

# Planning Services

## COMMITTEE REPORT

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### APPLICATION DETAILS

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APPLICATION NO:	PL/5/2012/0414
FULL APPLICATION DESCRIPTION	CHANGE OF USE FROM PUBLIC OPEN SPACE TO RESIDENTIAL CURTILAGE INCLUDING ERECTION OF FENCING (PARTLY RETROSPECTIVE)
NAME OF APPLICANT	A TURNBULL
SITE ADDRESS	17, 18 & 19 ROXBY WYND, WINGATE, TS28 5PN
ELECTORAL DIVISION	
CASE OFFICER	Laura Eden 03000263980 dmcentraleast@durham.gov.uk

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### DESCRIPTION OF THE SITE AND PROPOSAL

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#### Site:

1. The application site relates to a rectangular piece of land measuring approximately 5 metres wide by 47 metres long, situated to the west of 17, 18 and 19 Roxby Wynd and located between the their former rear fence line and a public footpath. The land was formerly completely open, was grassed and planted with trees.

#### Proposal:

2. Retrospective planning permission is sought for the change of use of the open space to private garden.
3. No.18 Roxby Wynd has already enclosed additional land to the rear of their property with a close boarded timber fence around 1.8 metres high. The plans indicate a tree stump within the new garden area.
4. No.17 Roxby Wynd proposes to erect a fence to enclose additional land as part of their domestic curtilage. The rear fence line would run in line with the adjoining neighbour at no.18 for 4.3 metres before it would splay at an angle in a southeasterly direction. It would then attach to a section of fencing proposed to project 2.5 metres out from the original rear fence line of the property set in slightly from the neighbour's hedge at no.11 Ingram Way.

5. No. 19 Roxby Wynd have not erected any form of enclosure however they have planted various trees and shrubs that run parallel with the existing path to the side of the property and that form the new boundary to the plot.
6. The application is referred to committee at the request of both local divisional members, Cllr O'Donnell and Cllr Maslin.

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## **PLANNING HISTORY**

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7. The Council originally owned the land that the houses in the estate are now built on, the application site and the larger area of open space to the west. When the land was sold to the housing developer a restrictive covenant was placed on the areas of open space that prohibits any development taking place. There are however legal options for seeking to remove or vary such matters and these are in any event private law issues.
8. Furthermore, there was also an application of a similar nature to the one currently under determination that was withdrawn in September 2012 due to concerns relating to the lack of clarity in the submitted plans (PL/5/2012/0260).

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## **PLANNING POLICY**

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### **NATIONAL POLICY:**

9. 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 under three topic headings – economic, social and environmental, each mutually dependant.
10. 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'
11. The following elements are considered relevant to this proposal:
12. Part 7 - 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.

*The above represents a summary of those policies considered most relevant. The full text can be accessed at: <http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements>*

### **REGIONAL PLAN POLICY**

13. *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.*

14. 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 was successfully challenged in the High Court in November 2010, thus for the moment reinstating the RSS. However, it remains the Government's intention to abolish Regional Spatial Strategies by making Orders under Section 109 of the Localism Act 2011. Both the RSS and the stated intention to make the necessary Orders are material planning considerations and it is a matter for each Planning Authority to decide how much weight can be attached to this stated intention, having regard to the evidence base which informs the RSS. However, none of the RSS policies are considered relevant to this application.

#### **LOCAL PLAN POLICY:**

##### District of Easington Local Plan

15. Policy 1- Due regard will be had to the development plan when determining planning applications. Account will be taken as to whether the proposed development accords with sustainable development principles while benefiting the community and local economy. The location, design and layout will also need to accord with saved policies 3, 7, 14-18, 22 and 35-38.
16. Policy 35 - The design and layout of development should consider energy conservation and efficient use of energy, reflect the scale and character of adjacent buildings, provide adequate open space and have no serious adverse effect on the amenity of neighbouring residents or occupiers.
17. Policy 73 - Extensions or alterations to existing dwellings, requiring planning permission, will be approved provided that there are no serious adverse effects on neighbouring residents, the proposal is in keeping with the scale and character of the building and the proposal does not prejudice road safety or result in the loss of off street parking.
18. Policy 92 - Amenity open space will be protected unless development would enable enhancement of the remaining play space or alternative provision of equal or enhanced benefit is provided.

*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.durham.gov.uk/Pages/Service.aspx?ServiceId=7534>*

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## **CONSULTATION AND PUBLICITY RESPONSES**

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#### **STATUTORY RESPONSES:**

19. Parish Council – Object to the development as want the land to remain as open space.
20. Cllr O'Donnell and Cllr Maslin – Object to the application on the grounds of the covenant that restricts development on this land and the field adjacent to it. They wish to see the land remain as open space and recreational land for the benefit of the whole estate.

## **INTERNAL CONSULTEE RESPONSES:**

21. Highways – No objection raised
22. Trees – The Council has maintained the trees in the estate. One tree in particular had been badly pruned and was diseased. It was considered that the only option was to remove the tree in the interests of health and safety. There is the option to place a Tree Preservation Order on the remaining trees.

## **PUBLIC RESPONSES:**

23. The application was advertised by means of a site notice and neighbour notification letters – Five letters of objection have been received from local residents concerned about the retrospective nature of the development, the loss of open space, that trees have been removed from the site and if allowed further trees could be lost, land ownership issues, the restrictive covenant, the content of the emerging Local Plan and setting a precedent for development. In addition, an eleven signature petition has been received objecting to the development.

## **APPLICANTS STATEMENT:**

24. We have lived at this address since the estate was built in 1999, the land in question has been anything but correctly maintained, grass and shrubs neglected over a long period of time an accumulation of litter, beer cans, pop cans, rubbish and fly tipping, kids making a nuisance by climbing trees and invading our privacy, is all we have experienced over the 14 years, by enclosing this area we have eliminated all the problems but not only that but we have raised the quality of the area. in line with how the estate should look. I myself have already enclose the area with quality fencing which blends well into the original fencing within the estate, my next door neighbour has boarded his ares with shrubs which look very nice.
25. We have followed all the correct channels prior to our adverse possession application, we approached land registry in Durham City, we asked if they could give us the title of who owns the land which they did it was Alexander Developments we explained to our knowledge that the company did not exist after being sold off a few years ago how ever further research showed the did have an address in Manchester, a planning application was sent to the land owners Alexander Development ( NE Ltd ) and they did not reply to the application, following this we are now in the planning application stage which is on going.

*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 <http://planning.easington.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=120763>*

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## **PLANNING CONSIDERATION AND ASSESSMENT**

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26. The main planning issues in the determination of this planning application are: -
  - Principle of Development
  - Residential Amenity
  - Visual Amenity
  - Trees
  - Other issues raised by the objectors

## **Principle of Development**

27. Policy 92 of the local plan states that amenity open space will be protected from development except in two specific circumstances that relate to the enhancement of the remaining space or alternative replacement provision being made. The proposal currently put forward would not meet either criteria therefore if approved would technically signify a departure from the local plan. It is acknowledged that public open space would normally be protected from development in accordance with the relevant policy however it is important to assess the harm that such a development would cause. Normally the view has been taken that applications could potentially be looked upon favourably unless the enclosure would detract significantly from the amenity of the area, it would represent a piecemeal development rather than a comprehensive application from a group of properties and would establish a precedent that could cumulatively lead to a more substantial reduction in public open space in the area.
28. In the circumstances it is not considered that the development would have a significant adverse impact on amenity that would justify refusal. It is acknowledged that this would not be in strict accordance with policy 92 however in light of specific site circumstances that will be outlined in more detail later in the report it is considered that the principle of development is acceptable. Whilst it does therefore represent a minor conflict with the development plan policy, there are other material considerations which outweigh that.

## **Residential Amenity**

29. Policy 35 and 73 of the local plan aim to ensure that development does not adversely affect the amenity of the people living in the vicinity of the development. These policies are in accordance with the NPPF as it too seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.
30. The closest property affected by the development is 11 Ingram Way, whose front elevation would face the side fence of no. 17 Roxby Wynd. There is in the region of 12 metres between the frontage of 11 Ingram Way and the proposed new opposing fence line at 17 Roxby Wynd. Initially it was considered that the development had the potential to be overbearing and dominant to the neighbouring property as the fence line was originally intended to project straight out to the footpath. Amended plans were therefore submitted showing the fence line splaying away from the neighbouring property that has helped to maintain the open aspect that they are currently accustomed to. Any impact on outlook from 11 Ingram Way is now considered to be at an acceptable level with the amended fence line.

## **Visual Amenity**

31. Alterations to properties are required to reflect the scale and character of the area if they are to be in accordance with policies 35 and 73 of the Easington Local Plan. These policies are not considered to conflict with the general principles of the NPPF and in particular Section 7 dealing with good design as proposals need to respect neighbouring properties and the local area more generally.
32. Due to the size of the application site it is not considered that the open space represented a usable space for residents of the estate especially when they can use the larger field adjacent, although it did contribute to the overall visual amenity of the

area. Furthermore, although some modern residential estates are characterised by pockets of open space/landscaping strips running through the development this is not the case in Roxby Wynd. Being separated from the main area of open space by a public footpath, this is the only amenity strip within the surrounding streets that could reasonably be enclosed as garden extensions therefore its loss would not be considered to conflict with the overall intention for the original estate or general open plan principles. Notwithstanding this, it is acknowledged that the application site occupies a visually prominent position at the entrance to Roxby Wynd and can be viewed uninterrupted across the adjacent open space.

33. As no. 19 Roxby Wynd have not erected a fence, instead opting to plant various shrubs and bushes to mark the new boundary line, more than half the original length of the open space retains a largely open plan feel. The additional planting undertaken is considered to improve the overall visual appearance of the area. Additionally, although no. 18 has already enclosed additional land and no.17 proposes to do so the developments are set back around 25 metres from the main estate road therefore their impact is significantly lessened. It would bring the fence line closer to the public footpath but this is not considered to adversely impact on users of the footpath. It is therefore not considered that the change of use to garden land adversely impacts on visual amenity to the extent that would justify refusal of the application. To ensure this remains the case it is recommended that a condition removing future permitted development rights in relation to enclosures is imposed should members be minded to grant approval. This would ensure that no further fences are erected without the consent of the Local Planning Authority therefore protecting the currently open feel around no.19 and safeguarding against the additional enclosure of land around no.17 to the detriment of the amenities of the occupier of 11 Ingram Way.

## **Trees**

34. The existing trees that lie within the original housing application site (97/586) are afforded protection by virtue of condition 9 of that approval that states the existing trees and hedges on site shall be retained and not felled, lopped or topped without the express consent of the Local Planning Authority. It further goes on to add that any trees that are removed without consent shall be replaced with trees of a similar species and size.
35. As part of the previously withdrawn application (PL/5/2012/0260) the tree officer assessed the proposal and noted that some of the trees were suffering from a decay fungus. They were considered to be suffering significantly and their disease was of an advanced stage therefore felling them in the interests of health and safety was considered to be the only option available. On that basis they were removed. Objectors have referred to trees being removed at the site however these appear to relate to the ones that the tree officer agreed should be removed in the interests of health and safety.
36. In terms of the current application the tree officer does not offer any objection to the scheme. He does note that there is an opportunity to place a Tree Preservation Order (TPO) on the trees and is currently in the process of surveying all the trees within original housing site boundary to ascertain which ones are worthy of such protection. It is hoped that this work will be completed and a TPO in place by the time the application is considered at committee. This would mean that if works were proposed to undertaken to any of the protected trees this could not be done until such time as a formal application had been submitted and approved. It is considered

that the trees do contribute to the amenity value of the area and it would be beneficial to see them retained therefore this formal protection is welcomed.

### **Objections to the development**

37. The main cause of concern for local residents, the Parish and local members appears to relate to a restrictive covenant on the application site and the field adjacent that prohibits development from taking place. It is acknowledged that development has taken place without this covenant being removed however this is a private civil matter for the applicant to resolve. Likewise, it is also known that the application site is not within the ownership of the applicant however from a planning perspective the ownership certificates have been signed correctly. The planning application needs to be assessed against the relevant development plan and determined on that basis. The aforementioned concerns relate to legal issues that are outside the planning realm therefore it would not be appropriate to refuse the application on this basis.
38. It is noted that the majority of the works contained within this application have already been completed however the current planning system allows retrospective submissions to seek to regularise unauthorised works.
39. It is not considered that if approved this decision would set a precedent for future development of a similar nature. As already stated there are no other similar areas within the estate that could be brought forward for development and regardless each application has to be assessed on its individual merits. Further although it is noted that the field adjacent to the development may be allocated as a potential future housing site in the new emerging Durham Local Plan this is considered to be a separate matter and not related to the determination of this development. Approval of this proposal would not be considered to undermine the Local Planning Authority's position on the larger adjacent area of open space.

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### **CONCLUSION**

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40. To conclude, it is not considered that the development has a significant adverse impact on either visual or residential amenity to an extent that would warrant refusal of the application. By imposing conditions relating to the removal of permitted development rights and potentially placing a Tree Preservation Order on the existing trees it is considered that the open plan feel to this area of the development can remain as well as protecting existing trees. Furthermore, the additional shrubs and bushes planted along the boundary of no.19 are considered to enhance the area. The main cause of objection to the scheme relates to a restrictive covenant and landownership issues which are legal matters that would need to be resolved outside the planning process.

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### **RECOMMENDATION**

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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 following approved plans. Plan References; Design and access statement and location plan received 13/11/2012, Drg. no. G716/2A received 19/12/2012 and application forms received 08/02/2013

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with saved policies 1 & 35 of the District of Easington Local Plan.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any order revoking or re-enacting that Order, no fences, gates or walls, other than those expressly authorised by this permission shall at any time be erected without the grant of further specific planning permission from the Local planning authority.

Reason: In order that the Local planning authority may exercise further control in this locality in the interests of visual and residential amenity in accordance with saved policies 1 and 35 of the District of Easington Local Plan.

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## **REASONS FOR THE RECOMMENDATION**

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1. The development was considered acceptable having regard to the following development plan policies:

DISTRICT OF EASINGTON LOCAL PLAN	ENV35 - Environmental Design: Impact of Development
DISTRICT OF EASINGTON LOCAL PLAN	GEN01 - General Principles of Development
DISTRICT OF EASINGTON LOCAL PLAN	HOU73 - Extensions and/or alterations to dwellinghouses
DISTRICT OF EASINGTON LOCAL PLAN	REC92 - Protection of Amenity Open Space
NATIONAL PLANNING POLICY FRAMEWORK	Part 7 - Requiring Good Design

2. In particular the proposal was considered acceptable having regard to consideration of issues of the principle of development, residential amenity, visual amenity and trees.

3. The stated grounds of objection concerning the retrospective nature of the development, the loss of open space, that trees have been removed from the site and if allowed further trees could be lost, land ownership, the restrictive covenant, the content of the emerging Local Plan and setting a precedent for development were not considered sufficient to lead to reasons to refuse the application because the development was considered to be in accordance with the relevant planning policies and the remaining matters are not considered to be planning related.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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In dealing with the application, the Local Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising during the application process and in compliance with the requirement in the National Planning Policy Framework to promote the delivery of sustainable development.

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## **BACKGROUND PAPERS**

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- Submitted Application Forms and Plans.
- Design and Access Statement
- North East of England Plan Regional Spatial Strategy to 2021 (RSS) July 2008
- District of Easington Local Plan 2001
- National Planning Policy Framework



- Consultation Responses



Planning Services

**CHANGE OF USE FROM PUBLIC OPEN SPACE TO RESIDENTIAL CURTILAGE INCLUDING ERECTION OF FENCING (PARTLY RETROSPECTIVE) at 17, 18 & 19 ROXBY WYND, WINGATE TS28 5PN PL/5/2012/0414**

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Comments

Date 2 August 2011

Scale 1:3500