

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/17/03499/FPA
FULL APPLICATION DESCRIPTION:	Change of use from agricultural land to domestic residential curtilage and diversion of public footpath
NAME OF APPLICANT:	Mr And Mrs James Maclure
ADDRESS:	5 Doulton Court Coxhoe Durham DH6 4GA
ELECTORAL DIVISION:	Coxhoe Michelle Hurton
CASE OFFICER:	Michelle.Hurton@durham.gov.uk 03000 261398

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site relates to a green field site outside the defined settlement boundary of Coxhoe in open countryside. Prior to its enclosure it was agricultural land used for arable purposes. There are trees located to the east of the site which are covered by a Tree Preservation Order (PN1-428).
2. The site lies in the East Durham Limestone Plateau Country Character Area which forms part of the larger area East Durham Magnesian Limestone Plateau National Character Area (NCA15). The site also lies in the Northern Limestone Escarpment Broad Character Area which belongs to the Limestone Escarpment Broad Landscape Type.
3. The site is primarily only visible from its immediate locality given that it is contained by topography and existing residential properties. There is a Public Right of Way (PROW) (Coxhoe No. 11) which runs adjacent to the boundary of no. 5 Doulton Court. The PROW currently separates the residential dwelling from the proposed garden extension and is a definitive boundary between the residential properties and the open countryside.

The Proposals

4. Planning consent is sought for the change of use of the open countryside into residential garden. The proposals are part retrospective and were brought to the attention of the Local Planning Authority through the Enforcement Section. The works which have been carried out are the erection of the outside post and rail fence with double gates, the concrete plinth and porous surface giving access into the field and the footpath has been laid, however the existing footpath has not been blocked.

5. The triangular plot was originally proposed to be enclosed with a post and wire fence on the inner side closest to the property with a hawthorn hedge on the outer side of the fence. On the side closest to the field it was proposed to erect a timber post and rail fence with a distance of 1800mm between the two. There is also a porous surfaced hard landscaping access with timber gates into the field proposed to be created to give access into the field and footpath.
6. Amendments have been received for the fence closest to the property to be a close boarded fence rather than the originally proposed post and wire fence. It also includes the front garden curtilage encroaching onto the land at the side of the property which would be used for bin storage area.
7. The plans show the diversion of the public right of way which runs along the gable end of number 5 Doulton Court, however this is covered under legislation separate from planning legislation and the applicant needs to apply for its diversion with the Councils PROW team. However, the impact of the proposal upon the public footpath is a material planning consideration.
8. The application is brought before members at the request of local ward members.

PLANNING HISTORY

9. None relevant to the application.

PLANNING POLICY

NATIONAL POLICY:

10. 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 dependent.
11. 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’
12. The following elements are considered relevant to this proposal:
13. 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.
14. NPPF Part 11 (Conserving and Enhancing the Natural Environment) – Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.

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>

LOCAL PLAN POLICY:

15. Q1 & Q2 (New development (General principles)) the layout and design of all new development should take into account requirements of uses.
16. Policy Q5 (Landscaping General Provision) sets out that any development which has an impact on the visual amenity of an area will be required to incorporate a high standard of landscaping.
17. Policy Q8 (Layout and Design – Residential Development) sets out the Council's standards for the layout of new residential development. Amongst other things, new dwellings must be appropriate in scale, form, density and materials to the character of their surroundings. The impact on the occupants of existing nearby properties should be minimised.
18. Q9 (Alterations and extensions) Proposals for alterations and extensions to residential property will be permitted provided that the design, scale and materials are sympathetic to the main dwelling and the character and appearance of the area; and the alteration or extension respects the privacy of adjoining occupiers of property.
19. Policy E7 (Development in the Countryside) advises that new development outside existing settlement boundaries will not normally be allowed. However, there are a number of exceptional circumstances where development outside existing settlement boundaries may be considered acceptable.
20. Policy E14 (Trees and Hedgerows) sets out the Council's requirements for considering proposals which would affect trees and hedgerows. Development proposals will be required to retain areas of woodland, important groups of trees, copses and individual trees and hedgerows wherever possible and to replace trees and hedgerows of value which are lost. Full tree surveys are required to accompany applications when development may affect trees inside or outside the application site.
21. Policy E15 (Provision of New Trees and Hedgerows) states that the Council will encourage tree and hedgerow planting.
22. Policy E21 (Conservation and Enhancement of the Historic Environment) requires consideration of buildings, open spaces and the setting of these features of our historic past that are not protected by other legislation to be taken into consideration.
23. Policy T21 (Safeguarding the Needs of Walkers) states that the Council will seek to safeguard the needs of walkers by ensuring that: existing footpaths and public rights of way are protected; a safe, attractive and convenient footpath network is established throughout the City; that the footpath network takes the most direct route possible between destinations; and the footpath network is appropriately signed. Wherever possible, footpaths should be capable of use by people with disabilities, the elderly and those with young children. Development which directly affects a public right of way will only be considered acceptable if an equivalent alternative route is provided by the developer before work on site commences.
24. Policy R11 (Public Rights of Way) states that public access to the countryside will be encouraged and safeguarded by protecting the existing network of public rights of way and other paths from development which would result in their destruction or diversion unless a suitable alternative is provided and the proposal accords with Policy T21.

EMERGING POLICY:

25. 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.

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/media/3396/City-of-Durham-local-plan-saved-policies/pdf/CityOfDurhamLocalPlanSavedPolicies.pdf>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

26. Highways Section – raises no objections
27. Police Liaison Officer – Objects to the application as it will have an adverse impact on the residential amenity of residents along Station Road, likely to create a fear of crime, obstruct views which should remain clear to provide a level of surveillance.

INTERNAL CONSULTEE RESPONSES:

28. Ecology – No objections to the proposed development, however given that the ancient hedgerow has been removed, this represents a loss of biodiversity and a new native species of hedgerow is required to compensate for the loss.
29. Landscape – raises concerns with the proposed development as it will lead to the erosion of the countryside and lead to the urbanization of the site.
30. Public Rights of Way – An application to divert the public right of way has been submitted which is dealt with via a separate process and would be subject to public consultation.

PUBLIC RESPONSES:

31. The application was advertised by means of a press and site notice and by neighbour notification to 36 properties.
32. Fifteen letters of objection has been received regarding the impact of the diversion of the public right of way on neighbouring residents, loss of privacy, overlook garden area, setting a precedent, the work being retrospective and the removal of an ancient hedgerow without correct permission.
33. Parish Council – Objects to the diversion of the public right of way without the necessary consent, removal of the ancient hedgerow without the necessary consent, encroachment into farmland, setting a precedent, impact on ecology and biodiversity, unacceptable level of visual intrusion, invasion of privacy

34. Ramblers Association – Objects to the removing of hedgerow, encroaching into farmland, diverting the public right of way without the correct permissions in place and will set an unwanted precedent and would like to see the reinstatement of the original footpath.

APPLICANTS STATEMENT:

35. My wife and I recently retired and moved, from a farm cottage in East Sussex, to Coxhoe to be near our grandchildren.
36. We want to plant a small orchard and thereby also form a windbreak to the south of the house, having realised that when the farmer was spraying his crop in the field the spray tended to be blown into the side of the house (and our kitchen window) because of a lack of adequate windbreak between the field and the house. We approached the farmer, who was supportive to our proposal, and he sold us a small triangular parcel of land adjacent to the house, on condition that we provide an access for farm machinery through this parcel, erect a post and rail fence along the new field boundary, and refrain from erecting any building on the land.
37. Our proposal is to plant fruit trees and canes in this triangle.
38. To carry out this plan we are now applying for a change of use from agricultural land to domestic residential curtilage.
39. If our application meets with the Planning Authorities approval, and in order to provide privacy, both to ourselves and to the public using the existing footpath “Coxhoe 11” we will, once the change of land use is agreed, apply for a diversion of the public footpath to the other side of the triangular parcel of land, away from the house which the footpath currently touches.
40. We will be very happy to plant a new hedge, to East Durham Limestone Hedgerow specifications, along the edge of the proposed footpath diversion.

PLANNING CONSIDERATIONS AND ASSESSMENT

41. As identified in Section 38(6) of the Planning and Compulsory Purchase Act 2004 the key consideration in the determination of a planning application is the development plan. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
42. The main considerations in regard to this application are the principle of development, impact on the character of the area, highway safety and impact on public right of way and residential amenity.

Principle of development

43. The application site is a greenfield site located outside the settlement boundary of Coxhoe and is a triangular plot of land to the east of no. 5 Doulton Court, Coxhoe which is a detached property located on the edge of a small residential estate where a public right of way separates the urban area to the open countryside.
44. Prior to the enclosure of the land, the land was within agricultural use for arable purposes. The site lies within an area identified within the County Durham Landscape Strategy as a landscape improvement priority area with a strategy to either restore or enhance.

45. The application is for the change of use of land to the side of the applicant's property which leads to an encroachment into the countryside, which would inevitably lead to the urbanisation of the site. Policy E7 of the City of Durham Local Plan states that development outside of the settlement boundaries will not normally be permitted unless exceptional circumstances have been justified.
46. Paragraph 14 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise):
- approving development proposals that accord with the development plan without delay; and
 - where the development plan is absent, silent or relevant policies are out of date, granting permission unless:
 - i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - ii) specific policies in this Framework indicate development should be restricted.
47. It is considered that policy E7 of the City of Durham local Plan is out of date and only limited weight can be afforded to this policy. Therefore in this instance paragraph 14 of the NPPF is engaged and it is considered that the adverse impacts of the proposed encroachment into the open countryside would significantly and demonstrably harm the character and appearance of the area. The proposal is considered to be contrary to Parts 7 and 11 of the NPPF.
48. The local planning authority does not feel that exceptional circumstances have been justified in this instance and therefore the proposed development is considered unacceptable in principle contrary to Policy E7 of the City of Durham Local Plan.

Impact on the character of the area

49. The application site is primarily only visible from its immediate locality as the site is visually contained by topography and residential properties. Prior to the works being carried out there was an ancient hedgerow which ran along the eastern boundary of no. 5 Doulton Court and the public right of way. This ancient hedgerow has been removed without submitting a hedgerow removal notice application to the Local Planning Authority for permission of its removal which is a breach of the Hedgerow Regulations 1997 act. Evidence suggests that the removed hedgerow would have been deemed as an important hedgerow as defined by the regulations given its length and age as it appears on the Coxhoe Tithe Plan of 1842.
50. The loss of the ancient hedgerow has removed what was the definitive boundary feature which separated the residential area from the public right of way and agricultural land. The originally submitted application seeks the permission to replace the existing boundary treatments of the property with a post and wire fence, this has since been amended with a 1.8m high close boarded timber fence.

51. No. 5 Doulton Court already benefits from a substantial sized garden, the change of use of the land would see the garden curtilage of the property nearly triple in size which would lead to the properties footprint being at odds with the general form and character of the settlement and nearby properties.
52. The change of use of the land would lead to the garden curtilage of the property being increased significantly which would not relate well with other nearby properties in terms of footprint and therefore would be out of character with the area creating a detrimental impact on the visual amenity of the area.

Highway Safety and impact on the Public Right of Way

53. In relation to highway safety, the Highways Authority has been consulted as part of the application and have raised no issues with the proposed development.
54. Regarding the diversion of the public right of way, the legal route of Public Footpath No. 11 Coxhoe within this application site is alongside the boundary of no. 5 Doulton Court. This path is recorded on the Council's Definitive Map and Statement. The applicant has indicated a proposed new footpath route within this application, however the legal diversion of the footpath cannot be determined as part of this planning application.
55. Instead a separate application is required, in this case using legislation under the Highways Act 1980 section 119 for a Public Path Order. The procedure for a proposed diversion is subject to a democratic process that initially involves consulting on a proposal with the Parish Council, user groups and County Councillors. An unopposed proposal would then be dealt with under delegated powers whilst an opposed proposal would be determined by the Council's Highway Committee. If the decision is to make an Order, then there is a statutory public consultation to which anyone can respond. If any objections are received during the statutory period and not withdrawn, the Order has to be referred to the Secretary of State for determination.
56. No objections have been received from public rights of way on the relocation of the public footpath no. 11. Notwithstanding the proposed change of use of the land there would be no issues with the relocation of the footpath in planning terms.

Residential Amenity

57. Objection letters have been received from various neighbouring properties, the Parish Council and the Police regarding the impact of the diversion on the amenity of nearby properties in particular with regards to loss of privacy and overlooking.
58. It is considered that the change of use of the land would have adverse impacts upon the residential amenity of neighbouring properties along Station Road with regards to loss of privacy and overlooking. It is acknowledged that the planning application does not give permission to divert the public right of way, however should permission be granted for the change of use of the land, the introduction of the fencing and hedging along the southern and eastern boundary of the site would prompt users of the footpath to walk around the perimeter of the fence rather than continue to use the existing footpath which currently runs down the side of no. 5 Doulton Court until such a time that the footpath diversion was determined.

CONCLUSION

59. In conclusion it is considered that the retrospective application has not provided exceptional circumstances to change the use of the land into residential curtilage and therefore is contrary to policy E7 of the City of Durham Local Plan and would result in the erosion of the open countryside having adverse impacts on the character and appearance of the area, which would lead to overlooking and loss of privacy issues to the properties along Station Road.

RECOMMENDATION

Recommendation that the application is:

REFUSED

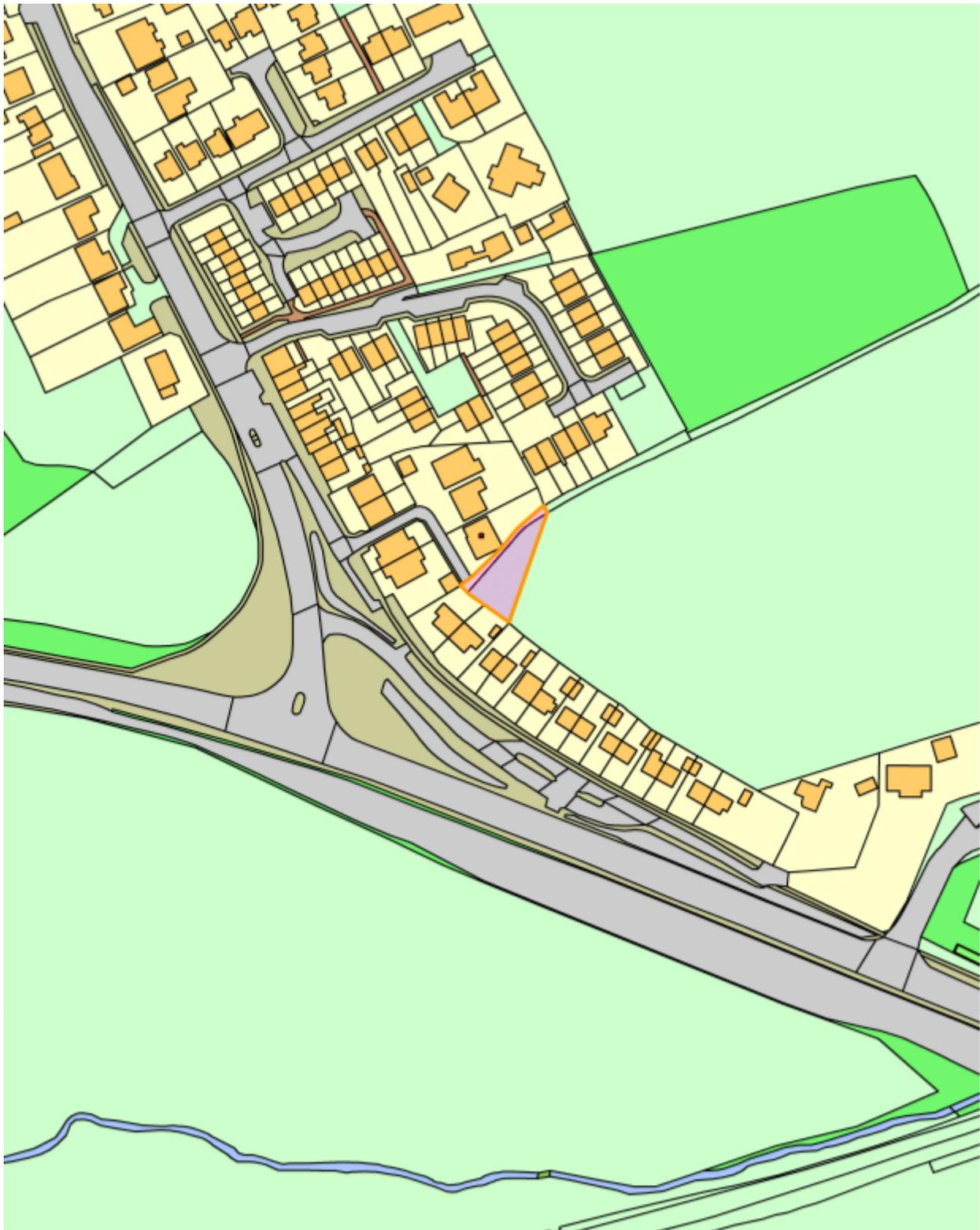
1. The retrospective proposal for the change of use of agricultural land into residential curtilage of no. 5 Doulton Court involves the enclosure of an area of land which constitutes harmful encroachment into the open countryside, and as a result, it is considered to have an adverse impact on the character and appearance of the area, contrary to policies E7 and E21 of the City of Durham Local Plan and Parts 7 and 11 of the National Planning Policy Framework.
2. The Local Planning Authority considers that the retrospective change of use of the land into residential curtilage by virtue of its size and location shall create adverse impacts upon the residential amenity of occupiers along Station Road. As a result, the proposal shall significantly harm the residential amenity of a neighbouring occupier contrary to the requirements of Policy Q9 of the City of Durham Local Plan 2004.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its decision to recommend refusal of this application have, without prejudice to a fair and objective assessment of the proposal, considered the proposal in relation to relevant planning policies, material considerations and representations received, however, in balance of all considerations, the issues of concern could not result in a positive outcome being achieved. The agent was advised of the recommendation prior to the decision.

BACKGROUND PAPERS

- Submitted Application Forms and Plans.
- Durham City Local Plan 2004
- National Planning Policy Framework
- Consultation Responses
- Letters of Representation



Planning Services

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Change of use from agricultural land to domestic residential curtilage and diversion of public footpath at 5 Doulton Court, Coxhoe, Durham, DH6 4GA

Comments

Date. 13 February 2018

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