

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	3/2012/0051
FULL APPLICATION DESCRIPTION:	Change of use of land to the rear of nos. 2 – 10 Royal Grove, Crook
NAME OF APPLICANT:	Mr John Winter
ADDRESS:	Land to the rear of 2 -10 Royal Grove, Crook
ELECTORAL DIVISION:	Crook South
CASE OFFICER:	Colin Harding colin.harding@durham.gov.uk 03000263945

DESCRIPTION OF THE SITE AND PROPOSALS

The site

1. The application site relates to a narrow area of grassland to the rear (west) of nos 2-10 Royal Grove, Crook. The land is in the ownership of Durham County Council.
2. The local topography is such that Royal Grove sits at a higher level than the adjacent B6298 road that runs to the west. Inbetween the houses and road is a grassed bank with the application site being situated at the top of the bank. This flat area forms part of Footpath no.57 Crook, which runs behind nos 1-9 Royal Grove. Footpath 57 does not itself run north past no.10 Royal Grove, but it is possible to travel north past no.10 to Peases West. There is a separate tarmac footway along the B6298 at the bottom of the bank.

The proposal

3. The application seeks to change the use of this land, which is part public footpath and open space, to residential garden for the use of occupiers of properties 2 – 10 Royal Grove, including moving the fenceline to the top of the grassed bank.
4. The development has been proposed in order to address antisocial behaviour issues associated with the path, which it is claimed have been ongoing since 1994.
5. It should be noted that the proposal would also require a Stopping Up Order to extinguish the Public Right of Way, however this would be subject to a separate process.
6. The application is being reported to Members due to the level of public interest that it has generated and because of local Member involvement.

PLANNING HISTORY

7. There is no specific planning history for the application site.

PLANNING POLICY

NATIONAL POLICY:

8. *The National Planning Policy Framework* (NPPF) outlines the government's approach to planning policies and decisions. With regards to this proposal the NPPF states at para. 69 that LPAs should promote safe and accessible environments where crime and disorder and the fear of crime, do not undermine quality of life or community cohesion, whilst highlighting the importance of creating opportunities for meetings between members of the community. At para.75 it states that planning policies should seek to protect and enhance existing public rights of way and access.

REGIONAL PLANNING POLICY

9. None relevant.

LOCAL PLAN POLICY:

10. The following policies of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007 are considered relevant in the determination of this application:

11. *Policy GD1 (General Development Criteria):*

All new development and redevelopment within the District should be designed and built to a high standard and should contribute to the quality and built environment of the surrounding area. Development should be designed to deter crime and increase personal safety.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.planningportal.gov.uk/england/government/en/1020432881271.html> for national policies; <http://www2.sedgefield.gov.uk/planning/WVCindex.htm> for Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

12. The *County Highway Authority* raise no objections to the proposal and note that the recently installed tarmac footway adjacent to the road is of a safe design and that no injury related accidents had occurred in the vicinity as of December 2011.
13. *Crook Neighbourhood Policing Team* support the application and have confirmed that the area has been subject to periods of anti-social behaviour on a number of occasions. Although quiet at present, if the physical structure of the area is not changed to address the situation, it is likely that at some time further anti-social behaviour may result.

INTERNAL CONSULTEE RESPONSES:

14. The *Rights of Way Section* offer no objection to the section of path behind nos. 1 – 9 Royal Grove being lost, but have concerns over the loss of path between nos. 9 and 10 Royal Grove as the loss of this section would inconvenience local walkers and the alternative route is circuitous and would change the character of a local promoted circular walk
15. The *Safe Durham Partnership* have confirmed that the problem of anti-social behaviour and criminal damage has been ongoing in this location for many years and that during this time partners have tried to resolve the issue by cutting trees and bushes back to increase visibility, targeted patrols by police and neighbourhood wardens and the installation of posts to stop off-road bikes along with the provision of an alternative footpath. They have clarified that it has previously been recommended by police crime prevention offices that the path running directly to the rear of the properties and through the estate be closed and adopted by residents. It is believed that this would be the most effective way of resolving ongoing problems. It is also noted that residents have become disengaged with services and have stopped reporting incidents to police and partners due to the problem being so prolonged.

PUBLIC RESPONSES:

16. The application has been publicised in the press, by site notices and letters were sent to neighbours.
17. The *Open Spaces Society* have objected to the application on the grounds that the footpath is well used and that its closure would not solve the problem of anti-social behaviour. They consider that the footpath is in a useable condition and are concerned that the alternative footpath adjacent to the road is potentially dangerous.
18. *Crook and Weardale Ramblers* have no objection to the closure of the footpath but do object to the fencing off of the land.
19. 25no. letters of objection and 3no. letters of support application have been received from local residents.
20. The concerns of local residents include the loss of a well used footpath which forms an important community facility; that the alternative footpath adjacent to the road is unsafe and prone to flooding; that the proposal is not the solution to the anti-social behaviour problem and would simply move it elsewhere. Concerns are also raised by the residents of no.11 Royal Grove who fear that the proposal would lead to people trespassing on their land as an alternative route. Other residents feel that there are other incidences of anti-social behaviour in the local area which haven't warranted such action and there are suggestions that the proposal simply forms a means of gaining extra garden space, with little consideration to the inconvenience it would pose to the wider community. Concerns are also raised that the approval of the application would lead to a subsequent proposal to close Footpath no.57 between nos. 11 and 12 Royal Grove.
21. Those local residents who support the application cite incidents where stones have been thrown at cars from the path and that the proposals are a common sense means of solving an anti-social behaviour problem.

22. It should be noted that although there is only one applicant, Mr Winter of no.7 Royal Grove, that residents of nos. 2, 3, 4, 6, 8, 9 and 10 Royal Grove have all previously indicated in writing that they are involved with the proposal.

APPLICANTS STATEMENT:

23. For clarification, although this application is in my name it is made on behalf of the residents of No's 2 -10 Royal Grove.
24. Anti-Social behaviour has been a long outstanding, well documented problem since 1994 and efforts have been made since that time to have something done about it. It was only in 2008 that ownership of the land was admitted by Durham County Council (DCC).
25. Under section 17 of the Crime & Disorder Act 1998 DCC have a Statutory Duty
26. "Without prejudice to any other obligations imposed upon it, it shall be the duty of each authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can to prevent crime and disorder in its area"
27. In addition, the residents of Royal Grove are entitled to the Right to Liberty and Security, the right to Respect for a Private and Family Life and the Right to Protection of Property under The Human Rights Act.
28. The footpath closure was first suggested by PC Don Luke (Now Retired), Crime Prevention Officer for Durham Constabulary. Working with the support of two Chairs of Durham County Council (Cllr Myers and Cllr Williams), Durham County Council Senior Officers, Local Councillor, Durham Constabulary and the Safe Durham Partnership, the residents have promulgated the provision of a new footpath construction to ensure that everything 'reasonable' had been done to facilitate the closure of the said footpath in compliance with the various legislation including the Crime & Disorder Act.
29. Many of the objectors are probably not aware of the ASB problems or even care but they are not the ones having to live with it, all we are asking for is a peaceful and quiet private life without damage to our property.

The above 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 Crook Civic Centre.

PLANNING CONSIDERATIONS AND ASSESSMENT

30. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of the development and visual impact of the extended fenceline .

Principle of the development.

31. Members should be aware that if this application is approved, the applicants will still be required to apply for a Stopping Up Order under s.247 of the Town and Country Planning Act. That is a separate process and will fully consider whether the Public Right of Way should be retained or not. For the purposes of this planning application

the key issue is considered to be whether there is a suitable alternative route and whether the land itself is of such public amenity value so as to warrant the refusal of the application, in accordance with Policy GD1 of the Wear Valley District Local Plan.

32. Policy GD1 of the Wear Valley District Local Plan makes no direct reference to the retention of Public Rights of Way, although it does discuss in more general terms the loss of public open space, needs of pedestrians, safe access and the deterrent of crime. Similarly, although the NPPF highlights the importance of retaining Public Rights of Way, it also highlights the importance of safe communities free from fear of crime.
33. As discussed below, the key issue with regards to the consideration of this application is the balance between the deterrent of crime, the loss of open space and the needs of pedestrians. In this regards, neither the NPPF nor Policy GD1 provides indication as to which issue should be apportioned more weight and accordingly, it ultimately falls upon the decision maker to consider this.
34. In order to fully consider these issues, it is helpful to appreciate the history of the site.
35. Residents of Royal Grove have apparently suffered from instances of anti-social behaviour (ASB) associated with the application site for a number of years and have been working with Durham County Council and others partners since at least 1994 in order to address the issue.
36. The land in question is Council owned and regard must be given to Section 17 of the Crime and Disorder Act 1998, under which the Council has a duty to do all that it reasonably can to prevent, crime and disorder in its area. To date instances of ASB have included damage to property, trespass, theft and damage of motor vehicles, riding of dirt bikes on the footpath and the throwing of stones and snowballs from the top of the grassed bank towards traffic on the B6298.
37. Whilst the Council, Police and other partners have worked to address ASB in the area through the removal of shrubs and installation of bollards, the closure of part of Footpath 57 at the top of the bank between nos 2-9 Royal Grove and the inclusion of the land within residents' gardens has been acknowledged as potentially being an effective way of addressing the problem in the long term. There is support from the Crook Neighbourhood Policing Team and Safe Durham Partnership in this respect. The Council's Rights of Way Section also have no objection to the section of Footpath 57 behind nos. 1 – 9 Royal Grove being lost.
38. However, at the same time it is also acknowledged that the footpath and land to the rear of no.10 Royal Grove is a well used facility and provides a walking route for many Crook residents, linking footpath no.57 to the Peases West Railway Walk, and the Council is a promoter of the route. While the Council's Rights of Way Section offer no objection to the section of path behind nos. 1 – 9 Royal Grove being lost, they do have concerns over the loss of the route between nos. 9 and 10 Royal Grove and the link north
39. Crucially, works for the realignment of the B6298 carriageway and the provision of a tarmac footway alongside the road. have now been completed and the footway traces the route of Footpath 57 in a parallel manner, running along the base of the bank to join the Peases West Railway Path to the north.
40. This newly installed footway provides a suitable alternative route to link to the Peases West Railway Path from the B6298 and is better surfaced. Some objectors have questioned the safety of this route, however the County Highways Authority

have confirmed that their latest figures show that until December 2011, no accidents resulting in injury have occurred and that furthermore, if highways officers had considered the location too dangerous to have a footway installed, then the work would not have been carried out. Whilst it is possible that the footpath will flood from time to time, it is considered that its use would not be prevented for such lengths of time that it would cease to be a viable route in the wider sense.

41. With regards to access to Footpath no.57, where it emerges between nos. 11 and 12 Royal Grove from the north or vice versa, it is accepted that a less convenient route would now have to be followed through Royal Grove itself to rejoin the original route. Instead of being able to cut between nos 9 and 10, users would have a detour of approximately 225m through Royal Grove and along the B6298. This route is therefore slightly longer, but at just 225m not overly so and it is better surfaced. It is therefore considered to be a perfectly viable alternative route.
42. Accordingly, it is considered that the loss of the land in question to private residential garden would not unreasonably compromise the ability of local residents to permeate the estate or connect to the existing footpath network. Ultimately, the consideration of this application, in accordance with Policy GD1 of the Wear Valley District Local Plan hinges on the minor inconvenience posed to footpath users, balanced against the ongoing antisocial behaviour problems which are being experienced by nos. 1 – 10 Royal Grove.
43. Given the presence of existing viable alternative routes for pedestrians it is considered that the inconvenience posed would not outweigh the duty of the Council to address the ASB problems being faced by residents.
44. Furthermore, it is considered that the land in itself, notwithstanding its Public Right of Way status, forms only a small part of a much larger area of public open space which is present on both sides of the road. In this respect, it is not considered that the appearance of the land alone warrants its retention as public open space as sufficient usable and aesthetically pleasing open space would remain.
45. The enclosure of the land by 1.8m high timber fencing would not have a detrimental impact on the character or appearance of the area, in accordance with Policy GD1 of the Wear Valley District Local Plan. The style and height of fencing would be in keeping with the existing fencing and would be set back a sufficient distance from the highway below. Colour treatment can be controlled by condition.

Other matters

46. Addressing the concerns of objectors which haven't been addressed above, it is considered that instances of antisocial behaviour in other locations in Crook should not justify the refusal of this proposal. Each problem has its own solution and this proposal has been specifically tailored to address this specific problem. To expect the Police to solve the problem in retroactive manner is not reasonable, with the Council and other parties having a duty to prevent crime and disorder. It is further considered that there is a reasoned process which has led to this proposal and the application does not form speculative "land grabbing" as has been suggested by some objectors.
47. It is considered unlikely that the approval of this application would lead to trespassing on the land of no.11 Royal Grove. If this were to occur, this would be a private civil matter.

48. Any proposal to close Footpath 57 between nos. 11 and 12 Royal Grove would be a separate matter which would require separate consideration. There is no suggestion that such a proposal is likely to come forward in the immediate future.

CONCLUSION

49. The loss of the affected section of public footpath is largely a matter for separate consideration under s.247 of the Town and Country Planning Act, however its loss is a consideration as part of this application.

50. Whilst the loss of a section of public footpath is always regrettable, it is considered that in this instance there is a viable alternative route available which would not inconvenience users to an unreasonable degree. The land itself is considered to not be of great amenity in its own right, other than the footpath function which it performs and moving the fenceline to enclose this section of land would not have a harmful visual impact on the surrounding area.

51. It is therefore considered that the application is in accordance with the provisions of relevant national and local plan policy.

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 and Section 18(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2. The development hereby approved shall be carried out in strict accordance with the following approved plans.

Plan Reference Number:	Date received:
Site Location Plan	6 th February 2012
Plan no.2	6 th February 2012
Plan no.3	6 th February 2012
Proposed Fence Detail	6 th February 2012

Reason: In order to secure a satisfactory form of development in accordance with Policy GD1 of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007.

3. Prior to the commencement of development details of the colour treatment of the proposed fencing shall be submitted to and approved in writing by the local planning authority. The development shall thereafter only be carried out in accordance with the approved details.

Reason: In order to secure a satisfactory form of development in accordance with Policy GD1 of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007.

REASONS FOR THE RECOMMENDATION

- I. The proposed development is considered acceptable having regard to the provisions of the NPPF and Policy GD1 of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007.
- II. More specifically, this proposal would address a longstanding antisocial behaviour problem without causing visual harm to the surrounding area, and there is an alternative convenient pedestrian route which would not inconvenience users to an unreasonable degree .
- III. The concerns of objectors have been considered but are not considered to carry sufficient weight so as to justify the refusal of the application.

BACKGROUND PAPERS

- Submitted Application Forms and Plans
- Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007
- National Planning Policy Framework.
- Consultation Responses
- Public Consultation Responses
- Regional Spatial Strategy for the North East