

**P/13/0739/CU**

MR C BARNES

**FAREHAM WEST**

AGENT: ROBERT TUTTON  
TOWN PLANNING  
CONSULTANTS LTD

ERECTION OF 1.8 METRE VERTICAL BOARD FENCE

158 HIGHLANDS ROAD - LAND TO REAR OF - FAREHAM PO15 5PS

***Report By***

Richard Wright x2356

***Introduction***

This application has been called onto the Planning Committee for members to determine at the request of Councillor Gregory.

***Site Description***

The application site is a grassed area occupying space between the highway footpath on the south-eastern side of The Cloisters, and the rear boundary fences of numbers 156, 158 & 160 Highlands Road.

There are several trees on the land edged in red as shown on the amended site plan and labelled T1 & T2 (both ash), T3, T4 & T5 (chestnut) and T6 (ash). These trees are protected by a tree preservation order (FTPO 620). A further tree T7 (crab apple) lies a short distance to the north-east of the application site.

***Description of Proposal***

Permission is sought for the erection of a 1.8 metre high vertical close boarded fence around the perimeter of the application site with the exception of its south-eastern boundary where existing 1.8 metre high fencing currently stands. Two gates 2.3 metres in width are proposed to provide access onto The Cloisters at the western end of the site where the existing dropped kerb and the end of the adjacent footpath lie.

***Policies***

The following policies apply to this application:

**Approved Fareham Borough Core Strategy**

CS5 - Transport Strategy and Infrastructure

CS17 - High Quality Design

CS21 - Protection and Provision of Open Space

***Representations***

Residents of thirteen properties have written to object to the application on the following grounds:

- Site is public open space and should remain so
- Visual impact of fence harmful
- Highway land encroached on
- Potentially hazardous to highway safety
- Fence and gates prevents maintenance of pathway and kerb and access to underground services

- Gate excessive for access to a residential garden
- Concern over future use/erection of buildings on land
- Concern over maintenance of protected trees
- Application does not propose any change of use
- Site includes parking spaces which are not owned by applicant

### ***Consultations***

Director of Planning & Environment (Arboriculture) - There are no arboricultural grounds for refusal and therefore no objection to the proposed fencing subject to conditions (tree protection method statement).

Director of Planning & Environment (Highways) -

There are several matters, as follows, that will need to be amended or provided before the proposal would be acceptable -

- For highway safety and visibility reasons, no part of the proposed fence or gates should be less than 2 metres from the carriageway of The Cloisters.
- It is apparent that a public drain and possibly other public utility services cross the area of land in question. It will be necessary for the application to confer easement and access rights to any under, or overground public utility that has equipment within the area.
- The gates and fence, located alongside the highway edge, must be set back a minimum of 0.1m for maintenance purposes.

Until these matters are satisfactorily resolved a holding highway objection is raised to the application.

### ***Planning Considerations - Key Issues***

i) Site history and use of the land

The residential development to the rear of Highlands Road known today as The Cloisters was granted planning permission in the late 1970s. Together the development permitted by planning references FBC.540/8 (2nd November 1976) and FBC.540/9 (26th January 1977) allowed the erection of 8 semi-detached houses and 12 maisonettes and garages. The approved site plan identifies the land subject of this current application on the south-eastern side of The Cloisters as "public open space".

The planning statement submitted by Mr Barnes in relation to this current planning application refers to condition 9 of FBC.540/8 which reads: "The land since hatched blue on the approved plan shall be laid out and maintained to the satisfaction of the local planning authority as amenity land in relation to the remainder of the site to be developed".

With reference to the laying out and maintenance of the amenity land, the statement contends that the "requisite arrangements were evidently not put in place in order to achieve that end" and that "in the absence of any claim to the contrary, one is obliged to conclude that the lawful use of the land owned by Colin Barnes continues to be residential garden and that planning permission is not required for him to use the land for that purpose".

Officers do not agree with the applicant's view that the land enjoys a residential use. Contrary to the applicant's statement the above planning condition did not require any specific arrangements to be put in place or for the Council to adopt the land in order that it could become public open space. There has evidently been no breach of condition in that regard. Officers consider that the status of the land should instead be determined from its

past and present use.

The site was identified in the 1976 permission as amenity land and as such it was laid out as an open grassed area with no physical division of the land to prevent it from being used by members of the public. The information available to Officers, and that provided by local residents in response to this application, shows that the site has been used for the public amenity of local residents over a number of years. It is understood the land was purchased by the applicant in December 2006 however no evidence has been provided that at any time it was put to residential use or for any other purpose other than as public open space.

The Council's Streetscene department maintained the land by mowing the grass until 2012 when it was brought to the attention of Officers that the land was in private ownership and a decision was subsequently made to discontinue the maintenance of any land outside of the adopted highway boundary. Following requests by residents grass cutting over the whole site resumed earlier this year.

This application seeks permission for the erection of a 1.8 metre high fence. No material change of use of the land is sought by the applicant, their understanding being as stated above that planning permission would not be required for its use for residential purposes. Notwithstanding their view, planning permissions for the carrying out of building operations such as the erection of fencing carry an implied permission for any material change of use. The proposed fence is intended to fully enclose the land and to provide the desired security and privacy for the applicant to use the land for residential purposes. If approved therefore the fencing would permit a material change of the use of the land. Section 75(3) of the Town & Country Planning Act 1990 states that "if no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed".

Policy CS21 (Protection and Provision of Open Space) of the adopted Fareham Borough Core Strategy explains that "development which would result in the loss of or reduce the recreational value of open space, including public and private playing fields, allotments and informal open space will not be permitted unless it is of poor quality, under-used or has low potential for open space...". The representations received demonstrate the high value local residents place on this particular piece of land as public amenity space. Its loss through being enclosed as a piece of private garden land would be harmful to the provision of such informal open space and contrary to Policy CS21.

#### ii) Visual impact of proposed fencing

The proposed 1.8 metre high fence would stretch approximately 40 metres alongside and immediately adjacent to the existing footpath on the south-eastern side of The Cloisters, wrapping around at each end with further 8 - 9 metre long stretches to join the existing fencing to the rear of houses on Highlands Road. Such a long expanse of 1.8 metre high fencing would be an incongruous feature, would appear unsightly and would severely diminish and detract from the spacious, open character of the streetscene as it exists at present. This would be especially so when the fence is viewed on entering The Cloisters from the south where the structure would extend right up to a point immediately adjacent to the highway carriageway eroding the spaciousness on the right hand side of the streetscene entirely.

It would also be the case when the fence was viewed from houses on the opposite side of the road and also when seen by users of the abutting footpath where it would appear most

imposing and overbearing. The harsh and unsightly appearance of the timber fence would be exacerbated by its proximity to the adjacent highway with no space retained within which to add landscape planting to screen the enclosure. This would be in stark contrast to the existing boundary fence along the rear boundary of the private gardens of properties in Highlands Road which is not only set much further back from the edge of the public highway but has also been softened visually over time through the natural weathering of timber materials and adjacent planting, some of which has overgrown or climbed the fence panels, and mature trees.

The proposed fence is considered to be contrary to Policy CS17 (High Quality Design) of the adopted Fareham Borough Core Strategy in that it would fail to respect or respond positively to the key characteristics of the streetscene, in particular its open spacious nature.

### iii) Highway safety

The red-edged application site does not encroach onto land forming part of the adopted highway in The Cloisters. The extent of the adopted highway does however include the adjacent footpath and land between it and the carriageway.

The Director of Planning & Environment (Highways) has raised an objection to the proposal principally due to the proximity of the fence to the highway. The fence and vehicular access gates are too close to the adjacent carriageway to enable adequate visibility southwards for exiting drivers. In addition the fence would directly abut the carriageway at its southern corner posing a hazard to vehicles using the road. The Director of Planning & Environment (Highways) has recommended that the fence be set back from the carriageway at this corner by at least 2 metres in order to address these concerns. In the absence of any such revisions the proposal as submitted would be harmful to the safety of highway users contrary to the aims of Policy CS5 of the adopted Fareham Borough Core Strategy.

The Director of Planning & Environment (Highways) has also raised issues concerning the proximity of the fence to the footpath and potential issues in the future with highway maintenance. Furthermore there are utilities and services understood to be on the land to which access would be lost if it were to be enclosed. These are practical concerns the applicant would be advised to take on board but are not considered to necessarily in themselves be reasons to resist this planning application.

### iv) Protected trees

The fence would enclose land on which stands a number of tree preservation order protected trees (T1 - T6 as identified on the submitted site plan). Subject to measures being taken to protect these trees during the erection of the fencing there would be no physical harm to their health or condition. Regardless of whether the land was public open space or residential garden land the trees would continue to be covered by the order and the Council able to exercise control over any works.

### v) Summary

The proposal to enclose this piece of land with a 1.8 metre high vertical close boarded fence is considered to be contrary to Policies CS5, CS17 & CS21 of the adopted Fareham Borough Core Strategy in that it would be harmful to the safety of highway users, would lead to an unsightly and incongruous addition which would detract from the open, spacious

character of the streetscene and would lead to the loss of a valued area of public open space.

***Recommendation***

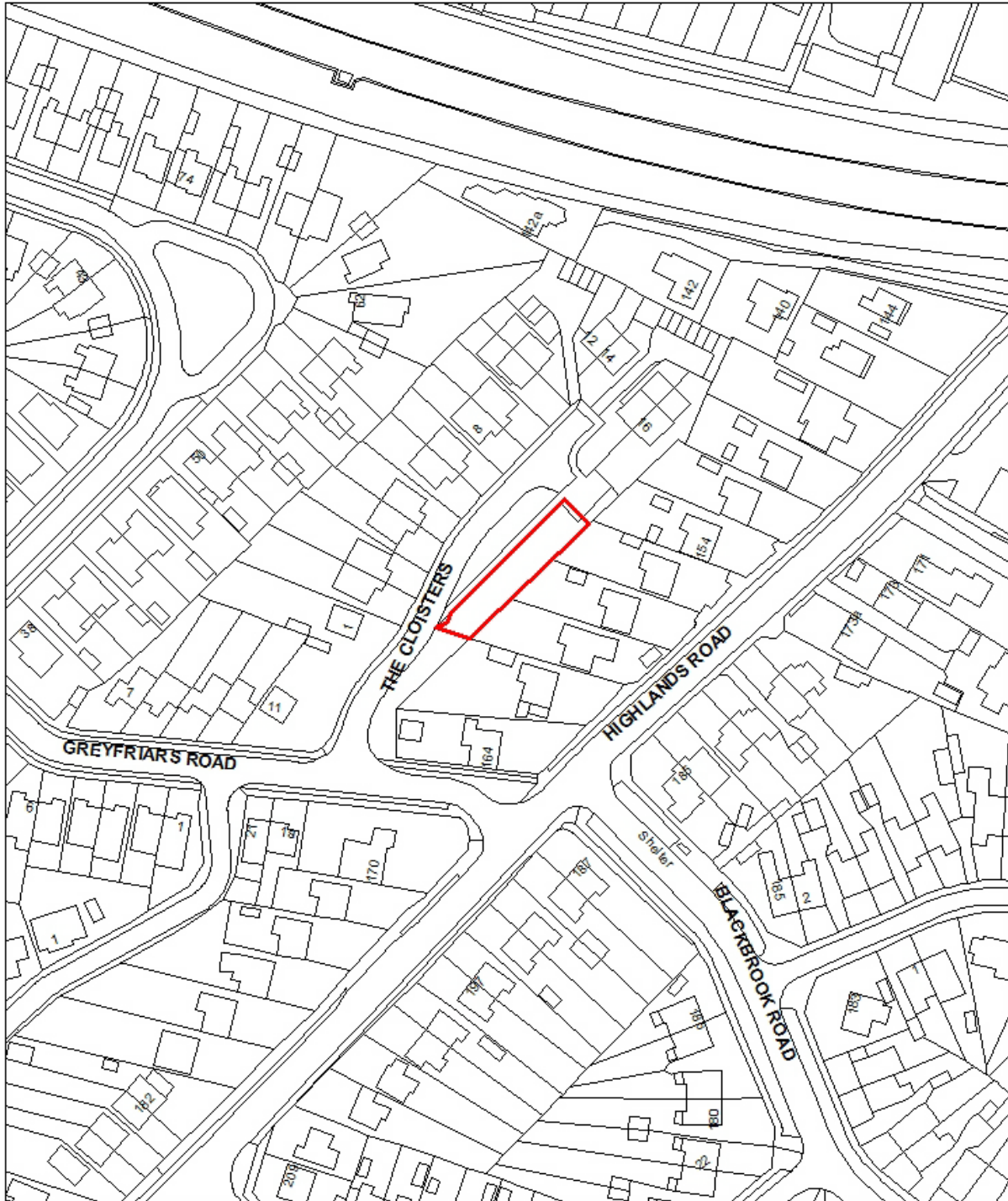
REFUSE: Contrary to policy: harmful to highway safety; harmful to the visual appearance of the area; would result in the loss of an area of public open space.

***Background Papers***

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# FAREHAM

## BOROUGH COUNCIL



158 Highlands Road  
Scale 1:1250

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