

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Application for Planning Permission

Reference : 16/01554/FUL

To : Mr Marc Ridgway 33 Justice Park Oxtou Lauder United Kingdom

With reference to your application validated on **19th December 2016** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of boundary fence (retrospective)

At : 33 Justice Park Oxtou Scottish Borders TD2 6NZ

The Scottish Borders Council hereby **refuse** planning permission for the **reason(s) stated on the attached schedule**.

Dated 20th February 2017
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA

Signed



.....
Chief Planning Officer

APPLICATION REFERENCE : 16/01554/FUL

Schedule of Plans and Drawings Refused:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused
	Photos	Refused

REASON FOR REFUSAL

- 1 The proposal is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016 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.

FOR THE INFORMATION OF THE APPLICANT

It should be noted that:

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 of a planning application now being made for a revised proposal, the Applicant would be able to make a new planning application without incurring a new planning application processing fee, subject to the application being made by the same applicant (Mr Marc Ridgway), for the same site (No 33 Justice Park), and for the same proposal ('erection of fence'), and within one year of the date of this Decision Notice.

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.

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 16/01554/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
	Location Plan	Refused
	Photos	Refused

NUMBER OF REPRESENTATIONS: 1

SUMMARY OF REPRESENTATIONS:

One general comment has been received from a member of the public, which advises that notwithstanding support for the principle of a fence, it is considered that the specific fence installed raises concerns for the safety of pedestrians and other road users, chiefly in that it obstructs the views of pedestrians leaving the footpath to cross the road, and in turn, obstructs the views of road users, of the footpath. The identification of potential to remove and/or reduce the fence by 1m is supported.

The Roads Planning Section: is unable to support this proposal as it stands. The location of the fence obstructs the view of pedestrians when crossing the road, or entering the shared surface area. In order to gain Roads' support, the fence should either be lowered to a height of no greater than 1m, or set back 1m from the edge of the carriageway.

PLANNING CONSIDERATIONS AND POLICIES:

SBC LDP 2016

Policy PMD2
Policy HD3

Recommendation by - Stuart Herkes (Planning Officer) on 17th February 2017

This application proposes retrospective consent for a fence, 6ft in height, which has now been erected along the boundary of the residential property at No 33 Justice Park, Oxton, immediately adjacent to the public footpath and public road.

The case was first referred to the Planning Authority within the context of an Enforcement case, and it was put to the Applicant at that time by the Council's Enforcement Section, that the fence (only then partially erected) could be reduced to 1m in height and maintained as it had been sited under PD rights, otherwise a planning application would need to be made if there were an intention to maintain or erect for any higher fence.

The Applicant explicitly acknowledges (within their completed planning application form) advice it was given by Enforcement at the time of the enforcement case. This includes advice that it was anticipated that the fence would have to be set back 1m from the boundary with the public road if it were to be supported by the Roads Authority in the event of an application. While the Applicant acknowledges this advice, there is no explicit advice from him as to any concern he may or may not have in fact to reduce or remove the fence in accordance with the direction of the Enforcement Officer. Moreover, in the time that the application has been made and awaiting determination, a fence has in fact now been erected to the full 6ft, and sited along the property boundary, immediately adjacent to the road.

I consider that the Applicant's proposal is only reasonably interpreted as the maintenance of the fence in the form in which it has been erected.

Given that the boundary affected is that with the public road, there are no unacceptable impacts upon the residential amenity of any individual properties, but the proposals do raise concerns with respect to road safety and visual amenity.

The Roads Planning Authority is not supportive of the fence being retained in its current location, or at its current height, for road safety reasons. Roads has advised that it would require the fence to be reduced to 1m in height if it were to be retained in its current position, or set back a distance of 1m from the property boundary. The first option could be achieved without planning approval, and an informative could reiterate this point for the Applicant's benefit.

In addition to the Roads' safety concern, and further to my site inspection, I consider that the fence as erected, is having unacceptably detrimental impact upon the visual amenities of the site and surrounding area. This is not only as a consequence both of its height and its immediate proximity to the public road; but is also a consequence of the lack of any opportunity for soft landscaping to be accommodated between the fence and the boundary with the public road. Accordingly, the fence projects out into the public realm as an obvious salient. The overall effect, I consider, is unacceptably harsh and overbearing in its character, with no opportunities for mitigation. It would also be a concern if this appearance were to be replicated on other surrounding properties, which would result in an altogether more oppressive sense of enclosure and shrinkage of the public realm, and the prevalence of an ancillary, dull and uninteresting character, in place of a predominantly open, inviting and green public realm which contributes to a pleasant setting for the dwellinghouses collectively.

There is some fencing of equivalent height to the proposal on some neighbouring properties, but this only occurs within rear garden areas, and also with such fencing being set back in line with the dwellinghouse itself, such as to conserve space between the fence and public road, which is sufficiently sized as to contribute to the collectively open setting of the properties. In short, I do not consider that this is in anyway equivalent to the impacts of the proposal, which is altogether insensitive in its impacts upon the wider public realm.

For the above noted reasons I consider that the application is only appropriately refused. An informative might note however, firstly, that there is potential for the fence to be maintained as sited, if it is now reduced to under 1m so as to conform with PD rights. I consider also, though, that there would be some potential to accommodate a higher fence further back into the site, at least towards the rear of the property, provided: (i) this were set back from the public road verge by at least 1m; (ii) provided the sections of fence to the front of the property, and along the southern boundary, critically to the west of the point at which the public road narrows, is not higher than 1m, and (iii) provided in the area to the east of the point at which the public road narrows, some soft planting, shrubs and/or climbing plants are established to soften the appearance of the new higher (6ft) section of fence. It is anticipated that all three considerations would have to be met to the Planning Authority's satisfaction, before any such amended proposal could be supported.

For the avoidance of doubt, since the fence is existing and since the concerns raised above relate to a combination of both its siting and height, the current planning application is not capable of support subject to planning conditions. However, matters are capable of being addressed without a further planning application necessarily being made; either that, or subject to a new planning application responding to the advice of the previous paragraph.

REASON FOR DECISION :

The proposal is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016 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.

Recommendation: Refused with informatives

1 The proposal is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016 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.

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 of a planning application now being made for a revised proposal, the Applicant would be able to make a new planning application without incurring a new planning application processing fee, subject to the application being made by the same applicant (Mr Marc Ridgway), for the same site (No 33 Justice Park), and for the same proposal ('erection of fence'), and within one year of the date of this Decision Notice.

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.

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