

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 27th October 2021

APPLICATION REF. NO: 21/00798/CU

STATUTORY DECISION DATE: 30th August 2021 (EoT 1st November 2021)

WARD/PARISH: HURWORTH

LOCATION: 2 Meadowbank Close
Hurworth Place

DESCRIPTION: Change of use from open space to domestic curtilage with erection of 1.8m high boundary fence to rear of property (Retrospective Application)

APPLICANT: Mr N Jeffrys

RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS (see details below)

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=summary&keyVal=QVRP7UFPG3I00>

APPLICATION AND SITE DESCRIPTION

1. The application site is a piece of land to the east of 2 Meadowbank Close, Hurworth Place and adjacent to public footpath No. 13. The surrounding area is predominantly residential in character. Footpath No 13 is also the former trackbed of the historic Croft Branch of the Stockton and Darlington Railway which is classed as a non-designated heritage asset. The site is situated within Flood Zone 2.
2. Retrospective planning permission is sought for the change of use from open space to domestic curtilage including the erection of a 1.8m high close boarded fence to enclose land as an extension to the applicant's rear garden. This piece of land has recently been purchased by the applicant. Group Tree Preservation Order No 1, 1989 covers part of this land enclosed by

this fencing. An application for the change of use of land to domestic curtilage and the erection of a 1.8m high fence to the rear of the neighbouring property at 3 Meadowbank Close is also on this agenda for consideration (21/00780/CU).

3. This piece of land is approximately 1m higher than the garden of the property and a retaining wall is in the process of being constructed between this small area of land and the garden of the property to retain the split levels and to avoid soil erosion. This wall does not require planning permission because of its height.

MAIN PLANNING ISSUES

4. The main issues with this application are:

- a) Impact on the character and appearance of the property, the surrounding area and the right of way
- b) Impact on the non-designated heritage asset
- c) Impact on residential amenity
- d) Impact on trees
- e) Flood Zone

PLANNING POLICIES

5. Relevant Local Plan and National Planning Policy Framework policies include those seeking to ensure that new development: -

- Is in keeping with character, design and external appearance of the dwelling, street scene and surrounding area and that adequate privacy in rooms, gardens and other outdoor buildings is maintained (H12)
- Provide links to existing networks to ensure safe, convenient and attractive access for pedestrians, cyclists, public transport users and for disabled people (CS2)
- Protect the Borough's distinctive character by protecting buildings, their settings and features and archaeological local importance in conservation areas (CS14)
- Protects and enhances healthy woodland, trees and hedgerows and has regard to existing trees and incorporates trees into the proposed layout wherever possible (CS15 and E12)
- Is focussed on areas of low flood risk and complies with national planning guidance relating to flood risk (CS16)

RESULTS OF TECHNICAL CONSULTATION

6. The Council's Senior Arboricultural Officer has not commented on this proposal.

7. The Council's Rights of Way Officer has raised an objection to this application

8. Hurworth Parish Council object to the application for the following reasons:

- This fence has been erected on an important historical area of land, which forms a part of Darlington's historical past.

- Darlington and Stockton must always preserve their place in history, and chipping away this pedigree by allowing construction, or the installation of fences will reduce and distort the historical value.
- To our knowledge the land upon which the applicant has constructed this fence does not belong to them.
- The aims and objectives of Hurworth Parish Council include the preservation of both open spaces and the preservation of our local heritage.
- The new fence will cause an obstruction to the farm vehicles that use this access and could eventually potentially lead to an accident.

9. The Stockton and Darlington Railway HAZ Project Manager has raised objections to this application:

- As set out in the objection by FSDR I concur that the unauthorised fence is an intrusive extension of the garden enclosing established trees in the open space margin of the trackbed of the historic Croft Branch of the S&DR and within the boundary of the former railway.
- It conflicts with Policy ENV2 of the emerging Darlington Local Plan, which seeks to protect the setting of and avoid damage to this non-designated heritage asset.
- To grant permission would encourage other householders in Meadowbank Close to seek similar extensions, creating further damage to the public amenity and the setting of the Croft Branch.

10. Friends of the Stockton and Darlington Railway have raised objections to this application:

- The unauthorised fence is an intrusive extension of the garden enclosing established trees in the open space margin of the trackbed of the historic Croft Branch of the S&DR and within the boundary of the former railway.
- It conflicts with Policy ENV2 of the emerging Darlington Local Plan, which seeks to protect the setting of and avoid damage to this non-designated heritage asset.
- The trackbed carries an attractive public footpath, popular with residents since the line was closed in 1964, which connects with the network of other paths in the village.
- The Local Plan requires this to be used in informing a heritage statement and impact analysis to accompany the application, in line with the National Planning Policy Framework. This has not been done.
- The trees on the site make an essential contribution to the amenity of the trackbed path; they should be retained within the public realm and managed accordingly.
- To grant permission would encourage other householders in Meadowbank Close to seek similar extensions, creating further damage to the public amenity and the setting of the Croft Branch.
- The Friends are currently in discussion with the S&DR Heritage Action Zone Projects Manager on the feasibility of working with landowners, the parish council and the local community volunteer group to create a project to manage the area as a rail heritage community based public amenity.

RESULTS OF PUBLICITY AND NOTIFICATION

11. Five properties in Meadowbank Close and one property in Grange Avenue were consulted in accordance with the regulations and five objections have been received. The points of objection are:

- We consider this fence to be ugly and intrusive in what is a pleasant and leafy walk along the old railway line.
- It protrudes for several feet onto the footpath area and is not in line with the rear boundaries of adjacent properties.
- This track bed is part of Darlington's rail heritage, which will be celebrated in 2025, and such intrusions onto the area of the Croft Branch of the Stockton and Darlington railway will greatly damage the setting.
- This fence has been erected on an extremely important historical area, with no regard to what this old track bed means to both the area (Darlington is the birthplace of railways, and we need to preserve this heritage) and to the local people who use the old track bed for recreation.
- They have encroached onto a historical rail line.
- This piece of land is also used as access for large farm vehicles, and trucks. Reducing the size of the access, would make passing very difficult.
- If granted, this will set an unfortunate precedent for every house, that backs onto this old track bed, to land grab.

PLANNING ISSUES/ANALYSIS

(a) Impact on the character and appearance of the property, the surrounding area and the right of way

12. The site is a narrow strip of grass verge which runs to the rear (east) of properties on Meadowbank Close. Public Footpath No. 13 which runs in a north – south direction along Linden Drive before accessing open countryside to the north, is also located to the east of the site. The public footpath at this point is also coincident with the former trackbed of the croft branch line of the former Stockton and Darlington Railway. The impact of the development on the former branch line, a non-designated heritage asset, will be considered elsewhere in this report.

13. A section of this grass verge to the rear of 2 Meadowbank Close has been purchased by the applicant and incorporated into the rear garden of the property enclosed by a 1.8m high timber boarded fence. The fence replicates the original timber boundary fence in terms of its size, construction and materials and those erected to the rear of other properties on Meadowbank Close. The fence has enclosed the public footpath on one side while the other side maintains its present state. The width of the footpath remains unaltered, and the eastern side of the footpath will remain as it is, heavily planted with trees and shrubs. The length of this fence is approximately 14.5m, after which the footpath continues into open countryside.

14. Linden Drive and the public right of way are enclosed by a variety of boundary treatments to the front and rear of existing properties which either face or back onto Linden Drive. The

fence albeit erected closer to the right of way matches that enclosing the newly built dwellings on the former Croft House site being broadly traditional and suitable for its setting.

15. The fence has been built on land in the ownership of the applicant and will not encroach onto the public right of way or former branch line, although will be closer to the branch line and will be within the setting of this non-designated heritage asset. The Council's Rights of Way Officer has objected to the application on the basis that it is considered the new fence restricts the available width of the footpath at this point and gives an imposing feel to the footpath. The Officer advises however that the Definitive Map and Statement does not specify a minimum footpath width at this location and so legally the fencing is not obstructing the footpath.

16. While it is acknowledged that the fence has some impact on users of the public right of way at this point, it has not resulted in the encroachment of the right of way. This impact will be for a short section of the right of way and the public right of way, and former branch line, remain open for use. The scale and siting of the fencing and the change of use of a small area of grass verge means is not considered to have a harmful impact on the character and appearance of the application property, surrounding area or on users of the right of way.

(b) Impact on the Non-Designated Heritage Asset

17. The application site lies adjacent to (and within the setting of) the former trackbed of the historic Croft Branch of the Stockton and Darlington Railway which is classed as a non-designated heritage asset. The Croft branch line was opened on the 27th October 1829 and was 3.5 miles in length. It ran from north of Hill House east of Skerne Bridge in Darlington to the north side of Hurworth Place where it terminated at the S&DR's Croft Depot. The branch line is partly coincident with Public Footpath No. 13 in this location.

18. Policy CS14 (Promoting Local Character and Distinctiveness) of the Core Strategy indicates that the distinctive character of the Borough's built, historic, natural and environmental townscapes, landscapes and strong sense of place will be protected. Paragraph 194 of the NPPF, 2021, requires that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. Paragraph 203 of the NPPF, 2021, requires that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

19. Policy ENV2 (Stockton and Darlington Railway (S&DR) Strategic Policy) of the Emerging Local Plan states that proposals which will conserve and enhance elements which contribute to the significance of the Stockton and Darlington Railway and its setting, including its trackbed and branch lines, will be supported. Due to the emerging status of the Local Plan however, this policy carries little weight in the determination of this application.

20. A brief Heritage Statement (HS) has been submitted with the application which is proportionate to the development proposed. The HS explains that the purpose of the fence is to enclose an area of rough grassland recently purchased by the applicant, adjacent to the former branch line of the Stockton and Darlington Railway, which has been used for fly tipping. The HS also explains that the fence replicates the original timber boundary fence in terms of its size, construction and materials and whilst it has been relocated closer to the branch line considers that it has a neutral effect on its setting.

21. As set out elsewhere in this report, the design of the new fencing will match that enclosing the newly built dwellings on the former Croft House site being broadly traditional and suitable for its setting. The fence has been built on land in the ownership of the applicant and will not encroach onto the public right of way or former branch line, although will be closer to the branch line and will be within the setting of this non-designated heritage asset. The public right of way and branch line is enclosed elsewhere along its length further south along Linden Drive by a variety of boundary treatments to the front and rear of existing properties which either face or back onto the right of way, including the former depot walls which remain on Linden Drive, all of which contributes to its setting in this location. Further north, beyond the built confines of Hurworth Place, the branch line is surrounded by open countryside which is typical of its setting in this location.

22. While the erection of the fence has resulted in some further enclosure of the former branch in this location, this is consistent with the character of the area immediately surrounding the branch line in this location. The public right of way, and former branch line, remain open for use. The scale and siting of the fencing means that it is not considered to have a harmful impact on the setting of this non-designated heritage asset and therefore complies with Policy CS14 and the NPPF in this regard.

(c) Impact on residential amenity

23. The change of use of the land and erection of a 1.8 metre high timber boarded fence will have little discernible impact on the amenities of nearby residential properties. The area of land in question is a small addition to the existing rear curtilage of the application property and the fence is sufficiently distant from nearby properties so as not to result in any significant detrimental impacts in terms of light, outlook and overlooking to neighbouring residential properties.

(d) Impact on trees

24. The area of land contains a number of self-seeded ash and sycamore trees which are protected by Group Tree Preservation Order No. 1, 1989 which are now incorporated into the applicant's garden. A Tree Survey and Arboricultural Impact Assessment has been submitted with the application which considers the impact of the development on these protected trees. The realignment of the boundary fence has resulted in some fence posts being within the trees' root protection areas (RPA) however the report advises that works have been undertaken by hand and these young / early semi-mature trees have not been negatively impacted as a result of the work. A retaining wall has been built within the applicant's garden to the west of the

trees to retain the split levels and to prevent soil erosion. This work does not require planning permission due to the height of the wall. The tree survey further advises that the construction of the wall has not impacted the protected trees. The proposal therefore complies with Policy CS15.

(e) Flood Zone

25. A Flood Risk Assessment has been submitted with the application which states that whilst the access road and entrance to Meadowbank Close are within Flood Zone 2 the houses within the development and their rear garden areas are sited at a significantly higher elevation to protect them from flood risk. Flood protection measures were installed as part of the redevelopment of the site. The relocated fence is on higher ground to the east of the dwellings. The fence is vertically boarded with gaps between and under the boards. Its relocation will therefore have no material effect on flood risk. The proposal complies with Policy CS16.

THE PUBLIC SECTOR EQUALITY DUTY

26. 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.

CONCLUSION AND RECOMMENDATION

27. The change of use of an area of grass verge and the erection of a 1.8m high timber boarded fence to the rear of the applicant's property is considered to be acceptable in terms of its impact on the character and appearance of the application property and surrounding area. While there will be some impact on a short section of public footpath no. 13 and on the setting of the non-designated heritage asset by the enclosure of this area, this impact is not considered to be unacceptable for the reasons set out in the report. The proposal is therefore considered to comply with Policies CS2, CS14, CS15 and CS16. It is recommended:

THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS

1. A3 Implementation Limit (3 years)
2. The development hereby permitted shall be constructed in accordance with the external materials/finishes as set out in the application and detailed on drawing no. 795-01 - Rev A
REASON – To ensure that the external appearance of the development is of an appropriate design and quality in accordance with Saved Local Plan Policy H12 and Policy CS2.
3. The development hereby permitted shall be carried out in accordance with the approved plans, as detailed below:

- Drwg. No. 795-01 - Rev A – Proposed Site Layout and Fence Detail
- Drwg. No. TCP01 - July 2021 Tree Constraints Plan

REASON – To ensure the development is carried out in accordance with the planning permission.