Development Control – Delegated Officer Report

Application Number: AWDM/0394/13 **Recommendation – Approve**

Site: **R/O 1-4 Westmount Close, Southwick, Brighton, West Sussex, BN42 4SR**

Proposal: **Retrospective change of use from amenity land to residential curtilage and erection of close boarded fencing at rear of 1- 4 Westmount Close**

Date of site visit: 5 June and 20 June 2013

Neighbours checked: Y

Additional neighbour notifications: N

Proposal, Site and Surroundings

This application relates to a narrow strip of land to the north of 1-4 Westmount Close which has been enclosed with closeboard fencing and incorporated into the rear gardens of those properties. The land is 3.6m wide and was formerly grass verge adjacent to a footpath which links Phoenix Crescent with Kingston Lane. The area enclosed extends beyond the rear of 1 Westmount Close to the west by running to the north of the rear garden of 49 Kingston Lane and beyond the rear of 4 Westmount Close to the east, running behind one of four garages.

Consultations

West Sussex County Council: Object. According to current records held at WSCC the fence extends over land under the control of WSCC. The Highway Authority, therefore, would not be in a position to support this proposal. In order to overcome this reason for refusal, they recommend that the applicant repositions the fence outside the public highway or in this case removes it totally.

The freehold of public highway is largely irrelevant since the Highway Authority own less than around 1% of the road network. The highway area is either adopted formally or maintained at public expense due to continued public use, and in both of these cases, the freehold title will remain with the original owner. The status of a public highway and the rights highway users have over such land will supersede rights of the freehold.

Sussex Police: No objection. From a crime prevention viewpoint this should not have a detrimental effect to the alleyway and the residents as there are lighting columns at one end and in the footpath itself. It may become a problem should number 49 decide to claim back the gardens as these 4 have and narrow it even further. There is another alleyway to the east which joins this and is narrow and of similar dimensions which is not causing problems or the Police would have heard about it.

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Representations

1 letter received from the owner of 49 Kingston Lane objecting to the application on the following grounds:

- Land that has been enclosed is common land
- Extended garden intrudes onto side of garden of No.49
- End of extended area has been blocked off with a gate rather than a fence.
- No longer possible for No.49 to create their own access into their rear garden
- Loss of privacy from extended garden
- Fence should be removed where it runs alongside garden of No.49

1 email received from the occupier of 45/2 Kingston Lane objecting to the application on the following grounds:-

- Narrowing of public right of way used by school children makes it very unsafe and lends itself to anti-social behaviour

Relevant Planning Policies

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AH7 and Appendix 11 'Supplementary Planning Guidance' comprising: Development Control Standard No.3 'Extensions and Alterations to Dwellings' National Planning Policy Framework (CLG 2012)

Planning Assessment

Principle

The proposal comprises upgrading of the existing housing stock located within the built up area and can be supported in principle. The relevant issues are the effects on the amenities of neighbouring residential occupiers and the effect on the character and appearance of the dwelling and its surroundings.

Visual amenity

The fence has closed the space between the rear of 1-4 Westmount Close and the side of 47 Kingston Lane and leaves only a narrow strip of grass alongside the footpath. There is therefore an increased sense of enclosure to users of the footpath and the loss of clear intervisibility from one end of the path to the other. However, Sussex Police are not concerned from a public safety point of view as there are lighting columns at one end and in the footpath itself. The path is of similar dimensions to another footpath further east which is not causing problems.

When viewed from Kingston Lane the fence is 20m away and does not form a prominent feature in the street scene. There is a fence and brick wall on the opposite side of the footpath and the new fence does not appear unduly out of

character. Consequently, there is not considered to be any reason, on visual amenity grounds, to object to this proposal.

Residential amenity

The enclosure of the land generally does not have an adverse impact on residential amenity. However, at the western end an additional parcel of land has been enclosed which runs along the side of the rear garden of 49 Kingston Lane. The extended garden is accessed by gates which offer the potential for regular activity in this part of the garden, and there are currently clear views into the garden of No.49 through gaps in the decorative wall. The applicants have offered to screen this with solid boarding, as has been done on the rear boundary wall, which would help. However, there is still the potential for increased activity and associated noise within the garden which could have a detrimental effect on the enjoyment of No.49.

However, the extent of activity arising from a domestic garden is not likely to be significant and the applicant has stated their intention to use it for planting/vegetable growing. Concern about overlooking can be overcome by erecting panels on the panel, as has been done on the wall at the west end of the garden No 49, and this can be required by condition.

The garden is too narrow to be used regularly, although the gates do provide the opportunity for more frequent activity. However, the main seating area is within the garden directly at the rear of 1 Westmount Close. The relationship between No.49 and the newly-formed garden is similar to that experienced by any properties that share a common boundary and it is considered to be difficult to demonstrate that there is harm to residential amenity as a result of this development.

The argument that the development prevents No.49 from providing an own access to their own garden from the lane is noted but this is ultimately a civil matter and is not a planning consideration.

Accessibility and parking

The applicants have demonstrated that they made enquiries with West Sussex County Council and Land Registry as to who owned the land and believed that it was unregistered. However, WSCC Highways have confirmed that the fence extends over land under the control of WSCC and they have objected to the enclosure.

However, this is also a civil matter and one which WSCC must pursue with the householders involved as there are not considered to be any planning or highway reasons to object to the application. The fencing does not obstruct the footpath.

Recommendation

APPROVE for the reason:-

The development does not detract from the local environment and has taken place without resulting in unacceptable detriment to the amenities of

neighbouring properties. It consequently does not conflict with the saved policies of the Adur District Local Plan (AG1, AH7) or the policies of the National Planning Policy Framework

Subject to Conditions:-

1. Approved plans
2. Within one month solid panels to be affixed to wall along northern boundary of 49 Kingston Lane

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

The applicant is advised that the enclosed land includes land under the control of WSCC and the Highway Authority has recommended that the applicant repositions the fence outside the public highway or, in this case, removes it totally.

Is recommendation contrary to letter(s) of representation? Y

Case Officer: Peter Barnett Date: 8 July 2013

Authorised by: Gary Peck Date: 8 July 2013