Development Management - Delegated Officer Report

Application Number: AWDM/0961/23 Recommendation – Approve

Site: Application for Certificate of Lawfulness for proposed 0.9m high wall and gate.

Proposal: 35 Falcon Close, Shoreham-by-sea

Proposal, Site and Surroundings

The application relates to a dwelling located on a corner plot on Falcon Close. A new wall has been erected which measures 0.9m high with 1.8m high pillars with mesh/trellis in between the pillars. An application to retain the wall as constructed was refused earlier in the year (AWDM/1536/22).

It is proposed to remove the pillars and mesh and to reduce the height of the wall to a maximum 0.9m high. A 0.9m high gate is also proposed plus a freestanding wooden letter box, 2m high.

Planning Assessment

Principle

The proposal will be viewed against the criteria of permitted development, as laid out within The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

Consideration

Class A of Part 2 (Minor Operations) of 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.

A.1 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 carrying out the development, exceed–
i. for a school, 2 metres above ground level, provided that any part of the gate, wall or means of enclosure which is more than 1 metres 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

Analysis: The proposed wall would not be situated at a school and measures 0.9m in height therefore complying with (ii).

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

Analysis: The height of the wall will be 0.9m above ground level

(c) the height of any gate, fence or 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 greater; or

Analysis: The wall will replace the low wall that previously ran around the boundary prior to the construction of the unlawful wall and will be taller. However, it will not exceed the height referred to in paragraph (a) or (b)

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

Analysis: The property is not listed

Legal advice about the letterbox is that it does not appear to fit the definition of development in s.55 TCPA 1990. It could be argued that it forms an “other means of enclosure” but this is not a strong argument once the wall is reduced to 0.9m.

It is considered that the letterbox does not require planning permission based on the facts of this matter.

Recommendation

Issue a Certificate of Lawfulness for Proposed Development, the submission of a planning application for the works will not be required as the wall and gate will be constructed adjacent to a highway used by vehicular traffic but will not exceed 1m in height.

Reasons for Recommendation

The proposal constitutes 'development' as defined by Section 55 of the Town and Country Planning Act 1990, but is permitted by Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Case Officer: Peter Barnett Date: 7 August 2023

Authorised by: Gary Peck Date: 7 August 2023