

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/23/01688/FPA
FULL APPLICATION DESCRIPTION:	Construction of 2.4m high fence and 2 no. gates.
NAME OF APPLICANT:	Mr Lee Ellison
ADDRESS:	N C B Buildings, Stella Gill Industrial Estate, Pelton Fell, Chester-le-Street, DH2 2RG
ELECTORAL DIVISION:	Pelton
CASE OFFICER:	Elinor Woodruff Planning Officer 03000 261059 elinor.woodruff@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is an unoccupied industrial building set within a large curtilage between Chester-le-Street and Pelton. It is bordered by the coast to coast (C2C) route to the north, a residential estate to the south, public right of way Footpath No. 21a to the east, and Stella Gill Industrial Estate to the west. Access is taken to the west via an access track/road.

The Proposal

2. The application seeks full planning permission for the erection of a 2.4m high fence around the perimeter of the site along with 2no. access gates. It is noted that part of the fence has already been constructed and is presently unauthorised. This application seeks to regularise that situation whilst also seeking planning permission for the completion of works to totally enclose the site with a 2.4 metre high security fence. It is noted that the applicant has ceased all works relating to completing the installation of the fence pending determination of this application.
3. The application is reported to planning committee at the request of Councillor Tracie Smith as it is considered that the proposal generates significant issues for consideration by the committee regarding traffic generation and access.

PLANNING HISTORY

4. No relevant planning history.

PLANNING POLICY

NATIONAL POLICY

5. A revised National Planning Policy Framework (NPPF) was published in July 2021 (with updates since). The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
6. In accordance with Paragraph 219 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.
7. *NPPF Part 2 - Achieving Sustainable Development.* The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
8. *NPPF Part 4 - Decision-making.* Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
9. *NPPF Part 6 Building a Strong, Competitive Economy* - The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
10. *NPPF Part 8 Promoting Healthy and Safe Communities* - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
11. *NPPF Part 9 – Promoting sustainable transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.

12. *NPPF Part 11 Making Effective Use of Land* - Planning policies and 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. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
13. *NPPF Part 12 – Achieving well-designed places* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
14. *NPPF Part 15 - Conserving and Enhancing the Natural Environment* - Conserving and enhancing the natural environment. The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.

<https://www.gov.uk/guidance/national-planning-policy-framework>

15. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; air quality; design process and tools; determining a planning application; flood risk; healthy and safe communities; land stability; land affected by contamination; housing and economic development needs assessments; housing and economic land availability assessment; natural environment; neighbourhood planning; noise; open space, sports and recreation facilities, public rights of way and local green space; planning obligations; travel plans, transport assessments and statements; use of planning conditions; Tree Preservation Orders and trees in conservation areas and; water supply, wastewater and water quality.

<https://www.gov.uk/government/collections/planning-practice-guidance>

LOCAL PLAN POLICY:

The County Durham Plan

16. *Policy 10 - Development in the Countryside.* Development in the countryside will not be permitted unless allowed for by specific policies in the Plan, relevant policies within an adopted neighbourhood plan relating to the application site or where the proposal relates to one or more of the following exceptions; economic development, infrastructure development and development of existing buildings. It also sets out the general design principles for different types of development in the countryside.
17. *Policy 21 - Delivering Sustainable Transport.* Requires all development to deliver sustainable transport by: delivering, accommodating and facilitating investment in sustainable modes of transport; providing appropriate, well designed, permeable and direct routes for all modes of transport; ensuring that any vehicular traffic generated by new development can be safely accommodated; creating new or improvements to existing routes and assessing potential increase in risk resulting from new development in vicinity of level crossings. Development should have regard to the Parking and Accessibility Supplementary Planning Document and Strategic Cycling and Walking Deliver Plan.

18. *Policy 26 – Green Infrastructure.* Development will be expected to maintain and protect, and where appropriate improve, the county's green infrastructure network. This will in turn help to protect and enhance the county's natural capital and ecosystem services. Development proposals should incorporate appropriate Green Infrastructure (GI) that is integrated into the wider network, which maintains and improves biodiversity, landscape character, increases opportunities for healthy living and contributes to healthy ecosystems and climate change objectives.
19. *Policy 29 – Sustainable Design.* Requires all development proposals to achieve well designed buildings and places having regard to SPD advice and sets out detailed criteria which sets out that where relevant development is required to meet including; making a positive contribution to an areas character and identity; provide adaptable buildings; minimise greenhouse gas emissions and use of non renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; providing suitable landscape proposals; provide convenient access for all users; adhere to the Nationally Described Space Standards.
20. *Policy 31 - Amenity and Pollution.* Sets out that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment and that they can be integrated effectively with any existing business and community facilities. Development will not be permitted where inappropriate odours, noise, vibration and other sources of pollution cannot be suitably mitigated against, as well as where light pollution is not suitably minimised. Permission will not be granted for sensitive land uses near to potentially polluting development. Similarly, potentially polluting development will not be permitted near sensitive uses unless the effects can be mitigated.
21. The current County Durham Parking and Accessibility Standards Supplementary Planning Document 2023 sets out the Council's approach to vehicle and cycle parking provision on new development and extensions to existing development which includes both residential and non-residential.

<https://www.durham.gov.uk/media/26916/County-Durham-Parking-and-Accessibility-Standards-2019/pdf/CountyDurhamParkingAndAccessibilityStandards2019.pdf?m=636839346853430000>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

22. *Pelton Parish Council* – Objects to the application on the basis that the fence blocks access to a lane that connects to the PROW Footpath No. 21a to the Industrial Estate to the west and that has been well used by the public for many years. In addition, they also raise objection that no consultation was had with residents prior to some of the work taking place.
23. *Highway Authority* – Raises no objection as there are no concerns over road safety.

INTERNAL CONSULTEE RESPONSES:

24. *Public Rights of Way Officer* – Offers no objection to the application noting that the public right of way to the east of the site would remain unaffected. In addition, they confirm that the lane to the north of the site is not adopted as a public right of way, but nevertheless advises that an application to have the lane adopted as a public right of way has been submitted.

PUBLIC RESPONSES:

25. The application has been advertised by way of a site notice, press notice and individual notification letters to neighbouring residents.
26. One letter of objection has been received from the Rt Hon Kevan Jones MP raising concerns that the fence blocks access to a lane that has been well used by the public over the years.
27. Councillor Smith has provided comments from local residents who are glad that the building is being made secure. However, there are concerns regarding access to the lane to the north which is frequently used for by residents being blocked off. She notes that as a consequence, residents have indicated intention to make application to establish this route as a PROW to protect its future use. With the above in mind, Councillor Smith has called in the application to be determined at Committee.

The above is not intended to list every point made and represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at:

<https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RVZU6XGDKMZ00>

APPLICANTS STATEMENT:

28. We are Storage North East Ltd, a new business established by four north east men who want to build a business and help enhance and develop a site that has fallen into a state of disrepair. We have all grown up in the local Chester le street area and care a great deal about its future. This is a first-time project for us, we are not slick property developers or a large corporate concern. We are all funding this project personally and have re-mortgaged our homes to raise the capital.
29. We have proceeded with passion and a sense of enterprise, but we recognise we have not explained our plans to the local community adequately and seek to do so in this statement.
30. The former fertilizer works has been derelict for many years. It has been a site that has attracted anti-social behaviour including underage alcohol abuse, drug use, malicious damaging, squatting, fires and even a pornography video shoot.
31. Since taking ownership we have had many of the mentioned incidents and have also had to deal with theft and damage of our machines and equipment, therefore we had to act quickly to secure the site and prevent this behaviour.
32. We erected a palisade fence around the perimeter of the land which was essential to safely secure the site, as fly tipping and damage to the building were undoing the clean-up works, we were undertaking.
33. Due to our inexperience, we were misinformed on the rules of permitted development for the fence height we have installed, we believed that 2.4 metres or below did not require planning permission and fell under permitted development.
34. We have now been made aware from our planning consultants that this is incorrect and it is actually 2 metres or below which is why we are now applying for permission retrospectively. The 2.4 metre high fence will provide the security necessary to allow the economic re-use of the existing building, which is supported by Policy 10 of the County Durham Plan.

35. In the medium to long term, we are confident that, once our plans are fully submitted, approved and completed, the site will once again be making a valuable contribution to the local economy, create job opportunities and employment for local residents, and otherwise derelict building will either be restored or rebuilt on the existing footprint. The light industrial and storage units that could emerge will be preferable to the dereliction, antisocial behaviour and eyesore of the existing site.
36. We hope Durham Council will support the positive ideas we have for the site and that, in due course, we can convince local people that our plans will have a low impact on their lives and be of benefit to the build environment on a pocket of land that needs serious remediation.

PLANNING CONSIDERATIONS AND ASSESSMENT

37. As identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004 the key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
38. In assessing the proposals against the requirements of the relevant planning guidance and development plan policies and having regard to all material planning considerations it is considered that the main planning issues in this instance relate to the principle of development, impact on residential amenity, impact on the character and appearance of the area, impact on highway safety and access, and the impact on PROW.
39. The County Durham Plan (CDP) was adopted in October 2020 and as such represents the up-to-date local plan for the area which is the starting point for the determination of this planning application. Consequently, the application is to be determined in accordance with relevant policies set out within the CDP. Paragraph 11(d) of the NPPF is not engaged.

The Principle of the Development

40. The proposal relates to a former industrial building located to the north of the settlements of Chester-le-Street and Pelton Fell, and as such is considered to be within the open countryside for planning purposes. 390m to the west of the site is the Stella Gill Industrial Estate which hosts a variety of industrial uses and provides access to the application site via a long track to the northwest. Planning permission is sought for the retention of a 2.4 metre high steel security fence and also seeks permission for the completion of associated works to extend this around the site perimeter. 2 No. access gates are also proposed.
41. As mentioned above, the application site is located outside of a built-up area or settlement and so is within the open countryside. Policy 10 (Development in the Countryside) of the County Durham Plan states that development will not be permitted unless allowed for by specific policies in the Plan or Neighbourhood Plan or unless it relates to exceptions for development necessary to support economic development, infrastructure development or development of existing buildings. The policy further sets out 9 General Design Principles for all development in the Countryside.
42. Provision for economic development includes: agricultural or rural land based enterprise; undertaking of non-commercial agricultural activity adjacent to applicant's residential curtilage. All development to be of design and scale suitable for intended use and well related to existing development.

43. Provision for development of existing buildings includes: change of use of existing building, intensification of existing use through subdivision; replacement of existing dwelling; or householder related development.
44. The planning application is supported by additional information which advises that the site was previously used for the manufacture of fertiliser, although neither the site or the building are presently in use in this regard and are understood to have been vacant for some time. The proposed fence is therefore required to improve site security; and reduce instances of anti-social behaviour and unauthorised trespass.
45. In light of the above, the applicant has submitted evidence which seeks to demonstrate that the site is subject to considerable antisocial behaviour, damage and vandalism, occurring as a direct result of unauthorised trespass and due to the site being fundamentally unsecure. This amounted to the results of a Freedom of Information Request made by the applicant to Durham Police which confirms that since 2018 there have been 2 incidents of Burglary, one of Antisocial Behaviour (Nuisance) and one of Public Fear, Alarm or Distress. The applicant asserts that instances of antisocial behaviour are more regular given that not all events are recorded or reported to the Police. With this in mind, they consider the impact that antisocial behaviour and damage presently has on the site to be considerable.
46. The site was last used for industrial purposes falling within Class B of the Town and Country Planning (Use Classes) Order and despite the fact the site is currently vacant, this remains the lawful use in planning terms. As such, the fence would secure the site and prevent unauthorised access and associated impacts from antisocial behaviour and damage. Whilst the volume of evidence provided in support of the application which seeks to demonstrate current issues in this regard is arguably limited, it nevertheless remains that security fencing of the type proposed is typically required to deliver appropriate security at industrial/commercial sites, particularly where natural surveillance is limited, as is the case in this instance.
47. In light of the above, it is considered that the retention of the fence and the proposed completion of the works is acceptable in principle in accordance with policy 10 of the County Durham Plan subject to proper assessment of all other material considerations detailed below.

Impact on Public Rights of Way

48. Policy 26 (Green Infrastructure) of the County Durham Plan states that development will be expected to maintain and protect, and where appropriate improve, the county's green infrastructure network; to help to protect and enhance the county's natural capital and ecosystem services. In addition, it states that development proposals should incorporate appropriate Green Infrastructure (GI) that is integrated into the wider network, which maintains and improves biodiversity, landscape character, increases opportunities for healthy living and contributes to healthy ecosystems and climate change objectives.
49. Policy 26 specifically takes into account Public Rights of Way stating that development will be expected to maintain or improve the permeability of the built environment and access to the countryside for pedestrians, cyclists and horse riders. In addition, proposals that would result in the loss of, or deterioration in the quality of, existing Public Rights of Way (PROWs) will not be permitted unless equivalent alternative provision of a suitable standard is made. Where diversions are required, new routes should be direct, convenient and attractive, and must not have a detrimental impact on environmental or heritage assets.

50. PROW Footpath No.21a is positioned to the east of the site in a north south axis, immediately to its eastern boundary and the position of the proposed fence. It is noted that despite being adjacent to the PROW the fence would not restrict its use and the Council's PROW Officer raises no objection to the application in this regard.
51. The main means of access to the site is via a track from Stella Gill Industrial Estate to the west. It is understood that this track also affords access to Footpath No. 21a from Stella Gill Industrial Estate although it is noted that there is no recorded public highway status. The track is on Council owned land up to the point where the fencing has been erected, and public access between this point and footpath no. 21a has been subsequently prevented. It is noted that objections have been received regarding the fact that this access has been restricted by the erection of the fence.
52. Regarding this track, public rights may be accrued through long usage, often referred to as presumed dedication. This allows for a public right of way to be established where a defined way has been enjoyed by the public as of right and without interruption for a full period of 20 years unless there is sufficient evidence that there was no intention during that period by the landowner to dedicate. An application along with evidence is required to support the contention that a public right of way already exists. In most cases this is evidence provided by the public of long usage and can ultimately lead to a dispute over a public right of way.
53. In this instance the Council's PROW Section has confirmed receipt of an application which seeks to demonstrate presumed dedication along this route. However, it is noted that the test of whether or not a dedication has occurred is set out within Section 31 of the Highways Act 1980 and as such falls outside of the scope of planning control. It is therefore the case that the track has no formal designation in this regard and the application should be assessed on this basis. Should presumed dedication be subsequently established, it is noted that the site owner would have the ability to apply to divert or permanently stop-up the route, although again this is a separate process falling outside of any legislative control through the planning system.
54. Noting the above, it is considered that the proposal would not have any adverse impact upon Public Footpath No.21a and as such the development would maintain the permeability of the built environment and access to the countryside for pedestrians, cyclists and horse riders and would not result in the loss of, or deterioration in the quality of, existing Public Rights of Way (PROWs) in accordance with policy 26 of the County Durham Plan.

Impact on Highway Safety

55. Policy 21 of the County Durham Plan seeks to ensuring that any vehicular traffic generated by new development can be safely accommodated; creating new or improvements to existing routes and assessing potential increase in risk resulting from new development in vicinity of level crossings. Development should have regard to Parking and Accessibility Supplementary Planning Document.
56. The application does not propose any alteration to the existing use and as such there would be no fundamental change to existing traffic generation. Consequently, the Highway Authority raises no objections to the application confirming that the proposal raises no concerns over highway/pedestrian safety.
57. As such, it is considered that the proposed fence and gates would accord with Policy 21 of the County Durham Plan and Part 9 of the NPPF.

Impact on Character and Appearance of Area

58. Policy 29 (Sustainable Design) requires all development proposals to achieve well designed buildings and places having regard to SPD advice and sets out 18 elements for development to be considered acceptable, including: making positive contribution to areas character, identity etc.; adaptable buildings; minimising greenhouse gas emissions and use of non-renewable resources; providing high standards of amenity and privacy; contributing to healthy neighbourhoods; and suitable landscape proposals.
59. The site is bordered by areas of woodland to the south, west and east which conceal the site from residential areas to the south and east. There are also no proposals to remove any trees from these areas. The fence would also sit alongside public right of way footpath no.21a to the west of the site and therefore be visible to the public, however it is not considered that this type of fencing would look out of place when considered in relation to the past use of the site as a fertilisation works.
60. As such, whilst there would be some harm to the visual amenity of the area to the west and the setting of the public right of way this would be negligible, given the industrial nature and appearance of the site.

Impact on Residential Amenity

61. Policy 31 of the CDP relates to amenity and pollution and outlines that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment. It continues to outline that proposals which will have an unacceptable impact such as through overlooking, visual intrusion, visual dominance or loss of light, noise or privacy will not be permitted unless satisfactory mitigation measures can be demonstrated.
62. Given the nature of the proposal and relatively isolated location, with the closest residential properties being approximately 75m to the south, it is not considered that there would be an impact upon the amenity or privacy of other persons or properties. However, as the area is popular in terms of recreational use by local residents, it is recommended a condition be included to control the hours construction works can take place to protect the amenity of the natural environment in accordance with Policy 31 of the County Durham Plan.

Public Sector Equality Duty

63. Section 149 of the Equality Act 2010 requires public authorities when exercising their functions to have due regard to the need to i) the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct, ii) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share that characteristic.
64. In this instance, officers have assessed all relevant factors and do not consider that there are any equality impacts identified.

CONCLUSION

65. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate

otherwise. The development plan in this case relates to the County Durham Plan. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means approving development proposals that accord with an up-to-date development plan without delay (paragraph 11 c).

66. In summary, it is considered that the principle of development is acceptable in planning terms and would accord with the aims of Policy 10 of the CDP subject to appropriate planning conditions listed below.

67. When assessed against other policies of the County Durham Plan relevant to the application, it is considered that the construction of a 2.4m fence and 2no. gates in this location would not significantly impact upon highway safety, the character and appearance of the area or PROW no.21a Chester-Le-Street in accordance with policies 10, 21, 26, 29 and 31 of the County Durham Plan or parts 9, 12 and 15 of the NPPF.

68. Whilst the objections raised by the Pelton Parish Council, Cllr Smith and Rt Hon Kevan Jones MP are noted, for the reasons discussed within this report they are not considered sufficient to sustain refusal of the application and considering the above, the application is reported to the Committee with a recommendation to approve the application, subject to conditions.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in strict accordance with the approved plans listed in Part 3 - Approved Plans.

Plan	Drawing No.	Date Received
Site Location Plan	NB23_12/01	09.06.2023
PROPOSED SITE PLAN	NB23_12/03	09.06.2023
TYPICAL FENCE ELEVATION	NB23_12/04	09.06.2023

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policy(ies) 10, 21, 26, 29, and 31 of the County Durham Plan and Parts 2, 4, 9, 12 and 15 of the NPPF. Notwithstanding the details shown on the submitted application, the external building materials to be used shall match the existing building.

3. In undertaking the development that is hereby approved:

No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 0730 to 1800 on Monday to Friday and 0730 to 1400 on Saturday.

No internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1700 on Saturday.

No construction works or works of demolition whatsoever, including deliveries, external running of plant and equipment, internal works whether audible or not outside the site boundary, shall take place on Sundays, Public or Bank Holidays.

For the purposes of this condition, construction works are defined as: The carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery including hand tools.

Reason: To protect the residential amenity of existing and future residents from the development in accordance with Policy 31 of the County Durham Plan and Part 15 of the National Planning Policy Framework.

STATEMENT OF PROACTIVE ENGAGEMENT

In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF.

BACKGROUND PAPERS

- Submitted application form, plans supporting documents.
- The National Planning Policy Framework (2021)
- National Planning Practice Guidance notes.
- County Durham Plan 2020
- Statutory, internal and public consultation responses
- County Durham Parking and Accessibility Standards 2023



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