

## AGENDA ITEM NO: 8/2(j)

<b>Parish:</b>	Pentney	
<b>Proposal:</b>	Retention of fencing, gated access and track	
<b>Location:</b>	Land North East of The Pines Abbey Road Pentney Norfolk	
<b>Applicant:</b>	Mr Derek Berry	
<b>Case No:</b>	16/01449/F (Full Application)	
<b>Case Officer:</b>	Clare Harpham	<b>Date for Determination:</b> 7 November 2016 <b>Extension of Time Expiry Date:</b> 12 March 2018

**Reason for Referral to Planning Committee** – The views of the Parish Council are contrary to the Officer recommendation.

**Neighbourhood Plan:** No

### Case Summary

The application seeks retention of the fencing to the front of the application site adjacent to Abbey Road, the gated access onto the highway and an access track which has been put across the application site.

### Key Issues

Principle of Development  
Highways Issues  
Other material considerations  
Crime and Disorder Act

### Recommendation

**APPROVE**

## THE APPLICATION

The application site lies to the northern side of Abbey Road approximately 320 metres north-east of the junction with Common Road. The application site is currently laid to grass with a couple of trees. There is also a track within the application site which joins a plot within the Pentney Lakes Leisure Park complex and the access.

The application is for full planning permission for the retention of the roadside fencing, gated access and track.

## SUPPORTING CASE

The gated access and fencing were erected for the following purposes:

1. To prevent unauthorised access onto the land through the existing access point.
2. To provide a safe haven on the highway verge for pedestrians and cyclists.
3. The access point is set in and is being utilised as a passing place for vehicular traffic on Abbey Road.

Additionally we have provided the following information:

1. We have now provided evidence and consider proven that the access point onto (NK448345 the orchard) was existing.
2. We have proven that the erected fence, gate and splay is on land owned by the applicant
3. We have undertaken work required to ensure (NK448345 the orchard) can be exited in each direction safely.
4. We seek vehicle access from Abbey Road to (NK448345 the orchard only), the only two vehicles to use the access is likely only ever to be the applicant and his wife.
5. We are not seeking permission for vehicle access over (NK448345 the orchard) onto (NK363659 60 Pentney Lakes)
6. We have clearly explained reasoning for the track layout configuration.
7. We have clearly explained as to what the track is being used for.

## PLANNING HISTORY

No planning history on the site.

## RESPONSE TO CONSULTATION

**Parish Council: OBJECTION** Planning policy states that the countryside should be protected for its intrinsic character and beauty and that development will be resisted unless essential for agriculture or forestry needs. The landscaping along with the removal of hedging along Abbey Road has eroded the rural character of Abbey Road with no justification and is therefore contrary to the provisions of the NPPF and the King's Lynn and West Norfolk Core Strategy 2011.

The Parish Council consider that at the very least a hedge inside the fencing should be planted in order to partially restore the character of the road.

**Highways Authority: NO OBJECTION.** Given that the point of access is considered to be existing I would not seek to resist the grant of permission

## **REPRESENTATIONS**

### **TWO** letters of **OBJECTION**:

- Would allow anyone to buy land against their property and make an entrance.
- A long amount of hedge has been removed (possibly ancient hedgerow)
- The bare metal fencing with wooden stakes is a horrible view in the landscape.
- The access has very poor visibility onto a narrow lane, which is dangerous.
- This access allows access to the cabins at Pentney Lakes which should use the main gate on Common Road.

## **LDF CORE STRATEGY POLICIES**

**CS06** - Development in Rural Areas

**CS08** - Sustainable Development

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM15** – Environment, Design and Amenity

## **NEIGHBOURHOOD PLAN POLICIES**

**N/A**

## **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)  
Planning Practice Guidance (PPG)

National Planning Policy Framework – sets out the Government’s planning policies for England and how these are expected to be applied.

National Planning Practice Guidance - Provides National Planning Practice Guidance, in support of and in addition to the NPPF

## **PLANNING CONSIDERATIONS**

The main issues to consider when determining this application are as follows:

- The Principle of Development
- Highways Issues
- Other material considerations
- Crime and Disorder Act

### **The Principle of Development**

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure can be carried out under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended.

However for permitted development rights to apply the height of any gate, fence or means of enclosure when erected adjacent to a highway used by vehicular traffic, cannot be more than 1 metre above ground level. The fence and gate which are subject of this planning application are 1.3m in height and therefore require planning permission.

During the course of the application it was important to determine whether the access which forms this application had been an existing access which had been gated, or whether it formed a completely new access. The applicant provided information stating that the position of the access was where the existing access to the land was situated. A map dated 1906 was submitted that showed buildings on the site (no longer in existence) and whilst this is not conclusive that the access was in existence, Google Earth images show a gap in the front boundary in this position dating back as far as 1999 with no other obvious access into the piece of land which forms the application site. Google Earth shows a hedgerow which previously formed the field boundary.

The 'formation or laying out of a means of access to highways' can constitute engineering operations which constitutes development, however this requires some physical engineering operation to have occurred and the simple removal of a hedge, or of a removable fence, in order to gain access is outside the scope of planning control. Therefore the original gap in the hedge which formed the access prior to this application did not require planning permission. Indeed Abbey Road is also an unclassified road where a means of access to a highway could also be carried out by utilising permitted development rights under Class B, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (provided the means of access is required in connection with development permitted by any Class in Schedule 2 other than Class A, Part 2).

It is therefore considered that the access within this application was existing and therefore it is the gate and fencing which require planning permission due to their height and not the access itself. The track which is sited within the application site is constructed from hardcore and gravel and is deemed an engineering operation which therefore requires planning permission.

### **Highways Issues**

Initial comments from the highways officer raised two key questions with regard to the determination of the application. Firstly whether the access was an alteration of an existing access or whether the access was new and secondly whether the proposal would generate additional traffic i.e. an intensification of the access.

If the access was considered to be new it would have to be formed in accordance with adopted standards with regard to visibility splays and access surfacing. The access does not comply with current visibility standards and the access is made of loose material. However, as addressed within the report above the access is considered to be an existing access. The fact that the splay is not up to standard and the surfacing is loose is a material consideration, however of overriding weight is the fact that the access is existing and does not require consent and on this basis there are no objections from the Highways Officer, nor are any conditions recommended.

The applicant has stated the use of the land has not changed. There is a track between the access and the applicant's plot within the Pentney Lakes Leisure Site. It is possible to access the application site from the Pentney Lakes plot and the applicant has stated that the tools and machinery used to maintain the application site are kept within a shed on the Pentney Lakes plot as a covenant on the application site prohibits the erection of any buildings, within which he could store tools etc. to maintain the land. Whilst the track would enable vehicular movement between the plot and Abbey Road the applicant has stated that

this is not the intention. The Pentney Lakes Plot does not have a residential unit on it but a boathouse.

Overall given the fact that the access is considered to be an existing access and that there has not been a material change of use of the land and subsequent intensification of said access the proposal is considered acceptable in relation to highway issues.

### **Other material considerations**

There have been objections to the proposal from the Parish Council and third party representations objecting to the removal of the hedge and the type of fence. The Hedgerow Regulations have criteria for determining 'important hedgerows' it is not only the age but a number of other criteria which determines if the hedgerow is classed as important i.e. the number of species etc. The replacement of a hedge with fencing can be carried out without requiring planning permission, the reason that this application requires consent is because the fencing and gate exceed 1.0m (they are 1.3m). It is not considered out of character in the countryside to see a post and wire fence of this type and therefore it is not considered to have a detrimental impact upon the character and appearance of the surrounding countryside.

Further objections have been received regarding visibility at the access point (addressed above) and the fact that this could set a precedent for people buying land in order to create an access adjacent to a separate piece of land. This is not the case, all applications are judged on their own merits and it would have to be determined whether a proposed access was up to standard and whether a material change of use of the land had occurred.

### **Crime and Disorder Act**

There are no crime and disorder issues raised by this planning application.

### **CONCLUSION**

Overall, given the fact that the access was considered to be existing, and that an intensification of the access hasn't occurred the provision of the fencing, access gate and track, all of which are subject of this application are considered acceptable and comply with the provisions of the NPPF, Policy CS06 of the Core Strategy 2011 and Policy DM15 of the Site Allocations and Development Management Policies Plan 2016 and members are requested to consider approval of the application.

### **RECOMMENDATION:**

**APPROVE** subject to the imposition of the following condition(s):

- 1 Condition The development hereby permitted shall be carried out in accordance with the following approved plans; Location Plan (Title number NK448345), 'Block Plan', 'Sample Elevation of Gate'; and 'Sample Elevation of Fence'.
- 1 Reason For the avoidance of doubt and in the interests of proper planning.