

<b>Application No:</b>	<b>23/00091/FULH</b>	Author:	Julia Dawson
Date valid:	20 February 2023	☎:	0191 643 6314
Target decision date:	17 April 2023	Ward:	Whitley Bay

Application type: Householder Full application

**Location: 160 Whitley Road, Whitley Bay, Tyne and Wear, NE26 2LY**

**Proposal: To modify pre-existing boundary treatment to add fence above 1m and some extension of three brick corner pillars (increase in pillars)**

Applicant: Mark Mulvaney

**RECOMMENDATION:** Application Refused

## **INFORMATION**

### **1.0 Summary Of Key Issues & Conclusions**

#### 1.0 Main Issues

The main issues in this case are;

- The impact upon residential amenity.
- The impact on the character and appearance of the site and the surrounding area.
- The impact on the highway.

1.2 Consultation responses and representations received as result of the publicity given to this application are set out in the appendix to this report.

#### 2.0 Description of the Site

2.1 The site to which the application relates is a two-storey semi-detached dwelling located within Whitley Bay town centre. The attached dwelling, No.4 Percy Road, faces in a westerly direction, whereas the host property has a different orientation facing in a southerly direction onto Whitley Road. Due to its corner position the host dwelling abounds Percy Road, Whitley Road, and the access road which runs along the eastern boundary of the property. Each of these boundaries abuts the pavement/highway. On the opposite side of the access to the east is the Whitley Bay Big Local building (previously the Job Centre), this fronts directly onto the pavement with no front curtilage. On the opposite side of Percy Road to the west is 'Grapes Café', which faces directly onto the pavement on Whitley Road. It has an external seating area at the junction with Percy Road, which is enclosed by a 0.7m high wall (approx.) and

1.8m high brick pillars (approx.) along the footpaths with Whitley Road and Percy Road.

2.2 Directly opposite the host property on Whitley Road is a terrace of two storey buildings, these are commercial (mainly restaurants) at ground floor level with access gained directly from the pavement.

2.3 Percy Road is a residential street and the dwellings on this street have a variety of low-level boundary treatments enclosing their front curtilages. The front boundary of the adjoining property, No.4, is enclosed by a low-level fence and brick pillars, which delineate the vehicular access point to the front garden.

### 3.0 Description of the Proposed Development

3.1 The proposal relates to an application for planning permission to make alterations to the existing (unlawful) fence along the western and southern boundaries of the host site. The original boundary treatment (pre-2014) consisted of a low-level brick wall to the western, southern and part eastern boundaries with dense shrubbery to all boundaries, along with a higher-level double gate along the eastern boundary to the access road/Back Lane. A centrally positioned low-level pedestrian gate originally provided access from Whitley Road.

3.2 In 2014 high level closed boarded timber fencing was installed to the northern, western, southern and eastern boundaries. This was placed immediately behind the existing brick walls and pillars. The fence projects upwards for approximately 1.21m above the brick wall (which has a height of between 0.67m and 0.93m), resulting in an overall combined height of between 1.89m and 2.15m from ground level. The height differs due to a slope in the ground level. A higher-level pedestrian gate was also installed, and the central brick pillars located either side of the gate were increased in height.

3.3 The current application relates to proposed works to the existing unlawful boundary treatment to increase the height of the existing corner pillars and slightly reduce the height of the fencing to match the increased height of the pillars. The unlawful pedestrian gate, central pillars and higher-level fence to the front part of the eastern boundary are to be retained as existing. Specifically, the corner pillars and fence are proposed to be amended as follows:

#### 3.4 Percy Road frontage:

- Pillar adjacent to boundary with No.4 Percy Road to be increased in height from 1.27m to 2m.
- Reduction in overall fence height from between 1.89m and 2.09m (right to left) to 1.8m and 2m (right to left).

#### 3.5 Whitley Road frontage:

- Pillar at north-western corner to be increased in height from 1.1m to 1.8m.
- Pillar at corner adjacent with access lane to be increased in height from 1.42m to 2.06m.
- Reduction in overall fence height from between 1.89m and 2.15m (left to right) to 1.8m and 2.06m (left to right)

#### 4.0 Relevant Planning History

##### 4.1 Application Site:

14/01093/FULH – Remove existing bushes and conifers along boundary of property (Percy and Whitley Road) and install wooden board fence along all perimeters increasing height of existing brick walls boundaries. Replace existing wooden fence above wall on perimeter of Percy back road, fence to sit behind wall on Percy and Whitley Road perimeters (Retrospective) – Refused 10.10.2014. Dismissed on Appeal (APP/W4515/D/15/2230028) 21.03.2015.

16/00017/S174 - Unauthorised erection of a boundary enclosure over 1 metre in height and adjacent to a highway (appeal against enforcement notice) – Appeal Dismissed (APP/W4515/C/16/3153229) 14.12.2016

##### 4.2 1 Percy Road and 162 Whitley Road:

19/00282/FUL - Change of use and subdivision of 162 Whitley Road from a tattoo parlour (sui generis use class) to Use Class A3 to provide an extension to the existing Grapes Café at 164 Whitley Road and a living room for the residential dwelling at 1 Percy Road (i.e. reinstate the original floor plan of this dwelling). New shop front facing Whitley Road. Outside seating area to be created for Grapes Café, to be enclosed by new boundary treatment. – Approved 03.05.2019

#### 5.0 Development Plan

##### 5.1 North Tyneside Local Plan (2017)

#### 6.0 Government Policy

##### 6.1 National Planning Policy Framework (NPPF) (July 2021)

##### 6.2 National Planning Practice Guidance (NPPG) (As amended)

6.3 Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in the determination of all applications. It requires LPAs to apply a presumption in favour of sustainable development in determining development proposals. Due weight should still be attached to Development Plan policies according to the degree to which any policy is consistent with the NPPF.

## **PLANNING OFFICERS REPORT**

### 1.0 Main Issues

The main issues in this case are;

- The impact upon residential amenity.
- The impact on the character and appearance of the site and the surrounding area.
- The impact on the highway.

1.2 Consultation responses and representations received as result of the publicity given to this application are set out in the appendix to this report.

## 2.0 Background

**2.1 April 2014:** LPA Officers received a complaint regarding the installation of a high level fence adjacent to the highway at the application site. An investigation took place and an officer visited the site. It was found that a fence in excess of 1m in height had been constructed adjacent to the public highway without planning permission. A letter was subsequently sent to the owner of the application site to advise them of the findings of the investigation and invite the submission of a retrospective planning application.

**2.2 July 2014:** Planning application (14/01093/FULH) was submitted on 15 July 2014.

**2.3 October 2014:** Application 14/01093/FUL was refused on 10 October 2014 as it was considered that the fence in question was unacceptable due to its impact on visual amenity and highway safety.

**2.4 February 2015:** The applicant submitted an appeal against the refusal of planning permission to the Planning Inspectorate (APP/W4515/D/15/2230028).

**2.5 March 2015:** The appeal was dismissed on 21 March 2015.

**2.6 August 2015:** Following on from the dismissal of the appeal the LPA allowed the applicant reasonable time to remove the fence. However, it remained in situ and, as such, officers wrote to the applicant to request that the fence be removed.

**2.7 2016:** A planning enforcement notice was served on the applicant requiring the unauthorised erection of a boundary enclosure over 1m in height and adjacent to a vehicular highway to be: 1. Reduced in height around the perimeter enclosure, including the gate and pillars to no more than 1m in height measured above the natural ground level; 2. The reduced brick piers with stone caps and the timber fence to be neatly finished, and; 3. All debris resulting from compliance with the notice to be removed from land and disposed of accordingly. The enforcement notice took effect on 25 July 2016. The applicant submitted an appeal against the enforcement notice (APP/W4515/C/16/3153229) which was validated by the Planning Inspectorate on 27 July 2016.

**2.8 December 2016:** The appeal was dismissed on 14 December 2016 and the enforcement notice was upheld.

**2.9 2017 - 2020:** The Council prosecuted the applicant for failing to comply with the enforcement notice. The Magistrates found the applicant guilty in March 2020 and imposed a fine.

**2.10 January 2023:** The applicant submitted the current application in order to make changes to the boundary treatment at the application site as set out within this application.

## 3.0 Residential Amenity

**3.1 Paragraph 185 of NPPF** states that planning decisions should ensure that new development is appropriate for its location taking into account the likely

effects (including cumulative effects) of pollution. In doing so they should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development, and avoid noise giving rise to significant adverse impacts on health and quality of life.

3.2 The NPPF states that planning should always seek to ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

3.3 Policy S1.4 of the Local Plan states that development proposals should be acceptable in terms of their impact upon local amenity for new or existing residents and businesses, adjoining premises and land uses.

3.4 DM5.19 states that development proposals that may cause pollution either individually or cumulatively of water, air or soil through noise, smell, smoke, fumes, gases, steam, dust, vibration, light, and other pollutants will be required to incorporate measures to prevent or reduce their pollution so as not to cause nuisance or unacceptable impacts on the environment, to people and to biodiversity. Development that may be sensitive (such as housing, schools and hospitals) to existing or potentially polluting sources will not be sited in proximity to such sources. Potentially polluting development will not be sited near to sensitive areas unless satisfactory mitigation measures can be demonstrated.

3.5 Policy DM6.1 of the Local Plan states that proposals are expected to demonstrate a positive relationship to neighbouring buildings and spaces; a safe environment that reduces opportunities for crime and antisocial behaviour; and a good standard of amenity for existing and future residents and users of buildings and spaces.

3.6 One objection has been submitted by the occupant of a neighbouring dwelling who has advised that prior to the erection of the fence, the security and privacy of the boundaries was provided naturally by mature trees, hedges and bushes which were felled prior to the erection of the fence.

3.7 As set out earlier within this report, the existing fence is unauthorised and has been the subject of two appeals, both of which were dismissed by the Planning Inspectorate. By way of the current application, the applicant is seeking to retain the high-level pedestrian gate and associated pillars and to substantially increase the height of the corner pillars whilst marginally decreasing the height of the fence to match the pillar heights. This will result in the fence and corner pillars being between 1.8m and 2m in height. The applicant considers that this is acceptable due to a change in local and personal circumstances and that a perimeter of at least 1.8m (at the lowest and most exposed point) is required to provide the necessary security, privacy, prevent litter discarding, infestations and pollution reduction.

3.8 The applicant has stated that since the current boundary treatment was installed (in 2014) there have been significant changes in the area including a change in the number and type of commercial establishments in close proximity to the application site. The LPA acknowledges that several of the current

operators did commence trading after 2014. However, prior to this there were existing restaurants, takeaways and a gymnasium in this town centre location, occupying several of these premises.

3.9 In addition, since the last appeal decision (the enforcement notice appeal, which was dismissed in December 2016) there has been little change to nearby commercial operators. Shikara, Elder and Wolf, Shampan and Kismet were all in use as restaurants prior to December 2016. The most notable changes to take place since 2016 are the opening of Pepe's takeaway and restaurant, which occupies the former Ming Cottage Chinese restaurant, the Whitley Bay Big Local, which occupies the former Job Centre, and the first floor Shampan Lounge Gin and Cocktail Bar. A small external seating area has also been constructed to the Grapes Café on the opposite corner of Percy Road.

3.10 The applicant argues that there has been an increase in footfall and vehicular traffic, taxis, delivery drivers (particularly since the pandemic), noise, waste, mechanical ventilation, cooking fumes, and delivery vehicles. It is acknowledged that the pandemic would likely have resulted in a temporary increase in delivery drivers attending these businesses at a time when the roads were quieter, and customers were staying at home and not attending the premises. However, the businesses are all now open to the public and it is likely this has reduced the takeaway element and associated deliveries. Background noise levels will have increased as a result of the pandemic restrictions being lifted, similar to pre-pandemic levels, meaning that lone delivery vehicles will not appear so prevalent.

3.11 The LPA is not aware of any new mechanical extraction equipment which has been installed to any premises in the immediate vicinity of the application site, i.e., Grapes Café or the Whitley Bay Local, which would result in increased noise or cooking smells for the occupants of the application site. The installation of any new external plant or machinery to the Whitley Bay Big Local building is strictly controlled by planning condition attached to approval 22/00891/FUL, which will ensure that, if any is installed in the future, it will not result in disturbance to the occupiers of the surrounding residential dwellings, including 160 Whitley Road. Activities at the Whitley Bay Big Local building are also controlled in order to protect residential amenity, i.e. approved roof terrace (hours of use are restricted and screening required along north-western boundary towards access lane/Back Lane), no music to be played, external lighting controlled, construction hours, dust suppression measures etc.

3.12 As set out above, whilst there have been some changes as would be expected in such a town centre location, there is limited material change to the area surrounding the application site since the Inspector's enforcement notice appeal decision in December 2016. With regard to security and litter, it is noted that in his decision he stated the following:

*"I have specifically taken into account the appellant's concerns regarding security and litter and whilst acknowledging that these are very valid and understandable concerns, I do not consider that they are sufficient to outweigh the harm caused to visual amenity by the development as carried out. In any case, there are many other ways to ensure security including lighting; closed circuit television and*

*landscaping (natural planted screening as opposed to solid walls or fencing) which would not require planning permission”.*

3.13 In the original planning application appeal decision (March 2015), the Inspector also noted the town centre location and character of the area, specifically referencing the job centre (now Whitley Bay Big Local), health centre, public car park, and commercial properties, including those opposite the application site and stated the following:

*“I recognise that a high fence increases security and prevents litter being deposited in the property. However, whilst there are again valid considerations, they do not outweigh the harm to visual amenity caused by the fence. Similarly I do not consider that the inability to retain a perimeter fence of this height significantly prejudices the right to a private life.”*

3.13 The applicant has provided some information with regard to typical traffic data to demonstrate the times at which the roads are most congested, which he states result in increased noise and pollution. However, no evidence has been provided to demonstrate that this situation is worse than when the original planning application was refused in 2014 (and dismissed on appeal in 2015), or when the enforcement notice appeal was dismissed in 2016. There is no evidence that noise levels or air pollution levels have increased or that, if this is the case, the only way to address this would be via a high level closed boarded timber fence and high-level brick pillars. As suggested by the Planning Inspector, as well as advice previously given to the applicant by the LPA and as noted by the objector, natural planted screening (as originally existed) could provide mitigation for all these concerns.

3.15 With regard to all of the above, it is considered the proposed revisions to the existing unauthorised boundary treatments are unacceptable due to their harmful impact on the character and appearance of the host site (as discussed in the following section). The justification that the applicant has set out in support of the application does not outweigh the harm that will result from the proposed works as set out within this application or for the retention of the existing unlawful boundary treatment in its current form.

3.16 Members must determine whether the proposed boundary treatment is acceptable. Officer advice is that the applicant’s concerns are not sufficient to outweigh the harm caused to visual amenity either by the proposed development, or as carried out.

#### 4.0 Character and Appearance

4.1 NPPF states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Development should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping; be sympathetic to the local character and history, including the surrounding built environment and landscape setting; and establish or maintain a strong sense of place.

4.2 Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking

into account any local design guidance and supplementary planning documents such as design guides and codes (NPPF para. 134).

4.3 Policy DM6.1 of the Local Plan states that applications will only be permitted where they demonstrate high and consistent design standards. Designs should be specific to the place, based on a clear analysis the characteristics of the site, its wider context and the surrounding area.

4.4 The Council's Design Quality SPD applies to all planning applications that involve building works. It states that care should be taken to limit the need for long sections of new walls or high close boarded fences, especially where these bound public areas. Where new boundary walls/fences are required, their design should match those used elsewhere locally and in particular comprise of materials and detailing which relate to the context of the site.

4.5 Generally, the front of a building will be the most sensitive to alteration as it is the elevation which is most visible to the public. Front gardens form an important part of the character and appearance of an area, which can suffer significant harm through the erection of inappropriate boundary enclosures.

4.6 The host property occupies a corner plot and is quite unusual in that it faces onto a part of Whitley Road which is commercial in nature. As such, there are no other frontages of similar residential dwellings within the immediate street scene along this part of Whitley Road to which the host property can be directly compared. Nonetheless, this does not render the proposed fence acceptable in this location, and the impact upon visual amenity of the street scene must still be taken into account.

4.7 One objection has been received. The objector has stated that they consider the fence to be an eyesore, which is completely out of character to the area due to its height and over-bearing presence. They have also referred to the growth of unsightly green algae on the external fencing boards. These concerns are noted.

4.8 The applicant has provided reasons why he considers the fence necessary and these have been set out in the previous section. With regard to the impact on the character and appearance of the site and surrounding area, the applicant considers that the proposed boundary treatment is similar to other boundary treatments, including the enclosure to the external seating area at the Grapes Cafe, and those along the access lane/Back Lane. The applicant has also drawn attention to high-level fences along Whitley Road towards the junction with John Street, Victoria Avenue and Station Road.

4.9 Firstly, with regard to the Grapes Cafe. The approved enclosure is a low-level 0.7m high wall with brick pillars which are approximately 1.8m in height. The approved plans show that the gaps in between the pillars will be infilled with open style wrought iron black railings with a maximum height of approximately 1.7m from ground level. The lengths of this boundary are also significantly shorter than the application site and this is entirely different to the high level closed boarded timber fence boundary treatment, which is subject of this application. The railings at the Grapes Cafe, when installed, will ensure that the open nature of the boundary is retained and will avoid the harmful impact which

results from long sections of high close boarded fences, especially where these bound public areas, as is the case for the proposed development which is directly in conflict with advice set out in the Council's Design Quality SPD.

4.10 It is also considered that the impact of the high-level boundary treatment proposed at the application site cannot be compared to the high-level boundary walls and fencing which enclose rear yards facing onto the narrow access road. These do not enclose frontages of a dwelling located at a prominent corner junction within a busy front street scene and are not comparable.

4.11 The references to high level fences in the wider surrounding area are noted. However, again, it is not considered that these are directly comparable to the application site. It is noted that no specific addresses have been provided and therefore the LPA is unable to confirm whether the fences in question have planning permission, although officers can confirm that there do not appear to be any planning approvals for such development to residential dwellings on Whitley Road in recent years.

4.12 The impact of the proposed development on the immediate surrounding street scene and the existence of other fences to properties in the surrounding area and wider Borough were also considered by the Planning Inspector in both of the previous appeals relating to the application site. In the 2015 planning application appeal decision, the Inspector stated the following:

*"This is an area where high level fences are not normally encountered....."*

*There are more commercial properties opposite the appeal site, then, further to the south east, substantial terraced houses set back behind small front gardens which typically have low frontage walls. The pattern of houses set behind small gardens with low frontage walls is repeated on Percy Road. When seen in this context the high fence enclosing the appeal site appears as an incongruous and intrusive element in the street scene.*

*The appellant refers to other elements in the street scene which detract from its appearance. Whilst this is a valid observation many of the unattractive aspects are not amenable to planning control. Importantly, the fact that a scene may contain some unattractive elements does not justify abandoning efforts to maintain or improve amenity. In this regard I am satisfied that the fence is visually harmful and that permission should not be granted. The appellant also refers to fences granted planning permission in other locations. I do not have full details of these other fences or what considerations led to their approval but my decision must in any event reflect the character of this particular location."*

4.13 In the 2016 planning enforcement notice appeal decision the Planning Inspector stated the following:

*"Having seen the sections of fencing on top of the brick walls, I share the concerns of the LPA and those of the previous Inspector. As the latter stated this is a part of Whitley Bay where boundary fences are not normally encountered. As one travels past the site, towards the town centre, the commercial premises extend to the edge of the footways (pavements) and to the south east there is a*

*health centre and a car park both with trees to their frontages. The roads at right angle, are residential in character where the frontage boundaries are generally low.*

*When seen in its overall context I agree with the previous Inspector that the high fence/wall sections surrounding the appeal property are incongruous and intrusive elements within the street scene. When viewed from Whitley Road (from both directions), the fencing appears as a stark, alien and visually intrusive built form against the traditional boundary treatments in the immediate vicinity.”*

4.14 In officer opinion the proposed works to the existing unauthorised boundary treatment will result in a highly incongruous and dominating feature within the street scene of this part of Whitley Road and Percy Road, appearing highly detrimental to the appearance of the site. The position of the application site exacerbates the problem as it is located on a prominent corner plot. There have been no significant material changes in the area surrounding the application site since planning permission was previously refused, or since the appeals were dismissed, which would change this position.

4.15 The proposed works to the pillars and the fence will not address the harm which has resulted from the existing unlawful boundary treatment. The proposed works will remain out of keeping with the predominately low boundary treatments to the front of properties on Percy Road as they will be seen in the context of the front gardens of these residential properties. It is considered that the large expanse of high, close boarded fencing will continue to have a significant detrimental impact on the appearance of the site and the street scene.

4.16 Members need to consider whether the proposed design is acceptable or whether it would harm the character and appearance of the surrounding area. It is officer advice that for the reasons set out above and taking into account the previous two appeal decisions for similar development to that which is proposed as part of the current planning application, the proposed works are unacceptable.

## 5.0 Highway Impact

5.1 NPPF states that transport issues should be considered from the earliest stages of plan-making and development proposals. It states that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.

5.2 All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

5.3 Paragraph 111 of NPPF states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5.4 Local Plan Policy DM7.4 New Development and Transport states that the Council and its partners will ensure that the transport requirements of new development, commensurate to the scale and type of development, are taken into account and seek to promote sustainable travel to minimise environmental impacts and support residents health and well-being.

5.5 The Transport and Highways SPD set out the parking standards for new development.

5.6 A local resident has objected, stating that the existing fence is a danger to pedestrians approaching the junction of Percy Road and Whitley Road as they have no visibility of approaching vehicles from Percy Road. This concern is noted. However, the original planning application (14/01093/FULH) was refused on similar highway safety grounds, and whilst the Planning Inspector agreed with the LPA that the high fence limits visibility for vehicles emerging from Percy Road and Victoria Avenue, he did not consider there was such a sufficient conflict with local plan policy for this to be a decisive objection given that the application site previously had a high level hedge which would have imposed a similar restriction on visibility.

5.7 The Planning Inspector who subsequently dealt with the enforcement notice appeal (APP/W4515/C/16/3153229), also stated that, "*There is clearly no issue regarding highway safety.*". This would again apply to the current application whereby the fence is proposed to be slightly reduced in height.

5.8 Members must determine whether the proposed works to the boundary treatment at the application site are acceptable in terms of their impact on vehicular and pedestrian safety. Officer advice is that the proposed works are acceptable in this regard.

## 6.0 Local Financial Considerations

6.1 Paragraph 11 of National Planning Practice Guidance states that Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local financial consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) defines a local financial consideration as a grant or other financial assistance that has been, will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments) or sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy.

6.2 Whether or not 'a local financial consideration' is material to a particular decision will depend on whether it could help make the development acceptable in planning terms. It is not considered that there are any local financial considerations material to this application.

## 7.0 Other Matters

7.1 In determining this application, Members must have regard to the public sector equality duty (PSED) under section 149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions). The PSED must be considered as a relevant factor in making this decision but

does not impose a duty to achieve the outcomes in s.149, it is only one factor that needs to be considered and may be balanced against other relevant factors.

7.2 The applicant has stated that the proposed high level boundary treatment is required in order to meet their personal circumstances. The PSED, under s.149 of the Equality Act 2010 requires the LPA, in considering and determining this planning application, to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not. It is not clear from the details provided with the planning application that the occupant/s of the property has protected characteristics for the purposes of applying the PSED.

7.3 However, consideration has been given to the need for the occupant/s of the host dwelling to have a high-level secure boundary. No substantive evidence has been presented showing that an alternative proposal could not deliver similar benefits for the occupant/s and result in less harm, i.e., secure open railings or secure lower-level boundary treatment. Suggestions were also made by the Planning Inspectors in their appeal decisions. Therefore, the LPA has given weight to the need for the proposed boundary treatment, but it does not outweigh the harm that this would result in with regard to the character and appearance of the application site and surrounding area.

7.4 Members should also be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority to act in a manner that is incompatible with the European Convention on Human Rights (ECHR). Members are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property).

7.5 In his determination of the 2016 planning enforcement notice appeal, the Planning Inspector noted the applicant's argument that *"the fence is required for security reasons and that it is essential to him under Article 8 of the European Court on Human Rights (ECHR)"*. However, the Inspector concluded that, *".....the need to comply with the requirements of the (enforcement) notice are proportional and necessary in order to safeguard the amenities of this part of Whitley Bay in the public, rather than private interest and with regard to his rights under the ECHR."* In summary, it is not considered that the recommendation to refuse permission in this case interferes with the applicant's right to respect for their private and family life.

## 8.0 Conclusion

8.1 The proposed works will result in significant harm to the appearance of the site, the street scene and the character of the area. Refusal is recommended.

**RECOMMENDATION:     Application Refused**

## **Conditions/Reasons**

1. The application site occupies a prominent position at the corner of Whitley Road and Percy Road. The proposed high-level closed boarded timber fencing and high-level brick pillars will appear highly incongruous in this part of the Whitley Road street scene, and are out of keeping with the low level boundary treatments to the front of properties on Percy Road. The proposed boundary treatment is out of keeping with the character of the area and results in significant harm to the street scene due to its height, position and close boarded design. The proposal fails to comply with policies S1.4 and DM6.1 of the North Tyneside Local Plan 2017, the Design Quality SPD and National Planning Policy Framework 2021.

### **Statement under Article 35 of the Town & Country (Development Management Procedure) (England) Order 2015):**

Prior to the submission of the planning application and following on from a previous refusal of planning permission and two unsuccessful appeals to the Planning Inspectorate, the Local Planning Authority offered solutions to the applicant in order to make the development acceptable. The applicant was, however, unwilling to amend the plans. Without these amendments the proposal would not improve the economic, social and environmental conditions of the area and therefore does not comprise sustainable development. In the absence of amendments or conditions which could reasonably have been imposed to make the development acceptable it was not possible to approve the application. The Local Planning Authority has therefore implemented the requirements in Paragraph 38 of the National Planning Policy Framework.



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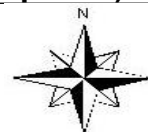
**Location: 160 Whitley Road, Whitley Bay, Tyne And Wear, NE26 2LY**

**Proposal: To modify pre-existing boundary treatment to add fence above 1m and some extension of three brick corner pillars (increase in pillars)**

Not to scale

Date: 29.03.2023

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**Consultations/representations**

1.0 Ward Councillors

1.1 Councillor John O'Shea (Whitley Bay Ward)

In the event that the above application is not supported by Planning officers, I request that the application, because of its previous history, be considered by the Planning Committee.

1.2 Representations

1no. objection has been submitted; this is set out below:

- The fence surrounding 160 Whitley Road is completely out of character to the area due to its height and over-bearing presence. It is an eyesore. Negatively and adversely impacts surrounding properties. Encourages the growth of unsightly green algae on the external fencing boards.
- It is a danger to pedestrians approaching the junction of Percy Road and Whitley Road as they have no visibility of approaching vehicles from Percy Road.
- Prior to the erection of the fence, the security and privacy of the boundaries was provided naturally by mature trees, hedges and bushes which were felled prior to the erection of the fence. Neither planning permission or neighbour consultations were sought at the time, prior to the works being carried out.
- Subsequently, this fence has previously been refused (retrospective) planning permission, had an appeal dismissed and there have been three enforcement notices issued to remove the fence, one currently outstanding, with no enforcement or corrective action taken to date.