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**APPLICATION DETAILS**

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<b>Application No:</b>	<b>21/0064/COU</b>
<b>Location:</b>	<b>Whimsey Nook Stainton Way Middlesbrough TS8 9DF</b>
<b>Proposal:</b>	<b>Retrospective extension to residential curtilage with boundary fencing and wall to front.</b>
<b>Applicant:</b>	<b>Mr &amp; Mrs Kevin &amp; Kathleen Wanless</b>
<b>Ward:</b>	<b>Stainton and Thornton</b>
<b>Recommendation:</b>	<b>Approve with Conditions</b>

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**SUMMARY**

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Retrospective planning permission is sought for the change of use of land to residential curtilage and erection of a boundary wall to the front. Extension to the curtilage has taken place on both the side and rear boundaries of the site with a total land take of approximately 719m<sup>2</sup>.

Consideration was given to the principle of the change of use and whether this would restrict future development of the adjacent site thereby hampering the implementation of the Councils policies in relation to the wider Hemlington Grange area.

One objection to the application was received in relation to the loss of council land.

In relation to the site to the east, it was found that the potential for development of this site was already severely restricted due to its limited width and position between the application property and the access road. The reduction of the site resulting from the change to residential curtilage is considered to not result in any further significant loss of development potential that would be detrimental to the delivery of the wider objectives for Hemlington Grange.

Consideration was also given to the impact of the reduction in size of the wider site that surrounds the application property. It was found that the land that has been changed to residential curtilage is only a small percentage of the development site and as such, it is unlikely to have a material effect on future development proposals.

In assessing the impact of the front boundary wall, it was considered that it would not have an adverse impact on the character of the area, residential amenity or highway safety.

The proposed change of use of the land to residential curtilage is contrary to the Local Plan in terms of the allocation in the development plan although in this instance it is considered to not undermine the principle of the policy and would not serve to impede its implementation.

With regards to being in keeping with its surrounding and of an appropriate scale and design, the proposals are considered to be in accordance with relevant policies. The officer recommendation is to approve subject to conditions.

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## **SITE AND SURROUNDINGS AND PROPOSED WORKS**

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Whimsey Nook is a relatively isolated property located on the southern side of Stainton Way. The site is bounded on both sides and to the rear by open land. Cleveland Community Safety Hub is located to the west, the access road to the Community Hub and the wider Hemlington Grange site is to the east with residential development beyond.

The site of the existing property (prior to the unauthorised expansion of residential curtilage) is not allocated for any specific purposes in the Local Plan and is in use for residential purposes. Land immediately abutting the site to the west east and south is allocated as employment land and is part of the Hemlington Grange site identified in the Development Plan.

The original property at the site was a smaller single storey dwelling that was extended in 2015. At the time of the works being carried out, the boundary of the property was also extended by:

- approx.. 7.5 – 8m on the north eastern boundary;
- approx.. 4.3m along the south eastern boundary and
- between 3.8 and 4.3m along the south western boundary.

The original area of the site was approx.. 1040m<sup>2</sup> and has been increased by approx.. 720m<sup>2</sup> to 1,760m<sup>2</sup>

Within the extended garden area, part of the land that has been raised and fencing erected around the side and rear boundaries. The raised land and the part of the fence to the rear of the property that is more than 2m in height require planning permission but details of the works are not included in this application. Where development has been in place for more than four years it falls outside of planning control, in this case the work was carried out some time after 2015 but the exact date is not known and as such, it is not clear if the development is established. In any event, the raised ground area sits behind fencing so is not visible from the wider area. The raised part of the fence is not considered to be overbearing in terms of appearance and is located to the rear of the property so is not highly visible from Stainton Way. In view of the uncertainty over the timing of the works and their limited impact, it is the Development Control view that it is not expedient to take any further action in relation to these works. The fencing that is less than 2m in height does not require planning permission.

The four year rule does not apply to the change of use a of the land. Planning legislation dictates that the use needs to have be in place for 10 years before it becomes established. A 2m high feature brick wall built has been partially constructed to the front of the property more recently and so requires planning permission.

The land that has been incorporated into the site is owned by the Council, it was originally agricultural land but it is not known when it was last used for this purpose. Retrospective planning permission is now sought for the change of use to residential curtilage and for the wall that has been partially constructed.

It is understood that the applicant has been in negotiations with the Council and agreed terms for purchasing the land and that planning permission is required before any purchase can be agreed, however, the terms of the negotiation are not a material planning considerations and so cannot be taken into account in reaching a decision.

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## PLANNING HISTORY

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M/FP/0724/14/P Conversion of existing bungalow, including single storey extensions to front/side and rear to create dormer bungalow with room in roof space Approve with Conditions

18th August 2014

M/FP/0925/14/P Demolition of existing bungalow and erection of new dormer bungalow Approve with Conditions but not implemented.

29th December 2014

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## PLANNING POLICY

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In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Local Planning Authorities must determine applications for planning permission in accordance with the Development Plan for the area, unless material considerations indicate otherwise. Section 143 of the Localism Act requires the Local Planning Authority to take local finance considerations into account. Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authorities, in dealing with an application for planning permission, to have regard to:

- The provisions of the Development Plan, so far as material to the application
- Any local finance considerations, so far as material to the application, and
- Any other material considerations.

### Middlesbrough Local Plan

The following documents comprise the *Middlesbrough Local Plan*, which is the Development Plan for Middlesbrough:

- Housing Local Plan (2014)
- Core Strategy DPD (2008, policies which have not been superseded/deleted only)
- Regeneration DPD (2009, policies which have not been superseded/deleted only)
- Tees Valley Joint Minerals and Waste Core Strategy DPD (2011)
- Tees Valley Joint Minerals and Waste Policies & Sites DPD (2011)
- Middlesbrough Local Plan (1999, Saved Policies only) and
- Marton West Neighbourhood Plan (2016, applicable in Marton West Ward only).

### National Planning Policy Framework

National planning guidance, which is a material planning consideration, is largely detailed within the *National Planning Policy Framework* (NPPF). At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The NPPF defines the role of planning in achieving economically, socially and environmentally sustainable development although recognises that they are not criteria against which every application can or should be judged and highlights the need for local circumstances to be taken into account to reflect the character, needs and opportunities of each area.

For decision making, the NPPF advises that local planning authorities should approach decisions on proposed development in a positive and creative way, working pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that at every level should seek to approve applications for

sustainable development (paragraph 38). The NPPF gives further overarching guidance in relation to:

- The delivery of housing,
- Supporting economic growth,
- Ensuring the vitality of town centres,
- Promoting healthy and safe communities,
- Promoting sustainable transport,
- Supporting the expansion of electronic communications networks,
- Making effective use of land,
- Achieving well designed buildings and places,
- Protecting the essential characteristics of Green Belt land
- Dealing with climate change and flooding, and supporting the transition to a low carbon future,
- Conserving and enhancing the natural and historic environment, and
- Facilitating the sustainable use of minerals.

The planning policies and key areas of guidance that are relevant to the consideration of the application are:

DC1 - General Development  
CS5 - Design  
H7 - Hemlington Grange  
H24 - Hemlington Grange Employment Uses

The detailed policy context and guidance for each policy is viewable within the relevant Local Plan documents, which can be accessed at the following web address.  
<https://www.middlesbrough.gov.uk/planning-and-housing/planning/planning-policy>

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## CONSULTATION AND PUBLICITY RESPONSES

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### Stainton and Thornton Parish Council

No comments received.

### Public Responses

Nearby Neighbours were notified of the proposal, one objection was received from:

Mr Dennison 7 Rowan Grove

The objection can be summarised as follows:

Loss of Council Land

Number of original neighbour consultations	1
Total numbers of comments received	1
Total number of objections	1
Total number of support	0
Total number of representations	0

Site notice posted –  
24th February 2021

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### Policy context

1. The National Planning Policy Framework (NPPF) was most recently revised and published by the Government in February 2019, and is a material consideration. The NPPF states that, where a planning application conflicts with an up-to-date development plan, permission should not usually be granted (para. 12). In determining planning applications, due weight should be given to local planning policies in accordance with their consistency with the revised Framework, with greater weight given to those policies which are closer to those in the Framework (para 213).
2. As a starting point, the proposal should be assessed against policies set out in the Development Plan. Policies DC1 and CS5 in essence seek to ensure high quality sustainable development; ensure the amenity of nearby residents; character of the area and highway safety are not adversely affected by the development.
3. The land that this application relates to is within the Hemlington Grange Area where Policies H7 and H23-24 Apply. Policy H7 (Hemlington Grange) identifies that this location will be developed to create a sustainable community of 1,230 dwellings and 8ha of employment land. Policy H24 identifies the western part of Hemlington Grange, where the application site is located, as being suitable for uses that fall within use classes B1, B2 and B8 Employment uses

### Principle

4. The extension to the residential curtilage encroaches into land that is allocated for employment use and as such, the proposal is contrary to the adopted development plan. In view of this consideration is given to the impact this will have on the future development potential of the surrounding area for the purposes set out in the plan. Although the Strategic Policy Team were not formally consulted, following discussion with the Head of Service the principles set out in the following paragraphs were agreed.
5. The extension of residential curtilage along the north eastern boundary projects approximately 8m into an area of open land that adjoins the access road to the wider Hemlington Grange Development site. The approved plans for the residential development on the other side of the road show a footpath with landscaping along the edge of the carriageway with a total depth of approximately 23m between the edge of the carriage way and the front of the proposed dwellings. Prior to the curtilage being extended, there was a distance of approximately 36m between the boundary of the site and the edge of the carriageway and its reduction by approx. 8m, down to 28m, is considered to retain a meaningful area of land whether this be utilised as a landscaped entrance to the site or with some form of development on it. Assuming a similar arrangement is carried out, this would leave 13m of developable land. It is unlikely that any sort of meaningful development that would be appropriate for the entrance to the site could be accomplished in this space and the land is most likely to contribute to additional landscaping provision and will not unduly curtail the potential for development over and above the existing situation.
6. In respect of the extensions to the other two boundaries, they have both been extended by just over 4m in width. When this is considered along with the north-eastern boundary extension, the total area of land involved is approximately 719m<sup>2</sup>. This represents around 4% of the development site that immediately surrounds Whimsey Nook. Currently, there are no planning applications for development at this site and therefore no approved layout of the land relating to this site or the immediate

surroundings. In view of the limited percentage of land take within the site, it is considered that this proposal will not impede or hinder the implementation of the Local Plan Policy.

7. In view of the above, it is considered that although the proposed use does not accord with the uses set out in Policy H24 of adopted Development Plan, the extension of the curtilage of this existing residential premises will not unduly impact the potential for future development of the wider site. Nor will it prevent the implementation of the Council's policies set out in the Local Plan to develop a sustainable residential and employment. As such, the change of use to residential curtilage is considered to be acceptable in principle.

### **Appearance**

8. The Urban Design Guide states that development should be consistent with the design of the original dwelling and should enhance, not detract from the character of the area.
9. The boundary wall to the front of the property has been partially constructed. Plans submitted with the application show a wall across the front of the site comprising 11no. 2.3m high brick pillars topped with coping stones with curve topped walling in between. 2no. 2.8m high pillars sit aside wrought iron gates to provide vehicular access with a separate pedestrian access provided. There are no other solid boundary treatments in this location to compare against, however, the design and materials of the wall and gates are considered to be of an appropriate scale in relation to the existing dwelling. It is considered that once the wall is completed it will present a high quality feature in the street scene.
10. In view of the above it is considered that the proposed development will not have a significantly adverse impact on the character of the area in accordance with CS5 (test c) and DC1 (test b), the Urban Design Guide.

### **Impact**

11. There are no dwellings or buildings in close proximity to the site and as such there is little prospect of impact on residential amenity. The proposal is therefore in accordance with policy DC1 (test c).

### **Highways**

12. Access to the site is off a narrow lane that is part of the adopted highway and set back from Stainton Way. The proposed walls are located so that they do not disrupt visibility at the access to Stainton Way. The entrance gates are set back from the main wall which will allow inter-visibility between vehicles egressing the site and pedestrians on the access lane. The proposal will not result in loss of parking at the site and will not therefore result in a demand for additional on street parking. In view of the above there will be no impact on the safe operation of the highway in accordance with policy DC1 (test d).

### **Other matters**

13. Comment was made that Council land had been taken without permission and that the size of the site has been increased by 70%. Negotiations for the sale of the land have taken place and as outlined above, and the act of taking the land without permission is not a material planning consideration and cannot therefore be taken into account in reaching a decision on this application. With regards to the amount of land that has been incorporated which forms the basis of this application, this has been assessed above.

## **Conclusion**

14. The proposal has been assessed against local policy and guidance and it is considered that the change of use to residential curtilage will not significantly restrict development of the wider site. The boundary treatment will, once it is completed, be in keeping with the scale and design of the host property and is appropriate to its setting. The development will not have an adverse impact on residential amenity or on the safe operation of the highway. All other issues raised have been considered but do not justify refusal of planning permission.

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## **RECOMMENDATIONS AND CONDITIONS**

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### **Approve with Conditions**

1. Approved Plans - Retrospective  
The development hereby approved is retrospective and has been considered based on the details on site and on the plans and specifications detailed below:
- a) Location Plan received 4th February 2021 and,
  - b) Existing and proposed site plans Drawing No. Received KW/WN/BS01
  - c) Layout and elevations of boundary Wall received 1st March 2021

This approval only relates to the details on the above plans and specifications, it does not relate to any other works.

Reason: For the avoidance of doubt and to ensure that the development is carried out as approved.

### **REASON FOR APPROVAL**

This application is satisfactory in that although the residential use does not accord with the acceptable uses for this site set out in policies H7, H24 of the Local Council's Local Development Framework, it will not prevent development of the wider site and as such the principles of policy H7 and H24 can still be realised.

The boundary wall accords with the principles of the National Planning Policy Framework (NPPF) and the local policy requirements (Policy DC1, CS5, of the Council's Local Development Framework). Where appropriate, the Council has worked with the applicant in a positive and proactive way in line with paragraph 38 of the NPPF (2018) In particular the wall is designed so that its appearance is complementary to the existing dwellinghouse and so that it will not have a detrimental impact on the amenity of any adjoining or nearby resident. The wall will not prejudice the appearance of the area and does not significantly affect any landscaping nor prevent adequate and safe access to the dwelling.

The application is therefore considered to be an acceptable form of development, fully in accordance with the relevant policy guidance and there are no material considerations which would indicate that the development should be refused.

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Case Officer: Maria Froggatt

Committee Date: 16<sup>th</sup> July 2021

# Appendix 1: Location Plan

