by removing and/or reducing the fence in order to comply with Householder Permitted Development Rights.

If the Applicant does maintain a concern to accommodate any section of fencing at 6ft in height in the area which lies within a forward position of the south elevation of the house relative to the public road, then it is anticipated that the Planning Authority would only be supportive of this, where such fencing (a) was sited on land that lies to the east of the point at which the public road narrows beyond the junction, and (b) was set back at least 1m from the public road verge on all sides. Some soft landscaping works would also likely be required to soften the appearance of any such fencing so installed.

In the event that the situation with the existing fence is not now addressed by the Applicant and to the Planning Authority's satisfaction within a reasonable period of time, the Council will seek to pursue enforcement action to require the removal of the subject fence in its entirety.

With specific regard to the section of fencing whose position is described on the site plan by the line highlighted in blue, the Applicant's proposal that this should be reduced to 1m in height raises no concerns in that this proposed revision does not require planning approval. Accordingly, were the Applicant now to reduce this section of fencing to 1m or less in height, the fence so described could be maintained in this location as a permitted development. However, there is no planning approval for any fencing over this height, and accordingly any such fencing that is maintained on the site, will remain actionable, and will be followed up the Planning Authority's Enforcement Section when it revisits the site to ensure that all fencing that has been unlawfully erected, has been removed or reduced to 1m in height.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.

