

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/16/00987/FPA
FULL APPLICATION DESCRIPTION:	Change of use of open space to private garden area (retrospective application).
NAME OF APPLICANT:	Mrs L Ferguson
ADDRESS:	170 York Crescent, Newton Hall, Durham, DH1 5QS
ELECTORAL DIVISION:	Framwellgate and Newton Hall
CASE OFFICER:	Lisa Morina Planning Officer 03000 264877 lisa.morina@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site in question is an area of open space which is located to the north of 170 York Crescent. The area of the land in question is around 230m², and forms one of many pockets of open space which are located within the Newton Hall Housing Development.

The Proposal

2. This application seeks retrospective consent for the change of use of part of this land to private garden area for the occupants of no. 170 York Crescent. The site extends out from the original boundary by 3.4m and runs for the full length of the garden. It is enclosed by a fence which is 6ft (approx. 1.8m) in height consisting of concrete posts and boards with fence panels.
3. Trees have been planted to the front of the fence, however, these are to be removed following concerns raised by officers, and do not form part of this application.
4. This application is being referred to the planning committee at the request of Cllr Hopgood due to the loss of open space.

PLANNING HISTORY

5. There is no relevant planning history on this site.

PLANNING POLICY

NATIONAL POLICY:

6. 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.
7. 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'.
8. The following elements are considered relevant to this proposal;
9. NPPF Part 7 – Requiring Good Design. 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.
10. NPPF Part 8 - Promoting Healthy 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.

The above represents a summary of the NPPF considered most relevant the full text may be accessed at: <http://www.communities.gov.uk/publications/planningandbuilding/nppf>

LOCAL PLAN POLICY:

City of Durham Local Plan

11. Policy H13 – (The Character of Residential Area) Planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
12. Policy E5a (Open Spaces within Settlement Boundaries) does not permit proposal which would detract from the functional, visual and environmental attributes they possess.
13. Policy Q1 (Design) sets out that the layout and design of all new development should take into account the requirements of users including personal safety and crime prevention and the access needs of everybody including people with needs of disabilities.
14. Policy Q9 (Alterations and Extensions to Residential Properties) state that extensions will only be approved when they met a set of specific criteria for example, including impact on residential amenity of neighbours and impact on streetscene.

RELEVANT EMERGING POLICY

The County Durham Plan

15. Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 15 February 2015, however that report was Quashed by the High Court following a successful Judicial Review challenge by the Council. As part of the High Court Order, the Council has withdrawn the CDP from examination. In the light of this, policies of the CDP can no longer carry any weight at the present time.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

16. Police Architectural Liaison Officer – The proposal is an improvement and should be retained.

INTERNAL CONSULTEE RESPONSES:

17. Landscape Team – No response received at the time of finalising this report. The committee will be updated accordingly.

18. Rights of Way Team - There are no recorded Public Rights of Way through the area in question. The surfaced pathways adjacent to the application site form part of the County's adopted highway network. Sufficient space would still be available to use the remaining area of grass bordering the pathway as an alternative when the pathway is icy.

PUBLIC RESPONSES:

19. The application has been advertised on site by way of a site notice and neighbouring residents were also notified individually of the proposed development. At the time of report preparation, 5 letters of objection have been received from neighbouring properties and 4 letters of support.

20. Comments have also been raised from Cllr Wilkes and Cllr Simmons in addition to the request for committee from Cllr Hopgood due to the limited communal grassed areas available for all members of the public and given the fact that the Council have cared for the land for well over forty years and suggests this should continue.

21. The issues raised by objectors are as follows:

- The area is open space and not wasteland as detailed in the application.
- The grassed area is maintained by the Council.
- Ownership was retained by Bellway to prevent any future developments on these areas which would spoil the open plan nature.
- Loss of public open space
- The space is a public right of way
- Level of consultation carried out

- The land belongs to the community (is a community asset) and cannot be just taken
 - The proposal will set a precedent for others which could reduce the amount of open space totally.
22. The letters of support consider that the area has been derelict for a number of years and has not been utilised for any specific purpose other than the collection of waste and dog fouling. Children do not play on it because of its irregular shape. It is considered that the proposal has improved the visual appearance of the area and made the area feel more safe and appealing. The proposal is also considered to bring a sense of ownership to the piece of waste land which has only benefitted the area.

APPLICANTS/AGENTS STATEMENT:

23. Paul and I bought this very dilapidated bungalow a year ago and have since spent that time creating a modern, bright family home worthy of modern times. The rear garden of the bungalow was small with a 40 odd year old fence only just hanging onto life, the side path was small and offered no privacy to our bedroom window on the side of the house. A decision was made to renew the fence and utilise this bit of land at the side of the property. I tried to find the owner of the land which isn't the Council, it isn't Bellway homes (I've written to them) and a search of the register with the Land Registry came back with no registered owner. Unfortunately we were misadvised as to being able to adopt this piece of land with a fence and therefore this application is retrospective.
24. I have read the responses to the proposed change of use and wanted to add the piece of land is not used for any purpose, only in the short year we have owned this property it was just bordering the path leading to the shops and is only used by dog owners as a dog toilet and rubbish collected in the very corner. Although a different matter, the path is very dark and with lighting on the side of the property, the fence has brightened up the area for the use of the community. Many passers-by have commented on how bright the area looks now.
25. One responder stated their view had been affected. This is not the case and from where their property is situated the view of the path hasn't changed since the fence has been erected. All they would be able to see is my husband's work van parked in front of our property which is in direct viewpoint from their house to the path.
26. I agree a man did fall and broke his leg but this is a very different matter from our planning application. The fence wasn't built at that time and I went out to assist this man as I saw him fall on ice due to runoff from the gradient of this piece of land. I have planted nearly 100 beech trees to make a bush in the front garden and am going to plant grass and a number of plants/bulbs/shrubs in order to assist with both the aesthetic appeal of our garden and try to help with water runoff from the over saturation of the land. I also haven't taken the whole piece of land and there is sufficient grass left for people to walk on should the path be icy. I have not made the path any less accessible and have not obscured the view of the path or people using it. I wanted to add that I have no intention of building anything on the piece of land and I have no intention of attempting to make our garden any bigger than it is.

PLANNING CONSIDERATIONS AND ASSESSMENT

27. 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, the impact on the residential amenity of the neighbouring properties, impact on the amenity of the area and any other issues.

Principle of the Development

28. Policy E5A of the City of Durham Local Plan advises that development proposals within settlement boundaries that detract from open spaces which possess important functional, visual or environmental attributes, or which contribute to the settlements character or to the small scale character of an area will not be permitted. The reason for this is that open spaces within the Districts settlements often form an important part of their character.
29. The area in question forms part of a network of open spaces and footpaths that connect through the estate and help to provide a pleasant pedestrian route for residents walking to and from services. The area also lies within the settlement of Framwellgate Moor.
30. The original area of open space has been reduced in size by the extended fencing, however it is considered that a reasonable amount of open and public space does still remain. In addition to this, other open spaces on the estate vary in shape and size, and it is therefore considered that the reduced area still combines well with the others adjacent and continues to provide an appropriate area of open space.
31. Concern has been raised that the proposal would result in a significant loss of open space, however, as detailed above, this is not considered to be the case. In addition to this, it is not felt that the land in its original form would have had any more significant benefits as an area of open space other than visual amenity, as given its location, slight gradient and size it is unlikely that it would have been used for other purposes such as general play activities, for example.
32. Given this, therefore, as well as the proposed use as residential curtilage being a typical use within the area, it is considered that the principle of the development is considered acceptable.

Impact on residential amenity

33. Given the nature and location of the proposal, it is not considered that it results in a loss of residential amenity to the surrounding neighbours as the use of this area of land as garden area being adjacent to other garden areas is considered acceptable. In addition, it would result in limited views from the surrounding properties, such that it would not adversely impact on visual amenity.
34. The proposal does not encroach on the footpath and is considered from a Design out Crime perspective to be acceptable and is supported by the police. There are no current issues with anti-social behaviour and it is not anticipated that this will change as a result of this proposal.

Impact on the visual amenity of the area.

35. As stated above, the proposal is considered to still retain a suitable area of open land which contributes to the visual amenity of the area.
36. The height and design of the enclosure is considered appropriate and typical of enclosures within the area and therefore, is not considered to be out of keeping with the character of the area.
37. It is considered however, that the fence appears more prominent due to its light colour, and would benefit from being stained a darker colour to match in more with the existing boundary treatments within the area. It would be appropriate to require this by a planning condition, in the event of planning permission being granted.

Other Issues

38. Concern has been raised by objectors that the proposal would set a precedent for others. However, each application is dealt with on its own merits and further encroachments on this piece of land or others would require a separate application. Future applications would take into account cumulative loss as well as the localised impact on the streetscene and this cannot be considered a refusal reason at this stage.
39. Some objectors have raised the issue that they were not consulted on the application. The correct level of consultation is considered to have been carried out with the nearest surrounding neighbours being notified and a site notice displayed. In addition, the number of responses from neighbours suggests that interested parties have become aware of the application through the publicity exercise, and have been able to comment.
40. The area of land in question is not an established right of way as confirmed by the Councils Rights of Way Officer, therefore, the proposal is not considered to impact upon an established right of way. Confirmation has also been given that sufficient space would still remain to use the grassed area if conditions are icy on the footpath.
41. Concern has been raised that the proposal is maintained by the Council and belongs to the community and that land cannot be just taken. The land in question is currently unregistered and the applicant has gone through the correct procedure in terms of advertising the proposal. Should anyone wish to make a legal claim over the land this should be done under a separate legal process and does not form part of the consideration of the proposal, and cannot be considered in the determination of this application. A grant of planning permission would not override any valid legal claim to ownership of the land.

CONCLUSION

42. The change of use of this land to private garden area is considered acceptable in principle given its use is appropriate. The proposal is also considered to be in keeping within the existing area and is not considered to have a detrimental impact on the surrounding residents.
43. As such, it is considered that the development would be in accordance with saved policies E5a, H13, Q1 and Q9 of the City of Durham Local Plan and the NPPF.

RECOMMENDATION

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

1. Within three months of the date of this approval the enclosure should be stained dark brown to match the boundary treatment within the rear garden area.

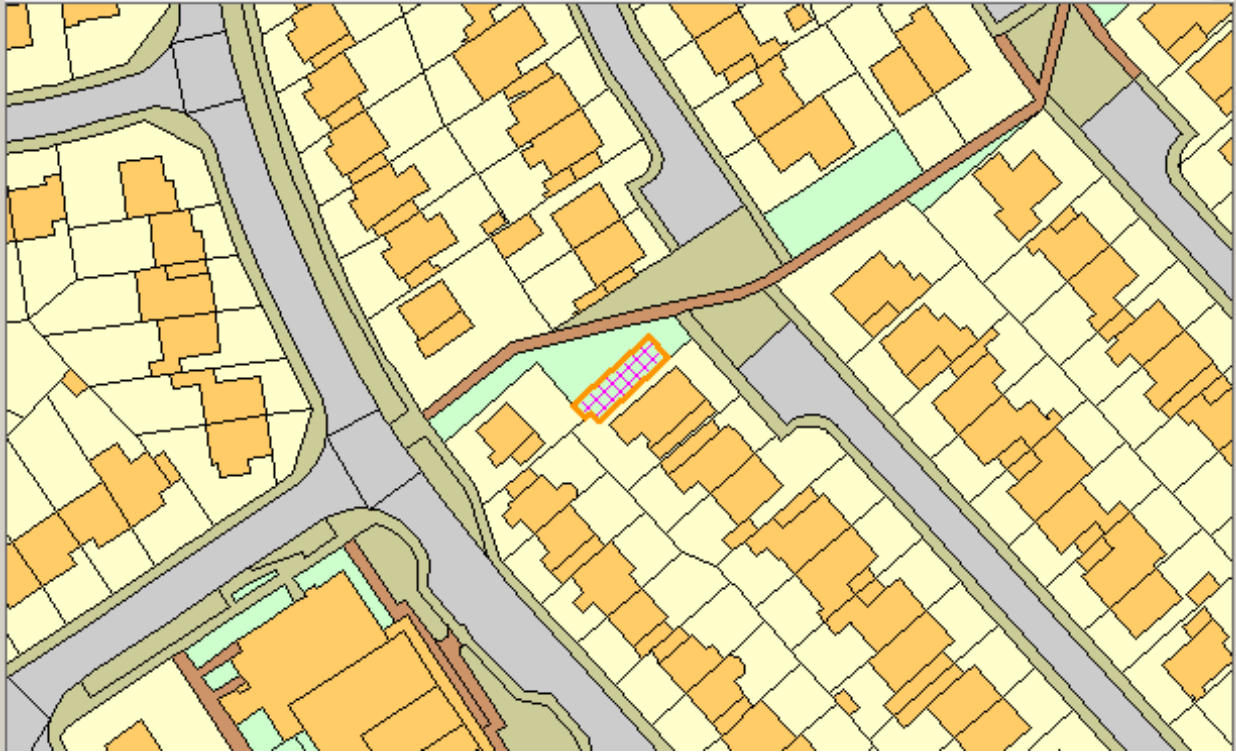
Reason: In the interests of the appearance of the area and to comply with policies E5a, H13, Q1 and Q9 of the City of Durham District Local Plan.

STATEMENT OF PROACTIVE ENGAGEMENT

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.

BACKGROUND PAPERS

Submitted Application Forms, Plans and supporting documentation
City of Durham Local Plan 2004
National Planning Policy Framework
Internal consultee responses
Public responses
Responses from statutory and other consultees
National Planning Policy Guidance



Planning Services

Change of use of open space to private garden area (retrospective application) on land adjacent To 170 York Crescent, Newton Hall, Durham, DH1 5QS
Application reference DM/16/00987/FPA

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