

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 23rd January 2019

APPLICATION REF. NO:	18/00905/FUL
STATUTORY DECISION DATE:	29 November 2018
WARD/PARISH:	STEPHENSON
LOCATION:	1 Sussex Way
DESCRIPTION:	Change of use of open space to private garden and erection of a means of enclosure (as amended by plans received 14.11.18)
APPLICANT:	Mrs Sheila Samways

APPLICATION AND SITE DESCRIPTION

The application site comprises an area of open space to the west side of 1 Sussex Way, off Haughton Road. Planning permission is sought for the erection of a fence to enclose this area and for the change of use of the land to private garden associated with 1 Sussex Way. The area of land, which is one of a number of similar parcels of land, within the estate has recently been purchased by the applicant. A semi-mature Sycamore tree is located within the area of open space. A Tree Preservation Order (No. 12) 2018 has recently been made in respect of this tree which is considered to be of high amenity value. A report which considers objections to this Tree Preservation Order is also on this agenda for consideration.

The plans have been amended since the application was submitted to splay the fence away from the applicant's drive to the north of the site to address the concerns of the Highway Engineer. The fence has also been reduced in height to 1 metre adjacent to the south side of the site and the remaining 2 metre high fence has been set back over 1 metre from the surrounding highway with landscape planting to the front. The effect of these amendments to the fence is such that it now constitutes permitted development under Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.

PLANNING HISTORY

18/00667/PDTF - In July 2018 a Tree Preservation Order /Conservation Area Enquiry confirmed that no consent was required.

16/00924/PDTF – In September 2016 a Tree Preservation Order /Conservation Area Enquiry confirmed that no consent was required.

06/00760/FUL – In September 2006 planning permission was granted for the erection of a conservatory.

PLANNING POLICY BACKGROUND

The following policies are relevant to consideration of the application:

Darlington Core Strategy Development Plan Document 2011

- CS2 – Achieving High Quality, Sustainable Development

RESULTS OF CONSULTATION AND PUBLICITY

Highway Engineer (Original proposal) - Expressed concern that visibility for access and egress from the garage/driveway of No 20 Devonshire Road and the driveway of No 1 Sussex Way would be compromised by the height and position of the proposed fence.

(Amended proposal) – No highway objection to the proposal on the basis of the amended plans.

Seven letters of objection were received to the original application which raised the following issues:

- *The estate is open plan;*
- *A 2m fence would be horrendous;*
- *A smaller fence or hedge would be better but still not fair to residents;*
- *A 2m high fence will not be in keeping with the original aspect of the estate and will be unsightly in an otherwise attractive, pleasant and well maintained area;*
- *We request that the planners visit the site before any decision is made;*
- *Will restrict vision when reversing vehicle off drive which will create a road safety risk;*
- *Deeds contain restrictive covenants and these should be adhered to before any planning application is granted;*
- *This fence would affect the value of my property and if I were to sell I feel prospective purchasers might be deterred from buying because of the proximity of the fence and the difficulties mentioned with regard to access to and from my garage;*
- *The 2 metre high fence will not be in keeping with the original aspect of the estate and will be unsightly in an otherwise attractive, pleasant and well maintained area;*

Eleven letters of objection were received after the amended plans were received which raised the following issues:

- *The area is supposed to be open plan and the sight of the fence would be unsightly;*
- *The owner of no. 20 will not be able to see oncoming traffic when reversing of the drive and the fence would be a hazard;*
- *Out of keeping with the open plan estate;*
- *This would make an unpleasant view for all properties opposite and probably devalue them;*
- *If it were to go ahead it would open the floodgates for others to follow suit;*
- *Would prove a traffic hazard to and from Sussex Way;*
- *Totally out of keeping with the rest of the estate;*
- *It would be an eyesore for all adjacent properties;*
- *Spaced out white posts 3 feet high joined by plastic chain or a low wall of similar height would be far more acceptable;*
- *Would spoil the view from my window;*
- *Will not be able to watch the birds on the grass and in the tree;*
- *Does not want to look at a 2m fence;*

- *Problem to car users who would not have a clear view of the junction from Sussex Way onto Devonshire Road;*
- *At the moment children playing on the estate can see traffic and be seen by drivers;*
- *Road safety;*
- *Why and when was this land sold to the applicant as it was not part of the transaction in November 2014;*
- *Restrictive covenants on the title deeds;*
- *The original 'planners' intention was to have and maintain an open aspect for the estate;*
- *The erection of this fence would completely destroy my pleasure in living here;*
- *Only view would be the side of the fence and the tops of the roofs of the bungalows behind it;*
- *This land was always maintained by the Council for 12 of the last 15 years;*
- *It will destroy the open aspect and character of this lovely estate;*
- *This will set a precedence for other residents to acquire other open spaces on the estate and put fencing around them;*
- *I enjoy the open space and amazing tree and is the reason I bought the house;*
- *We all pay Council Tax and should be listened to;*
- *Can't understand why a lady of her age would want to upset so many people;*
- *I did not receive any notification of the proposed purchase of the land or this application;*
- *Concerns regarding the future of the tree;*
- *The amended proposal will not change any existing objections;*
- *The new design will look a mess, there are no clear lines and I fear the whole thing is a reaction to objections to the original plan and ill thought out;*

Two Ward Councillors, Councillor J Taylor and Councillor K Kelly, have expressed their concerns on behalf of the residents and raise the following issues:

- *Have people in Sussex Way acquired the large area of land and the tree;*
- *Know that the couple have kept area tidy and planted;*
- *Residents nearby very upset;*
- *Acquiring land will change area (open plan)*
- *2m fence around perimeter will change area (open plan);*
- *Also resident under the impression that the tree is to be removed.*

PLANNING ISSUES

Policy CS2 (Achieving High Quality, Sustainable Design) requires that high quality, safe, sustainable design will be promoted in all new developments. In particular all development proposals should reflect and/or enhance Darlington's distinctive natural, built and historic characteristics that positively contribute to the character of the local area and its sense of place. The main issues for consideration are the impact of the proposal on the character and appearance of the surrounding area and upon highway safety.

The applicant has recently purchased this piece of land and wishes to enclose it with a boundary fence to enable it to be used as a private garden. This enclosure will restrict it being used by dog walkers and enable the family to benefit from the larger enclosed garden. The height of the proposed fence will provide privacy and safety for their visiting grandchildren when playing in the garden.

The area of open space to the side of 1 Sussex Way is one of a number of small undeveloped grassed areas within the estate. These areas are not formal areas of public open space although

they provide a pleasant visual aspect within the estate and therefore contribute to the character and appearance of the surrounding area. The effect of enclosing this area will therefore be to reduce the amenity value of this particular piece of open space with a resultant impact on the character and appearance of the surrounding area, contrary to the requirements of Policy CS2 in this regard.

In this instance however the erection of the fence, in its amended form, would be permitted development under Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. There were no conditions attached to the original planning permission which removed those permitted development rights. While there may be covenants attached to the land restricting the enclosure of land this does not affect the applicant's ability to exercise permitted development rights.

Nevertheless, the proposed fence forms part of this planning application and as such falls to be assessed against relevant planning policies. However, the fallback position: that the applicant could erect the fence as permitted development is a material consideration in the determination of this application. The weight to be given to such a material consideration varies according to whether what could be built using the GPDO would have a broadly similar or worse impact to what is proposed, and the reasonable likelihood or possibility that, if permission was refused, permitted development rights would be resorted to.

The fence in its current form could be constructed as permitted development and as such would have the same impact as the application proposal. It is considered that there is a reasonable likelihood that if planning permission were to be refused the fence would be erected as permitted development.

Therefore, while the visual impact of the proposal is acknowledged, significant weight can be attached to the fallback position in this instance and as such it would be difficult to justify refusal of the application on the basis of the visual impact of the proposed fence or the change of use of this parcel of land despite the concerns regarding compliance with Policy CS2.

In response to concerns expressed by the Ward Members and residents regarding the mature sycamore tree on the site, a Tree Preservation Order has been placed on the tree. A report which considers objections raised in response to the placing of the Order is also on this agenda for consideration.

The concerns of the Highway Engineer regarding the height and proximity of the fence to the applicant's drive have been addressed and on the basis of the amended plans no highway objections are raised.

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

The visual impact of the proposed fence and the resultant loss of an area of open land which has a pleasant open aspect is acknowledged. However, the fallback position; that the proposed fence

can be erected as permitted development, is afforded significant weight as a material consideration in the determination of this application. The concerns of the Highway Engineer have been addressed and as such, on balance, the proposal is considered to be acceptable.

RECOMMENDATION

THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. A3 (Standard 3 year time limit)
2. The development hereby permitted shall be carried out in accordance with the approved plans, as detailed below:
 - Drg. No. – Page 1 of 5 – Site Plan
 - Drg. No. – Page 2 of 5 – Block Plan
 - Drg. No. – Page 3 of 5 – Proposed Elevations
 - Drg. No. – Page 4 of 5 – Proposed Elevations
 - Drg. No. – Page 5 of 5 – Photographs and details of fencing

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

3. E3 (Landscaping scheme to be carried out concurrently with the development)

THE FOLLOWING POLICY WAS TAKEN INTO ACCOUNT IN CONSIDERATION OF THE APPLICATION

Darlington Core Strategy Development Plan Document 2011

- CS2 – Achieving High Quality, Sustainable Development