

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/17/02331/FPA
FULL APPLICATION DESCRIPTION:	Change of use of open space to garden
NAME OF APPLICANT:	Mr J Berry
ADDRESS:	13 Dunelm Close, DH8 7QR.
ELECTORAL DIVISION:	Leadgate and Medomsley
CASE OFFICER:	Louisa Ollivere Planning Officer Telephone:03000 264 878 louisa.ollivere@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is a parcel of land to the east of 13 Dunelm Close, which is an end terraced property adjacent to a hammerhead on a small cul-de-sac within a larger residential area in Leadgate. The site which is in unknown maintenance was until recently grassed and left open and sloped sharply from the adjacent informal footpath to the side of the property. Since the submission of this application the site has been levelled and timber fence posts have been erected. To the north and east of the site is an informal footpath that leads from Dunelm Close to the garage courtyard behind. To the north and east of this footpath is an area of enclosed pasture land that is subject of an application for an agricultural building and replacement hedging and fencing which is currently under consideration by Officers.

The Proposal

2. Planning permission is sought for the change of use of this open land to private garden land associated with 13 Dunelm Close. It is proposed to erect 1.2m high close boarded fencing along the front and side and 2m high fencing at the rear.
3. The application is reported to Committee as a local Councillor, Councillor Watts Stelling has requested that this be determined at this level given concerns in relation to potential for any fencing to create an alleyway which could lead to antisocial behaviour.

PLANNING HISTORY

4. In April 2017 an application for the erection of an agricultural barn for general agricultural storage and retention of 2 temporary storage containers and fencing adjacent to the highway on the adjacent land was refused (DM/17/00318/FPA).
5. An application for the erection of an agricultural barn for general agricultural storage and replacement fencing, hedging and creation of an access on adjoining land is currently under consideration (DM/17/02609/FPA).

PLANNING POLICY

NATIONAL POLICY:

NATIONAL PLANNING POLICY FRAMEWORK

6. In March 2012 the Government consolidated all planning policy statements, circulars and guidance into a single policy statement, termed the draft National Planning Policy Framework (NPPF). The overriding message from the Framework is that planning authorities should plan positively for new development, and approve all individual proposals wherever possible. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependent. There is a presumption in favour of sustainable development. It requires local planning authorities to approach development management decisions positively, utilising twelve ‘core principles’ that should underpin both plan-making and decision taking, the most relevant of these in this instance being:
7. *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. Planning policies and decisions must aim to ensure developments; function well and add to the overall quality of an area over the lifetime of the development, establish a strong sense of place, create and sustain an appropriate mix of uses, respond to local character and history, create safe and accessible environments and be visually attractive.
8. *NPPF Part 8 – Promoting Healthy Communities* – The planning system is considered to have an important role in facilitating social interaction and creating healthy, inclusive communities, delivering social recreational and cultural facilities and services to meet community needs. Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities.
9. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.

<http://planningguidance.planningportal.gov.uk/>

NATIONAL PLANNING PRACTICE GUIDANCE:

10. The National Planning Practice Guidance (NPPG) both supports the core government guidance set out in the NPPF, and represents detailed advice, both technical and procedural, having material weight in its own right. The advice is set out in a number of topic headings and is subject to change to reflect the up to date advice of Ministers and Government.
11. *Design* -The importance of good design. Good quality design is an integral part of sustainable development. The National Planning Policy Framework recognises that design quality matters and that planning should drive up standards across all forms of development. As a core planning principle, plan-makers and decision takers should always seek to secure high quality design, it enhancing the quality of buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on wellbeing.
12. *Open space, sports and recreation facilities* – Requires open space to be taken into account when considering proposals that may affect existing open space and provides guidance on Local Green Space designation.

LOCAL PLAN POLICY:

13. Policy GDP1 – *General Development Principles* –outlines the requirements that new development proposals should meet, requiring high standards of design, protection of landscape and historic features, protection of open land with amenity value, respecting residential privacy and amenity, taking into account ‘designing out crime’ and consideration of drainage.

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=494>

EMERGING POLICY:

14. 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. In the light of this, policies of the CDP can no longer carry any weight.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

15. None applicable.

INTERNAL CONSULTEE RESPONSES:

16. None applicable.

PUBLIC RESPONSES:

17. Neighbouring land owners and occupiers have been consulted and this has resulted in 11 letters of objection from 15 local residents.

Objectors' comments are summarised as follows:

- Fencing has already been erected on site.
- Loss of open space.
- Applicant has failed to remove unsightly 2m high fencing on the adjacent site that was refused planning permission.
- High fencing would create an alleyway that would be unsafe and lead to anti-social behaviour problems.
- Development would affect a Public Right of Way.

APPLICANTS STATEMENT:

18. The open space was dangerous for Council to cut with machines as too steep. This resulted in long grass, rubbish and dumping ground for dog muck. The slope of the land was causing damp in my house. I have tidied it up, levelled it out and put the same size fence around as what surrounds no 13.

PLANNING CONSIDERATIONS AND ASSESSMENT

19. 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 whether the land is open space and the impact of the proposals on the character of the area and on crime and personal safety.

Loss of open land

20. Derwentside Local Plan Policy GDP1 criteria (e) requires the protection of open land which is recognised for its amenity value or the contribution its character makes to an area. This accords with section 8 of the NPPF although this also restricts development on existing open space unless an assessment has proven it is surplus to requirements, the loss would be replaced by better quantity and quality open space in a suitable location or the development is for alternative sports and recreational provision.

21. The local residents consider this area of land to be public open space. However being private land the land is not owned or maintained by the Council. Whilst it is accepted that private land, can also be classed as open space the NPPF defines open space as being all open space of public value which offer important opportunities for sport and recreation and can act as visual amenity. Given the previous steep slope of the land, the minimal amount of land involved and the close proximity to residential

properties it is not considered that the land offered opportunities for sport or recreation. Furthermore the land it is not considered of significant visual amenity given the lack of regular maintenance and difficulties with maintenance caused by the slope. Bearing the above in mind the land is not considered to be open space as defined by the NPPF and therefore the stricter requirements of section 8 of the NPPF are not applicable in this case and the loss of the open land is therefore acceptable in principle.

Design and Impacts upon the character of the area

22. Derwentside District Local Plan Policy GDP1 criteria (a) requires developments to be in keeping with the character and appearance of the area. This policy is in compliance with the NPPF specifically section 7 which requires developments to create attractive places to live and visit and respond to local character.
23. This is residential cul de sac with several properties enclosed with low level timber fencing and there are small areas of grassed and maintained open space to the front and side of dwellings. Whilst this proposal would result in the loss of some open land that adds to the openness of the area this is considered acceptable given the site is visually different from the areas of public open space given the small amount of land involved and the limited maintenance issues. The height and type of fencing being proposed is akin to the fencing already surrounding 13 Dunelm Close and the positioning of the fencing would not create an irregular boundary. The development is therefore considered to be of an acceptable design in keeping with the character and appearance of the area.

Deterrence of crime and personal safety issues

24. Derwentside Local Plan Policy GDP1 criteria (h) requires proposals to be designed to deter crime and increase personal safety. This policy is consistent with the NPPF section 7 which requires the creation of safe environments where crime and disorder and the fear of crime do not undermine quality of life or community cohesion.
25. Both local residents and Members are concerned that high fencing on either side of the footpath would create an alleyway here which could lead to incidences of crime and anti-social behaviour and fear of crime. However the applicant has confirmed that it is his intention to erect fencing no greater than 1.2m in height along the front and the site boundary with the footpath. This proposal would not therefore lead to the creation of an alleyway with no surveillance as views would be possible into the footpath area from Dunelm Close above the 1.2m high fencing which can be ensured via condition. The use of 2m high fencing to the rear is considered acceptable as there are wider views possible to the footpath from the garage court area to the rear. The deterrence of crime and personal safety can therefore be ensured in accordance with Derwentside Local Plan Policy GDP1 and the NPPF.
26. Objectors are concerned that the application may be prejudiced by fencing already being on site. This is not the case and in fact the applicant's previous disregard for planning law is a material planning consideration in regard to the Government's advice issued through their ministerial statement; however this in its own right is not enough to warrant refusal of the application.
27. It is noted that neighbours object due to impacts upon a Public Right of Way. There are no registered Public Rights of Way on or within the vicinity of the site. Whilst there is an informal footpath on the site the use of or experience when using the footpath

should not be significantly affected by this proposal with a condition restricting the height of the fencing.

PLANNING BALANCE AND CONCLUSION

28. Policy 14 of the NPPF directs the Local Planning Authority to approve proposals that accord with up to date development plan policies without delay. With conditions restricting the height of fencing adjacent to the footpath and along the frontage to no greater than 1.2m in height the proposal would accord with Derwentside Local Plan Policy GDP1 which is compliant with the NPPF. Therefore approval is recommended subject to conditions restricting the height of fencing in perpetuity.

RECOMMENDATION

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

1. The development hereby approved shall be carried out only in accordance with the following approved plans:

Plan Ref:	Date Submitted:
Location Plan	25/07/2017

Reason: To define the consent and ensure that a satisfactory form of development is obtained in accordance with Policy GDP1 of the Derwentside District Local Plan.

2. The height of any fencing along the southern and eastern boundary shall be no greater than 1.2m in height in perpetuity.

Reason: To deter crime, ensure personal safety and that the development is in keeping with the character of the area in accordance with Derwentside Local Plan Policy GDP1.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its decision to approve the application 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. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

BACKGROUND PAPERS

Derwentside District Local Plan (saved policies 2007)
National Planning Policy Framework, March 2012
National Planning Practice Guidance



at 2017.



Planning Services

13 Dunelm Close DH8 7QR

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Comments

Date 29th September 2017

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