

REPORT TO: Planning Committee

MEETING DATE: Tuesday 2 September 2014

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the Scheme of Delegation List by Councillor Grant for the following reason: the residents of 7 Winton Terrace, New Winton, feel their objections to this application have not been properly addressed in the Planning Officer's report and would like to address the Committee to voice their concerns.

Application No. **14/00319/P**

Proposal Erection of fencing and heightening of wall (Part Retrospective)

Location **6 Winton Terrace
New Winton
Tranent
East Lothian
EH33 2NQ**

Applicant Mr Neil Craigmile

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

The property to which this application relates is a two storey semi detached house located within a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 20008. It is also within New Winton Conservation Area. To the west the property is bounded by open agricultural fields, to the east by the public road and footpath of Winton Terrace, to the south by the house and residential curtilage of 7 Winton Terrace and to the north by the house and residential curtilage of 5 Winton Terrace.

Planning permission is sought for:(i) the erection of fencing on the southwest and part of the northwest and southeast boundaries of the rear garden of the house, (ii) the erection of fencing along the southeast boundary of the side and front gardens of the house, and (iii) the heightening of the northeast roadside boundary of the front garden of the house. This application is partly sought in retrospect as sections of fencing have already been erected on southeast boundary of the front garden of the house.

The application as originally submitted proposed that the gates erected across the vehicular access in the recessed part of the northeast roadside boundary of the property be moved forward of their current position in line with the roadside northeast boundary wall. That element of the proposal has now been omitted from the application. Revised drawings were submitted to reflect this.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan is the approved Southeast Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Policy 1B (The Spatial Strategy: Development Principles) of the approved Southeast Scotland Strategic Development Plan (SESplan) and Policies ENV4 (Development Within Conservation Areas) and DP2 (Design) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application are Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development within a conservation area given in Scottish Planning Policy: June 2014.

Scottish Planning Policy echoes the statutory requirements of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. It is stated in Scottish Planning Policy that proposed development within conservation areas and proposals out with which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area. Proposals that do not harm the character and appearance of the conservation area should be treated as preserving its character and appearance.

Three written objections to the application have been received. They are from occupiers of [REDACTED]. They are made on the grounds that:

- (i) the fence erected on the mutual south boundary of the property with [REDACTED] Winton Terrace has been erected on garden ground not within the ownership of the applicant and without planning permission having been granted for it,
- (ii) the applicant is not the sole owner of the land,
- (iii) the fence that has already been erected is not like for like as stated on the application forms,
- (iv) the work to erect the fence was not started on 29 March 14 as stated on the application forms but was instead started on the 22 March 2014,
- (v) contrary to that stated on the application forms there are and were trees adjacent to the application site,
- (vi) any new fence should be erected on land owned by the applicant and not on land which forms part of 6 Winton Terrace,
- (vii) the section of fence to be erected on the mutual rear garden boundary with the neighbouring property of [REDACTED] Winton Terrace should be of the same height, all the way along the boundary to afford better privacy to the garden of [REDACTED] Winton Terrace,
- (viii) the applicant should also fix the gap in the wall on the mutual front garden boundary with [REDACTED] Winton Terrace to stop his dog entering the garden of [REDACTED] Winton Terrace and

chasing the neighbour's cat.

It is not proposed through this application to alter the enclosure on the mutual front garden boundary of the properties of 5 and 6 Winton Terrace. It is not therefore a material consideration in the determination of this application for planning permission.

It is declared on the application forms that works had commenced on site on 29 March 14 and that no trees exist on or adjacent to the application site. However this in itself does not invalidate the application.

The applicant has also declared that he is the owner of all of the land of the application site. This is corroborated by a written submission provided by the applicant's solicitor who has inspected his client's title plan for the land.

Notwithstanding this, legal matters in the form of the contents of title deeds and any discrepancies in the terms of them cannot be taken to be material planning considerations in the determination of an application for planning permission. Matters of legal ownership of land are a private matter to be settled by the relevant parties.

The front garden of the house is enclosed on its northeast roadside boundary by a low stone wall which varies in height from some 600mm to 680mm. The wall is a continuation of a stone wall that encloses the northeast roadside boundary of the neighbouring residential property of 5 Winton Terrace. The low stone wall returns in a south-westerly direction into the front garden of the house such that it encloses the northwest side of the recessed vehicular access and driveway in the southeast part of the front garden of the house.

It is proposed to raise the height of the roadside boundary wall to some 990mm and thus to a similar height to the section of stone wall that encloses northwest roadside boundary of 5 Winton Terrace by adding coping stones to the top of it.

Provided the coping stones to be added to the top of the wall are of a form and laid in a manner to match those that top the wall on the northeast roadside boundary of the property of 5 Winton Terrace, the proposed heightened section of wall would not appear incongruous in its relationship with and would not compromise the integrity of the section of wall on the northeast roadside boundary wall of 5 Winton Terrace, it would be a continuation of. In this context, the proposed heightening of the wall in the manner proposed would not compromise the positive contribution the wall and other stone walls in this part of Winton Terrace make to the character and appearance of the Conservation Area.

A 7.8 metres long length of 1.99 metres high timber panel fencing has been erected on the southeast boundary of the side garden of the house. As a continuation of this fence and at a height of some 990mm high, a 5.76 metres long length of timber panel fencing has been erected on the southeast boundary of the front garden of the house. Both sections of fence are painted a green colour.

These lengths of timber fencing are visible in public views from Winton Terrace. However in those views the proposed lengths of timber fencing are seen in relation to a mix of boundary enclosures that exist on the front and side garden boundaries of the houses of Winton Terrace. Moreover by their positioning, stepped nature and the finishing colour of them, the lengths of timber fencing are visually well associated with soft landscaping that exists within the applicant's front garden and within the wider streetscape. In which case, they do not appear dominant or incongruous within their streetscape setting. They are appropriate to their location and well integrated with their surroundings. They are not harmful to the setting of the house or the character and appearance of the Conservation

Area.

The mutual rear garden boundary with the neighbouring property of 5 Winton Terrace to the northwest is enclosed for the most part by high timber panel fencing measuring some 1.8 metres in height. The remainder of that mutual boundary is enclosed by a post and wire fence as well as small bushes. It is proposed to replace the post and wire fence with new timber panel fencing some 914mm high.

The southwest boundary of the rear garden of the house is enclosed with post and wire fencing, mature bushes and a tree. It is proposed to replace the existing fence with a new vertically boarded timber fence measuring some 1.3 metres at its greatest extent.

The mutual rear garden boundary with the neighbouring residential property of 7 Winton Terrace to the southeast, is enclosed for the most part by post and wire fencing and mature bushes, hedging and a section of dilapidated timber fencing. It is proposed to erect a 1.99 metres high timber fence along the mutual southwest boundary as a replacement of the existing post and wire fencing and a continuation of the dilapidated section of fence.

Although varied in form and height the lengths of timber fencing to be erected on the northwest, southwest and southeast boundaries of the rear garden of the house would not be readily visible from public places. Only glimpsed views of the southeast rear garden boundary fence would be taken from Winton Terrace and those would be from the vehicular access in the roadside boundary of the front garden of the house. Owing to this and otherwise by their size, scale, form, positioning and materials the proposed new lengths of fencing would be appropriate to rear garden location and well integrated with their surroundings. They would not be harmful to the setting of the house, the setting of the houses of 5 or 7 Winton Terrace or the character and appearance of the Conservation Area.

On the foregoing considerations the timber fencing, proposed timber fencing and heightened wall do not conflict with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) June 2013, Policies ENV4 and DP2 of the adopted East Lothian Local Plan 2008 or Scottish Planning Policy: June 2014.

The lengths of timber fencing to be erected on the southwest and southeast boundaries of the garden of the house would be erected within the root protection area of a tree on the application site and a tree within the garden of 7 Winton Terrace. So as to prevent harm to those trees as a consequence of the erection of the proposed timber fencing it would be prudent to impose a condition on the grant of planning permission that holes for the fence posts that would support it be dug by hand and positioned to avoid tree roots. Subject to this control the proposed fencing is consistent with Policy DP14 of the adopted East Lothian Local Plan 2008.

CONDITIONS:

- 1 The stonework of the heightened section of wall shall match in all respects the stonework of the existing wall that encloses the northeast roadside boundary of the property 5 Winton Terrace, including the laying, pointing and coping of it, all in accordance with a sample panel to be provided on site for the prior inspection and approval of the Planning Authority.

Reason:

To safeguard the character and appearance of the Conservation Area.

- 2 The postholes for the posts of the fencing hereby approved shall be hand dug within the tree root

protection area of the tree on the southwest rear garden boundary and adjacent to the southwest rear garden boundary of the house. The posts shall be positioned to avoid tree roots exceeding 25mm in diameter. If roots exceeding 25mm in diameter are encountered the excavation shall be backfilled and lightly compacted immediately and another hole dug. Any tree roots 25mm in diameter and smaller encountered shall be cleanly cut prior to installing the support posts.

Reason:

In the interests of safeguarding trees that form part of the landscape character of the Conservation Area.

Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation).