Statement of Case – Ref 9 Ermin Close, Baydon, SN8 2JQ

1 Background

1.1 This statement is made in support of a written appeal against the decision of Wiltshire County Council (WCC) to refuse planning consent for the erection of a closeboard fence that sits on top of an existing dwarf wall at 9 Ermin Close, Baydon, SN8 2JQ, ref PL/2023/10509. Between August 2022 and October 2023 an extension was constructed at 9 Ermin Close PL/2021/07631. During the construction of the extension the building regulations inspector informed the appellants that the existing hedge needed to be removed. The appellants complied with building regulations and removed the hedge and replaced it with a closeboard fence in August 2023. The appellant's constructed a closeboard fence on top of the existing dwarf wall due to this being the most common type of fencing used in the cul-de-sac and in the wider region, so in keeping with the local aesthetic. The appellants were unaware that planning permission was required. During the erection of the fence an anonymous complaint was made to Wiltshire Council Planning Enforcement Office (WCPEO) regarding the removal of the hedge. The WCPEO emailed the appellants on 15/09/2023 informing them that a fence over one metre would require planning permission. The appellants submitted a retrospective planning application which was validated on 02/01/2024, but was refused on the 26/02/2024.

2 Site Location

2.1 The application dwelling forms part of a cul-de-sac consisting of single and double story detached dwellings in a variety of styles, set within the village of Baydon that does not fall within an Area of Outstanding Natural Beauty (AONB). The properties in the cul-de-sac were constructed in the late 1960's. The boundary treatments of the dwellings within the cul-de-sac, which run parallel to the highway, are made up of a variety of designs and materials.

3 Planning History

3.1 PL/2021/07631 Two-storey extension to the north elevation of the current property approved on the 13/4/2022.

4 The Development Plan

4.1 In preparing this appeal statement, full regard has been made to the relevant policies in the Development Plan including those in the Wiltshire Core Strategy (WCS), the National Planning Policy Framework (NPPF) and The Town and Country Planning (Development Management Procedure) Order 2015 (TCP). It is respectfully considered that the following Development Plan Policies are the most relevant against which to assess the merits of the proposal:

- WCS policy 57 paragraph i and vi
- National Planning Policy Framework paragraph 132 and 38
- The Town and Country Planning (Development Management Procedure) (England) Order 2015 paragraph 35

5 The Appeal Proposal

5.1 Planning permission is sought to retain the closeboard fence running along the front boundary of the property, parallel to the highway. It is needed to provide the appellants with the security and privacy after the previous hedge had to be removed in accordance with building regulations. The proposal is set out in the design statement that supported the planning application.

5.2 Appendix 1 sets out the full context of the proposal in elevation and plan form. The materials of construction are a wooden closeboard fence on top of an existing masonry dwarf wall.

5.3 Wiltshire Planning Office (WPO) in their refusal letter (26th February 2024) clearly identified that the fence does not encroach on any neighbours or impact upon the North Wessex Downs National Landscape. It also states that it has no impact on the highway.

5.4 The sole reason for refusal was the appearance. The WPO states in the Scale, Design and Material section (SDM) of their report, paragraph 3 that it is "*incongruous*" and SDM paragraph 6 '"does not respond positively to the "existing townscape and landscape features"" to "'*effectively integrate' with the existing street-scene*"'. The appellants feel that WCC have not fully considered the range of boundary treatments in the area. They also feel that given the vast range of boundaries visible in both the cul-de-sac and the village the WCC has no clear policy on how boundary treatments should look so cannot use this as a reason for refusal. The WCC does not explain how or why the fence is incongruous.

5.5 The planning application was discussed by Baydon Parish Council (BPC) on the 15/01/2024. At this meeting, no objections were raised, leading to the BPC having no objection to the planning application (06/02/2024).

5.6 The highways agency comment on the 29/01/2024 raised no objections to the planning application, other than one condition identified in the officer's report.

6 The Case and the Planning Balance

6.1 The WPO states in the case officers report under the section SDM paragraph 6: that the proposed fence *"does not respond positively to the "existing townscape and landscape features" to 'effectively integrate' with the existing street-scene as required by part iii of CP57 of the WCS. The fence is not in-keeping with the existing boundary treatments found along Ermin Close and fails to respect the general open character of the street. The fence therefore appears visually obtrusive within the street-scene and conflicts with Core Policy 57 of the WCS and Paragraph 135 of the NPPF which requires development to be "sympathetic to local character."* The appellants disagree with this assessment. It is clearly shown in figure 1 that there is no clear vision for the cul-de-sac because there is a range of boundary treatments, these include:

- No 1 has a new brown recycled fence measuring at a height of 1.82 m erected in summer of 2023;
- No 10 has a closeboard fence measuring at a height of 1.85 m and a length of 12.75m;
- No 19 has an open board fence measuring at a height of 2 m and a length of 7.20m;
- No 20 has a closeboard fence situated on top of a brick wall with the total height measuring at 2.50 m and a length of 11.50m;
- No 21 has a closeboard fence at a height of 1.90 m with a hedge above it. The fence is measuring a length of 26.75m;
- No 23 has a closeboard fence situated on top of a wall.



Figure 1. Plan view of the cul-de-sac, with photographs showing neighbouring properties and their variety of boundary treatments. The appellant in holding a 1 m white board as scale.

6.2 Of the 23 properties in the cul-de-sac (including the appellants property), 7 of the 23 (30%) properties have fences over 1.5 m parallel to the road. 9 of the 23 (39%) have closeboard fencing parallel to the highway and 22 out of the 23 houses (96%) have closeboard fencing clearly visible from the highway either parallel to the highway or separating neighbouring properties, thus having an impact on the existing street-scene. Other boundary treatments consist of walls, hedging or are open fronted. WCC's sole reason for refusal is appearance yet closeboard fencing is highly visible throughout the cul-de-sac. As the WCC have neglected to enforce or control any other boundaries that use closeboard fencing over 1m high this lack on enforcement sets precedent for the expectation that closeboard fencing and other high boundary treatments are acceptable in the cul-de-sac.

6.3 The NFFP in paragraph 132 states that, "*Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable."* Figure 2 demonstrates that the appellants boundary used existing materials (dwarf walls) and chosen materials (closeboard fencing) that is in keeping with other boundaries in

the cul-de-sac. The appellants have tried to keep the original character of their boundary by maintaining the original dwarf wall and have sat the fence upon this, whilst other properties have no original boundary treatment and have just sat their fence upon the ground. The appellants feel that figures 1 and 2 clearly support Core Policy 57 paragraph i "*relating positively to its landscape setting and the existing pattern of development*" and Core Policy 57 paragraph vi "*taking account of the characteristics of the site and the local context to deliver an appropriate development which relates effectively to the immediate setting and to the wider character of the area*". Maintaining the dwarf wall with the pillars either side of the drive also adds athletically to the new fence and when the wood weathers to silver the wooden panels and dwarf wall will provide an attractive contrast. The appellants feel the WCC does not have a clear design vision in the cul-de-sac or in Baydon village and other surrounding villages, with closeboard fencing being one of the most common design options.



Figure 2. The appellants fence showing the used materials in keeping with that of other boundary treatments. The existing dwarf wall and pillars with the closeboard fence, providing an attractive contrast in design. The appellant in holding a 1 m white board as scale.

6.4 The appellants are of the view that WCC did not fulfil their obligation as outlined in the NFFP paragraph 38 that *"Local planning authorities should approach decisions on proposed development in a positive and creative way."* Or under The Town and Country Planning (Development Management Procedure) (England)) Order 2015 (TCP) paragraph 35 that "*Where paragraph (1)(a) or (b) applies, the notice must also include a statement explaining, whether, and if so how, in dealing with the application, the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application."*. On Wednesday 21st February 2024 the WPO informed the appellants, via telephone, of WCC's intention to refuse the planning application. At this point the appellants tried to engage with WCC to see whether there was an opportunity to reach a compromise which would be acceptable to WCC. During the telephone conversion the appellants suggested a range of solutions including a reduction in height but the WPO refused to enter into an open or constructive discussion. This negative approach was confirmed in an email on Friday 23rd February 2024 which stated "*I would not like to accept the reduction in height… and we are not obliged to accept revised plans in any case,".* The planning application was rejected on the 26th February 2024. Following the planning application rejection the appellants sent two constructive emails (26th February and 10th March 2024 appendices 2 and 3) trying to find a solution and suggesting alternatives. WCC did not acknowledge or responded to these emails. The appellants accept they should not have constructed the fence without planning permission, but since finding out planning was required they have tried to work with WCC in a constructive manner which has not been reciprocated.

6.5 In the Case Officers Report it stated that this planning application has been refused as it contravenes Core Policy 57 – Ensuring high quality design and shaping and Core policy 51 – Landscapes. However, no reference is provided as to how the planning application contravenes Core Policy 51 – Landscapes as it is not discussed at any point in the Case Officers Report.

6.6 In the Case Officers Report, section SDM, paragraph 3 it states "*The fence is overbearing in height, being the tallest fence within the street."* This comment is untrue as No 20 is 2.5 m. In an attempt to enter into a constructive discussion the appellants offered on several occasions to reduce the height by approximately 30 cm in line with the neighbouring property (No10). WPO refused to enter into constructive discussion regarding changes in height, colour or form, only reiterating that the fence must be reduced to a height at which planning is not required (<1 m).

6.7 WPO have no records of planning applications or records for any of the other fences in Ermin Close and they have stated that they are unsure of the planning status of similar boundary treatments in the cul-de-sac. It appears that WCC have not enforced any planning policy boundary treatment in the cul-de-sac and certainly not in a consistent manner. By allowing multiple boundary treatments within the cul-de-sac WCC have failed to establish any continuity in boundary treatments.

6.8 The appellants successfully appealed against WCC refusal for an extension PL/2021/07631. In the appeal decision the Planning Inspectorate (PI) emphasised the lack of consistent planning policy in the cul-de-sac as the report states "*Furthermore, given the considerable variety of properties that can be seen in the surrounding area, consistency is no longer a defining feature of dwellings in the area and thus a front addition would not be incongruous at this location."* This demonstrates that WCC are not adopting advice or good practice already highlighted by the PI.

6.9 In the Case Officers Report, SDM Paragraph 5 it states *"and fails to respect the general open character of the street."* There is a wide variety of boundary treatments in the cul-de-sac. The appellants went to great length to ensure closeboard fencing was used as this is the most common boundary treatment in the area. The fence is more open than the hedge it replaces. The hedge was approximately 30 cm higher and it was protruding beyond the property and over the pavement by approximately 30 cm, because it was a fir hedge it could not be cut back without exposing the dead branches.

6.10 On two separate occasions in the WCC report in the SDM sections of text has been copied and pasted from another WCC report 19/06410/FUL, which focused on refusal of a closeboard fence in 2019 however this was a very different environment. This can be seen in paragraph 3, as it is formatted differently to the rest of the report. The second occurrence is in paragraph 4 of the Scale, Design and Materials section it mentions property No 73, Ermin Close only goes up to number 23. This incorrect statement is the result of the WPO having copied and pasted sections of the pre-existing report 19/0410/FUL which is in five years old and in different circumstances rather than considering this planning application on its own merits.

7 Planning Conditions

7.1 The appellant will accept a condition that reduces the height to that similar to the neighbours. They will also accept a condition of painting the fence and have always been open to discussion and compromise.

8 Conclusions

8.1 Planning permission is sought for the erection of a closeboard fence along the highways boundary at 9 Ermin Close, Baydon, Wiltshire.

8.2 The WPO does not have a clear design vision for the cu-de-sac as there is a lack of consistency in boundary treatments.

8.3 The appellants have used a range of existing and new materials, and taken design inspiration to construct an attractive boundary treatment in keeping with the surrounding area.

8.4 The new fence is less intrusive than the overgrown and higher hedge it replaces.

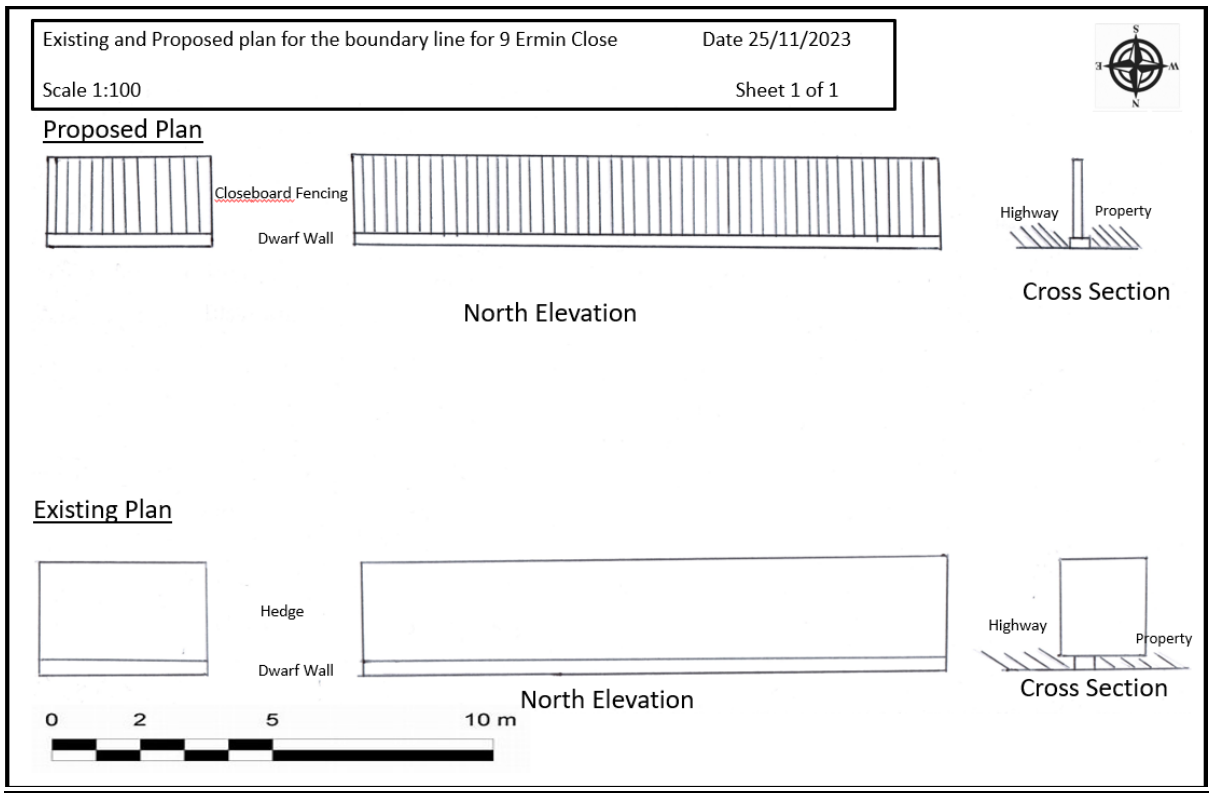
8.5 There was a negative and uncommunicative approach towards the appellants planning from the WPO, contradicting paragraph 38 and 39 of the NFFP.

8.6 Parts of the WPO report were taken from a different planning application (19/06410/FUL, 2019) demonstrating this application was not considered on its own merits.

8.7 It is respectfully requested that the appeal is allowed and planning permission granted for the development set out in PL/2023/10509 application.

Appendices

Appendix 1



Appendix 2

HL Helen Lawrence
To: Leesam, Joe

Reply Reply all Forward
Mon 26/02/2024 19:24

Dear Joe

Thank you for your update.

We find it disappointing that Wiltshire Council is not willing to engage in way forward regarding amendments to the fence. We only took our hedge down because of a building regulations requirement during construction of our extension. We were only informed by the Wiltshire Council that the fence needed planning after its erection and have tried to work with Wiltshire Council in a constructive manner. We tried to install a fence that was in keeping with others in the cul-de-sac, in particular the neighbours fence. We find it strange that at least five fences in the cud-de-sac that are at equal or similar height to ours and atleast two on the Aldbourne Road that have been put up in the last 2 years. Many on corners and main road have been erected yet we are the only ones being targeted. We would rather try and work with Wiltshire Council than go to appeal again, like we were forced to with our recent extension.

Kind regards
Helen lawrence.

Reply Forward

Appendix 3

HL Helen Lawrence
To: Leesam, Joe

Reply Reply all Forward
Sun 10/03/2024 18:48

Dear Mr Leesam,
We have seen online that our planning **PL/2023/10509** has been refused by Wiltshire Council, as you can imagine we are disappointed and frustrated that the council refused to engage in constructive discussion. We just wanted to try and reach out one last time before going to appeal to see if we could work together to find a solution that is acceptable to Wiltshire Council.

After being told that we had to take down the hedge by building regs we thought the fence would be an ideal solution and were very surprised be the councils reaction. We are open to considering options alternative options that address the councils concerns such, as height, colour, etc.

We did reach out to you on the 26th January 2024 with similar suggestion but you didn't response, so if you could reply to us as soon as possible then we would be extremely grateful and hope to be able to move forward in a constructive manner.

Kind Regards

Helen Lawrence