

Development Control Committee

Meeting to be held on 12th December 2018

Electoral Division affected:
Lancaster South East

Lancaster City: Application Number. LCC/2018/0040
Change of use of land to educational use comprising of school playing area outdoor amenity and play space.
Recreational land to the east of Barton Road, Lancaster

Lancaster City: Application Number. LCC/2018/0041
Erection of 2.1m ball stop fencing and gates.
Recreational land to the east of Barton Road, Lancaster.

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Executive Summary

Application - Change of use of land to educational use comprising of school playing area outdoor amenity and play space.(application LCC/2018/0040)

Application - Erection of 2.1m ball stop fence and gates (application LCC/2018/0041)

at recreational land to the east of Barton Road, Lancaster.

Recommendation - Summary

That subject to the Secretary of State not calling in the application for his own consideration, application LCC/2018/0040 be **granted** subject to conditions controlling time limits and working programme and;

That subject to the Secretary of State not calling in the application for his own consideration, application LCC/2018/0041 be **granted** subject to conditions controlling time limits, working programme, protection of vegetation, colour and design of fencing and community use agreement.

Applicant's Proposal

Two planning applications have been submitted on a parcel of land (playing field) located off Barton Road, Lancaster. The whole playing field measures approximately 280m x 145m, covering an area of 3.6ha.

The planning applications are as follows:-

- A change of use of the playing field to educational use. The site area is currently designated as open space in the Lancaster City Local Plan but is owned and maintained by Lancashire County Council (LCC/2018/0040)
- The erection of 2.1m high ball stop fence and gates coloured Green (RAL 6005) to provide a secure area for the pupils that would be using the field. The fencing would have a total linear distance of approximately 570 m providing a total fenced off area of 17370m² (LCC/2018/0041)

Description and Location of Site

The application site is an area of grass playing field located on the south east side of Barton Road in a residential area approximately 2km to the south of the centre of Lancaster. The boundary with Barton Road is formed by a low hedgerow with a number of mature trees within the pavement. Houses on the north side of Barton Road overlook the application site.

Burrow Beck, a designated main river flows in a southerly direction along the eastern boundary of the application site. The proposed fence would be erected at least 8m away from the Burrow Beck Brook to retain access to the watercourse. Part of the application site is located within a flood zone 2 and 3 area next to the Brook.

Barton Road Community Centre is located directly adjacent to the playing field and Moorside Primary School is located approximately 260m east of the playing field.

Members visited the site on 30th October 2018.

Background

There is no relevant planning history.

Planning Policy

National Planning Policy Framework

Paragraphs 11 - 14, 54 - 57 96 - 101 and 124 are relevant with regards to the requirement for sustainable development, planning conditions, protection of open and recreation space and good design.

Lancaster District Core Strategy

Policy SC1 - Sustainable Development
Policy SC5 - Achieving Quality in Design
Policy SC8 - Recreation and Open Space

Lancaster City Council Development Management Document (2014)

Policy NPPF 1 - Presumption in favour of Sustainable Development.

Policy DM25 - Green Spaces and Corridors
Policy DM26 - Open Space, Sports and Recreational Facilities
Policy DM29 - Protection of Trees, Hedgerows and Woodland
Policy DM35 - Key Design Principles
Policy DM38 - Development and Flood Risk
Policy DM38 - Surface Water Run-Off and Sustainable Drainage

Lancaster City Strategic Policies and Land Allocations DPD (Submission version)

Policy SC3 - Open space, recreation and Leisure
Policy SC4 - Green Space networks

Consultations

Lancaster City Council - Object to the application as they consider that the proposed fencing would prevent informal recreational use and restrict public access to a designated outdoor sports facility, open space and part of the Green Space Network containing a public right of way. Consequently the City Council consider that the proposal is contrary to policy SC4 and SC3 of their strategic policy and land allocations DPD and policies DM25 and DM26 of the Development Management DPD. The City Council also consider that the length, height and location of the proposed mesh fencing would represent an overbearing, stark and incongruent form of development contrary to policy DM35 of their Development Management policies DPD. The City Council also state that application fails to address the need to protect trees and boundary hedge within and immediately adjacent to the site contrary to Policy DM29 of the Development Management policies DPD.

Public Rights of Way - No observations received.

Environment Agency - No objection.

Sport England - Objection raised - The proposed fence position impacts on the ability to reintroduce sport and potentially expand the sports uses at the site. Sport England objects to the application because it is not considered to accord with any of the exceptions to Sport England's Playing Fields Policy and would propose the fencing line is expanded around the site boundary.

LCC Highways Development Control - No objection - conditions should be added in regards to the applicant being aware that they cannot obstruct a public right of way, wheel cleaning facilities should be used during construction and gateposts shall be positioned as shown on the submitted plan.

LCC Lead Local Flood Authority - No observations received.

Representations - The application has been advertised by site notice and neighbouring residents informed by individual letter. A large number of representations have been received in relation to both applications which can be summarised as follows:-

Application LCC/2018/0040 - A total of 130 objections and 9 letters of support have been received raising the following issues:-

- This playing field is allocated as green open space that has been used for many years by the general public. By changing its use and fencing the field, the proposal would be contrary to policy.
- The proposal would exclude members of the public from this valuable green open space within the local community. It is used daily for dog walking and for recreational activities by both adults and children. Other public uses include golf, jogging, drone / kite flying, football, cricket etc., therefore the proposal would have significant detriment to the local community.
- Even though it is important for primary school children to be able to exercise safely between 9.00 and 15.00 40 weeks of the year it is more important for everyone of all ages to be able to access the facility 24 hours a day 365 days a year. A reasonable agreement could be made without going through this type of planning process.
- Only Moorside Primary School should be taken into account in the assessment of need for playing field space as other schools in the local area have no intention of using the playing field.
- Moorside Primary School would be left without any designated playing field space if the nearest areas of open land to the school are registered as a town green. Therefore the proposals are required for the school to carry out their duties.

Application LCC/2018/0041. A total of 138 objections and 8 letters of support have been received raising the following issues:-.

- The area is bounded by hedges and woodland and is a safe place for people and wildlife. The proposed fence would further damage the environment including birds and bats. The fencing would have a detrimental impact on visual amenity for residents on Barton Road.
- Only Moorside Primary School should be taken into account in the assessment of need for the play space as other schools in the local area have no intention of using the playing field.
- According to the Department of Education's guidelines the whole of Barton Road playing field would not be needed to provide replacement recreational area for that lost due to the Town Green application. The calculations of the required amount of replacement space incorrectly interpret Government guidance
- The fencing would prevent local people using the field when it is not required by the school
- The site is located within a flood zone and the erection of fencing would increase the flood risk of the Burrow Beck.
- The fence would obstruct a footpath leading onto Bowerham Road. Restricting public access would cause further traffic movements in the local area.
- Child safety should be paramount and a fenced area for the school would help ensure this.
- The fencing is a stepping stone to the land being sold off for development

County Councillor Erica Lewis - Objects to the application as she considers that the area specified in the application is far in excess of the current size of the Moorside Primary School playing fields. The fence is so close to the beck that it will impede maintenance and may also increase flood risk in other areas. Additionally, the fence is so close to the beck that it may become unstable due to erosion/channel migration. The proposal would not accord with the Lancaster Local Plan and would prevent access to a public right of way.

Advice

The objective of the applications is to provide a secure and safe area for sport and recreational and outdoor learning activities for the pupils of Moorside Primary School located off Bowerham Road. Moorside Primary School is a large establishment providing for reception and key stage 1 and 2 children in the south Lancaster area. Planning permission was recently given for significant extensions to the school to increase capacity to 3 form entry, a total of 630 pupils.

The school currently has access to an area of land directly to the south west of the school buildings for outdoor recreation and learning activities. This land is comprised of a marked out grass pitch area enclosed by fencing together with a larger area of grass land which is not formally managed.

The land currently available to the school as outdoor play and recreation space was subject to an application for Town Green status in 2010. The Commons Act 2006 provides that any person may apply to the relevant commons authority (in this case Lancashire County Council) to register land as a Town or Village Green. The application for Town Green status was referred to the Planning Inspectorate for decision due to the registration authority being Lancashire County Council who are also owners of the land. After hearing evidence in relation to the history of public use of the land, the Inspector considered that the majority of the application land should be added to the register of Town / Village Greens. The total area of land considered to benefit from Town green status equates to approximately 27400m². The County Council has challenged this decision through the courts but the decision by the Planning Inspectorate has been upheld. The outcome of the application and subsequent legal process is therefore that the areas currently used by Moorside Primary School for outdoor sport and recreation benefit from Town Green status and therefore the public have a legal right of access to this land for dog walking, exercise and general recreational use.

The granting of Town Green status over this land means that the school can no longer provide sufficient secure and safe space for children to play and to use as part of curricular activities. The Department for Education Statutory Guidance 'Keeping children safe in Education' (September 2018) states that 'all staff have a responsibility to provide a safe environment in which children can learn'. In order to comply with their safeguarding responsibilities, the school proposed to create an alternative area for the school which can be enclosed by fencing thereby excluding dog walking, littering and other activities which might prejudice the ability to provide a safe and secure area for pupil's play and recreational activities.

The main issues relate to the principal of the development, the relationship with the policies of the local plan, visual and residential amenity impacts of the fencing, and potential flooding impacts.

Justification for the size of the fenced area

The Department of Education's Guidelines for the Disposal or Change of use of Playing Field and School Land provides guidelines for the calculation of areas required for outdoor play and recreation space at education facilities. To calculate the area of new space required to compensate for that lost to the Town Green application, these guidance levels have been applied based only on Moorside Primary School. There are other primary schools in the local area including immediately adjacent to Moorside but the pupils at these establishments have not been accounted for in the assessment as it is understood that they do not use the areas subject to Town Green registration.

The Department of Education's guidance states that the calculation of area needed should be comprised of two elements; a base area and area per pupil which is adjusted for the age of the pupils. The base area for primary schools is 2000m². In terms of the calculation per pupil, Moorside Primary School has a total theoretical capacity of 630 pupils. The guidelines provide for some flexibility and potential growth in pupil numbers and the calculation for outdoor space is therefore based on 105% of the current pupil capacity, or forecast pupil numbers.

Ninety of the pupils at the school are within the Early Years Foundation stage which according to the Department of Education's Guidelines, do not have to be considered when calculating areas for playing field space.

Currently there are 180 pupils at Key Stage 1 stage. The guidelines state the number of pupils should be multiplied by 1.05 which equates to 189 pupils. This is then multiplied by 11m² per pupil for Key Stage 1 pupils which gives a total requirement of 2,079m².

There are 360 pupils at Key Stage 2. This provides a total of 378 pupils when applying the 1.05 multiplier. This is then multiplied by 50m² which is the allowance per pupil for Key Stage 2 pupils. The calculation used for playing field space for these pupils gives a requirement of 18,900m².

With the addition of the base area and the area required per pupil, the total amount of outdoor play and recreational space for Moorside primary school is 22,979m². However, it is necessary to deduct the areas of existing external play space which are not subject to town green registration which total approximately 3744m² leaving a shortfall of 19235m² according to the guidelines. The fencing proposed by the applicant would provide an area totalling 17370m² which would be below the shortfall in provision according to the guidelines.

A representation has been received which states that the existing areas of external play space available to the school outside the Town Green areas considerably exceeds the 3744m² which the applicant claims and that there are many areas of green space and play area around the school that should have been taken into

account in the calculation. However, it is considered that the calculation should only take into account land which is capable of being used for such activities and should not include small areas of ancillary grassland, land which is outside the school perimeter fencing and other areas of the school which are not used for play and recreation purposes.

Taking into account the above calculation, it is considered that there is justification for the principle of the development and that the area that would be enclosed by the proposed fencing is not greater than that suggested by the relevant Government guidance.

Planning Policy Issues

The City Council and a number of local residents consider that the proposals are contrary to the policies in the National Planning Policy Framework and local Development Plan relating to the protection of open space and recreational facilities.

Paragraph 97 of the National Planning Policy Framework states:

'Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- An assessment has been undertaken which has clearly shown the Open Space, buildings or land to be surplus to requirements; or*
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- the development is for alternative sports and recreation provision, the needs for which clearly outweigh the loss.'*

The City Council states that they retain a presumption towards the protection of green spaces and green assets particularly where it can be demonstrated that they provide value, either economically, environmentally or socially to the community they serve. The protection of such spaces is achieved through Policies DM25 and DM26 of the Lancaster Local Plan Development Management Document

Policy DM25 addresses Green Infrastructure and states that the integrity and connectivity of the Green infrastructure network will be managed, maintained, protected and enhanced. Any development proposals which involve the loss of designated green spaces will be resisted

Policy DM26 states that 'Open space which the council views to have an environmental, economic or community value will be protected from development proposals which would result in their loss, either partially or fully. Should the council accept that exceptional circumstances exist in relation to the re-use or redevelopment of open space, high quality re-provision will be required which provides equal or better provision than currently exists. Any improved provision should seek to serve both existing users of the space and any uplift in users associated with the development proposed'.

Lancaster City Council consider that the proposal would be contrary to this policy and that the proposed fencing would prevent informal recreational use and restrict public access to a designated outdoor sports facility. They also consider that the development would be contrary to two policies (SC3 and SC4) in their Strategic Policies and Land Allocation DPD (replacement local plan). However, these policies are currently only at submission stage and therefore do not form part of the adopted development plan.

It is accepted that this part of Barton Road playing fields is well used by local residents as a recreational and leisure facility. However, the proposed fencing would not totally prevent access to the area. The fencing would be positioned so that it would still be possible to walk around the perimeter of the field and on the south eastern side there would be a substantial stand off from the Burrow Beck and a woodland area to the north would also not be enclosed. For dog walkers and runners who tend to use the perimeter of the field, access and use of these areas would be unimpeded. However, it must be acknowledged that the extent of the fencing would result in a loss in ability for the public to freely use the full extent of the area as is currently the case. The applicant does understand the value of this area to the local population and is prepared to allow use of the fenced area by arrangement with the school during times when the area is not required for use by the school. This can be the subject of a planning condition. Notwithstanding this, there would be an impact on the recreational value of the site to the general public and there it is considered that the proposal is contrary to Policy DM26 of the Lancaster Local Plan Development Management Document.

Residential / Local Amenity

A number of objections have been received from local residents concerned about the visual impact of the fencing. Lancaster City Council also object on the basis that the fencing would represent an overbearing, stark and incongruent form of development that would cause unacceptable harm to the street scene on Barton Road contrary to policy DM35 of their Development Management Development Plan Document. The City Council also state that the application would fail to protect the trees and boundary hedge which contribute to the visual amenity and character of the area.

The fencing would be visible from the houses on the northern side of Barton Road which overlook the site. The boundary of the playing field with Barton Road is formed by a low hedgerow approximately 1 metre high with a number of large street trees in the pavement along Barton Road. The proposed fencing would not require the removal or pruning of either the hedge or the trees which would remain in situ and which would provide some screening to offset and soften the visual impacts of the fencing. The applicant has lowered the height of the fencing from 2.6 metres to 2.1 metres which would also reduce its visual impacts. Whilst the fencing would still be clearly visible from the houses and from Barton Road itself, its impact would be mitigated by the retention of the existing vegetation and the mesh design and colour of the fencing itself. The applicant has agreed to also modify the style of fencing so that a more open mesh style would be used instead of the prison mesh design originally proposed. This matter can be the subject of a planning condition and would further reduce the visual impacts of the proposal.

It should also be noted that the applicant could erect a fence up to 2 metres in height under permitted development rights (without the need for planning permission) and therefore the visual impacts of the fencing should be viewed in the context of this fall-back position. Taking into account these issues, it is considered that the visual impacts of the fencing are acceptable and the objections of the City Council on this point are not supported.

A representation has been received stating that the proposed fencing position does not provide adequate room to allow maintenance of the road side hedge and area of grass that would lie between the hedge and the fence. This matter has been raised with the applicant who confirms that sufficient gap would be retained to allow access for grounds maintenance staff.

The fencing would be located on managed recreational grassland and its construction would not have any material impact on wildlife.

Flooding Issues

Part of the fenced area is located within a flood risk area (Flood Zone 2 and 3). Policy DM38 of the Lancaster Development Management DPD states inappropriate development in areas at risk of flooding should be avoided by directing development away from areas of highest risk and where development is necessary, it should be designed to make it safe without increasing flooding elsewhere.

When the planning application was originally submitted the fencing line was situated around the boundary of the whole playing field including close to the Burrow Beck. The fencing line has now been relocated to allow for an 8m easement from the Burrow Beck to allow maintenance of the watercourse. The fencing would still be within the flood zone but the proposed open mesh fence design would not result in any significant increase in flood risk on the site or elsewhere. The foundations of the fencing are proposed to be set below ground level such that there would be no restriction or impedance of the normal function of the flood plain. The development is therefore considered to be acceptable from a flooding perspective. The change of use proposal would have no material impact on flooding issues and is acceptable in relation to Policy DM38 of the Lancaster Development Management DPD.

Public Right of Way: A large number of objections received from local residents state that the proposed development would prevent residents from using a public right of way across the site. There is an application for a Definitive Map Modification Order in relation to a claimed public right of way across the site between Barton Road and Bowerham Road. However, this Order has not been confirmed and therefore there is no definitive right of way across the site at present. In any event the proposed fencing alignment would still permit a public right of way between these two roads in the event that the existence of the right of way is proven.

Sport England consider that the fencing should be extended around the whole of the playing field so that there would be no impact on the ability to reintroduce formal marked out pitches onto the playing field in future. However, the fencing has to be located away from the brook to preserve the Environment Agency's flood easement

and a fencing alignment that covered a greater area of the field would not be justified in terms of the requirement for secure play and recreational space at the school. The objection by Sport England is therefore not supported. However, given that Sport England have objected to the proposal, prior to granting planning permission, it will be necessary to refer the matter to the Secretary of State to provide him with the opportunity of calling in the applications for his own consideration.

Conclusions

Section 36(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. In this case it is considered that the proposal would conflict with certain of the policies in the Lancaster City Council Development Management Policies Development Plan Document as it would restrict open access to an area that is designated and protected for such uses within the local development plan.

However, it is also important to consider the need for primary school children to have access to a clean and safe area where the physical education requirements of the curriculum can be delivered. The registration of the Town Green will mean that Moorside Primary School will no longer be able to ensure that the areas currently used for such purposes are clean and safe for children. In order to meet Government standards in terms of the provision of play / recreation space, alternative provision is needed. The land off Barton Road is close to the existing school and is already of an appropriate standard. The proposal would therefore secure provision to allow the school to meet the required standards for clean and safe play and recreation space. The land take is also less than that indicated by the relevant standards. It is considered that these factors outweigh the protection given to the playing fields by the policies of the development plan particularly given that the proposal would not totally remove the ability of local people to use the field and that the school is willing to allow use of the fenced area in a controlled manner.

The visual impact of the fencing is considered acceptable and the fencing would not increase flood risk.

On balance the proposals are considered acceptable when considered against the policies of the development plan and other material considerations.

Human Rights Considerations ; The application raises issues in relation to the convention rights identified in Article 8 of the Human Rights Act. Article 8 establishes that everyone has the right to respect for private and family life and that there shall be no interference with such rights except in accordance with the law and such is necessary in the interests of national security, public safety, economic wellbeing, prevention of crime and disorder, protection of health or for the protection of the rights and freedoms of others.

It is considered that the rights in Article 8 could extend to the rights of local residents to use and enjoy areas of open space for recreation and exercise. The proposed fencing by restricting access to such areas, could impact upon these rights. Interference in these rights is therefore only permitted where the exemptions set out

in Article 8 apply. However, there is a legal basis for interfering in the Article 8 rights and the children educated at Moorside Primary School will also have Article 8 rights in relation to their freedom to have an education that is conducted in a safe and clean environment. It is considered that these rights outweigh the limited impact upon the rights of residents.

Recommendation

- i) That subject to the Secretary of State not calling in the application for his own consideration, application LCC/2018/0040 be granted subject to the following conditions:**

Time Limits

1. The development shall commence not later than 3 years from the date of this permission.

Reason: Imposed pursuant to Section 91 (1)(a) of the Town and Country Planning Act 1990.

Working Programme

2. The development shall be carried out in accordance with the following documents:

a) The Planning Application received by the County Planning Authority on 23rd August 2018.

b) Submitted Plans and documents:

Drawing No - A01 / Existing Plan / Submitted 15th October 2018

Drawing No - A02 / Proposed Plan / Submitted 15th October 2018

Reason: To minimise the impact of the development on the amenities of the area and to conform with Policy NPPF1 of the Lancaster City Council Development Management Document.

- ii) That subject to the Secretary of State not calling in the application for his own consideration, application LCC/2018/0041 be granted subject to the following conditions:**

Time Limits

1. The development shall commence not later than 3 years from the date of this permission.

Reason: Imposed pursuant to Section 91 (1)(a) of the Town and Country Planning Act 1990.

Working Programme

2. The development shall be carried out in accordance with the following documents:

- a) The Planning Application received by the County Planning Authority on 3rd September 2018.

- b) Submitted Plans and documents:

Drawing No - A01 / Existing Plan

Drawing No - A02 / Proposed Fence Line - Rev E

Drawing No - A04 / Existing and Proposed Areas - Rev B

Reason: To minimise the impact of the development on the amenities of the area and to conform with Policy DM35 Lancaster City Council Development Management Document (2014)

Landscaping

3. No trees or hedges shall be removed, pruned or trimmed during the erection of the fencing.

Reason: In the interests of the visual amenities of the area and the amenities of local residents and to conform with Policy DM29 of the Lancaster City Council Development Management Document (2014).

4. No fencing shall be erected until details of the design of the fencing have been submitted to the County Planning Authority for approval in writing. The fencing shall thereafter be erected in accordance with the approved details.

Reason: In the interests of the visual amenities of the area and to conform with Policy DM35 of the Lancaster Development Management Policies DPD.

5. Outside of school opening times, the fenced area shall be made available for use by the local community in accordance with a Community Use Agreement which shall be submitted to and approved in writing by the County Planning Authority prior to the commencement of development. The Community Use Agreement shall contain details of how public access to the fenced area will be allowed outside of the times when it is being used for school use including administration and conditions of booking arrangements, security and times of use.

The provisions in the Community Use Agreement shall be implemented at all times.

Reason: To secure controlled public access to the fenced area and to conform with Policy DM25 and DM26 of the Lancaster City Council Development Management DPD.

Notes

The grant of planning permission does not entitle a developer to obstruct a right of way.

Local Government (Access to Information) Act 1985 List of Background Papers

None

Reason for Inclusion in Part II, if appropriate

N/A