

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 resillace against flooding

RECOMMENDATION

GRANT (subject to conditions)

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 complaint with any respective designated regulations which are applicable to its location.
Highways	The proposal is located on private land but is sited in proximity to the route of public footpath. 223033. The County's public rights of way officer, albeit initially objecting, is now satisfied the proposal would not partially obstruct this public right of way and therefore no longer opposes the proposal.
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	The Environment Agency have confirmed no objections

2. Proposal

- 2.1. The application was deferred at the December panel meeting as a result of the footpath officer withdrawing their objection plus the submission of late amendments. This resulted in a change of officer recommendation from refusal to approval. The deferral allowed for re-consultation on the amendments to be undertaken. A member's site visit is also to be undertaken prior to the January panel meeting.
- 2.2. The application seeks retrospective consent for the siting of a row of concrete blocks along the front hedgerow boundary of a detached house on Rubbybanks Road, Cockermouth.
- 2.3. The blocks (approx. 70cm in height) are sited along the bankside adjacent to the driveway of Rubbybanks Road. The blocks are proposed to be clad in timber with the void to the rear infilled with soil and grass seeded. They would then be viewed as part of the existing raised hedgerow bank. The applicant advised that the blocks were installed as a flood resilience measure to protect the earth bank fronting his property.
- 2.4. The applicant in response to the Footpaths officer's initial objections, undertook a site meeting and subsequently submitted an amended plan outlining a tapered angle to the end block. A condition is recommended to ensure this is undertaken within 2 months of the date of decision.
- 2.5. The plans under consideration are:
 - Drawing FRP-1 retaining wall elevation
 - Drawing FRP-2 retaining wall plan view (amended 16/12/22)
 - 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 Cockermouth Conservation Area.

4. Relevant Planning History

- 4.1. The application 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).

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** – No objections
- 5.4. **Civic Trust** – No reply to date
- 5.5. **Public rights of way officer** –

Response 24/11/22

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.

E-mail dated 15/12/22 –

I have discussed the Lego blocks with the landowner and he has referenced photographic evidence that the bank the blocks are on protruded out further into the right of way prior to the bank being eroded away by flooding, so the blocks are not as thought obstructing the public right, just replacing the eroded banking.

However, I did have concern that the blocks at one end did pose a risk to users in the dark owing to them protruding out abruptly. The landowner has said that he will address this by cutting a taper on the first block.

When this work is carried out we will gladly remove our objection to the siting of the blocks.

E-mail dated 19/12/22

Confirm the amended tapering block details are acceptable

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 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 from flooding, 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.

Highways

- 11.3. The concrete blocks are on land within the applicant's ownership and do not encroach the public highway/footpath. Rubby banks Road was unsurfaced until after the floods of 2009. Following the 2009 floods the edge of the road nearest the applicant's hawthorn hedge was badly eroded artificially widening the road. Following the floods, the level of the road was raised and tarmaced.
- 11.4. Following a site meeting between the applicant and the footpath officer. The PROW officer withdrew his objection, subject to an amendment to chamfer the end block. An amended plan demonstrating this has been submitted to and agreed with the footpath officer. This addresses and overcomes officers initial earlier recommended ground of refusal for the proposal which related solely to the obstruction of the public highway. A condition requiring the chamfering works to be carried out in accordance with the submitted details is recommended.
- 11.5. A number of the representations refer to the blocks hindering private vehicular and access for waste/emergency vehicles. Private rights of access are not a planning consideration and are subject to separate legal rights. In relation to access of emergency and waste vehicles. As set out above the blocks are located within the applicant's landownership and they extend no further than the original land bank that the blocks replaced. While this area is narrower than some parts of Rubby Banks closes to the town centre there are narrower points beyond. As such it is considered that access is not impeded.

Conservation Area

- 11.6. 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.
- 11.7. As such in order to overcome the visual impact, it is 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 concrete material would be visible. Therefore, officers consider the proposals subject to the revised external treatment would not harm the character the Conservation Area in compliance with policy S27 of the Allerdale local plan (Part 1). A condition is suggested to ensure that the cladding is installed.

Ecology

- 11.8. It is considered the minor scale of works which did not involve the removal of any vegetation, would not harm the ecological value of the nearby River Cocker's SSSI designation.

Flood risk

11.9. The Environment agency have raised no objections regarding flood risk.

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. The proposed works in themselves are small in scale. The matter of their siting in proximity to the designated corridor of the public footpath has been resolved with the footpath officer no longer objecting to the proposal. Similarly, the Environment Agency have also raised no objection to the works

13.2. Officer's original recommendation solely related to highway consideration relating to the public right of way. The amended scheme has resolved this matter to the satisfaction of the Footpath officers and consequently officers consider the proposal's detailed plans may now be recommended favourably. (A condition is imposed to ensure the exterior works are fully implemented in the short term and retained at all times thereafter.)

14. RECOMMENDATION

GRANT

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In order to comply with Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out solely in accordance with the following plans:

Drawing FRP-1-retaining wall elevation

Drawing FRP-2 Rev A retaining wall plan view (amended 16/12/22)

Drawing FRP-3-retaining wall details

Drawing FRP-4- location plan

Reason: In order to ensure that the development is carried out in complete accordance with the approved plans and any material and non-material alterations to the scheme are properly considered.

3. The chamfering of the blocks as detailed on drawing FRP-2 Rev A and external timber cladding to the exterior and surface covering of the wall blocks as detailed on drawing FRP-1 hereby approved shall be implemented in full within 2 months of the date of this consent and shall be retained at all times thereafter for the lifetime of the development.

Reason: In order to ensure the development is visually sympathetic with its locality and setting within the Conservation Area in compliance with Policy S27 of the Allerdale Local plan (part 1).

