

Allerdale Borough Council

**Planning Application
Development Panel Report**

Reference Number: HOU/2022/0174

Valid Date: 22/09/2022

Location: Park End, Rubbybanks Road, Cockermouth

Applicant: Mr McGuire

Proposal: Construction of a retaining wall in pre-cast concrete blocks to provide resilience against flooding

RECOMMENDATION

REFUSE

1. Summary

<u>Issue</u>	<u>Conclusion</u>
Principle of Development	The principle of flood resilience measures is supported, but any such proposal needs to be compatible in its design with its surroundings and compliant with any respective designated regulations which are applicable to its location.
Highways	The proposal is located on private land but is sited along the route of public footpath. 223033. The County's public rights of way officer considers the proposal would partially obstruct this public right of way and is of the opinion that permission should not be granted.
Design/Heritage	The applicant has sought to amend the external exterior finish of the existing blocks through the application of external timber cladding to the exterior and infilling the rear void with soil. As amended the design is considered acceptable including its setting within the Conservation Area

Flood risk	Comments of the Environment Agency are awaited
------------	--

2. Proposal

- 2.1. The application seeks retrospective consent for the siting of a row of concrete blocks along the front hedgerow boundary to his detached house on Rubbybanks Road, Cockermouth.
- 2.2. The blocks (approx. 70cm in height) are sited along the surfaced driveway of Rubbybanks Road and are to be clad in timber with the void to the rear infilled with soil as an extension to his adjoining raised hedgerow bank. The applicant advises these are a flood resilience to protect the earth bank fronting his property.
- 2.3. The plans under consideration are:
 - Drawing FRP-1 retaining wall elevation
 - Drawing FRP-2 retaining wall plan view
 - Drawing FRP-3 retaining wall details
 - Drawing FRP-4 site location plan

3. Site

- 3.1. The applicant's property is sited in the valley floor of the River Cocker in the centre of the town. The driveway fronting the applicant's property is at an elevated level upon a retaining wall adjacent to the River Cocker's watercourse.
- 3.2. The site occupies a landscaped setting within the town with isolated residential properties served by the cul-de sac highway of Rubbybank's Road which also supports the public right of way 233033.
- 3.3. The site is located within the towns Conservation Area

4. Relevant Planning History

- 4.1. The application's proposed works were originally the source of an enforcement complaint which prompted the submission of the current retrospective application.
- 4.2. Rubbybank's road formed part of the wide range of flood mitigation measures instigated by the approved consents (2/2011/0254 and /2/2012/0022) following the flood event in 2009 (although the bulk of these were further downstream closer to the town centre).
- 4.3. A planning application FUL/2021/0042 for a detached dwellinghouse on the neighbouring plot of land to the south remains pending. It obtains its proposed means of access via Rubbybanks Rd.

5. **Representations**

- 5.1. **Town council**- recommend refusal due to access
- 5.2. **Natural England** – Advise the retaining wall is adjacent to the River Cocker and therefore recommend a Construction Environment management plan be conditioned. Also recommend consulting the Environment Agency.
- 5.3. **Environment Agency** – Comments awaited
- 5.4. **Civic Trust** – No reply to date
- 5.5. **Public rights of way officer** – FP 233033 runs along Rubby Banks Road through the development site.

Where a public right of way follows a defined track such as this the width of the path is legally assumed to be the full width of the track unless recorded otherwise. No specific width is recorded for this footpath but it was described as running along a 'broad unsurfaced road' when it was added to the definitive map. So in this case that legal width would be to the base of the existing hedge and the concrete blocks will be located within the footpath narrowing the available useable width for the public.

Part of the footpath would be obstructed by the positioning of these blocks and we must therefore request this development is not granted planning permission.

Strategic Policy 22, transport principles in the Allerdale Local Plan 2014 asserts that All new development in the Plan Area will: Protect and, where appropriate, enhance or create new designated public rights of way;

Section 130(1) of the Highways Act 1980 places a statutory duty on Cumbria Council as the Highway Authority to: -

- Assert and protect the rights of the public to the use and enjoyment of any highway for which they are the Highway Authority; and
- Prevent as far as possible the stopping up or obstruction of those highways.

We object to the application in order to protect the full width of FP 233033 from development.

We would advise that:

- The right of way as shown on the definitive map and statement must be kept

open and unaltered for public use until an order made to divert, stop up or to temporarily close them has been confirmed.

- The granting of planning permission would not give the applicant the right to block or obstruct the rights of way shown on the attached plan.

No development should take place on or near the footpath unless the appropriate statutory legal process has been successfully completed.

5.6. The application was advertised on site and in the press.

14 letters of objection were received on the grounds of:

- Prevention of emergency vehicle/bin /food delivery access along the lane
- Safety concerns on forcing vehicles closer to the eroded supporting wall of the river
- Detrimental to the amenity of occupiers of dwellings in the locality
- Visually unsympathetic with its surroundings
- The proposal is not needed for flood defence
- Hazard to vehicles/pedestrian users of the lane
- Not sympathetic with its location in the Conservation Area
- Not compatible with the landscape of its surroundings to the detriment of tourism.
- The blocks are overbearing
- Treatment of the applicant's hedgerow /bank vegetation could have alternatively strengthened the bank -question Natural England's view on the application)
- The lane was tarmacked in response to a petition of 900 signatures which is spoiled by the blocks
- Correspondence from the fire department advises their vehicles would have to go over the grass verge to pass the blocks.
- Design is not compatible with the high standard of design applied to other flood defences
- Concrete blocks look like "a motorway" project" and the timber fence would rot
- The backfilling with soil will raise the walls height by a further 20cm
- Properties on Rubbybanks Road are classified as being at low risk of floods by the Environment Agency-the works are overkill
- Blocks could be moved if necessary
- The line of the hedgerow must have existed for centuries
- Seek views of the Civic Trust
- The flood defences unlike the town wider defences are unplanned.
- Alternative methods could shore up the land without encroaching onto the Road.
- The offer of lifting the blocks if access is need is not feasible
- Covering of electricity and gas supplies
- The blocks are outside the applicant's property.
- The flood events in 20089 and 2015 did not reach the hedgerow bank and the applicant's house is at a higher level

- Hazard to pedestrian use of the lane in narrowing the highway
- The town is a gem town and the blocks undermine literary references (Robert Louis Stephenson)
- Retrospective nature of the works.

6. Environmental Impact Assessment

- 6.1. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017
- 6.2. The development does not fall within Schedule 1 nor 2 and, as such, is not EIA development.

7. Duties

- 7.1. The site does not affect the setting of a listed building.
- 7.2. The site is within the towns designated Conservation Area. Section 72(1) of the Listed Buildings Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
- 7.3. The nature of the works is unlikely to have a significant effect upon a Natura 2000 designation

8. Development Plan Policies

8.1. Allerdale Local Plan (Part 1)

Policy S1	Presumption in favour of sustainable development
Policy S2	Sustainable development principles
Policy S3	Spatial Strategy and Growth
Policy S4	Design principles
Policy S5	Development Principles
Policy S22	Transport principles
Policy S29	Flood Risk and Surface Water Drainage
Policy S32	Safeguarding amenity
Policy S33	Landscape
Policy S35	Protecting and enhancing biodiversity and geodiversity
Policy DM14	Standards of Good Design
Policy DM17	Trees, hedgerows and woodland.

8.2. Allerdale Local Plan (Part 2)

Policy SA2	Settlement limits
------------	-------------------

9. Other material considerations

National Planning Policy Framework (NPPF) (2021)

Allerdale Borough Council Plan 2020-2030

Environmental Bill 2021

10. Policy weighting

- 10.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. This means that the Allerdale Local Plan (Part 1) 2014 and the Allerdale Borough Local Plan (Part 2) 2020 policies have primacy.

11. Assessment:

- 11.1. Officers emphasise that the merits of application needs to be judged on the merits of the submitted details within the application, rather than the existing works at the site (Officers acknowledge that the works as existing could not be supported.) The applicants property occupies an elevated location within its curtilage to the rear of the front hedgerow and the dwellings parking area. The applicant advises these works are not to protect his property which was not directly impacted by the town's former floods, but seeks to prevent his hedgerow bank being subject of scour from any such future event
- 11.2. The principle of flood resilience measures is supported but given the sensitivity of the site in the Conservation Area it needs to safeguard the formal designated highway corridors, plus be compatible with its setting and surrounding within the riverscape of the River Cocker . Each of these can be examined.

Highways

- 11.3. The stationing of the flood blocks on the surface of the tarmacked surface of Rubbybanks Road, albeit outside the applicant defined residential curtilage, is on land within his ownership. The highway issues are twofold ;
- 11.4. Of primary concern is the siting on the blocks within the public highway as the driveway forms part of the public right of way 233033. Whilst there remains sufficient width for the members of the public along its route, the views of the County's footpath officer seeks no encroachment within the original designated corridor of the footpath which includes all the tarmacadam surface.
- 11.5. The applicant alternatively contests they may have been misinformed regarding the width of his road. The description of the footpath as "running along a broad unsurfaced road" is vague and he questions when this description was made. The "broad unsurfaced road" will refer to the section of road from the junction of Rubby Banks Road and New Road to the junction of Rubby Banks Road and the footpath to Harris Park which runs between Park End and The Old Pumhouse. This was always unsurfaced until after the floods of 2009. The applicant has photographs of the unsurfaced road in front of Park End from 1998, soon after he

purchased the building plot for Park End including the road. These clearly show that the width then was exactly the same as the narrowest section now with the blocks in place. In 2009 when Cockermouth was flooded and the river wall adjacent to Rubby Banks House was rebuilt, the edge of the road nearest his hawthorn hedge was badly eroded, widening the road. The local council also raised the level of the road and gave it a tarmac surface. This widened the road i.e the road was not always that wide. The applicant advises he has installed the blocks as close to the hedge as possible without damaging the roots and now the width is fixed without being reduced seasonally by nettles and weed growth as happens further down the road.

- 11.6. He considers the current details under FUL/2021/0042 for a 4 bedroom house in the grounds of Rubbybanks House will have far more serious consequences for pedestrians using the footpath in question, due to the increase in traffic entering and exiting the proposed development.
- 11.7. Officers attribute significant weight to the views of the public rights of way officer. Given this infringement officers consider the siting of the structure at this location cannot be supported. Indeed the siting of the wall would also need to be the subject of a separate application under their own respective regulations.
- 11.8. A significant number of the representations also refer to the blocks hindering the private vehicular means of access to the remaining properties to the south of the application site served by Rubbybank's road. Any such means of access is, unlike the public right of way, separate legal considerations dictated by any legal covenants rights of way relating to land and property. This spate issue relating to private vehicular means of access cannot be supported.

Conservation Area

- 11.9. Clearly the visual impact of the concrete blocks as existing, are an alien and unattractive feature within the sensitive setting of the landscaped corridor of the lane within the Conservation Area, which is supported above the River Cocker via a retaining stone wall.
- 11.10. In discussions with officers, in addressing its present unsympathetic visual impact, it was proposed to clad the exterior of the blocks with timber cladding and infill the void to the rear of the blocks with soil. As a consequence none of the existing modern materials would be visible. Whilst the line of blocks do project outwards in the lane corridor the extent of this (approx. 0.7m) is limited and given its low level would not be visually harmful to its setting. Therefore officers consider the scheme as submitted would, subject to the revised external treatment not harm the character of its sensitive locality in the Conservation Area in compliance with policy S27 of the Allerdale local plan (Part 1)

Ecology

- 11.11. It is considered the very minor scale of works which does not involve the removal of any vegetation would not significantly harm the ecological value of the nearby River Cocker's SSSI designation.

Flood risk

11.12. The views of the Environment agency are awaited and will be reported at the panel meeting.

12. Local Financial Considerations

Having regard to S70 (2) of the Town and Country Planning Act the proposal will not have any financial implications arising from the development.

13. Conclusions

13.1. Whilst the works in themselves are small in scale, the principle of their siting within the designated corridor of the public footpath cannot be supported, with officers attributing significant weight to the comments of the public rights of way officer.

13.2. Furthermore the views of the Environment Agency are also awaited given the close proximity of the site to the watercourse.

14. RECOMMENDATION

REFUSE

1. The proposed siting of the proposed flood wall encroaches within the designated route corridor of the public right of way 223033 to the detriment of its users.

