

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 12 SEPTEMBER 2023

**PLANNING APPLICATION – DAVID'S HILL, WAULKMILL, ST VIGEANS, ARBROATH,
DD11 4RG
GRID REF: 363213: 743868**

REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH

Abstract:

This report deals with planning application no. [23/00149/FULL](#) for retrospective permission for a 1.8-metre-high vertical slatted timber fence on the roadside boundary of David's Hill, Waukmill, St Vigeans, Arbroath, DD11 4RG. This application is recommended for approval.

1. RECOMMENDATION

It is recommended that the application be approved for the reason given in Section 10 of this report.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- Safe, secure, vibrant and sustainable communities
- A reduced carbon footprint
- An enhanced, protected and enjoyed natural and built environment

3. INTRODUCTION

3.1 Full planning permission is sought for the erection of a 1.8-metre-high vertical slatted timber fence on the roadside boundary of David's Hill, Waukmill, St Vigeans, Arbroath. The fence has been erected and the application is retrospective. A plan showing the location of the site is provided at Appendix 1.

3.2 The fence is located to the west of a private road that serves a number of dwellings, including the application property. It is around 60 metres north of the public road that runs between St Vigeans and Mains of Letham. The fence has been constructed along the full extent of the roadside boundary of the property which is a distance in the region of 100 metres, but it is punctuated by an entrance slightly beyond the midway point of its length as measured from its southern extent.

3.3 The application was subject to normal neighbour notification procedures and has not been subject of variation.

4. RELEVANT PLANNING HISTORY

Observations were received by the planning service from interested parties, raising concern regarding the erection of the fence. The planning service investigated the matter

and advised the landowner that the fence required planning permission. Following some dialogue, this planning application was submitted.

5. APPLICANT'S CASE

The applicant has responded to matters raised in objection and in summary terms that suggests: -

- a previous fence was located nearer to the bridge in 2014 on land owned by the applicant.
- the new fence is erected on land owned by the applicant.
- a metal fence has been erected in front of what used to be a car park and passing place owned by Angus Council.
- detail on the location plan refers to a disused railway and not the private road.

6. CONSULTATIONS

6.1 **Community Council** - No response.

6.2 **Angus Council - Roads** – No objection.

6.3 **Environmental Health** – No objection.

6.4 **Archaeology** - No objection.

7. REPRESENTATIONS

7.1 18 letters of representation have been received. 13 have objected to the proposal and 5 offer support. The letters of representation are attached as Appendix 2 and are available to view on the council's [Public Access](#) website.

7.2 The following matters have been raised in objection and are discussed under the Planning Considerations section of this report:

- **Fence blocks previous clear sightlines, endangering road users.**
- **Fence is higher and extends beyond the line of the previous fence location, reducing width for larger vehicles.**
- **Roads have no jurisdiction, but the fence would not be permitted if this was a public road.**

7.3 The following matters have been raised in support and are discussed under the Planning Considerations section of this report:

- **The road is safer as views are clearer as previous trees and bushes restricted views**
- **Fence enhances look of the road**

7.4 In addition, the following matters have been raised and addressed forthwith: -

- **There are errors in the applicant's submission** - there is some dispute about the nature and location of a fence/ hedge that was previously at this general location. However, the relevant consideration is whether the fence, as erected, is acceptable. The applicant has completed the land ownership certificate confirming the fence is located on land in their ownership. No evidence has been provided to indicate that this is incorrect, and in general terms, landownership is not a material planning consideration. In addition, it has been suggested that information on submitted

drawings is incorrect, but the fence has been constructed and the information submitted is adequate to allow proper assessment of the application.

- **The application property is being used for purposes other than normal residential use** – this application relates to the fence that has been erected. Issues regarding alleged unauthorised activities at the property are not directly material to consideration of this application and are being pursued separately. While those uses may generate additional traffic movement on the private road, this is principally between the public road and the entrance to the applicant's property.

7.5 Other matters and opinions were raised by objectors and those in support that highlighted other errors in the application, matters of a personal nature or matters or opinions that are not relevant which have not been included in consideration and determination of the fence and have not been mentioned in this report.

8. PLANNING CONSIDERATIONS

8.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

8.2 In this case the development plan comprises: -

- [National Planning Framework 4 \(NPF4\) \(2023\)](#)
- [Angus Local Development Plan \(ALDP\) \(2016\)](#)

8.3 The development plan policies relevant to the determination of the application are reproduced at Appendix 3 and have been taken into account in preparing this report.

8.4 The ALDP was adopted in September 2016 while NPF4 was adopted on 13 February 2023. Planning legislation indicates that where there is any incompatibility between the provision of the national planning framework and a provision of a local development plan, whichever of them is the later in date is to prevail.

8.5 ALDP Policy TC4 relates to proposals for house and flat alterations/extensions and development within the curtilage of houses and flats. It indicates that development will be supported where the siting, design, scale or massing of the proposal does not:

1. adversely affect the residential amenity enjoyed by the house or surrounding domestic properties including, in the case of microgeneration, through noise or shadow flicker;
2. detrimentally affect the character and/or appearance of the building, site or surrounding area; and
3. result in the overdevelopment of the plot or a loss of garden ground, parking or bin storage.

8.6 In addition, development plan policy seeks to safeguard amenity and requires all proposed development to have regard to opportunities for maintaining and improving environmental quality. It indicates that development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties. The policy identifies matters that will be taken into account, including impacts on highway safety, and recognises that in some circumstances it will be appropriate to approve proposals that give rise to amenity impacts where they can be mitigated.

8.7 Policy 16 criterion (g) of NPF4 deals with householder development and identifies similar considerations regarding design and amenity impact. NPF4 Policy 13 criterion (b)

indicates that proposals will be supported where it can be demonstrated that, amongst other things, they adequately mitigate any impact on local public access routes.

8.8 The key development plan issues in relation to the proposal relate to the appearance of the fence and its impact on the amenity of the area, and its impact in terms of road traffic and pedestrian safety. Those are issues that have been raised in representation to the application.

8.9 In relation to appearance and amenity impact, the council has produced guidance on boundary enclosures which is provided in the householder development planning advice note. In addition, advice on boundary enclosures is provided in the council's adopted design and placemaking supplementary guidance. The planning advice note states: -

When designing a boundary treatment, such as a fence, hedge or stone wall, it is important that it should:

- *Respect and complement the character of the existing residential property and surrounding area.*
- *Be developed to ensure that the scale and form of the boundary treatment is appropriate to the surrounding context and should not detract from the streetscene as a result of inappropriate visual impact.*
- *Not be of a height which would ensure that it is intimidating or would reduce security overlooking from the existing residential property or other residential properties within the surrounding area.*
- *Not cause any adverse overlooking or overbearing impacts upon adjacent neighbouring properties.*

The design and placemaking supplementary guidance states that: -

'Boundaries that abut public spaces and routes should be attractive using high quality materials including walls, quality landscaping and railings. Large areas of fencing or blank elevations will not be acceptable where they form a public/private interface.'

8.10 It is relevant to note that a timber fence of 1-metre in height could be erected at this location without the need to submit an application for planning permission using permitted development rights. In this case the fence requires planning permission because it exceeds the 1-metre permitted development limit. If the fence was reduced in height by 0.8 metres, an application for planning permission would not be required.

8.11 In this case, the fence is in a countryside location and is some distance from the closest public road and its visibility from that route is limited. However, the fence is visible from the adjacent private road, and it is also visible from the public path to the east, albeit separated from the public path by the carriageway of the private road and some intervening planting along sections of its length. There are other vertically slated timber fences of varying height in the area, including a fence to the south adjacent to the private road and more visible from the public road. It is not uncommon to find timber fences of this general nature in remote countryside areas. A fence of this nature is not out of character with the area. It does not give rise to any direct sensory impact on occupants of nearby residential property given the separation distances involved, and it is not of a height that would be regarded as overbearing in relation to its surroundings. This is not an area where properties provide significant natural surveillance of public or private routes and any reduction caused by the fence cannot be regarded as significant or unacceptable. While the supplementary guidance cautions against significant lengths of timber fencing, that is principally directed at locations where they are particularly prominent and where natural surveillance could be regarded as particularly important. As indicated, the fence is adjacent to a private road and while it is visible from the public footpath, it is not a prominent location. As indicated, a fence of 1-metre in height could

be erected at this location without submission of a planning application and its visual impact would not be greatly different from that currently experienced. In these circumstances, the visual and amenity impact of the fence is not unacceptable having regard to relevant development plan policy and design guidance.

8.12 In terms of road traffic and pedestrian safety, the supplementary guidance states that: -

'When designing a new boundary treatment, it is important that consideration is also given to the safety of pedestrians and road users. In all cases, new boundary treatments such as walls which are situated close to road junctions and/or beside vehicular driveways, should be kept low and/or set back from the road/vehicular driveway to avoid obstructing the views of drivers.'

8.13 However, the above must also be read in the context of Scottish Government policy provided in 'Designing Streets'. Amongst other things, it advises that in order to achieve speeds of 20 mph or less, speed-controlling features are needed at intervals of around 60-80m, and should take advantage of building alignment, parking, road narrowings, landscaping and other design features. The policy identifies reduction in forward visibility as a means of reducing driving speeds and promotes this in appropriate circumstances. It is relevant to note that Designing Streets applies to public and private roads. There are many examples of public roads throughout Angus where roads are narrow and forward visibility is limited.

8.14 The carriageway adjacent to the fence is not adopted and appears to be a private road. It serves a small number of houses, with only four located beyond the extent of the fence. The carriageway is narrow, and its geometry and general character is such that vehicle speeds should naturally be limited. The fence, as erected, limits forward visibility at a point to the north of the application site and in the vicinity of a narrow bridge and bend in the road. There are signs on the route that suggest speeds should be limited to 10mph and on any route drivers are required to adapt their driving to the appropriate type and condition of road they are on. Officers from the roads service have visited the locale and inspected the fence, and having regard to relevant policy and guidance, they are satisfied that the fence does not create an unacceptable road safety hazard and that service has confirmed no objection to the application. The fence has no material impact on the public path to the east. It does not give rise to any significant issues in terms of highway safety, and it does not adversely impact on local public access routes. In this respect the proposal is compatible with development plan policy in so far as it relates to road traffic and pedestrian safety.

8.15 The application does not give rise to any significant issue in terms of other development plan policy. As with any proposal, the application attracts support from some development plan policies and is not entirely compatible with others, including relevant design guidance. However, when those matters are balanced and considered in the round, the fence is in general compliance with the development plan.

8.16 In relation to other material considerations, it is relevant to have regard to the submitted representations in so far as they raise material planning issues. Those representations variously suggest that the fence reduces or improves safety of the adjacent private road. Issues regarding this matter are addressed above, and as indicated, the council's expert advisor on such matters has visited the locale, reviewed all representations, and offered no objection to the application. For clarity, issues associated with forward visibility are a relevant consideration, and have been taken into account in the preparation of this report. As indicated above, and having regard to government policy guidance, reduced forward visibility is not unacceptable on a route of this nature. The verge associated with the roadway may be narrowed, but as indicated, a fence could be erected up to 1-metre

in height utilising permitted development rights; reducing the height of the fence would not alter the resultant width of the verge or proximity of the fence to the carriageway.

- 8.17 Similarly, there may be mixed opinions on the appearance of the fence and whether it improves the route or detracts from its character. However, having regard to its relatively discrete location, the fence is considered acceptable for the reasons set out above.
- 8.18 In conclusion the proposed development would not give rise to unacceptable impacts on the amenity of occupants of neighbouring property and it would not adversely affect the character and appearance of the application property or the wider area. The proposal is acceptable in the context of the relevant development plan policy and guidance. The letters of representation have been considered in the preparation of this report, but they do not raise material matters that justify refusal of planning permission in circumstances where the proposal is otherwise compatible with development plan policy.

9. OTHER MATTERS

HUMAN RIGHTS IMPLICATIONS

The decision to grant permission/consent has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying this decision in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified.

10. CONCLUSION

It is recommended that the application be approved for the following reason, and subject to the following condition(s):

Reason for Approval:

The fence is in accordance with the development plan as it does not give rise to unacceptable impacts on amenity, the character and appearance of the dwelling or wider area and does not result in overdevelopment of the plot or unacceptable loss of garden ground, parking or storage as assessed in terms of the council's published guidance. It does not result in unacceptable impact on natural, built, or cultural heritage interests and does not result in unacceptable flood risk or road safety implications having regard to the location and the nature and scale of the development. There are no material considerations that justify refusal of planning permission contrary to the provisions of the development plan.

Note No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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APPENDIX 1: LOCATION PLAN
APPENDIX 2: LETTERS OF REPRESENTATION
APPENDIX 3: DEVELOPMENT PLAN POLICIES