

LAND ADJACENT TO 1, 3 AND 5 HAMPTON COURT
MR NATHAN COOK

18/00284/FUL

The application is for retention of the use of land as residential garden and the retention of fencing already erected which encloses that land.

The site lies within the Urban Neighbourhood of Newcastle under Lyme as defined on the Local Development Framework Proposals Map.

The application has been called in to the Planning Committee due to public concerns.

The 8 week period for the determination of this application expired on the 4th June but has been extended by agreement of the applicant to the 22nd June 2018.

RECOMMENDATION

PERMIT subject to a condition that lists the approved plans.

Reason for Recommendation

The development does not conflict with the Development Plan or with the National Planning Policy Framework. It does not encroach upon or adversely affect the enjoyment of a public right of way to which Part 3 of the Wildlife and Countryside Act 1981 (i.e. which is on the definitive map). In addition it does not result in any significant harm to the visual appearance of the area. In the absence of any other material planning considerations it is considered that the development is acceptable and should be permitted.

Statement as to how the Local Planning Authority has worked with the applicant in a positive and proactive manner in dealing with this application

The application has been received following the report of a breach of planning control. No amendments, alterations or additional information have been requested following a previous withdrawn application. The proposal is considered now to be a sustainable form of development in compliance with the provisions of the National Planning Policy Framework.

Key Issues

The application is for the retention of the use of land as residential garden and retention of fencing that has already been erected which encloses that land. The line of fencing as erected spans approximately 50 metres in length and ranges in height from 1.5 metres to 2.2 metres owing to ground level changes. In effect the proposal seeks to regularise the unauthorised extension of the gardens of properties 1, 3 and 5 Hampton Court.

The site lies within the Urban Neighbourhood of Newcastle under Lyme as defined on the Local Development Framework Proposals Map. There are protected trees in the vicinity but none are affected by the proposal.

The key issue to consider is whether or not there is any harm to public amenity arising from the proposal which will be addressed below following relevant background information.

Background to the application

Complaints were received last year alleging that land in the Council's ownership had been incorporated into gardens of numbers 1, 3 and 5 Hampton Court. Investigations, which included the taking of measurements, subsequently established that in respect of one of the properties the allegation was correct but that in respect of the other two properties no land in the Council's ownership was involved.

Following such investigations and associated discussions with the Council's Property Team the fence has now been reinstated in a position that no longer, as far as the Property Team are concerned, encloses Council land.

This application follows an application received in early January which was the subject of a number of representations and was 'called in' for determination by the Planning Committee. However, during the course of the application it became clear that the applicant had not completed the appropriate Certificate of Ownership and had not notified relevant landowners (where known) as required by legislation. The applicant chose to withdraw that application in February. Such issues have been addressed in the current application.

The measurements that the Council's Property Team have taken and its conclusion that no Council land is enclosed within the gardens of these properties have been challenged by, and remain in dispute with, Thistleberry Residents Association (TRA) who has submitted an independent survey plan to contest that conclusion. The Council's Property Team have taken into account the information within the independent survey plan but have revised their conclusion which remains that there is no encroachment onto, or loss of, Council land arising from the development.

Whether or not there is any harm to public amenity?

There are two elements to be considered; whether the development affects the enjoyment of a right of way; and whether any adverse visual impact arises from it.

Policy CSP1 Newcastle under Lyme and Stoke on Trent Core Spatial Strategy requires development to respect the character of the area and the way it functions. The current National Planning Policy Framework (the Framework), at paragraph 58, states that both policies and decisions should aim to ensure that developments will, amongst other things, function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development. Paragraph 75 of the Framework also states that planning policies should protect and enhance public rights of way and access. The new draft Framework also reflects this approach.

Within a few metres of the rear boundary of 1, 3 and 5 Hampton Court there is a useable pathway which is not affected by the proposal. Public representation does, however, refer to the presence of a further historic route referred to as "the trackway" that they say is immediately adjacent to the boundary of those properties. Other representations indicate that there has never been such a route. As such reports of the presence of "the trackway" and its historic use are somewhat.

The TRA have submitted to the County Council an application under the Wildlife and Countryside Act to have "the trackway" declared a Public Right of Way and it is their view that part of the claimed public right of way has been encroached upon by this development. That application remains undetermined and as such, as confirmed by the Public Rights of Way Officer of the County Council, "the trackway" is not on the Definitive Map of Public Rights of Way. It therefore cannot be concluded that the development, which is the subject of this application, encroaches upon and thereby adversely affects the enjoyment of a public right of way to which Part 3 of the Wildlife and Countryside Act 1981 (i.e. which is on the definitive map).

Whilst it is acknowledged that the development may affect a right of way that exists at common law, or by virtue of a presumed dedication under Section 31 of the Highways Act 1980 this in itself would not form the basis upon which planning permission could be refused.

The erection of the fence line in its revised position has probably reduced the amount of hedgerow in the locality by a small degree but its visual appearance is not out of keeping with the wider area when viewed in the context of the Hampton Court residential development and substantial remaining greenery. No trees have been lost. Overall there is no visual harm arising from the appearance of the fence or any other significant public detriment triggered by the proposal.

APPENDIX

Policies and Proposals in the Approved Development Plan relevant to this decision:-

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006 -2026 (adopted 2009) (CSS)

Policy SP1	Spatial principles of Targeted Regeneration
Policy SP3	Spatial principles of Movement and Access
Policy ASP5	Newcastle and Kidsgrove Urban Neighbourhoods Area Spatial Policy
Policy CSP1	Design Quality
Policy CSP3	Sustainability and Climate Change

Newcastle-under-Lyme Local Plan 2011 (NLP)

Nil.

Other Material Considerations

National Planning Policy Framework (March 2012)

Draft National Planning Policy Framework (March 2018)

Planning Practice Guidance (March 2014)

Supplementary Planning Documents/Guidance

Space Around Dwellings SPG (SAD) (July 2004)

Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance SPD

Planning History

17/01043/FUL	Retention of change of use of open space to residential garden	Withdrawn	2017
06/00109/FUL	Demolition of former dwellings and erection of 8 new houses and associated site works	Refused	2006
06/00458/FUL	Demolition of former dwellings and erection of 8 new houses and associated site works	Permitted	2006

Views of Consultees

Landscape Development Section has no objections provided that the fence follows the correct boundary line between the Borough Councils land and that of the Hampton Court development.

The **Public Rights of Way Officer** (Staffordshire County Council) comments that the County Council's Definitive Map of Public Rights of Way shows that no Public Rights of Way cross the proposed application site. However, the County Council has received an application under Section 53 of the Wildlife and Countryside Act 1981 to add or modify the Definitive Map of Public Rights of Way, which affects the land in question. It should be noted, however, that this does not also preclude the possibility of the existence of a right of way at common law, or by virtue of a presumed dedication under Section 31 of the Highways Act 1980. It may, therefore, be necessary to make further local enquiries and seek legal advice in respect of any physically evident route affecting the development.

Representations

A total of 17 representations have been received objecting to the application including correspondence from **Thistleberry Residents Association**. The comments made include:-

- That the land subject to change of use is in Council or public ownership.
- It is wrong for land in public ownership to be used for unauthorised private gain without challenge, and accepting the proposal would send the wrong message.
- There are potential conflicts of interest arising from a decision on the proposal.
- That there is a historical public trackway (or public right of way) which is affected by the proposal and which has been regularly used for a considerable number of years.
- A request was made, in 2007, to the County Council to record the trackway on the definitive footpaths map, however the County have as yet to respond that that request.
- Hedgerow has been removed.
- The application documents contain inaccurate and misleading information.

Some 6 letters in support of the application make further points:-

- A previous resident of Hampton Court for 10 years until last year states there was no path adjacent to the properties boundary with the Thistleberry Parkway during the time residing at the address and the entire length of the boundary was made up of over grown bushes and nettles.
- That there is a path a few metres from the boundaries of Hampton Court but not a useable trackway. The area has been overgrown for many years.
- A trackway (reinstated or otherwise) immediately adjacent to the boundary is not a good idea as it would increase the risk of antisocial behaviour that would affect those residents and was subject to historical local engagement as the reason not to pursue that idea.

Applicant/agent's submission

Additional supporting information has been submitted as well as application forms and indicative plans have been submitted. The application documents are available for inspection at the Guildhall and via the following link

<http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/18/00284/FUL>

Background Papers

Planning File
Planning Documents referred to

Date Report Prepared

6th June 2018.