

Refusal of Planning Permission - Householder Planning Appeal

Appeal by Ms Claire Smith of 26 Linnet Hill, Rochdale, OL11 4DA

This appeal is made under the provisions of Section 78 of the Town and Country Planning Act 1990 (as amended) following Rochdale Borough Council's refusal of planning permission on 5th December 2024 for the development described as follows:

'Proposed 1.0 metre high wall and 1.5 metre laurel hedge along front boundary of the residential curtilage including 1.8 high fence with automated gate'

The householder planning application was submitted to the Council on 10th October 2024, and we would wish to highlight that the description on the decision notice is not the same as the description that was included on the planning application forms and on the Supporting Planning Statement.

The original and preferred description reads as follows:

- 1) Proposed erection of a 1.0 metre high wall and 1.5 metre laurel hedge along front boundary of the residential curtilage*
- 2) Proposed erection of an independent 1.8 metre high fence and automated gate within the front garden area of the property. The fence and gate is to be set back into the property a distance of 2.1 metres from the front boundary and the back of footway on Linnet Hill.*

The application was initially invalid on submission as the LPA asked for some additional drawings to be provided. An invalid letter was sent to the agent, and this contained the full original description shown on the application forms. The additional drawings were provided as requested and the LPA then chose to amend the description without the formal written consent of the applicant or appointed agent at the validation stage. This was unfortunately not noticed by the agent when the LPA issued their validation letter. This would have been challenged if it had been noticed at the time and it was only seen late in the consideration process. We consider that the application description is an important factor in this appeal.

The original description clearly shows that there were two separate elements to the application proposal - the first element being a new front boundary treatment for the house including a low level rendered wall with evergreen laurel hedge behind. The second element included an entirely separate and independent structure set back within the curtilage including the provision of a fence and automated gate. The LPA chose to group the two separate elements together in the amended description to make it seem that they formed one combined boundary treatment when this is not the case.

The application was refused by the Council for the following reason:

- 1 By virtue of its siting, excessive height and width, composite material and design, the proposed 1.8m-high fence and gate would constitute an obtrusive and incongruous feature which is wholly out of keeping with the prevailing character and appearance of the surrounding street scene and would result in undue visual harm in this regard. The proposal would not be well-designed and would fail to accord with Policies P3 and DM1 of the adopted Rochdale Core Strategy, the Council's adopted Supplementary Planning Document 'Guidelines and Standards for Residential Development', Policy JP-P1 of the adopted Places for Everyone Joint Development Plan, and the National Planning Policy Framework.*

The appellant would wish to rely heavily on the detailed Supporting Planning Statement prepared by MRH Planning Services that was submitted with the application to justify why we consider the appeal should be upheld. This statement does not wish to repeat word for word the analysis that is already contained in the Supporting Planning Statement.

To provide some helpful and useful background to the Appointed Inspector, Ms Smith is a hard-working single mum with four children, and she bought the detached dwelling house (26 Linnet Hill) several years ago as a long-term family home. She has invested significant resources (money and time) into improving and extending and fully modernising the dwelling house and the outside grounds for the family's needs and enjoyment. The extensions and alterations and associated modernisation work to the house were granted planning permission by the Council in 2015 and the property now has an attractive visual appearance. The external elevations are covered with white render and grey cladding and the window openings have been enlarged and changed to grey colour. It would be fair to say that the property stands out and is noticeable in the wider street scene because of its very modern appearance, and many of the other properties on Linnet Hill remain largely unchanged from their original construction.

Ms Smith erected some grey coloured composite fencing and an automated sliding gate along the front boundary of her dwelling house (adjacent to the highway on Linnet Hill) in 2021 without the necessary planning permission, and this boundary treatment remains in place at the present time and is the subject of the Council's current enforcement action. The Enforcement Notice was served on 14 November 2024, and an appeal has been made against it under Ground G (Appeal Reference: APP/P4225/C/24/3358119).

Ms Smith did not wish to cause any upset or annoyance to the neighbours or the amenity of the area when she chose to erect this taller and modern form of boundary treatment. She just wanted to provide something that she considered suitably matched and complemented the modern house, and which provided a reasonable level of security for the family. The failure to obtain the necessary prior planning permission for the development was a genuine mistake. The Council's Planning Enforcement Service allegedly received a complaint about the fencing and gates that Mrs Smith had erected, and they subsequently investigated the matter and established that a breach of planning control had taken place due to the height and positioning of the fencing and gates. The reason for this is because the boundary treatment is sited adjacent to a highway used by vehicular traffic (back of footway on Linnet Hill) and it measures more than 1 metre in height. The existing fencing and gates range in height between 1.8 - 2.4 metres due to the sloping nature of the land as shown in the photograph below.



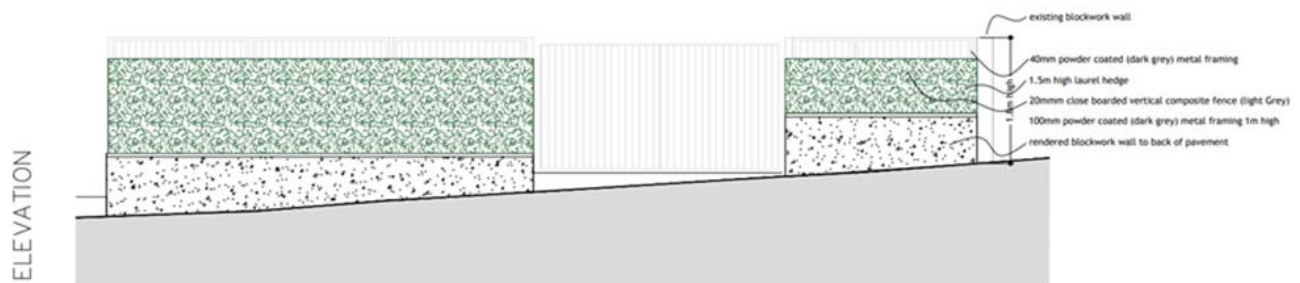
Existing composite fencing and automated gate that is in situ at 26 Linnet Hill and subject to current enforcement action

Mrs Smith is a reasonable person, and she has actively engaged with the Council to try and resolve the breach of planning control. She has previously sought to regularise the situation through the submission of three materially different planning applications (Refs. 21/00951/HOUS and 22/00193/HOUS, and 24/00952/FUL) but these have all unfortunately been unsuccessful. The latest application that is the subject of this appeal was refused on 5th December 2024 and disappointingly the Council would not enter into any form of negotiation or consider any working amendments to the submitted scheme. Several attempts were made to the Case Planning Officer including requests to extend the target determination date and to meet at the site to discuss potential solutions, but these were just ignored and rejected.

Good communication and helpful customer service used to be important at Councils, but it was disappointing to experience a preference and eagerness to refuse the application ASAP rather than to try and work proactively with the applicant to try and achieve a positive outcome, especially when this relates to a long-standing enforcement matter.

The composite fencing and automated electric powered sliding gate that is currently in situ at the property were very expensive to fabricate and not easy to install, and Ms Smith has explored the possibility of altering / reducing them to 1.0 metre with her fencing contractor, but it appears that this cannot be easily achieved using the existing metal structure, framework and components and it would all basically have to be scrapped and re-made. She does have a Certificate of Lawfulness granted for such a development as a fall-back position, but unfortunately it is not easily achievable for the reasons explained. The 1.0m high boundary treatment will also not provide her with an adequate level of safety, security, and privacy that she requires for the family home, and she is also concerned it will not look particularly attractive in visual appearance terms in the wider street scene.

The recently refused application scheme provided an opportunity to salvage and re-use more elements of the current fencing and gate structure / components and this would not appear unreasonable under the circumstances. The new application proposal involves the provision of a low-level render covered wall positioned adjacent to the highway (1.0 metre maximum) with a 1.5-metre-high evergreen hedge planted directly behind it. The render covered wall would be a suitable match to the host dwelling house in terms of its colour and texture. This front boundary treatment would be like many others that are in existence along Linnet Hill. The fencing and automated sliding gate would be set back a 2.1 metre distance into the front garden area (from back of footway) basically forming a separate and independent structure. The fencing and gates would be reduced in height to 1.8 metres (currently 2.4m in parts) so they would be significantly less visible in the street scene and largely screened behind the new principal boundary treatment of the front boundary wall and 1.5-metre-high hedging. Only a small amount of the fence would be visible above the top of the hedge, and this may reduce further as the hedge grows / establishes. Ms Smith was also prepared to change the design of the composite sliding gate to something different or more open (if required). A copy of the proposed elevation that the Council refused and deemed to be 'unacceptable' and an 'obtrusive and incongruous feature' is shown below.



Unsurprisingly, it has also been established from the Council that there were no objections received to the proposal from the neighbours, statutory consultees and other interested parties that were formally consulted on the application. They were clearly satisfied that it was a suitable and acceptable development for the property, the local area and was safe in highway terms. The appellant understandably very disappointed with the Council's decision and unreasonable behaviour during the process, as she thought it was a reasonable compromise solution. Ms Smith hopes the Planning Inspectorate can uphold her appeal so she can implement the scheme and finally resolve this longstanding enforcement matter. She would like to feel comfortable, enjoy and be proud of her family home once again without this stressful situation hanging over her.

Some additional matters for the Appointed Inspector to please consider

The appellant would be prepared to accept a condition attached to any permission requiring the construction materials for the fencing and gate inserts to be changed to timber or vertical steel bars (see through) with details to be submitted for approval, if the Appointed Planning Inspector deems this necessary.

The appellant would also accept a condition in respect of the evergreen hedge planting like what is commonly used and attached to planning permissions for site landscaping schemes. If the planting fails to establish or is damaged or removed within 10 years, the Council would have the necessary enforcement powers available to use via the service of a breach of condition or enforcement notice to secure replacement planting.

There was an error on the submitted 'Proposed Boundary Detail' drawing Ref. 772-03 and the 'Layout' does not show the front boundary treatment (wall and hedge) stretching across the full width of the left-hand side to the gate post. This would clearly screen from street scene views a greater portion of the independent recessed fence and gate structure in the front garden. This error can be easily amended, and we are happy to get the architect to provide an accurate drawing to show this if required.

We appreciate that all site circumstances can be materially different, but we would like to highlight that the Council do appear to be inconsistent in their decision making for developments including boundary treatments such as this and we have provided two recent case examples in the borough that they have approved and deemed to be acceptable. The development that has been approved and implemented at 300 Middleton Road, Heywood (24/00047/HOUS) includes the modernisation of the original dwelling house, and it also includes the erection of two new 1.8-metre-high solid steel frame and timber clad gates and some railings along the front boundary along with some laurel hedge planting. The 1.8m-high gates in this case were not considered to ***'constitute an obtrusive and incongruous feature which is wholly out of keeping with the prevailing character and appearance of the surrounding street scene and would result in undue visual harm in this regard'***. This is a green belt location with the adjoining and nearby properties all having low level boundary treatments and it would be fair to say that this development has a significantly greater impact on the local area than the proposed development that is the subject of this appeal would have.