

**DARLINGTON BOROUGH COUNCIL**  
**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 7<sup>TH</sup> July 2021**

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| <b>APPLICATION REF. NO:</b>     | 21/00537/FUL   |
| <b>STATUTORY DECISION DATE:</b> | 20 July 2021   |
| <b>WARD/PARISH:</b>             | Heighington And Coniscliffe  |
| <b>LOCATION:</b>                | 6 The Green, HIGH CONISCLIFFE  |
| <b>DESCRIPTION:</b>             | Erection of 1.8m high timber fence to front entrance and 1.8m high timber fence with gates to rear of play area and driveway (Retrospective Application) |
| <b>APPLICANT:</b>               | Mr Sowerby   |

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**RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

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**Application documents including application forms, submitted plans, supporting technical information, consultations responses and representations received, and other background papers are available on the Darlington Borough Council website via the following link: <https://publicaccess.darlington.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Q82CFLFPLCD00>**

**APPLICATION AND SITE DESCRIPTION**

1. The application site comprises the Spotted Dog Public House which is located in High Coniscliffe alongside the A67 (The Green). There is a car park with a play area located to the side and rear of the main public house building which is accessed via Mill Lane to the east and from the A67 (The Green) to the south. The site is within the High Coniscliffe Conservation Area and Mill Lane is a bridleway (No 1 in the Parish of High Coniscliffe).
2. The Public House and its car park are bound to the north by open fields; to the east by dwellings on Mill Lane and a tennis club and courts beyond; to the south by a dwelling (No 49 The Green) on the opposite side of the A67 and to the west by dwellings on The Green and St Edwin's Close.
3. This is a retrospective planning application for the erection of a 1.8m high close boarded timber fence across the existing vehicular access to the side of the

public house off the A67 and a further 1.8m high close boarded fence behind with gates to the rear of the existing play area.

4. It is mentioned within the Heritage Statement submitted in support of the planning application that due to the current COVID situation the pub has been closed for lengthy periods of time with the applicant not living in the pub for the majority of this time. The applicant became concerned the car park was being used on a daily basis as a car park for dog walkers who use the fields to the rear of the pub. This included people regularly entering the front driveway and walking to the rear again to access the fields. There have been large amounts of dog mess left on the grassed and children's area and reports of people loitering in the grounds of the pub which became a security issue for the applicant. The Statement also advises that there had also been problems with cars driving at speed past the amenity space of the pub to access the rear car park.
5. A separate retrospective planning application (ref no 21/00538/FUL) has been submitted for the replacement of timber sash windows with white UPVC windows to the front elevation of the public house and removal of 3 no. windows and installation of bi fold doors to side elevation of the public house. This application is currently under consideration by the local planning authority.

#### **MAIN PLANNING ISSUES**

6. The main issues to be considered here are the impact of the works on:
  - a) The visual appearance and character of the street scene and High Coniscliffe Conservation Area:
  - b) Highway and Pedestrian Safety
  - c) Public Rights of Way
  - d) Residential Amenity
  - e) Other Matters

#### **PLANNING POLICIES**

7. The relevant local development planning policies are those which seek to ensure the development
  - Reflects or enhances the built characteristics that positively contribute to the character of the local area and its sense of place (CS2 of the Core Strategy 2011)
  - Provides vehicular access and parking suitable for its use and location (CS2 of the Core Strategy 2011)
  - Protects the general amenity and health and safety of local community (CS16 of the Core Strategy 2011)
  - Protects buildings, their settings, and features of historic local importance in conservation areas (CS14 of the Core Strategy 2011)
  - Provides safe, attractive, convenient access for pedestrians, cyclists, public transport users and for disabled persons (CS2 of the Core Strategy 2011)
8. The National Planning Policy Framework 2019 is also relevant.

## RESULTS OF TECHNICAL CONSULTATION

9. The Council's Highways Engineer has raised no objections to the fencing and has recommended the imposition of a planning condition to remove the existing drop crossing onto A67 and replace it with a footway.
10. The Council's Conservation Officer has no objections to the principle of a new boundary treatment in these locations, but he considers that the fencing has a negative impact upon the appearance of the Conservation Area
11. The Council's Rights of Way Officer has raised no objections

## RESULTS OF PUBLICITY AND NOTIFICATION

12. Four letters of objection have been received following the Council's notification and publicity exercises for the planning application. The comments are as follows:

- *The fences stop people walking through the carpark to avoid the busy main road on a very narrow footpath and corner. It could only be a matter of time before there is a serious accident on this bend*
- *The path through the carpark has been used for years as a safe footpath for people, walkers, dog walkers to walk through for many years*
- *This fence is an eye sore and it is not within keeping in a conservation area.*
- *If this fence is allowed to remain will not be in the community's interest this will cause a greater amount of traffic using Mill Lane.*
- *Fencing puts all vehicle access to Mill Lane entrance, which is pedestrian access for two council bungalows and tennis courts with no footpath*

13. High Coniscliffe Parish Council have objected to the planning application on the following grounds:

- *The fence is unsightly and not in keeping with the conservation area.*
- *The fences block an established public thoroughfare which has been used for years forcing pedestrians to use a dangerously narrow section of footpath.*
- *Concerns of the impact this blocked entrance will have on Mill Lane with the increase in vehicle and foot traffic particularly late at night. Nos 1-3 The Green bungalows have elderly residents who would be disturbed.*
- *Concerns over emergency vehicle access if Mill Lane was blocked*

14. Councillor Crudass, the Ward Councillor for Heighington and Coniscliffe has objected to the planning application on the following grounds:

- *Fence is entirely out of character for a conservation area and should be removed.*
- *Changing the colour does not provide a solution. Safe egress for vehicles from the property intending to travel east has been compromised and a more*

*dangerous option is the only choice. The egress should be reinstated when the pub reopens. Fence has a security function for a mobile accommodation unit which is inside the secured area. Does this have approval? 40+yrs of free access closed and extra traffic for Mill Lane.*

## **PLANNING ISSUES/ANALYSIS**

15. Planning law (S.38(6) of the Planning and Compulsory Purchase Act 2004) requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (2019) supports the plan led system providing that planning decisions should be “genuinely plan-led” (NPPF para 15).

### **a) The visual appearance and character of the street scene and High Coniscliffe Conservation Area**

16. The Spotted Dog Public House is not a listed building, but it is located within the High Coniscliffe Conservation Area. The building is in a prominent location within the Conservation Area, especially when approaching the village from east along the A67. While there have been some changes to the building and its setting, the building has retained its character.

17. The close boarded fence which is positioned across the access off the A67 runs in line with the frontage of the Public House and it highly visible within the street scene and the Conservation Area when approaching from the east and the west along the A67. The second fence and gate which is located to the rear of the existing play area is less visible when viewed from outside of the application site.

18. The Council’s Conservation Officer has not objected to the principle of the access being enclosed but considers the most prominently located fence to the front of the property to have a negative impact to the street scene which does not reflect the character of the area. The erection of the fence to the rear boundaries is set back and is visible to a lesser degree, but also represents a feature which does not reflect the character of the area. The Conservation Officer has advised that any means of enclosure should be of a form which causes less visual harm such as the use of hedges and natural screening.

19. One of the reasons as to why the fencing is currently visually prominent within the street scene is that the timber has yet to be treated or painted. Due to the position of the fence adjacent to the A67, it would not be possible to screen it with landscaping, but if the planning permission is granted, it is the intention of the applicant to paint the fencing the same dark brown colour as the existing low fencing that is erected around the play area and it would be possible to impose a planning condition for an agreed timescale for such works. This is a material planning consideration that would carry weight in the determination of the planning application.

20. The identified harm to the Conservation Area would be less than substantial, albeit it at the lower level of the scale of harm, and in such circumstances the harm should be weighed against the public benefits of the proposal (Para 196 of

the National Planning Policy Framework 2019). As is set out in the next section of this report (para 22 – 31), the works have resulted in the loss of a substandard access onto the A67 and secure the reinstatement of a footway where the vehicular crossing is currently located and these highway improvements are considered to represent a public benefit which is considered to outweigh the level of visual harm to the Conservation Area, even though its visual impact will be further reduced once it has been painted.

21. Having considered that comments made by the Conservation Officer and interested parties, officers are of the view that the planning application can be supported in accordance with the requirements of the National Planning Policy Framework 2019.

#### **b) Highway and Pedestrian Safety**

22. The erection of the fence effectively removes the use of one point of access off the A67 which whilst providing both vehicular and pedestrian access for some period of time, does not form part of the public highway or have a designation as a public right of way.
23. Pedestrian access is still available via the front entrance of the Public House building along the A67 for persons arriving on foot, and whilst the footway to the front does have a localised narrowing over a length of approximately 12m, it is generally consistent with other footways throughout High Coniscliffe. Persons wishing to access Mill Lane may have walked through the car park as a matter of convenience, when heading east, but a lawful means of access to the properties to the rear is available via the adopted highway. A convenient means of pedestrian access is retained for persons using the pub car park, via the rear entrance door (policy CS2 of the Core Strategy)
24. Engineering analysis of the two access points demonstrates that the access, which is now been closed, has visibility splays of 2.4m x 15.5m & 26m looking west and east respectively. Whilst it is likely that increased visibility is available for the west splay, this is over 3rd party and not secured within the highway, as such any overgrowth of hedges etc would not be under the control of the Highways Authority and visibility cannot be considered to be 'secured'. It is worth noting that the advised visibility for a priority junction adjoining a classified road with a 30mph speed limit (such as the A67) is 2.4x70m in each direction with a minimum standard of 2.4x43m being considered an absolute minimum. It is therefore demonstrated that the access off the A67 does not meet any recommended standard regarding visibility and that it is only permitted on an historic basis. The visibility of the adjacent footway is obstructed by the main building for vehicles exiting the site.
25. The second issue with the access is that it is not sufficiently wide enough to enable a two way passage of vehicles. Any vehicles exiting the site would be in conflict with vehicles wishing to enter from the adjoining A67, requiring sudden stopping or risk of reversing onto the highway at a dangerous location. It is also an environment which has mixed vehicle and pedestrian movements, without a designated footway, again this may be considered dangerous where people

stepping out of the side door of a pub may not expect to encounter moving vehicles.

26. In comparison, the existing Mill Lane access has visibility splays of 2.4m x 53m & 70m+ looking east and west respectively. It therefore exceeds the minimum requirement of 2.4m x 43m and exceeds the DMRB standard of 70m looking east. This access point has demonstrably better visibility than the access off the A67. The Mill Lane junction is adopted highway with a 5.5m carriageway which is sufficiently wide to accommodate two way traffic, and there is no inherent conflict with incoming and outgoing vehicle movements. It also has a footway to enable safe pedestrian movements.
27. The A67 access may have been acceptable for 'left in' movements but in practical terms this would be difficult to enforce or regulate and it also does not address any concerns regarding pedestrian safety.
28. If this planning application is approved and the A67 access is no longer to be used, the now redundant vehicle crossing should be kerbed through with full height kerbs and the crossing point reinstated as footway to tie into existing infrastructure. A planning condition can be imposed to ensure that this work is carried out within an agreed timeframe.
29. Whilst the works may result in an increase in traffic on Mill Lane, this is difficult to evidence without a breakdown of traffic counts using each access point and without this data it is not possible to determine the previous split of vehicles movements between the two points. However, it is worth noting that the proposal does not generate any 'new' or additional traffic, it may merely create some very localised redistribution.
30. A 5.5m carriageway is sufficient to serve a maximum of 300 residential dwellings, under current design guide standards and the Council's Highways Engineer has advised that it would therefore be difficult to suggest that this is an over intensification of use of the access and Mill Lane given the limited number of dwellings it serves (currently 8) with additional movements associated with the pub and tennis courts, all of which are existing facilities.
31. The Council's Highways Engineer supports the application in the interests of highway safety as it is an opportunity to remove an unsafe access from an 'A' classification road (A67). The planning application would accord with policy CS2 of the Core Strategy 2011 in terms of both highway safety and that pedestrian and disabled access into the site and the building remains in place and this would constitute a public benefit derived from the scheme as well as being a material planning consideration in the determination of the planning application.

### **c) The Public Rights of Way**

32. There is a Public Right of Way (High Coniscliffe Bridleway No.1) running down Mill Lane to the east of the application site and Mill Lane provides access to the car park at the rear. The only official means of accessing this bridleway from High Coniscliffe Village is via the adopted highway (any previous access across

the Spotted Dog Car Park would be at the landowner discretion). The fence is not obstructing any legal public right of way and access to the bridleway is still maintained by the roadside footway for pedestrians, or on the road for horse-riders and cyclists.

33. Many of the objections relate to the works preventing people from using the access and car park as an access into Mill Lane and the bridleway. There is no public footpath or bridleway running through the site which is private land and any claims pursued by interested parties over the right to use the land as an access would fall outside the remit of planning and is not a material planning consideration when determining this application.
34. The Council's Rights of Way Officer has raised no objections to the planning application, but has requested that a dropped crossing point be added to the roadside footway on Mill Lane either side of the car park entrance to allow safe use of the bridleway. This is an existing access which already provides safe access to the rear of the site and the bridleway beyond. The closing of the access off the A67 is not likely to result in a significant increase in the use of the bridleway to warrant such improvement works being carried out. The proposed improvement works would not meet the tests of being necessary or reasonable to the proposed development.

#### **e) Residential Amenity**

35. The fencing would not have an adverse impact upon the amenities of the neighbouring dwelling in terms of outlook. The continued and increased use of the Mill Lane access by vehicles and patrons of the public house would not significantly harm the amenities of the residential dwellings which are located adjacent to this existing access point. The development would accord with policy CS2 of the Core Strategy 2011.

#### **f) Other Matters**

36. Members should be aware that if the fence that is located in close proximity to the highway (A67) was repositioned so that it was a minimum of 1.5m from the edge of the adopted highway, none of the fencing that has been erected would require planning permission. In such circumstances, the local planning authority would not be able to secure the painting of the fence and a timescale for doing so as a planning application would not be necessary.

### **THE PUBLIC SECTOR EQUALITY DUTY**

37. In considering this application the Local Planning Authority has complied with Section 149 of the Equality Act 2010 which places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Access into the public house and its car park would still be possible via the access off Mill Lane and a planning condition has been recommended which requests the reinstatement of a footway where the current dropped access is located which will improve the footway infrastructure for wheelchair users and people who are visually impaired. This would be a public benefit to be derived

from the works. The proposal would comply with policy CS2 of the Core Strategy 2011.

### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

38. 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 AND RECOMMENDATION**

39. This is a retrospective planning application for the erection of fencing at the Spotted Dog Public House which has resulted in an existing single vehicular access off the A67 to the car park at the rear of the public house being blocked off. to both vehicles and pedestrians. The vehicular access off Mill Lane would remain and become the only access to the rear of the Public House. The site is within the High Coniscliffe Conservation Area and interested parties and the Council's Conservation Officer consider that the fencing does not reflect the character of the area and would harm the significance of the Conservation Area.
40. The Council's Highways Engineer supports the planning application in highway safety terms as the works would remove an unsafe and unsuitable vehicular access. The Council's Rights of Way Officer has advised that the continued use of the Mill Lane access would not have an adverse impact upon the Lane continuing as a public bridleway and the proposal does not raise any general residential amenity issues.
41. There is an existing footway which runs along the frontage of the public house on the A67 which can continue to be used to reach Mill Lane and the wider area from The Green and the building can still be accessed by patrons and customers via the existing front and rear entrances, this remains unchanged.
42. Officers consider that the painting of the fence will reduce the visual impact of the fencing and furthermore the removal of an unsatisfactory access and the improvements made to the footway adjacent to the A67 which would be secured by a planning condition is a public benefit which outweighs the identified harm to the High Coniscliffe Conservation Area. The proposal would accord with the National Planning Policy Framework 2019 and the appropriate local development plan policies to allow officers to recommended approval for the development subject to the planning conditions listed below.

### **THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS**

1. The development hereby permitted shall be carried out in accordance with the approved plan, as detailed below:
  - a) Drawing Number 02 Site Plan

REASON – To ensure the development is carried out in accordance with the advertisement consent.

2. The fencing shall be painted in a colour scheme to match the existing means of enclosure at the application site within one month of planning permission being granted. The fencing shall remain painted in the agreed colour scheme whilst remaining in situ.

REASON - In the interests of the visual appearance of the site and the High Coniscliffe Conservation Area.

3. The existing vehicle access (dropped crossing) off the A67 shall be removed and reinstated as footway with replacement kerbs to suit the adjacent highway. The works shall be completed within six months of planning permission being granted.

REASON - In the interests of highway and pedestrian safety.

### **INFORMATIVE**

The applicant is advised that works are required within the public highway, to remove an existing vehicle crossing and reinstate as footway. Contact must be made with the Assistant Director: Highways, Design and Projects (contact Mrs Lisa Woods 01325 406702) to arrange for the works to be carried out or to obtain agreement under the Highways Act 1980 to execute the works.