
APPLICATION DETAILS

APPLICATION NO: 3/2012/0393

FULL APPLICATION DESCRIPTION: Retrospective permission for 2.0m high timber security fence and gates

NAME OF APPLICANT: Meridian Estates

ADDRESS: General Bucher Court, Hawthorn Road, Bishop Auckland, DL14 6EY

ELECTORAL DIVISION: Woodhouse Close

CASE OFFICER: Paul Hopper, Planning Officer
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DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application relates to an existing sheltered housing complex of self-contained flats located within a predominantly residential area towards the centre of Bishop Auckland. The complex itself is made up of three double storey buildings of 1970's design and brick construction, and connected by two single storey link corridors and also includes areas of soft landscaping and an associated car park to the west. A mix of 43 studio flats and apartments are provided together with some communal areas.
2. The complex was previously used by a housing association which provided accommodation to the elderly but has recently been occupied by a housing association that specialises in providing accommodation for young people who are homeless or at immediate risk of becoming homeless.

The Proposal

3. Planning permission is sought retrospectively for the retention of a close boarded timber fence with associated gates which extends along the northern boundary of the site. The fence covers a total length of 113 metres and is approximately 2 metres in

height and is finished in mid brown wood stain. In addition, four sets of pedestrian gates have been provided within the fencing and of the same height and appearance.

4. Prior to being brought back into use earlier this year, the site was subject to periods of vandalism causing significant damage. The applicant has advised that the boundary fence to which this retrospective application relates was erected to mitigate these problems on the advice of Durham Constabulary Crime Prevention Officer.
5. The application is being reported to the South West Area Planning Committee at the request of Councillor Lee in order that the committee can properly assess the potential impact of the proposal on the surrounding area.

PLANNING HISTORY

6. There is no planning record of when the residential complex was originally constructed. However, information received from Housing 21 (the housing association that previously operated the complex), indicates that it was built in 1970 by the British Legion as a sheltered housing complex. A planning application (3/2001/0386) for two extensions to form lifts and lobbies was made by Housing 21 in July 2001 and submitted plans show the general arrangement of the buildings as a sheltered housing complex.

PLANNING POLICY

NATIONAL POLICY

7. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development via three topic headings – economic, social and environmental, each mutually dependant.
8. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve ‘core planning principles’.
9. The following elements are considered relevant to this proposal;
 - An economic role seeks to contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure; and
 - A social role seeks support strong vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with its accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and

- An environmental role seeks to contribute to protecting and enhancing our natural, built and historic environment; and, as part of this helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

10. Paragraph 14 of the NPPF sets out the presumption in favour of sustainable development. Paragraph 17 contains the 12 core land-use principles that planning should underpin decision taking. These include:

- proactively drive and support sustainable economic development to deliver homes, business and industrial units, infrastructure and thriving local places that the country needs;
- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
- take account of the different roles and character of different areas, promoting the vitality of our main urban areas;
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and,
- take account of and support local strategies to improve health, social and cultural well being for all, and deliver sufficient community and cultural facilities and services to meet local needs.

The NPPF can be accessed at:

<http://www.communities.gov.uk/planningandbuilding/planningsystem/planningpolicy/planningpolicyframework/>

REGIONAL PLANNING POLICY

11. The North East of England Plan - Regional Spatial Strategy to 2021 (RSS) July 2008, sets out the broad spatial development strategy for the North East region for the period of 2004 to 2021. The RSS sets out the region's housing provision and the priorities in economic development, retail growth, transport investment, the environment, minerals and waste treatment and disposal. Some policies have an end date of 2021 but the overall vision, strategy, and general policies will guide development over a longer timescale.

12. In July 2010 the Local Government Secretary signalled his intention to revoke Regional Spatial Strategies with immediate effect, and that this was to be treated as a material consideration in subsequent planning decisions. This position was challenged through the courts and the Court of Appeal ruled in May 2011 that the proposed abolition of Regional Spatial Strategies can be regarded as a material consideration when deciding planning applications. The following policies are considered relevant.

13. *Policy 8 (Protecting and Enhancing the Environment)* seeks to promote measures such as high quality design in all development and redevelopment and promoting development that is sympathetic to its surroundings.

The above represents a summary of those policies considered most relevant. The full text can be accessed at:
<http://www.gos.gov.uk/nestore/docs/planning/rss/rss.pdf>

LOCAL PLAN POLICY:

14. The following policy of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007 is relevant in the determination of this application:
15. *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.

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.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

16. *The Highway Authority* offers no objection to the proposal but notes that two sections of fence to the rear of Elm Terrace and a section at its easternmost point appear to encroach upon the public highway. It is noted that matters of highway encroachment are subject to appropriate control under Section 143 of the Highways Act 1980 which also includes powers of enforcement. Details of the fence have been passed to the Council's Highway Policy & Asset Management Section to consider whether or not any breach has taken place.
17. *Durham Constabulary Architectural Liaison Officer* has no objections to the proposal noting that during the time General Bucher Court stood empty, it was subject to a serious amount of burglary and vandalism and that at the time it had an open aspect with an insecure boundary. They confirm that the fence was necessary to offer the buildings some protection and to help break the cycle of offending. Closing the cut through was necessary to protect the flats and in time the closure will prove to be a benefit to the surrounding houses (in particular Elm Terrace as the cul-de-sac it has created will be more secure). In response to concerns that the fence has generated antisocial behaviour it is noted that the problem was there before the fence was erected and while it may have been subject to vandalism, it is not the cause.

INTERNAL CONSULTEE RESPONSES:

18. *Public Rights of Way Section* states that there are no recorded rights of way through the site. However, they note that it is possible that access may have been established through presumed dedication, a procedure which is tested under the Wildlife and Countryside Act 1981, where it is necessary to show that there has been uninterrupted use by the public over a period of 20 years, and that the landowner never intended to dedicate the way (which could be by way of notices indicating that it was private, reports from people who can give evidence that the way was private or an interruption of the public's use, for example, by locking a gate for one day during the year).

PUBLIC RESPONSES:

19. The application has been advertised on site and neighbour notification letters sent to surrounding properties. In total 26 letters/emails of objection have been received and these reasons for objection are summarised below;

- The fence is unsightly, poorly constructed, is unsuitable for a residential area and has an adverse impact upon visual amenity.
- The fence has an adverse impact upon parking, access and highway safety and blocks a public right of way.
- The fence has created a focal point for youths who congregate alongside it and use it to sit on from where they can see directly into the windows of neighbouring properties. The resulting antisocial behaviour adversely affects the amenity of adjacent residential occupiers.
- The fence is too high and as such is overbearing reducing the amount of natural light enjoyed by adjacent residential properties.
- The position of the fence is such that it has reduced the width of lane to the rear of Oak Terrace restricting vehicular access.
- High level lighting has been installed on the building and light spill from these is adversely affecting adjacent properties.
- A number of trees have been removed from the site.
- The site should be developed for housing.
- The gates onto Elm Terrace will have an adverse impact upon highway safety, parking and access.
- The fence will reduce the property value of surrounding houses.
- The use of the building is unacceptable.
- The fence in places has created a gap between the fence itself and an existing wall which will collect litter and raise maintenance issues for the local authority.
- The application retrospective and should not be considered.
- Incorrect dates have been provided in the application in relation to when the works commenced.
- The CCTV cameras which have been installed on the building are unacceptable.

APPLICANTS STATEMENT:

20. The buildings at General Bucher Court have long suffered from vandalism and abuse from local children who use the sheltered and hidden corners of the buildings alongside Hawthorn Road to drink and use drugs. This has also led to serious vandalism and theft while the buildings were unoccupied.
21. The buildings are now mostly tenanted and the residents gain considerable peace of mind from the fact that children can no longer hide-out on or around their homes to cause nuisance.
22. We have considered the objections regarding the height of the fence and are willing to remove a section of the fence running along the top of the existing wall alongside Block 3 that is above 2.0M high as shown on the accompanying drawing, however we feel that the security of the tenants should be our main concern and that this would be comprised if the fencing was reduced below 2.0m high in other areas.
23. Our future aim is to improve the surroundings of the whole site and once the development has a more settled and well established use, it would be our intention to replace some of the fencing with railings of a more aesthetic appearance subject to agreement with the local authority.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file.

PLANNING CONSIDERATIONS AND ASSESSMENT

24. Having regard to the requirements of section 38(6) of the Planning and Compulsory Purchase Act 2004, relevant guidance, development plan policies and all material planning considerations including representations received, it is considered that the main planning issues in this case relate to the impacts upon the amenity of surrounding residents, the visual impact and issues of highway safety and access.

Impact upon residential amenity

25. The fence has an overall height of 2 metres and is located along the northern boundary of the site parallel to Hawthorn Road and Oak Terrace. The nearest residential properties at Oak Terrace are located approximately 6 metres from the fence. Properties at Hawthorn Road, Cedar Road and Laburnham Road are situated 12 metres away.

26. A number of residents have raised concerns regarding overshadowing and loss of sunlight to surrounding properties, particularly those at Oak Terrace. While the fence is located to the south of these properties it is considered that the 6 metres separation distance is sufficient to ensure that there would be no adverse residential amenity impacts in terms of the fence being overbearing or leading to any loss of light or overshadowing. In addition, existing boundary treatment to the rear of these properties comprises a 2 metre high boundary wall and as such the fence does not create any overshadowing above that already created by this boundary wall.

27. Properties to the north at 2 Hawthorn Road, Hawthorn Cottage, Cedar Road and Laburnham Road are located 12 metres from the fence and this is considered sufficient distance to ensure that there would not be any adverse impact in terms of overbearing, overshadowing and loss of sunlight. The orientation of properties at Cedar Road and Laburnham Road is such that the fence predominantly fronts blank gable elevations, although there are some non-habitable windows positioned on the side elevations of rear offshoots which themselves are set back within rear yards.

28. Notwithstanding the above, the applicant has agreed to remove three sections of fence where it has been erected above existing brick walls. These are interspersed along the length of the fence on Hawthorn Road and as it turns into the rear lane of Elm Terrace. This would assist in mitigating any potential impact on the amenity of nearby residents, and can be secured through the imposition of an appropriate planning condition. As such, the proposal would not significantly adversely affect the amenity of surrounding residents in accordance with Local Plan Policy GD1.

29. Residents have raised concerns regarding antisocial behaviour and that the fence is regularly climbed by youths. The applicant has confirmed that the fence was erected on the advice of Durham Constabulary Crime Prevention Officer to address issues of crime, antisocial behaviour and vandalism at the site. Durham Constabulary Architectural Liaison Officer has been consulted and notes that the problem of antisocial behaviour existed before the fence was erected and that while it may have been subjected to vandalism, it itself is not the cause. In addition they consider the fence was necessary to offer the buildings some protection and will, over time, prove to be a benefit to surrounding houses (particularly those in Elm Terrace) as the cul-de-sac it has created will be more secure. As a result it is considered that the proposal would not have any adverse impact to the amenity of surrounding residential occupiers in terms of antisocial behaviour and as such accords with the requirements of Local Plan Policy GD1.

Impact upon visual amenity

30. The site is located within a predominantly residential area and prior to the erection of the fence, it had an open aspect to the north with boundary treatment elsewhere at the site comprising a small dwarf wall with associated piers. The fence has an overall height of 2 metres and has been finished in mid brown wood stain. Several residents have raised objection to the fence citing its height, appearance, quality of build and finished colour which they consider is not in keeping with the character of the surrounding area and has an adverse impact upon visual amenity.
31. While the site lies to the south west of Cockton Hill Conservation Area, it is not subject to any landscape or conservation designation and has limited impacts outside the immediate area.
32. The overall height of 2 metres is approaching the upper limits of what could be considered acceptable in a predominantly residential area, however, the colour finish and timber construction is of a style typical of that found in residential areas throughout the County. In addition, the impact of the fence is further mitigated by virtue of a 40m section of the fence being located within the rear lane of Elm Terrace, where high boundary treatments are typically found. Furthermore, the remainder of the fence along Hawthorn Road is broken up by existing sections of walling, as opposed to the fence being a continuous solid boundary treatment.
33. The concerns of local residents are noted and the agreement of the applicant to remove those sections of fence above existing boundary walls is welcomed and this can be secured through the imposition of an appropriate planning condition. It is therefore considered that the fence would not have any unacceptable adverse impact upon the character and appearance of the surrounding area in accordance with the requirements of Local Plan Policy GD1.

Highway Safety and Access

34. Several residents have raised objection to the application on the grounds that the fence has restricted the use of an existing footpath that previously spanned the site. The Rights of Way Section confirms that there are no registered rights of way across the site, and although there are mechanisms available to contest access rights, through continuous use for a period of 20 years or more (presumed dedication), this assessment falls beyond the control of relevant planning legislation. As the proposal does not currently affect any designated public right of way, it is considered that it accords with the requirements of Local Plan Policy GD1.
35. The fence is located adjacent to the adopted highway at Hawthorn Road and Elm Terrace, and its straight, linear layout is such that it does not have any adverse impact upon the visibility of those vehicles using this road. Local Plan Policy GD1 that proposals provide safe access, and as such, the proposed fence accords with the requirements of the policy. The Highway Authority has no objections but notes that part of the fence appears to encroach onto the public highway at points to the east of Hawthorn Road and to the rear of Elm Terrace. While this encroachment has narrowed the width of the existing lane it has not done so to the extent that this would have an adverse impact upon highway safety or its ability to accommodate vehicles warranting refusal of the application. Matters of highway encroachment are covered by provision in Section 143 of the Highways Act 1980 and cannot be enforced by planning legislation.

36. Within the length of fencing erected, there are four sets of pedestrian gates, which currently open outwards onto the public highway. The Highway Authority has advised that these should be amended to open only inwards in order to protect the safety of those users of the adjacent pedestrian footpath. The applicant has agreed to undertake these works which could be ensured through the inclusion of appropriate planning condition.

Other matters

37. Residents have raised objection to the retrospective nature of the scheme and that they were not consulted by the applicant prior to the installation of the fence. In addition they note that the date which the applicant states that the works commenced is inaccurate. While it is disappointing that the fence was installed without the benefit of planning permission, the retrospective nature of the application is not a material planning consideration nor is any alleged discrepancy in the dates provided relating to when the development commenced.

38. Concerns have been raised in relation to the removal of two large leylandii trees on the northern boundary of the site, in order to accommodate the fencing. The site is not located within a conservation area and the trees were not protected by a Tree Preservation Order, and as such they were afforded no statutory protection. However, since the removal of the trees, a Tree Preservation Order has been served on two large retained trees on the southern and western edges of the site to ensure their long term retention as they make a significant contribution to the character of the and appearance of the surrounding area.

39. Residents have objected to the installation of high level lighting and CCTV equipment at the site which have adversely affected the amenity of surrounding properties in terms of light spillage and loss of privacy. Both the lighting and CCTV have deemed consent under provision of the Town and Country Planning (General Permitted Development) Order 1995. Notwithstanding this, the applicant has been made aware of these concerns and has realigned the lighting and reduced the area covered by the CCTV equipment to wholly within the site.

40. Several residents have voiced objections to the use of the complex as residential housing for young people and questioning whether or not this constitutes a material change of use requiring planning permission. While this application relates solely to the retention of the boundary fence and associated gates, the site remains in use as a sheltered housing complex, and as such, no material change of use of the land and buildings has occurred and accordingly planning permission is not required for the current use.

41. Residents have concerns that the fence will reduce the value of surrounding properties. The impact of development upon surrounding property values is not a material planning consideration.

42. Finally, some residents have concerns at what they believe are future plans to provide similar boundary treatment arrangement along the western boundary with the Elm Terrace. This application relates solely to the fence erected to the northern boundary and as such any future proposed to install a similar fence to the west would require planning permission which would be considered separately, and on its planning merits.

CONCLUSION

43. The timber fence and gates have been provided to improve security at the site and enclose what are private garden areas used by the residents of the associated flats. While the overall height, at two meters, is approaching the upper limits of what would be considered acceptable within a residential area, it is considered that the timber construction and finished colour are typical of a residential boundary fence, and as such the fencing and gates does not have an unacceptable impact upon the character and appearance of the surrounding area. Nevertheless, the applicant has agreed to remove three sections of fencing erected above existing walls to further reduce the impact of the fencing on the immediate area.
44. Nearby residential properties are considered to be sufficiently far away from the fencing that there are no adverse impacts upon residential amenity in terms of overshadowing, dominance or privacy loss. Accordingly, it is considered that the application accords with Local Plan Policy GD1, and is therefore acceptable.

RECOMMENDATION

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

1. Within three months of the date of this permission the three sections of fencing erected above existing walls shall be removed for the entire length of the respective walls and shall not be reinstated thereafter. The local planning authority shall be notified within seven days of the completion of the works. Reason: In the interests of highway safety in accordance with the requirements of Policy GD1 of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007.
2. Within 3 months of the date of this permission the four pedestrian access gates located within the boundary fence hereby approved shall be repositioned so that they are inward opening into the site only and this arrangement shall thereafter be retained. The local planning authority shall be notified within seven days of the completion of the works. Reason: In the interests of visual amenity in accordance with the requirements of Policy GD1 of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007.

REASONS FOR THE RECOMMENDATION

1. The proposed development is considered acceptable having regard to the provisions of the NPPF, RSS and Policy GD1 of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007.
2. More specifically, the proposed fence has improved security at the site and enclosed what is a private amenity space serving an associated residential development and without having unacceptable impacts on the character or appearance of the surrounding area, the amenity of nearby residents, or highway safety.
3. In arriving at this recommendation, the public consultation responses received have been considered, however on balance, the issues raised are not considered sufficient to warrant refusal of the application and can, where appropriate, be mitigated through inclusion of planning conditions.

BACKGROUND PAPERS

- Submitted Application Forms and Plans
- Design and Access Statement
- National Planning Policy Framework
- North East of England Plan Regional Spatial Strategy to 2021 (RSS) July 2008
- Wear Valley District Local Plan
- Circular 11/95: Use of conditions in planning permission
- Responses from Highway Authority
- Internal responses from Public Rights of Way
- Public Consultation Responses



Planning Services

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Retrospective permission for 2.0m high timber security fence and gates at General Bucher Court, Hawthorn Road, Bishop Auckland, DL14 6EY

Comments

Date 22 November 2012