

<b>Parish:</b>	<b>Terrington St Clement</b>	
<b>Proposal:</b>	<b>Retrospective replacement of a front fence with 6ft 6 high of wooden boarding with concrete posts and proposed replacement of front driveway entrance with fence.</b>	
<b>Location:</b>	<b>Westfield Gardens 81 Market Lane Terrington St Clement PE34 4HR KINGS LYNN</b>	
<b>Applicant:</b>	<b>Mr James Harding</b>	
<b>Case No:</b>	<b>22/01044/F (Full Application)</b>	
<b>Case Officer:</b>	<b>Bradley Downes</b>	<b>Date for Determination: 8 September 2022 Extension of Time Expiry Date: 14 October 2022</b>

**Reason for Referral to Planning Committee** – Called in by Cllr Squire and deferred from 3<sup>rd</sup> October Planning Committee

**Neighbourhood Plan:** No

**Members Update:**

The application was deferred from the 3rd October Planning Committee to enable discussions to continue with NCC Highways to try to resolve highway safety concerns with the site.

Further correspondence with NCC Highways re-iterated their position and set out potential changes to the proposal which would alleviate the concerns. The applicant decided not to make any changes to the scheme so that the Planning Committee could consider the suggestions put forward by NCC Highways and make a determination on the application accordingly.

Updated sections of report are in bold.

**Case Summary**

The application is part-retrospective for the erection of a 2m fence adjacent the highway at 81 Market Lane, Terrington St Clement. The site has a residential dwelling but a dog training business is also run within the site. The development is only part-retrospective because it involves closing the primary residential access by replacing the 2m gate with a section of 2m solid fence and instead using the business access further to the east for the dwelling and the business together because it has slightly better visibility. The site lies in the countryside and there are no immediate neighbours surrounding the land.

**Key Issues**

- Principle of development
- Form and character
- Highway safety
- Any other matters requiring consideration prior to the determination of the application.

## **Recommendation**

**REFUSE**

### **THE APPLICATION**

The application is part-retrospective for the erection of a 2m fence adjacent the highway at 81 Market Lane, Terrington St Clement. The site has a residential dwelling but a dog training business is also run within the site. The development is only part-retrospective because it involves closing the primary residential access by replacing the 2m gate with a section of 2m solid fence and instead using the business access further to the east for the dwelling and the business together because it has slightly better visibility. The site lies in the countryside and there are no immediate neighbours surrounding the land. The application has been made to the Local Planning Authority following an enforcement investigation that determined planning permission would be required.

### **SUPPORTING CASE**

We purchased and moved into our new home in October 2020. The property has been a kennels for over 40 years but in recent years had been neglected and needed a lot of work. It had overgrown mature trees and shrubs at the front and rear, fencing was missing or rotten in places and the whole site was not fit to keep animals safe and within its boundaries. With sheer hard work over the last two years, we have put all the money we have made directly back into the property and have turned the place around. We have grown and developed the previous failed business (that was making a loss) into a fully functioning, licenced and successful local business, employing local staff & volunteers and which is now known locally and across the UK for its fantastic animal care.

Our priority two years ago was to restore the essential boundary fencing, to maintain a secure site for the dogs in our care and to ensure the safety of road users. The new front fence was erected in the same position as the old fence and overgrown shrubbery and positioned further back in places and was completed by Christmas of 2020. However, unbeknownst to us at the time that this fence would require planning permission, despite having four professional fencing companies quoting for the work, it was never suggested to us. If we were aware we obviously would have sought advice and positioned our new fence slightly further back from the road as so not to have required planning permission at all. With the ever increasing costs of materials, fuel and labour, the impact that relocating this fence will have on our small business will be astronomical, especially as in places we are being asked to move the fence back as little as 30cm!

What we have proposed in our retrospective planning application, is the compromise that if the fence line were to remain where it is currently, that we are willing to remove the house driveway gates/entrance and instead continue the fence line, thus eliminating any access safety issues that highways may deem. Neither the parish council nor the planning department have mentioned that the proposal will be to remove the driveway entrance, the exact same area that has been highlighted as a safety issue, the issue that will be eliminated following the gate removal.

The council categorise us as a commercial property and we have chosen the most domestic looking commercial fencing that there is. We and lots of our customers and neighbours deem our fencing as attractive and very much in keeping with the area. We do not live in a

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village setting, instead we live on the outskirts of a village adjacent to the very busy road of the A17. Within 1/4 of a mile from us is the following services:

Machine repair, Tulip farm currently building an industrial warehouse, a hedgehog rehoming centre, strawberry farm, metal fabricator, electrician depot and T M brown builders' yard, ourselves that run a small dog training business and 1 other residential property.

We very much think our fencing is more than in keeping with the area. In fact, it was looking at our neighbouring properties that lead us to settle on the material and design as both our direct neighbour to the east of us and three neighbours within 1/2 mile to the west of us on Market Lane have the same fencing, same wood, same height, same style and same colour. If you have passed the A17 recently you will notice how smart the front of our property looks.

When we first received the enforcement notice within a matter of weeks, we took action and at great cost to ourselves we moved the eastern part of the fence back to the desired distance and restored the non-existent verge to an attractive newly turfed and maintained area. We do not however see any justification to remove and relocate the rest of our fence line at a further huge and significant cost & detriment to our business.

## **PLANNING HISTORY**

08/02079/F: Delegated Decision - Application Permitted: 12/11/08 - Extension to existing kennel block - Zilveren Kennels, Market Lane, Terrington St Clement

2/97/0361/F: Delegated Decision - Application Permitted: 15/04/97 - Construction of field shelter - Zilveren Kennels, Market Lane, Terrington St Clement

## **RESPONSE TO CONSULTATION**

**Parish Council:** Made the following comments

The Parish Council supports the observations of the Planning Enforcement Team in regard to the fence being moved and the gate set back.

**Highway Authority: OBJECTS** on the following grounds

The vehicle access for the dwelling is to be permanently closed off and fenced across. This removes our concerns in relation to that particular point of access. However, the existing field access at the west end of the site will remain. While use of this field access is currently low, it could not be conditioned in a manner to control the frequency of its use and therefore an intensification of the access needs to be considered.

I can only conclude that the fencing has resulted in the field access to have inadequate visibility for the speed of traffic passing the site and our recommendation of refusal would remain. Similarly, I am not aware that the central section of fencing has been set back to enable visibility to be adequately achieved to the west of the business access (proposed to also be residential), and I therefore have the assumption that the access remains substandard and should therefore be refused.

It is disappointing that the applicant has not sort to set back the appropriate sections of fencing to achieve the visibility requirements that have been suggested, as fundamentally we are not against the fencing in principle, just its proximity to the carriageway given its height therefore its effect on the accesses to be retained. Recommend refusal due to inadequate visibility splays.

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### **Updated comments following 3rd October Planning Committee**

This has been reviewed by two NCC officers and suggested ways forward. The applicant can make the change as per our recommendation and we would remove our objection, or the committee can make a decision based on the original submission.

The applicants appear to have created a new field access without consent; closed their original residential access; as well as erecting fencing which reduces visibility for their proposed residential and business access. The new field access is particularly dangerous and it needs to be closed or have its visibility improved. The field entrance issue could be addressed in a number of ways. 1. Close off the access, which appears to be achievable as the red line extends into the field. 2. Set-back approximately 6m of fence to create an improvement to emerging visibility. 3. Lower approximately 6m of fence to 1m in height, to create an improvement to visibility. The method by which the access is closed or improved is down to the applicant.

The other access proposed from residential and business use combined has poor visibility to the west but would be ok if the applicants set part of the fence back. We just want to see this dangerous situation removed. Without these points being addressed our recommendation has to remain – the application be refused on highway safety grounds.

### **IDB: NO OBJECTION**

Land drainage consent has been granted.

### **REPRESENTATIONS**

None received

### **LDF CORE STRATEGY POLICIES**

**CS06** - Development in Rural Areas

**CS08** - Sustainable Development

**CS11** - Transport

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

**DM2** – Development Boundaries

**DM15** – Environment, Design and Amenity

### **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2019

## **PLANNING CONSIDERATIONS**

### **The main considerations are:**

Principle of development  
Planning history  
Form and character  
Highway safety  
Any other matters requiring consideration prior to the determination of the application

### **Principle of development:**

The proposed development is for the erection of a 2m high untreated timber fence approximately 45m in length to the roadside boundary of 81 Market Lane, which is used as both a residential dwelling and has a small office serving the dog training business run from the site. The site lies in the countryside where Policy DM2 states that development is more restricted and limited to that identified as suitable in rural areas. The proposed fence is primarily a means of enclosure for the dwelling and to provide additional security in relation to the dog training activity. It is considered the principle of the development is acceptable subject to compliance with other policies within the Development Plan.

### **Planning history:**

This planning application has arisen as a result of an enforcement investigation where it was determined that planning permission would be required for the fence. While there was historically a fence along the front boundary prior to the installation of this fence, it was only 1m in height and did not require planning permission. To determine the likelihood of approval in the event of an application, the enforcement team consulted with the Local Highway Authority who had serious concerns regarding the proximity of the fence to the carriageway and the impact this would have on visibility at the three points of access. The three points of access are the field access on the west side, the residential access in the middle, and the business access to the east side. As a result, the applicant moved the part of the fence furthest to the east further back to allow adequate visibility from the business access looking to the north/east. Despite this, the Local Highway Authority still had concerns with the remaining parts of the fence because while visibility had been improved for the business access, the visibility at the residential access and field access were still severely limited by the fence.

As a result, the enforcement team sought to serve an enforcement notice on the fence. However, the applicant then stated that they would first make a planning application to attempt to regularise the fence, making a further compromise to try to satisfy the Local Highway Authority. That compromise is the closing of the residential access by replacing the gate with fencing and instead using the business access for the dwelling and the business together, which forms part of this proposal.

### **Form and character:**

The site lies in a prominent location on the south side of Market Lane near the A17. The surrounding area is predominantly open countryside with the exception of a dwelling approximately 125m to the west and commercial use approximately 165m to the west.

In terms of context, the other dwelling approximately 125m to the west has a section of 1.8m high fencing which is solid up to 1.6m with a 0.2m lattice on top. This portion of fencing on the neighbouring property is more set-back from the carriageway and there are tall trees in between which provide screening. This dwelling does also have an approximately 16m long

and 2m high red brick wall along the frontage of the property which does lie adjacent to the highway, but it is older than 4 years. It is considered this wall is not overly prominent in the street scene as it lies next to the commercial units and the views up and down that part of Market Lane are dominated by large mature trees either side of the property.

The application site is considered to be visually and spatially distinct from the property 125m to the west. While it does have some vegetation along the boundaries, that vegetation is not as visually prominent on this part of the road, which combined with being immediately adjacent open countryside in all directions and located on a prominent well trafficked corner results in a fence which is considered to appear much more intrusive in the street scene. The proposed fencing is somewhat justified by the need to secure dogs within the applicant's ownership, however the type of fencing chosen is not considered to be sensitive in its current form.

It is considered that if the fence was painted or otherwise had colour applied it could potentially have a mitigating effect on the visual impact of the fence. In its untreated state, it is considered the fence is a harsh and obtrusive feature in the otherwise rural and open countryside setting. However, with an appropriate colour applied such as a dark green, it would blend in with the vegetation and would be much less noticeable in views in the countryside.

Policy DM15 of the SADMPP 2016 and CS06 of the Core Strategy 2011 require that development is sympathetic to the characteristics of an area and respect the intrinsic character and beauty of the countryside. With a satisfactory colour applied, it is considered the proposed fence could be sympathetic to the characteristics of the area and would not have any significant impact on the character and appearance of the countryside.

### **Highway Safety:**

The proposal to block up the original residential access with additional fencing, re-instate the verge and instead use the existing business access further to the east would improve the highway safety of the development. However, it is considered the development as a whole would still fall short of being adequate and safe in terms of visibility. The existing business access to be utilised would still experience limited visibility in the westerly direction and the field access to the west end of the proposed fence line also has its visibility severely limited by the fence. This field access is not currently used regularly, but it may be used more regularly in the future for example if an agricultural use on the land started again. At such a time, the fence would be a significant highway safety hazard for potentially large vehicles exiting the land.

The speed limit on the road is 60 mph, however 85th percentile speeds are around 30mph. For such speeds on a road, visibility splays should be 2.4m x 70m in both directions. Visibility splays are not shown on the plan, however it is apparent when looking at the fence on site visit that visibility to the west from the remaining business/proposed residential access would be limited to some degree and that visibility to the east from the field access is blocked to near blind levels. It is therefore considered the development results in conditions to the detriment of highway safety. The Local Highway Authority currently object on this basis.

While it is acknowledged the applicant has already rectified part of the fence to improve visibility, it is considered this does not weigh significantly in favour of the scheme when remaining parts of the development are considered to be substandard. As the application is retrospective, the cost to the applicant of rectifying the remaining parts of the fence to achieve adequate visibility at all points of access is not a material consideration.

Since the 3rd October Planning Committee, the applicant has been presented with potential options for improving visibility at the points of access as set out in the new NCC Highways response. These suggestions included closing the field access, lowering the offending parts of the fence to 1m, or setting back sections of the offending fence panels to enable adequate visibility. Notwithstanding these options presented, the applicant has requested the committee consider the suggestions proposed but determine the application as it stands with no changes made at this time. As such, the recommendation to refuse the application on highway safety grounds remains.

It was considered whether a condition could be applied to require the applicant to provide adequate visibility splays in order to overcome the highways objection by moving the fence after a decision is made. However, it is considered such a condition would not be appropriate to impose on a decision where visibility splays are fundamental to the decision making and the condition would require significant alterations to the fence. Furthermore, the applicant would need to be willing to entertain the alterations and it is clear from the above that the applicant wishes the application to be determined as submitted.

Policies CS11 of the Core Strategy 2011 and DM15 of the SADMPP 2016 states that development should demonstrate safe access can be provided. Due to the restricted visibility at the remaining points of access as a result of the proposed fence it is considered the proposed development does not demonstrate that it provides safe access to the site. As a result it is considered the proposal is contrary to the Development Plan.

#### **Any other matters requiring consideration prior to the determination of the application**

There are no nearby neighbours which would experience any significant impacts as a result of the fence.

The IDB has indicated that consent has been granted in respect of the development to relax their byelaw 10, due to the proximity of the fence to an IDB drain. This consent is separate from the remit of planning and does not prejudice any decision that can be made the Council.

#### **CONCLUSION**

The proposed fence line is considered to be a prominent feature in the street scene and currently is detrimental to the open character of the countryside on this part of Market Lane. However, with satisfactory colour applied to the fence it is considered this impact would be mitigated to a degree which would not cause sufficient harm to warrant refusal. However, the proposed fence would limit visibility for both of the remaining points of access and would be detrimental to highway safety.

**Notwithstanding negotiation with NCC Highways following 3rd October Planning Committee, the applicant is not currently minded to make alterations to the scheme and wishes for the application to be determined as submitted.**

As such the proposal would be contrary to Policies DM15 of the SADMPP 2016 and CS11 of the Core Strategy 2011 which require development provides safe access. Therefore, it is recommended that permission is refused for the reason below.

**RECOMMENDATION:**

**REFUSE** for the following reason(s):

- 1 The proposed fence, by virtue of its proximity to the carriageway, would result in inadequate visibility splays at both of the remaining points of access with the County highway and this would cause danger and inconvenience to users of the adjoining public highway. As such, the development would be contrary to Policy DM15 of the SADMPP 2016 and CS11 of the Core Strategy 2011.