

# **DURHAM COUNTY COUNCIL**

## **AREA PLANNING COMMITTEE (NORTH)**

At a Meeting of the **Area Planning Committee (North)** held in the Council Chamber, County Hall, Durham on **Thursday 30 November 2023 at 9.30 am**

### **Present:**

**Councillor E Peeke (Chair)**

### **Members of the Committee:**

Councillors G Binney, J Blakey, L Brown, J Griffiths, D Haney, J Purvis, I Roberts, A Sterling, A Watson and S Wilson

### **Apologies:**

Apologies for absence were received from Councillors W Stelling, K Earley, P Jopling, B Moist and K Shaw

### **Also Present:**

#### **1 Apologies for Absence**

Apologies for absence were received from Councillors P Jopling, B Moist and W Stelling.

#### **2 Substitute Members**

There were no substitute Members in attendance.

#### **3 Minutes**

The Minutes of the meetings held on 5 and 26 October 2023 were confirmed by the Committee as a correct record and signed by the Chair.

#### **4 Declarations of Interest**

There were no declarations of interest.

#### **5 Applications to be determined;**

- a DM/23/01688/FPA - NCB Buildings, Stella Gill Industrial Estate, Pelton Fell, Chester-le-Street, DH2 2RG**

The Committee considered a report of the Planning Officer regarding an application for the construction of a 2.4 metre high fence and two gates at the N C B Buildings, Stella Gill Industrial Estate, Pelton Fell, Chester le Street (for copy see file of Minutes).

P Hopper, Principal Planning Officer provided a detailed presentation of the application which included a site location plan, an illustration of Public Rights of Way, site photographs and a proposed site plan. The Principal Planning Officer referred to paragraph 24 of the report and informed the Committee the Council's Rights of Way Officer had confirmed that no formal application had been received for the lane to the north of the site to be adopted as a public right of way, although some evidence of usage had been submitted.

Councillor P Pringle of Pelton Parish Council and local Member addressed the Committee. The Parish Council objected to the fence being erected because it was believed it was blocking a public right of way and the access road had been widened up to the fence. The fence should not have been erected until planning permission had been sought and the Parish Council considered it should be removed immediately until planning permission was granted. Councillor Pringle grew up in the area and prior to the closure of the Consett Steelworks in the early 1980's the coast to coast route was an active railway line and therefore could not be used as a walkway. The path alongside the railway line from where the old station used to be on Station Lane to the South Pelaw residential area was always used as a public right of way. Councillor Pringle was unsure why this path was not considered a public right of way and the fence was now blocking this path.

Councillor T Smith informed the Committee that while she was not the local Member, she represented a nearby housing estate of at least 500 houses which was built in the 1960's and would be impacted by this development. During Covid the path to the north of the site was used as an important exercise route for residents from the estate and Councillor Smith had been contacted by numerous residents to inform her that for over 60 years this lane was a public right of way as far as they were concerned. The path now had a metal fence across it which had been erected without planning permission. Councillor Smith asked that a full consultation with local residents take place before the submission of a planning application so that local people could make appropriate representations.

J Ridgeon address the Committee on behalf of the applicants. The applicants were local businessmen who had seen the opportunity to bring this site back into use after several years of being derelict. The site had attracted anti-social behaviour including underage alcohol use, drug use squatting, fires. Since taking ownership the applicants had faced theft and damage to machines and equipment and therefore acted quickly to secure

the site to prevent this behaviour by erecting a 2.4 metre high fence. Under permitted development rights landowners could erect a fence and gate up to 2 metres high and Members should consider the acceptability of the additional 40 centimetres height of the fence above what would be acceptable under permitted development rights. The justification for the 2.4 metre height was well documented in police records, it was locally well known that anti-social behaviour had been an ongoing issue at the site. This justified the additional height of the fence above what would be allowed under permitted development. Planning Officers agreed with this position as set out at paragraphs 45 and 46 of the Committee report. The Public Rights of Way Officer had confirmed that the path was not and had never been a public right of way. The existing public rights of way had not been impacted upon and could still be used recreationally. Given the delay in determining the application the public had been given more than sufficient time to submit evidence for a footpath application. The Public Rights of Way Officer had stated that 'to date we have not received sufficient evidence to investigate further a claim for a public right of way based on long usage and we have not received a Definitive Map Modification Order application to add this to the Definitive Map'.

The bringing back into use of a derelict brownfield derelict site was a significant planning benefit of the application and this was the first step to bringing the site back into economic use which was fully in accordance with Policy 10 of the County Durham Plan.

Mr Ridgeon asked the Committee to support the application.

The Principal Planning Officer did not wish to comment on any of the representations made.

Councillor L Brown informed the Committee that the application was being considered because the fence was 40 centimetres higher than it should be. The site was private, it was not a County Council site and the road leading to the site was on the west side. The path was not a public right of way but could perhaps be considered a permissive path and could be stopped up at any time. The path ran parallel to the Coast to Coast route and there were two paths from the road to the Coast to Coast route. There was a route to the south of the site which again was a permissive path rather than a public right of way. Councillor Brown asked when the fertilizer works, which had previously used this site, had closed and also asked about the hours of opening.

The Principal Planning Officer confirmed that permitted development rights would cover a fence up to 2 metres high which dropped to 1 metre if the fence was adjacent to a highway used by vehicular traffic. The access gates were adjacent to a highway used by vehicular traffic and therefore the

permitted development rights dropped to 1 metre. The track to the north of the site which was a source of concern was not a public right of way. The process for having the track defined as a public right of way sat outside of the planning process and therefore the application must be considered on the grounds that this was not a public right of way. The Principal Planning Officer was not aware of when the fertilizer works had closed but he understood this to be a considerable length of time ago.

With reference to the operating hours, the Principal Planning Officer reminded the Committee that the proposed hours of construction only related to the erection of the fence on the southern boundary of the site which had not been carried out, and the operation hours of the site lay outside of this application.

N Carter, Planning and Development Solicitor informed the Committee that this was not the appropriate forum in which to establish the status of the path to the north of the site. There was a separate statutory process under the Wildlife and Countryside Act whereby anybody could make an application to the public rights of way team with appropriate evidence, usually based on 20 years uninterrupted use as of right and this may or may not result in a footpath being added to the Definitive Map. It was not for the Committee to make a decision on whether this was or was not a footpath. Although the application was partially retrospective, this was not a reason in itself to refuse it.

Councillor Blakey asked the applicant when had they realised they needed planning permission. J Ridgeon replied that the applicant had realised following enforcement action and had then instructed him. The applicant had thought this was covered under permitted development rights and had immediately ceased work when they realised planning permission was needed.

Councillor Watson suggested that the application could be deferred to allow for full public consultation and for the process for registering the lane as a public right of way explained.

The Principal Planning Officer replied that the planning application had been displayed on site and in the press and it could be demonstrated that the local authority had advertised the application in the appropriate way.

The Planning and development Solicitor agreed with the Principal Planning Officer and was unsure what a deferment would achieve. There had been a consultation exercise in relation to the planning application. Councillor Watson replied that a deferment would allow an application to be made for a public right of way. The Planning and Development Solicitor replied that the application process to establish a public right of way could be quite a lengthy

process. The rights of way team that dealt with such applications had in excess of 300 outstanding applications and currently were processing approximately 10 a year. Although applications could be prioritised the Planning and Development Solicitor considered it would be unreasonable to defer the application for such a period of time as the length of time taken for this process.

Councillor Wilson considered there was still a walking route within a decent proximity to the path which was the subject of dispute, and he could see no reason for deferment. There had been no application made for a Modification Order. As a result, Councillor Wilson was happy to support the officer recommendation.

**Moved** by Councillor L Brown, **Seconded** by Councillor J Blakey and

**Resolved:**

That the application be approved subject to the Conditions contained in the report.