

# GLOUCESTER CITY COUNCIL - DEVELOPMENT CONTROL

Committee:	Planning
Date:	6 <sup>th</sup> February 2024
Address/Location:	36 Denmark Road
Application No:	23/00121/FUL
Ward:	Kingsholm & Wotton
Expiry Date:	14 <sup>th</sup> November 2023
Applicant:	Holmleigh Care Ltd
Proposal:	Erection of fence to front and side of property frontage, and bin store (altered design to existing front fencing)
Report by:	Adam Smith
Appendices:	Site location plan Existing and proposed front elevation

## Site location plan



## 1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 The application site is on the north side of Denmark Road within a row of detached properties. The site fronts immediately onto Denmark Road to the south. To the east is a 20<sup>th</sup> century two storey property, notably it has a vehicular driveway at the rear side. Immediately to the east of the application property is an access lane (Mermaid Close) to residential properties to the north of the site, behind nos. 34 and 36 Denmark Road. To the west is a two storey property with an open parking area to the whole frontage. It appears to be in a residential use of some form.
- 1.2 The application site comprises of a three storey period property, with the third storey in the roof space. It is of red brick construction with timber black and white detailing to the front roof gables, and bay windows to front. It is understood to be used as a class C2 residential care home for persons with learning difficulties. The property also includes associated land to front and rear. At the front there is a front yard, containing two large trees. It is enclosed by a solid timber panel fence. This is 2.1m tall (as measured on site) along the frontage and was erected without planning permission. There is a central pedestrian gate at the road frontage and on the left hand side of the frontage a gate to the bin store, which is behind the fence at the front west corner. On the east side the fence returns alongside Mermaid Close up to the existing building, and there are double gates within this part of the fence, onto Mermaid Close.
- 1.3 The proposal is for the retention of a front fence but in a revised arrangement with the central frontage section reduced down to c.1m tall. As such the arrangement would be c.2m tall to the side boundaries and turning into the front boundary, then sloping down to the middle 1m tall part. The application includes the frontage fence, the fence to the east side alongside Mermaid Close, and the bin store structure in the west/front corner. The application is not for the west side fence, which the applicant asserts is lawful due to being in place for over 10 years.
- 1.4 The application has been referred to the Planning Committee by a ward councillor.

## 2.0 RELEVANT PLANNING HISTORY

Application Number	Proposal	Decision	Decision Date
44/13465/HIST	P/150/50:- CHANGE OF USE FROM NURSING HOME TO POLICE HOSTEL.	Approved	19.09.1950
44/13467/HIST	P/895/68:- DEMOLITION OF UTILITY ROOMS AND ERECTION OF KITCHEN EXTENSIONS AND WARDENS LIVING ROOM.	Approved	12.11.1968
99/00341/COU	Change of use from hotel (C1) to home for people with learning difficulties(C2)	Granted subject to conditions	09.08.1999
01/00802/FUL	Erection of eight bedroom residential care unit with ancillary facilities and laying out of car parking	Refused	05.03.2002
02/00372/FUL	Erection of residential care unit (8 bedrooms) with link (to 36 Denmark Road).	Withdrawn	19.06.2002
03/00204/FUL	Erection of 3 dwelling houses and garages. Alterations to existing vehicular access. (Amended Proposal)	Refused (*allowed on appeal)	06.01.2004

04/01226/FUL	Alteration of existing vehicular access to No.36 Denmark Road and rearrangement of parking area to Nos.36-38 Denmark Road	Granted subject to conditions	05.11.2004
05/01007/FUL	Erection of a dwelling house served off modified access arrangement to Denmark Road. (*house behind no. 34)	Granted subject to conditions	14.11.2005
15/00810/FUL	Retrospective application to retain boundary fence between 36 and 38 Denmark Road. (*this is farther back into the rear garden area on the west side)	Granted subject to conditions	24.09.2015
22/01158/FUL	Construction of replacement entrance porch	Refused	6.9.2023

### 3.0 RELEVANT PLANNING POLICY

3.1 The following planning guidance and policies are relevant to the consideration of this application:

#### 3.2 National guidance

National Planning Policy Framework (NPPF) and Planning Practice Guidance.

#### 3.3 Development Plan

**Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (Adopted 11 December 2017)**

Relevant policies from the JCS include:

SD4 – Design requirements

SD8 – Historic Environment

SD14 – Health and environmental quality

INF1 –Transport network

#### 3.4 City of Gloucester Local Plan (Adopted 14 September 1983)

The statutory Development Plan for Gloucester includes the partially saved 1983 City of Gloucester Local Plan. Paragraph 219 of the NPPF states that ‘...*due weight should be given to (existing policies) according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).*’ The majority of the policies in the 1983 Local Plan are out-of-date and superseded by later planning policy including the NPPF and the Joint Core Strategy. None of the saved policies are relevant to the consideration of this application.

#### 3.5 Gloucester City Plan

The Gloucester City Plan (“City Plan”) was adopted January 2023 and provides policies addressing local issues and opportunities in the City. Relevant policies include:

A1 – Effective and efficient use of housing, land and buildings

D1 – Historic environment

D2 – Non designated heritage assets

F1 – Materials and finishes

G1 – Sustainable transport and parking

#### 3.6 Other Planning Policy Documents

**Gloucester Local Plan, Second Stage Deposit 2002**

Regard is also had to the 2002 Revised Deposit Draft Local Plan. This has been subjected to two comprehensive periods of public and stakeholder consultation and adopted by the Council for development control purposes. No policies are relevant to this application.

### 3.7 **Supplementary Planning Guidance/Documents**

#### Denmark Road Conservation Area Appraisal

All policies can be viewed at the relevant website address:- national policies:

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Gloucester City policies:

<http://www.gloucester.gov.uk/resident/planning-and-building-control/planning-policy/Pages/current-planning-policy.aspx>

### 4.0 **CONSULTATIONS**

4.1 The **Conservation Officer** recommends that the application is refused due to the visual harm to the character of the Conservation Area.

4.2 The **Civic Trust** considers the colour and height of the current fence to be out of keeping. The Trust considers that a lower treatment in a more traditional colour would be more in keeping.

4.3 The **Highway Authority** recommends deferral and stated that the proposed frontage and east side fence along Mermaid Close needs to be reduced in height to 600mm to maintain visibility.

### 5.0 **PUBLICITY AND REPRESENTATIONS**

5.1 Neighbouring properties were notified and press and site notices were published.

6 comments have been received and may be summarised as follows:

- Object to height, colour and materials of the fence.
- Site is in Conservation Area.
- Not in keeping with environment.
- Not commensurate with adjoining/locally found front fencing (which are all lower).
- Not comparable with any other property on the road.
- Hides the attractive building behind from view.
- East side fence is not historic as claimed and should be changed in line with the other fences.
- Side fence only screens another fence.
- As fence to front can be reduced, there is no need for such a high fence to side.
- Fence impacts on vision for residents of properties to rear using the lane, and pedestrians. Risk to all users.
- Tight turn into the side entrance. Minibus reverses out onto the main road with no vision. Hits the fence/tree opposite.
- Numerous near misses.
- Fence adjoining Mermaid Close must be lower.
- East side fence was erected at same time as fence to south and west sides. Denmark Road frontage had a low fence like nearby properties and east boundary was unfenced until after September 2021.
- Front fence is now acceptable as per the plans. Panels should be natural wood grain colour rather than ship grey.
- Still a high fence to the east/front which is a new development and doesn't appear there previously. Would be much better if it was reduced to the same height as the proposed front fence. Quality of vehicle gate needs to be robust.

5.3 The application can be viewed on: [Simple Search \(gloucester.gov.uk\)](#) using the application

reference.

## 6.0 OFFICER OPINION

### 6.1 *Legislative background*

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Local Planning Authority to determine planning applications in accordance with the Development Plan, unless material considerations indicate otherwise.

- 6.2 Section 70(2) of the Town and Country Planning Act 1990 (as amended) states that in dealing with a planning application, the Local Planning Authority should have regard to the following:
- a) the provisions of the development plan, so far as material to the application;
  - b) any local finance considerations, so far as material to the application; and
  - c) any other material considerations.

- 6.3 The development plan consists of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS - 2017), The Gloucester City Plan (2023) and the partially saved 1983 City of Gloucester Local Plan.

- 6.4 It is considered that the main issues with regard to this application are;
- Historic environment impacts and design;
  - Traffic and transport;
  - Residential amenity.

- 6.5 The planning history is of use in setting out some of the context for the various boundary treatments. There were several applications in the 2000s for the backland development for residential development with a scheme of 3 units being allowed on appeal and subsequently an additional house being approved. These are accessed off Mermaid Close. At the time of these applications being considered the frontage at no. 36 appears to be more open, with case file photographs of the site frontage with no east side fence next to the lane (what becomes Mermaid Close), and the frontage fence being lower and situated farther west from the lane. This appears to align with the comments from several residents. There was also permission granted for a different access arrangement for the frontage of no. 36, shared with no. 38 and with an access point between the two properties accessing parking at both frontages, with an open access point to Denmark Road. This permission was not implemented. Of note, the permission included a condition seeking to avoid any obstructions over 0.6m in height within the access visibility splay. Photographs indicate that the west side boundary treatment (not applied for here) was in place at least since 2015. The current unauthorised fencing applied for here is also potentially in breach of condition pursuant to the permissions for the infill houses to rear of no. 34/36 Denmark Road, but I have been unable to verify this with certainty at the present time and the current application is considered on its merits below.

### 6.6 **Heritage and design**

#### *Heritage policy*

The NPPF sets out the importance of protecting and enhancing the historic environment, and conserving heritage assets in a manner appropriate to their significance. It states that in determining planning applications, local authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. Also the desirability of new development making a positive contribution to local character and distinctiveness. Furthermore that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Policy SD8 of the JCS similarly seeks to preserve and enhance

heritage assets both designated and undesignated as appropriate to their significance. Policy D1 of the City Plan reflects the guidance in the NPPF and JCS in respect of conserving heritage assets, also that proposals should conserve features that contribute to the significance of a heritage asset; demonstrate that it conserves and enhances the character, appearance and architectural quality of the area and setting in siting, scale, form, proportion, design and materials; and should use high quality and locally distinctive materials following traditional building methods and detailing where appropriate. Policy D2 deals with non-designated heritage assets, setting out that development should protect and where appropriate enhance its significance, should be of high quality and designed sympathetically, and seek to enhance the character of the non-designated heritage asset. The Conservation Area Appraisal identifies no. 36 as a positive building in the Conservation Area.

- 6.7 As the site is within the Denmark Road Conservation Area the Council is statutorily obliged to pay special attention to the desirability of preserving or enhancing the character or appearance of the area, in accordance with s72.1 of the Planning (Listed Building and Conservation Areas) Act 1990. As above, it is identified as a positive building in the Conservation Area within the Conservation Area Appraisal and the Conservation Officers consider it to be a non-designated heritage asset.
- 6.8 *Design policy*  
The NPPF states that good design is a key aspect of sustainable development, and sets out criteria for decision making including ensuring that developments will function well and add to the overall quality of the area, are visually attractive, sympathetic to local character and history while not preventing or discouraging appropriate innovation or change, and establish/maintain a strong sense of place. JCS Policy SD4 sets out requirements for high quality design, including responding positively to and respecting the character of the site and surroundings, and being of a scale and materials appropriate to the site and setting. Design should establish a strong sense of place and have appropriate regard to the historic environment. Policy A1 of the City Plan requires overall improvements to the built and natural environment, to be of a suitable scale for the site and not have a significant adverse impact on the character of the locality, and the appearance of the streetscene. Policy F1 requires high quality architectural detailing, external materials and finishes that are locally distinctive, and developments to make a positive contribution to the character and appearance of the locality. Innovative modern materials will be encouraged where they strongly compliment local distinctiveness.
- 6.9 The Denmark Road Conservation Area is characterised by large semi-detached late 19<sup>th</sup>/early 20<sup>th</sup> Century dwellings of red brick with an emphasis on high quality detailing; these are considered within the Conservation Area Appraisal to be positive buildings. The character of the street is properties with front gardens, some of which retain brick walls with gate pillars and stone details and some with dwarf walls and hedges. There are a variety of boundary treatments along the street, from being fully open, to partial low brick walls of c. 1m, to close boarded timber fences. For example the property to the east has a timber fence of approximately 1.2m high, with trellis type panels to either side of the driveway. There are other close boarded timber fences on dwarf walls within the neighbouring few properties on this side of the street.
- 6.10 The current unauthorised fence is an imposing and incongruous feature in the streetscene and obscures views of the positive building behind. While there are other front fences in the vicinity, this one is notably higher, and is in a prominent position on the main road through the area and in front of an attractive building that itself adds to the character and appearance of the Conservation Area. The colour serves to exacerbate the out-of-character appearance. As such it is considered to be an unsympathetic presence in the street, with a resultant

adverse impact on the character and appearance of the Conservation Area, and for the positive building itself.

- 6.11 The proposal to reduce the front fence down to the middle part would ameliorate those negative effects somewhat, however the front corner sections, and side, would still remain at c2m and would still have a negative effect on the appearance of the area given their size, prominent siting and colour. It would still, as proposed, have a harmful visual impact on the character of the Conservation Area. The impact would amount to less than substantial harm in heritage terms on the designated asset of the Conservation Area. In relation to the positive building at no. 36 it would not cause any direct physical harm to the building but would continue to obscure views of it and would present an unattractive frontage setting to the building. The proposal is not considered to be of high quality nor designed sympathetically to preserve the historic and architectural interest of the building, and would not enhance the character of the non-designated heritage asset.
- 6.12 As such the proposal fails to preserve the character and appearance of the Conservation Area, and in relation to adverse impact on the designated Conservation Area the application conflicts with Policy SD8 of the JCS, Policy D1 of the City Plan, and the NPPF, and approval would not satisfy s72(1) of the 1990 Listed Building and Conservation Area Act.

For non designated heritage assets, in terms of the building itself, the test set out in the NPPF is that the effect of a proposal on the significance of a non-designated heritage asset should be taken into account in determining the application whereby a balanced judgement should be made, having regard to the level of significance of the asset and the scale of any harm or loss. Policy SD8 of the JCS and Policy D2 of the City Plan sets out similar. In relation to adverse impact on a non designated asset then, the significance of the asset is an attractive and positive building but not of high significance, and the harm is not physical damage or total loss but is a significant harm to its setting. The harm and conflict with Policy SD8, Policy D2 of the City Plan and NPPF adds negative weight to the planning balance.

In amounting to poor design it also conflicts with Policy SD4 of the JCS, Policies A1 and F1 of the City Plan, and the NPPF. The proposal would not make a positive contribution to the character and appearance of the locality, would not be of a suitable scale for the site and would not deliver overall improvements to the built environment.

- 6.13 Consideration of public benefits: Overall conclusion on heritage matters:  
Consideration of any public benefits of the scheme is relevant to the determination of this application, both in the overall balancing of the application's merits and in the context of any harm to heritage assets, whereby the NPPF advises that less than substantial harm to the significance of a designated heritage asset should be balanced against public benefits of the proposal. The balancing of harm with public benefits is a policy test for designated assets, so this would apply to the harm to the Conservation Area. The harm identified by the Conservation Officer is 'less than substantial' so this balancing test is engaged. The benefits from the proposal would appear to be private ones, if any. Overall it is not considered that there are any significant public benefits. Therefore the heritage harm continues to be decisive overall and is not outweighed by public benefits.

- 6.14 **Traffic and transport**  
The NPPF provides that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts upon the road network would be severe. Policy INF1 of the JCS requires safe and accessible connections to the transport network, and sets out that permission will

be granted only where the impact of development is not considered to be severe. Policy G1 of the City Plan sets out that in all development, on street space designed and allocated for pedestrians, cyclists, mobility users and deliveries, and bus stops and bus priority measures, will be prioritised over the parking of private vehicles.

- 6.15 The proposed fence to the sides and the immediate corners of the road-fronting part would be taller than the standard 1m 'permitted development' height for fences or other means of enclosure next to highways. Presumably the legislation refers to this height in part due to the potential for taller boundary treatments adjacent to highways to adversely affect driver/pedestrian visibility and the need for this to be assessed in a planning application. Regardless, it is considered that the current proposals require consideration for highway safety given they are immediately adjacent to Mermaid Close that serves both the side gate access to the frontage parking at the application property, and also the 4 dwellinghouses to the rear. The fence currently sits (and the proposed redesign would not alter this) at the back edge of the Denmark Road footway and abutting the adjacent Mermaid Close access lane. As proposed the taller part of the fence would continue, as current, alongside Mermaid Close such that vehicles on the site frontage manoeuvring out into the lane would be situated adjacent to the fence, in relation to drivers' field of vision towards other users of the lane, and other users towards them. I note that several residents report near misses at this point and conflicts with other drivers on the lane. Overall, it appears likely that there could be multiple vehicles manoeuvring in close proximity to the fence on the frontage, Mermaid Close and/or Denmark Road, which coupled with the use of the Denmark Road footway by pedestrians (and additional pedestrian use of the lane) means visibility is a key consideration to preserving highway safety. Concerns have been raised locally about the safety of vehicle manoeuvres in this context. Interestingly, it appears from the case file photographs that the Planning Inspector who approved the development of the houses behind no. 36 did so in the context of there being no east side fence and the frontage fence being lower and farther to the west.
- 6.16 The Highway Authority has recommended that the application be deferred, citing that the frontage and east side fence along Mermaid Close needs to be reduced in height to 600mm to provide for and maintain visibility between emerging vehicles from the application site and existing and entering vehicles along the lane on and off the highway. In addition the high boundary fence at least 2m from the edge of Mermaid Close shared by the application site reduced to 600mm high for emerging vehicle and pedestrian visibility. These changes have not been made and there appears to be a legitimate concern about highway safety both anecdotally from local residents and from the Highway Authority and on face value this is understandable. In this scenario I cannot conclude that the application has demonstrated that highway safety would be preserved, or that impacts would not be severe. The application therefore fails to comply with the above policy context.
- 6.17 ***Residential amenity***  
The NPPF seeks to ensure that developments provide a high standard of amenity for existing and future users. The NPPF sets out that decisions should ensure development is appropriate for its location taking into account effects of pollution on health and living conditions. Policy SD14 of the JCS requires that new development must cause no harm to local amenity including the amenity of neighbouring occupants. Furthermore Policy A1 of the City Plan includes criteria on the living conditions of neighbours and future residents.
- 6.18 The fence structures are of a substantial size, but off-set to the frontage of neighbouring properties, which on the east side, has their own boundary treatment and Mermaid Close between, and on the west side has the surface car park adjacent. The scale and siting of the fence structures in this context is such that they should not give rise to any substantial



adverse impacts on the amenities of residents of nearby properties. The proposals comply with the above policy context.

#### 6.19 **Conclusion**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The proposals have been assessed against development plan policies and guidance within this report.

6.20 The existing fencing has been erected without planning permission, and I understand that the applicant considers the enclosure to be needed for the care of residents, although it is not clear why lowering the frontage fence to 1m is agreeable in this regard but not the side and corners. Overall the application has failed to demonstrate that it would preserve highway safety and an undefined and unclear advantage to resident care would not outweigh this concern in my opinion. The proposal would also cause less than substantial harm to the character and appearance of the Conservation Area as a designated heritage asset and there are no public benefits that outweigh this. It would also cause harm to the significance of the building itself as a non designated heritage asset in its immediate front curtilage, which adds weight to the case against granting permission. The NPPF requires great weight to be given to conservation of heritage assets, while the 1990 Listed Buildings and Conservation Areas Act requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. There is therefore harm that should be given significant weight in the decision. The proposal is also harmful in design terms. For the reasons explained in this report it is considered that the proposals conflict with the development plan, and with the NPPF, and the provisions of the 1990 Listed Buildings and Conservation Areas Act would not be satisfied if permission were granted. There are no other material considerations that would outweigh that harm and conflict. The harm is overriding and it is recommended that planning permission is refused.

#### 7.0 **RECOMMENDATION OF THE PLANNING DEVELOPMENT MANAGER**

7.1 That planning permission is **REFUSED** for the following reasons;

Given its scale, prominent siting and colour finish, the proposal is of an unsympathetic, poor design and would not preserve (or make a positive contribution to) the character and appearance of the Conservation Area and would lead to an associated harm to the character and appearance of the building at no. 36 Denmark Road as a non designated heritage asset. As such the proposal conflicts with Policies A1, D1, D2 and F1 of the Gloucester City Plan 2023, Policies SD4 and SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2017 and the NPPF.

The proposal involves a substantial boundary fence immediately next to the access points from the property and neighbouring properties to the Mermaid Close access lane, and to Denmark Road, and the application fails to demonstrate that the arrangement would preserve highway safety when vehicles are manoeuvring between the site frontage and the Denmark Road highway, and when all vehicles are manoeuvring at the Mermaid Close/Denmark Road intersection.

**Person to Contact:** Adam Smith (396702)