

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE:

Page

APPLICATION REF. NO:	17/00270/CU
STATUTORY DECISION DATE:	11 May 2018
WARD/PARISH:	MOWDEN
LOCATION:	1 Hall View Grove
DESCRIPTION:	Retrospective planning application for the change of use of open space to the rear to private garden and the erection of 1.8m high fence (amended description)
APPLICANT:	Mrs Linda Furness

APPLICATION AND SITE DESCRIPTION

A piece of open space measuring approximately 1m (depth) x 16m (width) to the rear of No 1 Hall View Grove has been enclosed by a 1.8m high close boarded fence and incorporated into the rear garden of the aforementioned property. This is work which has been carried out without the benefit of planning permission and this application has been submitted to regularise the works.

The land that has been enclosed forms part of an area of open space to the rear of dwellings on Hall View Grove, Edgecombe Grove and Edgecombe Drive. The open space comprises a footpath link, with grass and landscaping on either side and there a number of trees in the link covered by a Tree Preservation Order dated 1951.

The applicant contacted Darlington Borough Council regarding the ownership of the land and also contacted Land Registry at Durham who advised that the land is unregistered.

The open space is not within the ownership of the Council and forms part of the open space within the Mowden area that was retained by Yuills Homes Limited who have since gone into receivership. The applicant has completed the appropriate Ownership Certificate (D) on the application forms which reflect this ownership position.

As part of the submission, the applicant has advised:

“In respect of the retrospective planning application, the extension of the fence line was not planned, and in a reaction to an attempted burglary of the shed in the north west aspect of the garden. The fence was used as a ladder which was damaged beyond repair. The fence panels used to lever the shed roof up to gain access to the contents inside the shed. We had been informed there has been a long history of break ins of the shed with former occupants as the

shed was an easy target from the footpath. As such we moved the fence out to prevent the shed being an easy target for unsavories in the area while erecting a six foot fence”

The planning application originally included a proposal to extend the domestic garden to the side (west) but this has now been omitted following concerns made by local residents and Officers. The application is solely for the works that have been carried out to the rear of the property.

Application documents, photographs, consultation responses, representations received and other background papers are available on the Darlington Borough Council website

PLANNING HISTORY

None relevant

PLANNING POLICY BACKGROUND

The relevant planning policies are:

Darlington Core Strategy Development Plan Document 2011

CS2 – Achieving High Quality Sustainable Design

CS16 – Protecting Environmental Resources, Human Health and Safety

CS17 – Delivering a Multifunctional Green Infrastructure Network

Other Documents

Darlington Open Space Strategy 2007 – 2017

Darlington Open Space Strategy 2007 – 2017 Update Report (2010)

RESULTS OF CONSULTATION AND PUBLICITY

When the planning application was originally submitted, it included a proposal to extend the domestic garden to the west by enclosing a section of the open space with a new fence as well as the retrospective element to the rear. Letters of objection were received from eleven households along with one letter of support. The comments can be summarised as follows:

- *Another lovely walkway would be spoilt by the fence. We live on an open plan estate and areas should be left alone for everyone to enjoy*
- *I object to extending the garden boundary onto public land as it was originally laid out not to be part of the property. It sets a precedence for every other owner to take over land and it would become an unsightly mess.*
- *This is an open plan estate and these open spaces should be for the benefit of all the residents not for individual families. When this estate was built in the 1960s this land and all the other open spaces throughout Mowden would have been deemed by the developer to be amenity land to make the estate look appealing*
- *The applicant has already erected a fence at the back of their property that extends onto public land and this has created an alcove that could be deemed a security risk for users of the walkway.*
- *In granting permission for the transfer of use of this piece of land the council would be setting a precedent where everyone living next to a piece of land could claim it for their own thus depriving the wider community of this wonderful amenity.*
- *I feel also that if this application is approved other residents with gardens bordering open spaces and walkways of Mowden may take advantage and do the same, which will result in the residents of the estate being left with no open spaces*
- *The works are contrary to the local development plan policies (CS17 of the Core Strategy)*

- *I find it hard to understand that, the council are giving permission for such work when they clearly make it known that it does not belong to them! When will it end? surely each resident that backs onto the walkway would be entitled to steal land, imagine what the future holds, very sad*
- *I am concerned that the fencing will affect the ability of local wildlife to thrive in the area.*
- *The actions already undertaken are likely to have caused damage to the grassland in terms of digging for fence posts.*
- *The public access and public rights of way that have been enjoyed by the residents of Mowden for in excess of 40 years could be taken away from us all. The fence in its current position is not aesthetically pleasing. It extends out from the garden fence of the neighbouring garden.*
- *Allowing individual householders to encroach on this open space will damage the amenity value for all current and future residents. The high close boarded fence will be unattractive and damaging for wildlife such as hedgehogs. The creation of potential hiding place also has community safety implications*
- *If this goes ahead there will be a massive impact on views*
- *This open woodland should not be for one resident to claim and section off*
- *It will have an adverse impact on the visual appearance and character of the walkway. This is public land and should remain so.*
- *A potential hiding place will be created*

The letter of support that was received states:

- *I am in full support of this application. It would be nice to see this land being maintained and used. The proposed plans do not affect me or my family in any way and therefore I feel indifferent to the proposed plans. In fact I'm really surprised that anyone is really that concerned. Let this family have a little bit of sunshine. The common land around Mowden at the moment is really untidy and quite frankly a bit of an eye sore. I am aware that the council is encouraging locals to mow the grass nearby them, yet they are not allowed to use it for themselves with regards to the fence all homeowners have the right to secure their property effectively and the original post and rail fences fail to do this. As for the fence line harbouring muggers and bad eggs, I'm pretty sure Mowden is a fairly safe area, and police statistics back that up. Perhaps people need to focus on their own patch of grass instead of being so concerned with other people.*

Following the amendment to the planning application to omit the enclosure of land to the west of the application site, three letters of objection have been received:

- *I still object to the planning application for the reasons given in my previous objection*
- *I have no additional; comments to make but I am still objecting to the revised planning application as I have detailed previously*
- *Although the application is not as extreme as the previous I still feel that until the ownership of community land on Mowden is established, no claim should be granted and should remain for public use, as it has been since the estate was first built, therefore my objection still stands*
- *The land in question does not belong to the householder or the council, I cannot therefore see how the council can grant permission for the erection of a fence on land that neither party owns. The land when the estate was built was for the enjoyment of the local residents and should remain a community facility. If one application is granted it opens the doors for other applications of this nature. The local councillor is trying to*

ascertain who the owner of the land around Mowden is and until this issue is fully address no planning applications involving community land should be granted.

One of the local residents that had previously objected to the planning application WITHDREW their objection once the application related to the repositioning of the fence to the rear of the application site only.

Consultee Responses

The **Council's Highways Engineer** has raised no objections

The **Architectural Liaison Officer from Durham Constabulary** has raised no objections

PLANNING ISSUES

The main issues to be considered here are:

- Planning Policy
- Impact on the Visual Appearance and Character of the Area
- Residential Amenity
- Safety and Security
- Impact on Trees
- Setting a Precedent

Planning Policy

The application site is within the development limits for the urban area and the area of open space has no planning policy designation (for example open land network, wildlife site etc.) under the provisions of the Borough of Darlington Local Plan 1997.

Policy CS17 of the Darlington Core Strategy Development Plan Document 2011 states that the green infrastructure network will be protected and where appropriate, enhanced and extended to provide a quality, accessible and safe network of well connected, multifunctional green spaces to meet the formal and informal recreation needs of the local community. The network includes local important open spaces that have been identified in the Open Space Strategy (Update Report). The Strategy identifies the open space at the rear of No 1 Hall View Grove as an informal recreation area and it is considered to be of high value but of two star (***) quality.

Policy CS17 goes on to state that the loss of any green infrastructure will only be considered in exceptional circumstances for the provision of essential infrastructure or where it has been demonstrated that the site no longer has any value to the community in terms of access and usage, is not required to perform an alternative green infrastructure function, is not required to meet a shortfall in the provision of that open space and a better type of open space is available.

The repositioned fence line encroaches into the open space by approximately 1 metre (total area of 16m²) which is considered to be a minimal incursion. The encroachment would not prevent the open space from being used and accessed by the local community for its primary function as an informal recreation area and the minimal loss of open space would not harm the overall function of the green infrastructure in the wider local area. In these circumstances, the application can be supported in general planning policy terms.

Impact on the Visual Appearance and Character of the Area

The open space provides a pedestrian link between Hall View Grove and Edgecombe Grove. The enclosures that bound the open space are a mix of close boarded fencing, the original post and rail fencing and mature hedges.

The new fence is a close boarded timber fence that runs along the west boundary (a replacement fence on existing boundary line which does not require planning permission) and the north boundary (repositioned fence). The fence measures 1.8m high. It is considered that the new fence would not adversely harm the visual appearance and character of the open space as it constitutes a minimal encroachment and the fence is set well away from the footpath that dissects the open space. Whilst the work has resulted in a staggered fence line when considered with the neighbouring garden, the new fence line and fence are considered acceptable in visual terms.

Residential Amenity

The works would not raise any residential amenity issues in terms of visual impact, loss of light, outlook etc.

Safety and Security

The Architectural Liaison Officer from Durham Constabulary has commented as follows:

Our records show that on 1st August 2016 the Applicant reported damage to the original fence and to the adjacent garden shed as a criminal act by unidentified person(s). An attempt was made to force the roof from the shed but no access was gained. This seems to have been an isolated incident with only one other (none related) incident reported elsewhere in Hall View Grove in the last 12 months however a neighbour did state during my site visit that historically the area of open space had been used to access the rear gardens of properties for the purposes of theft. The new fence has not made the garden any more secure as there is easy access from the side fence which is the original post and rail. In my view the new boundary does not unduly encroach on the open space and it is only on close inspection that it can be seen that the garden has been extended.

Having taken the comments from the ALO into account, Officers consider that the repositioning of the fence would not create adverse safety and security concerns.

Impact on Trees

The trees within the open space have not been affected by the works that have been carried out.

Setting a Precedent

Court and appeal decisions have established that it is legitimate for Planning Authorities to give weight to the possibility of creating an undesirable precedent when considering whether to grant permission. However, it is not enough for Local Planning Authorities to have a general anxiety that their decisions may be used in the future to justify other proposals. The Local Planning Authority would consider any other similar proposals on their individual merits and take into account the appropriate material planning considerations in each instance.

For example, a recent retrospective planning application to enlarge a domestic garden at the rear of a dwelling on Parkland Drive by enclosing a section of open space was refused on grounds of its adverse impact on the character and visual appearance of the open space/footpath link and security concerns. Following the decision, the fence line has been reinstated to its original position. Officers consider that the proposal to the rear of Hall View Grove does not raise similar visual concerns and the comments made by the ALO on safety and security have been taken into account in order to justify the support of this particular case and not the work carried out on Parkland Drive.

SECTION 17 OF THE CRIME AND DISORDER ACT 1998

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

CONCLUSION

This is a retrospective application for the enclosure of land to the rear of No 1 Hall View Grove that is not within the householder's ownership and forms part of an area of open space/footpath link in the Mowden area. It is considered that the extent of the encroachment into the area does not raise significant visual, residential amenity or security concerns. Should any similar applications be submitted in the future, they would be considered on their individual merits and Officers do not consider the application should be refused on the grounds of setting a precedent.

RECOMMENDATION

PLANNING PERMISSION BE GRANTED

THE FOLLOWING POLICIES AND DOCUMENTS WERE TAKEN INTO ACCOUNT WHEN ARRIVING AT THIS DECISION:**Darlington Core Strategy Development Plan Document 2011**

CS2 – Achieving High Quality Sustainable Design

CS16 – Protecting Environmental Resources, Human Health and Safety

CS17 – Delivering a Multifunctional Green Infrastructure Network

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