

**R04**

**FH/TH/22/1672**

PROPOSAL: Erection of vehicle and pedestrian gates to front boundary  
(retrospective application)

LOCATION: 75 Gloucester Avenue MARGATE Kent CT9 3NP

WARD: Cliftonville East

AGENT: Mr John Elvidge

APPLICANT: Mr & Ms D & H Morgan & Wells

RECOMMENDATION: Refuse Permission

For the following reasons:

1 The gates, by virtue of their height, design and location, create a stark and highly prominent feature, incongruous with the prevailing open character of this part of the streetscene, and contrasting with the low boundaries and landscaped frontages found elsewhere. This has created in the solid development and the harmful enclosure of the site, with a blank and expansive appearance at street level that is considered to contribute to the dilution of a sense of place and welcoming character that otherwise existed in this location, contrary to the aims of paragraph 130 of the NPPF and policies SP35 and QD02 of the Thanet Local Plan.

#### SITE, LOCATION AND DESCRIPTION

Number 75 Gloucester Avenue is a detached bungalow on the northern end of Gloucester Avenue, which is a residential street adjacent to Palm Bay cliff tops. It has a front right projection to the northern side of the site, and an attached garage on the southern boundary. The dwelling has a larger set-back than those to the south, and does not follow the same front building line as the resultant streetscape.

It appears that for sometime most of the front of the site has been enclosed by a length of higher boundary wall along the street frontage, and internal higher walls between the garage and the front garden, resulting in a small singular off-street parking space to the front of the existing garage. It is not known when the higher front boundary or internal walls were erected, though Google images suggest they may have been in place since at least 2009. It appears that the former brick wall has been rendered more recently.

The front boundary wall was finished with a brick pier, followed by an opening between this and a similar pier on the southern side of the entrance. This space has now been enclosed with 1.8m high grey gates, comprising one set out double gates and one single gate. These are the developments sought to be retained through this application.

#### RELEVANT PLANNING HISTORY

FH/TH/22/1440 - Erection of vehicle and pedestrian gates to front boundary. Refused 14/12/2022 for the following reason:

"The gates, by virtue of their height, design and location, create a stark and highly prominent feature, incongruous with the prevailing open character of this part of the streetscene, and contrasting with the low boundaries and landscaped frontages found elsewhere. This has created in the solid development and the harmful enclosure of the site, with a blank and expansive appearance at street level that is considered to contribute to the dilution of a sense of place and welcoming character that otherwise existed in this location, contrary to the aims of paragraph 130 of the NPPF and policies SP35 and QD02 of the Thanet Local Plan."

### PROPOSED DEVELOPMENT

This application seeks planning permission for the retrospective retention of vehicle and pedestrian gates at a residential property in Margate. It is a resubmission of the previous refusal, and no changes are proposed since the application was last considered (FH/TH/22/1440). The applicant however has asked the Council to consider an alternative fallback position. This is something that should be the subject of a lawful determination rather than a resubmission but is considered briefly below.

### DEVELOPMENT PLAN POLICIES

SP35 - Quality Development  
QD02 - General Design Principles  
QD03 - Living Conditions  
TP06 - Car Parking

### NOTIFICATIONS

Letters were sent to neighbouring property occupiers and a site notice posted close to the site.

One letter of support has been received surrounding:

Off road parking and traffic improvements  
The development being no higher than former walls

### CONSULTATIONS

**KCC Highways:** The proposal does not meet the criteria for Highways involvement.

### COMMENTS

This application is reported to Planning Committee at the request of Councillor Towing in order for Members to consider whether any harm is caused to the character and appearance of the area as a result of the works that have been undertaken.

## **Principle**

The proposal relates to an existing residential dwelling and there is no in-principle objection to works within its curtilage.

The main considerations are the impact on the character and appearance of the surrounding area, the living conditions of neighbouring occupiers, highway safety and the fallback position.

## **Character and Appearance**

Paragraph 130 of the National Planning Policy Framework (NPPF) states decisions should ensure that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, sympathetic to local character and history, establish or maintain a strong sense of place, and optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development and create places that are safe, inclusive and accessible. Policy SP35 of the Thanet Local Plan outlines that new development will be required to be of a high quality and inclusive design as set out in Policies QD01 and QD02. Policy QD02 outlines that the primary aim of new development is to promote or reinforce local character and provide high quality and inclusive design that is sustainable in all other respects. Proposals should therefore relate to surrounding development, form and layout, be well designed, pay particular attention to context and identity of location, scale, massing, rhythm, density, layout and materials, and be compatible with neighbouring buildings and spaces. Any external spaces and landscape features should be designed as an integral part of the scheme.

The gates that have been installed feature solid panels and a dark coloured finish. They allow no views across the main principal facade of the host dwelling or its front curtilage, and save for glimpsed views of the gables, close off the site from the rest of the street. This is an area characterised by typically low front boundary treatments, with an open and spacious feel in the context of the cliff top and seaside location. Where fences or walls are higher, these are largely to corner properties where some level of privacy across side and rear gardens can be expected. Those with higher boundary treatment still retain some elements of an open frontage, and the works that have occurred across the application site are therefore in contrast with this established character. The higher front boundary walls, along with the higher internal walls, already meant that the site was at odds with the prevailing streetscape, and reference to the planning history for the site does not reveal that permission was given for these. However, they were established developments, and the internal walls set back from the highway met with an open gate set in a brick arch, that gave some small semblance of openness, and views across part of the frontage and the existing garage.

The gates that have been installed now further diminish the character and quality of the area by adding additional built form that creates a stark and highly visible feature, incongruous with the prevailing open character of this part of the streetscene, and contrasting with the low boundaries and landscaped frontages found elsewhere. This has created an inconsistent pattern of solid development and the harmful enclosure of the site, with a blank and

expansive appearance at street level that is considered to contribute to the dilution of a sense of place and welcoming character that otherwise existed in this location, contrary to the aims of paragraph 130 of the NPPF and policies SP35 and QD02 of the Thanet Local Plan, which seek to ensure that all works are inclusive, that they pay attention to context and identity of location, along with scale and massing, layout and materials, and are compatible with neighbouring spaces.

There remain some tall hedgerows along Gloucester Avenue, but these are not formalised development, and soft landscaping and urban greening have wider public benefits and a less prominent and contrasting aesthetic and appearance than solid panelled gates enclosing a dwelling.

Although the letter of support received indicates that the gates that have been installed are no higher than previous walls, they have an altered position and relationship with the host building and the street. Therefore, for this reason and those given above, the works are considered to be contrary to the aims of local and national planning policy.

### **Living Conditions**

Paragraph 119 of the NPPF states that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Paragraph 130 states that decisions should ensure development creates, inclusive and accessible and which promote health and well-being, with a high standard of amenity for future users. Policy QD02 of the Thanet Local Plan outlines that new development should be compatible with neighbouring buildings and spaces, and should be inclusive in its design for all users. It should improve people's quality of life by creating safe and accessible environments and promote public safety and security. Policy QD03 outlines that new development must not lead to unacceptable living conditions through overlooking, noise, vibrations, light pollution, overshadowing, loss of natural light or a sense of enclosure.

The gates that have been installed are set between two existing brick piers. They are not higher than those piers in any material way and given their location, inset from these, and away from neighbouring windows, the works are not considered to result in any significantly harmful impact upon neighbouring amenity.

### **Highways**

Policy QD02 of the Thanet Local Plan outlines that new development proposals should incorporate a high degree of permeability for pedestrians and cyclists and provide safe and satisfactory access for pedestrians, public transport and other vehicles. Policy TP06 outlines that proposals for development will be expected to make satisfactory provision for the parking of vehicles. Suitable levels of provision are considered in relation to individual proposals, taking into account the type of development proposed, the location, accessibility, availability of opportunities for public transport, likely accumulation of parking and design considerations.

The gates that have been installed do not alter the level of parking provision that is available on the site.

It appears they open inwards and therefore would not be likely to cause highway safety issues in terms of stopping on the highway. The gates are set back and whilst they are large in nature and likely to of themselves reduce visibility splays, they are set back from the highway beyond a path and grass verge, and therefore there would still be some visibility splays retained when entering and exiting the site onto the highway, albeit across a pedestrian path.

### **Fallback Position**

Schedule 2 Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out the permitted parameters for gates, fences and walls within the curtilage of different building types. For dwellings, a means of enclosure adjacent to the highway is permitted up to 1m in height. Development above this height requires planning permission. The gates that have been installed are stated to be 1.8m in height. As a result there is no fallback position for the works.

The applicant has submitted a document outlining that, in their view, they could move the existing gates back 2 metres, attaching them to a new wall replacing a former but now demolished internal wall, and this would be permitted development. The effect would be the same, and as a result the site would still appear enclosed with no views across it. As a result planning permission should be granted.

To first address the lawful position. The applicant contends that moving the gates back 2 metres and adding them to a new internal wall would not require planning permission. The reference to 2 metres back comes from a common planning enforcement metric which usually is that if a means of enclosure were moved 2 metres or more back from the highway, it would usually not be expedient to pursue formal action against it, in the generic sense, because 2 metre visibility splays would be retained and, therefore, where there is no harm to any highway safety, it would not be in the public interest to pursue formal action. This is not a commentary on the lawful position and is not set out anywhere in legislation. It is a rule of thumb used to determine immediate harm, not whether something requires planning permission. The matter at hand in determining the lawfulness of development of this kind is whether it is considered to be adjacent to the highway, and the meaning of the term adjacent has been debated many times by the courts and the Inspectorate. The general agreement has been that this must be a decision based on fact and degree and carefully assessed on individual cases.

The term "adjacent to a highway" replaced the former term "abutting on a highway" and seemingly increased the instances where it could be possible that a means of enclosure that did not directly touch a highway could still be considered to be adjacent to it and, therefore, subject to the 1m rule. Those that have the perceived function of forming a boundary between the highway and property, subject to a consideration of the fact and degree, could therefore fall short of the fallback position.

In this case, there are no exact plans before the Council indicating how the scenario for the stated "2m back" development would look, the overall heights concerned for internal walls and whether these would all be solid. On the basis of the information that is available and the indicative lines shown in the supporting statement, a further two sections of wall would be required and there would be a short space between the gates and the verge leading on to the highway. There would be no street furniture, natural planting or established trees encumbering adjacency. A footpath or verge can form part of the highway and there is no requirement that this be separated from an understanding of what the highway is according to previous appeal decisions. Therefore, the gates and new wall required to support them would be likely to be viewed as a formal boundary separation, with nothing preventing adjacency, and therefore permission would, on the balance of probabilities, be required.

The applicant has submitted during discussions with Officers, that the Blaby case demonstrates that 1 metre back from the highway is sufficient as to prevent adjacency. The 2007 appeal decision referred to is APP/T2405/C/07/2042800 concerning an enforcement notice issued by Blaby District Council against a timber fence erected on top of a brick wall and forms a side boundary. The decision and commentary in that case can be distinguished from this in that the gates and wall would be in a different location, would have a visual association with the highway, and would be for the purpose of creating a demarcation between the highway and the property rather than separating adjacent gardens.

Furthermore, the convoluted way in which the existing gates would need to be added to new walls, and then joined to rebuilt former walls, raises the question of the single act of development. Both the courts and the Planning Inspectorate have deliberated whether if one part of the development is not permitted by virtue of its height or location, would the other part(s) be permitted and the finding has been that operational development must be considered in its entirety and should not be subdivided into parts that constituted permitted development and other parts that did not (*Garland v Minister for Housing and Local Government* (1968) 20 P & CR 93). In *Simmonds v Secretary of State for the Environment and Rochdale MDCI* [1981] JPL 509 judgement was given in relation to the 1m rule on stepped boundary treatments and the court commented that, in their view, side walls should be considered to be part and parcel of a single act of development and would be part of the act of development in its entirety. This has been followed with subsequent appeal decisions by the Inspectorate who have also considered that the development of fencing (and therefore it follows walls) should be subject to the 1m rule for the entire length of the development, commenting in some cases that it would be illogical to treat the respective different parts in different ways.

Additionally the applicant's statement relies, in part, on the application of paragraph A.1(c), which sets out that it would not be permitted if the height of any gate, fence, wall or means of enclosure, maintained, improved or altered would exceed its former height. In this case the internal walls have been demolished. A total rebuild would, therefore, be likely to fall outside the scope of this paragraph.

Finally on the matter of a fallback, the courts have taken the view previously that any such position should be realistic and not theoretical. In this case the applicant's agent has set out that there is no intention to alter the scheme or implement this fallback and this is therefore a material consideration.

In terms of the stated impact, Officers do not agree with the view that there is a lawful permitted development fallback here, however if there was it is accepted that in part the presence of a high means of enclosure would still go some way to obscuring views across the frontage. However, the set-back previously of any such walls or means of enclosure was much larger, there was some sense of openness created by the form and location of boundary treatments, and there was some sense of relief from physical built development on the entrance to the site. It was not enclosed in the same way and cut off or unwelcoming, and did not give the impression of a gated community or physical separation from the rest of the street in the way that the current arrangement does. If the fallback were accepted, a 2m or more set-back, with or without other internal walls, would still create some relief on the main entrance to the site and break up the expansive and blank run of boundary walls and enclosures. Therefore, it is recommended that the application be refused.

### **Conclusion**

The works that have been undertaken are considered by Officers to create a harmful impact on the character and appearance of the area, enclosing the application site and being contrary to the otherwise open and welcoming character of the street. There is not considered to be any lawful fallback position that would change this, and therefore the application should follow the former decision, and be refused.

### **Case Officer**

Vicky Kendell

TITLE:

FH/TH/22/1672

Project

75 Gloucester Avenue MARGATE Kent CT9 3NP

