

COMMITTEE REPORT

Site Address:	Land adjacent to 16A Hart Plain Avenue, Waterlooville, PO8 8RP		
Proposal:	Change of use and enclosure of amenity land to form extension to residential garden of 16 Hart Plain Avenue		
Application Type:	Full Planning Permission		
Application No:	APP/20/00723	Expiry Date:	3 rd December 2020
Applicant:	Mr Adrian Greet		
Agent:	None.	Case Officer:	Lesley Wells
Ward:	Hart Plain		

Reason for Committee Consideration: At the request of Councillor Keast

Development Manager Recommendation: **GRANT PERMISSION**

Executive Summary

This retrospective application seeks permission for the change of use of a narrow strip of amenity land to extend the residential garden of 16 Hart Plain Avenue, together with the repositioning of an existing close-boarded fence.

The proposed relocated fence line would ensure the full 7-metre definitive width of Restricted Byway RB516 is maintained, and no objections have been raised by Hampshire Highways or the Countryside Access Team.

The small loss of amenity land is not considered to harm the character of the area or prejudice public use of the byway. Impacts on neighbouring amenity are limited and acceptable.

A number of Poplar trees were removed in order to facilitate the change of use, however these were not protected by Tree Preservation Order, and the application predates the requirement for Biodiversity Net Gain.

Overall, the proposal is considered acceptable in planning terms, and approval is recommended subject to conditions ensuring the fence is relocated as shown on the proposed plan.

1 Site Description

- 1.1 The application site consists of an area of land along the east side of Restricted Byway 516 which connects Hart Plain Avenue with Silvester Road to the north. This public right of way has a confirmed width of 7 metres and consists of a crushed hard-core pathway bounded on both sides by mown grass. The east and west boundaries of the site consist of wooden fencing to a height of approximately 2 metres.
- 1.2 Whilst the majority of public footpaths have a defined width of around 3 metres, in this case the Definitive Map Modification Order (under the provisions of the Wildlife & Countryside Act 1981) records the width of this Restricted Byway as being 7 metres as there was historic evidence indicating that this larger width had been available between the boundaries of the route since the early 20th Century.

- 1.3 In August 2017 part of the land which had previously formed part of the width of the footpath was enclosed by wooden fencing to create a separate accessway to the rear garden area of 16 Hart Plain Avenue. This fencing encroached onto the defined 7 metre width of the byway and created a “dog leg” step in the fence line approximately halfway along the length of the footpath at the point where the rear boundary of 16 Hart Plain Avenue and 25 Silvester Road meet. It should be noted that the current position of the fence on site is not the same as that shown on the submitted plans which are under consideration, which show a fence line set further back in line with the fence line of 25 Silvester Road.
- 1.4 The surrounding locality consists of residential dwellings of a mixed character along Hart Plain Avenue where there are two storey dwellings and bungalows with some being detached and others semi-detached or terraced. Silvester Road (which is located at the northern end of the footpath has a similar varied character.

2 Planning History

05/71114/00 To surface path 2 metres wide in hoggin, to erect x 4 light columns, to erect bollards to prevent cars using the footpath, to plant a nature hedgerow. Granted 6th February 2006

3 Proposal

- 3.1 The application seeks consent to change the use of an area of land and enclose it to form an extension to the residential garden of 16 Hart Plain Avenue. As indicated above an unauthorised fence has already been erected on site which infringes the 7-metre width of the Restricted Byway (RB516) but this application proposes to re-site this fence such that the 7-metre width is not infringed. This will permit the creation of a narrow accessway adjacent to the northwest boundary of number 16A Hart Plain Avenue to allow additional access into the rear garden area of number 16.
- 3.2 From the measurements taken on site and from those annotated on the submitted plans it would be possible to re-site the existing unauthorised fence in the manner shown without the 7 metre width of RB516 being infringed.

4 Policy Considerations

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011
Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS11 (Protecting and Enhancing the Special Environment and Heritage of Havant Borough)

CS16 (High Quality Design)

CS20 (Transport and Access Strategy)

DM8 (Conservation, Protection and Enhancement of Existing Natural Features)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Crime Prevention – No Comment Received

Developer Services – Southern Water – No Objection

Information provided to make applicant aware of the location of foul and surface water sewers in the locality and make the applicant aware of their obligations.

Hampshire Highways – No Objection

The Highway Authority has checked its records and can confirm that there are no highway assets present within the enclosed amenity land. The Highway Authority raise no objection to the application.

Ramblers Association – South East Hants Group – Neutral

Neutral view on application but noted that the proposal would have little new effect on the adjacent right of way.

Building Control, Havant Borough Council – No Objection

Public Spaces – No Comment Received

Countryside Access Team – No Objection

The 7m definitive width of RB516 is accommodated in the proposal and no objection is raised.

Councillor A Briggs

No comments received.

Councillor E Shimbart

No comments received.

Former Councillor D Jenner

No comments received.

Councillor D Keast

Requested the application is determined by the Planning Committee

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 18

Number of site notices: 1

Statutory advertisement: Yes

Number of representations received: 17 received objecting to proposal

Comment	Officer Comment
Concern raised that a new dwelling could be constructed on land to the rear of No. 16 at some point in the future	Should such a proposal come forward then it would need to be determined on its own merits.
Land has already been grabbed and a fence erected – no justification for the retrospective proposal – should be ordered to remove the fence	Noted. Certificate D has been correctly completed, with the required notices served and publicised in accordance with the statutory procedures. The retrospective nature of the enclosure and fence does not prejudice the assessment of the proposal, which must be considered on its planning merits, and having particular regard to the revised fenceline as proposed in the application.
The enclosed land is for public use and forms part of a Restricted Byway	The land that is the subject of this application is outside of the defined Restricted Byway 7m width. No objections have been received from HCC's Countryside Access Team or the Ramblers Association.
Large trees have been removed and loss of wildlife habitat	Poplar trees were removed as part of the initial works of enclosure but these were not covered by a Tree Preservation Order, so the Local Planning Authority had no control over their removal.
The new narrow end to the restricted Byway makes it difficult to traverse during inclement weather	The proposal as submitted ensures the definitive 7-metre width of Restricted Byway RB516 is maintained, as confirmed by the Countryside Access Team. Therefore, the functionality of the byway is not materially affected, and the concern does not justify refusal.
There is no justification for the enclosure of public land and is an asset to local residents.	As above.

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Appropriateness of design and impact on the character of the area
- (iii) Effect on neighbouring properties
- (iv) Biodiversity Net Gain (BNG)
- (v) Impact on Trees

(i) Principle of development

- 7.2 The site lies within the defined urban area, where development is acceptable in principle subject to normal development management considerations. Although the works were carried out before permission was sought, planning legislation allows applications to be submitted retrospectively, and such proposals must be assessed in the same way as any other. The fact that the application is retrospective does not count for or against the proposal; it should simply be considered on its planning merits in light of the development plan and all other material considerations.
- 7.3 This retrospective proposal seeks permission for the change of use of land, measuring approximately 2 metres in width and approximately 40 metres in length, from amenity space to residential garden with the erection of a 2-metre-high close-boarded wooden fence. It is important to note that the site in question is not identified as a Local Green Space in the Local Plan, and thus does not warrant protection under Policy AL8. While the proposal results in the loss of a small strip of amenity land, the proposed site lies outside the defined 7-metre width of Restricted Byway RB516 and does not materially affect public access or the functionality of the byway. Therefore, the principle of development is considered acceptable within the defined urban area.

(ii) Appropriateness of design and impact on the character of the area

- 7.4 The repositioning of the fence by approximately 2.5m to the east as proposed would place it outside the defined 7-metre width of Restricted Byway RB516, aligning it with the boundary fence to the rear of 25 Silvester Road. The Countryside Access Team has raised no objection, and the small loss of amenity land is not considered to materially affect users of the byway.
- 7.5 To ensure the byway's full 7-metre width is maintained and the fence remains consistent with the western boundary alignment, if permission is granted a condition is recommended requiring the fence to be repositioned in accordance with the approved plan within six months of the date of permission
- 7.6 The repositioned fence would form a continuation of the existing means of enclosure running south from 25 Silvester Road along the eastern side of the byway. Access from this strip of land to No. 16 would continue to be provided via the existing dog-leg arrangement at the rear of the property and from an access gate onto Hart Plain Avenue. The proposal is therefore not considered to harm the character of the area and complies with Policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011.

(iii) Effect on neighbouring properties

- 7.7 The properties with the potential to be affected by the proposal are Nos. 16A and 20 Hart Plain Avenue to the west. In respect of No. 16A, the boundary with the application site already contains a 1.8-metre close-boarded fence along its western edge. The erection of an additional fence of similar height running parallel is not considered to create an overbearing or dominant impact on the occupiers of No. 16A, nor would it result in any significant loss of light. Regarding the proposed use of the land as a garden area, such a use is considered appropriate within a residential estate, which would not adversely impact on the amenity of the occupiers of No. 16A.
- 7.8 As to 20 Hart Plain Avenue, this lies on the opposite side of the byway with a separation distance of 8m to their boundary fence and approximately 14m to the

property. The erection of the fence and the use of the land as a garden would not give rise to a loss of amenity to the occupiers of this property.

- 7.9 The proposal is therefore deemed acceptable and complies with Policy CS16 of the Havant Borough Local Plan (Core Strategy).

(iv) Biodiversity Net Gain (BNG)

- 7.10 Biodiversity net gain (BNG) is a legal requirement for planning permission introduced for small sites such as this on 2nd April 2024. However, the application was submitted prior to the introduction of the legislation and therefore the application is exempt from the requirements relating to BNG.

(v) Impact on Trees

- 7.11 To facilitate the erection of the fence and to undertake some drainage repairs, Poplar trees were removed. Whilst their loss was undesirable, these trees were not subject to a Tree Preservation Order and therefore the Local Planning Authority had no control over their removal. As such the removal of the trees is not considered to constitute a defensible reason for refusal of the application.

8 Conclusion

- 8.1 This retrospective proposal seeks permission for the change of use of land, measuring approximately 2 metres in width and 40 metres in length, from amenity space to residential garden, together with the erection of a close-boarded wooden fence approximately 2-metres in height. While the proposal results in the loss of a small strip of amenity land, the site lies outside the defined 7-metre width of Restricted Byway RB516 and does not materially affect public access or the functionality of the byway. The proposal is not considered significantly harmful to the character of the area or residential amenity, and would correspond with the alignment of fencing further along the byway adjacent to 25 Silvester Road. Therefore, the development is considered acceptable and conditional planning permission is recommended.

9 **RECOMMENDATION:**

That the Development Manager be authorised to **GRANT PERMISSION** for application APP/20/00723 subject to the following conditions:

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan – uploaded 15/9/25

Reason: - To ensure provision of a satisfactory development.

- 2 Within 6 months of the date of this permission, either:
- (a) the existing fence shall be relocated in its entirety, to the position shown on the approved Site Location Plan; or
 - (b) a new fence shall be erected, in the position shown on the approved Site Location Plan, and the existing fence shall be removed in its entirety.
- If a new fence is proposed, full details of its height, materials, appearance and method of construction shall be submitted to and approved in writing by the Local Planning Authority prior to its erection.

The fence in the approved position shall thereafter be retained and maintained.

Reason: To ensure that only one boundary enclosure is positioned outside the defined 7-metre width of Restricted Byway RB516 in the interest of public amenity, and to secure an appropriate form of boundary treatment, having due regard to Policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 3 The use of the land hereby granted planning permission shall only be used as garden area incidental to the enjoyment of 16 Hart Plain Avenue.

Reason: To ensure the land remains incidental to 16 Hart Plain Avenue and having due regard to Policy CS16 of Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

Appendices

- (A) Site Location Plan
- (B) Photographs of the existing fence

Please find attached the second consultation response from the Highway Authority. To enable the application to go forward with a positive recommendation, it has to be demonstrated that the proposed location of the signs are not located on adopted highway land, or are relocated outside of adopted highway land.

For your assistance, the following extract plan shows the extent of the adopted highway land in red opposite the site's access.