

DELEGATED

AGENDA NO  
PLANNING COMMITTEE

14 OCTOBER 2015

REPORT OF CORPORATE DIRECTOR,  
DEVELOPMENT AND NEIGHBOURHOOD  
SERVICES

14/2019/FUL

12 Teesbank Avenue, Eaglescliffe, Stockton-on-Tees

Part retrospective application for works to rear garden to provide H section steel uprights with wooden sleepers and living wall planting and placing of soil from house extension foundations to be placed to rear of sleepers

Expiry Date: 30 March 2015

#### SUMMARY

Retrospective planning permission is sought for the erection of a retaining structure and for earthworks to level land and import soil from elsewhere within the site, all within the rear garden of a residential property on Teesbank Avenue in Eaglescliffe. The works have been undertaken on the riverbank, adjacent to the River Tees in the lower part of a domestic garden. The retaining structure spans a notable width of the garden and the land levelling works create a plateau on the river bank which affects approx. 9m of the gardens depth. The imported soil has been used to back fill behind the retaining structure to assist with creating the plateau.

A number of comments of objection and support have been received to the application. The main thrust of comments is that, supporters consider the scheme to be a positive improvement for the area whilst objectors consider the works to urbanise the natural river bank that the proposal raises structural issues adjacent to a river which floods and that it affects to wildlife and biodiversity. Letters of support and comment are also made by the applicant and his family members which are summarised within the report.

The site lies within a designated 'Special Landscape Area' adjacent to designated green wedge and is within the Tees Heritage Park. The proposal does have an urbanising and formalising affect to the character of the area which was formerly a semi natural river bank. Amendments have been made to both the submission details and on site following concerns being raised by officers about the dominance of the structure on the character of the surroundings. Whilst the proposal remains to be noticeable in the wider area, based on the amended scheme and subject to a landscaping scheme, officers consider the impacts of the development are sufficiently limited to allow support to be given to the proposal. Officers consider there are no undue impacts on wildlife or on adjacent land owners.

#### RECOMMENDATION

*That planning application 14/2019/FUL be approved subject to the following conditions and informatives;*

### **Approved Plans**

- 02** *The development hereby approved shall be completed in accordance with the following approved plans;*

<i>Plan Reference Number</i>	<i>Date on Plan</i>
<i>SBC0001</i>	<i>14<sup>th</sup> October 2015</i>
<i>1425/L/100</i>	<i>2<sup>nd</sup> October 2015</i>
<i>1427.2.2.100F</i>	<i>2<sup>nd</sup> February 2015</i>

*Approved plan 1427.2.2.100F as detailed above is only approved in relation to the extent of earthworks and any details of the retaining structure as shown in section on that plan are not part of the approved details. The approved heights and details of the retaining structure are shown on approved plan 1425/L/100 as received on the 2<sup>nd</sup> October 2015.*

*Reason: To define the consent.*

### **Soft Landscaping Scheme**

- 03.** *Within 6 months from the date of this approval a detailed scheme of soft landscaping shall have been submitted in writing to the Local Planning Authority. The scheme of works shall include a detailed planting plan and specification of works indicating soil depths, plant species, numbers, densities, locations and inter relationship of plants, stock size and type, and planting methods.*

*Any changes to the soft landscaping scheme requested by the Local Planning Authority in writing shall be made and resubmitted to the Local Planning Authority within 1 month of being formally requested.*

*The scheme of soft landscaping shall be implemented in accordance with the approved details within 6 months of the final agreement of the Local Planning Authority being issued.*

*In the instance that there is no written agreement from the Local Planning Authority to a landscaping plan within the above timescales or in the instance of the approved landscaping scheme not being implemented within the timescales detailed above, then the retaining structure the subject of this application shall be removed from the site and the land shall be re-graded to create a constant slope from the river edge to the land to the rear of the existing levelled section of the river bank.*

*The approved and implemented scheme of soft landscaping shall be retained for the life of the retaining structure in accordance with the approved details.*

*Reason: To ensure a high quality planting scheme is provided in the interests limiting impacts on the designated special landscape area in accordance with the principles of saved Local Plan Policy EN7.*

### **INFORMATIVE OF REASON FOR PLANNING APPROVAL**

#### **Informative: Working practice**

*The Local Planning Authority has worked in a positive and proactive manner and sought solutions to problems arising in dealing with the planning application by seeking a revised scheme to overcome issues and by the identification and imposition of appropriate planning conditions.*

## **BACKGROUND**

06/1583/FUL Erection of detached dwelling house and detached garage  
Approved 13<sup>th</sup> July 2006

07/1457/FUL Revised application for the erection of 1 no. detached dwelling house and garage.  
Approved 10<sup>th</sup> July 2007

10/0841/FUL Erection of extensions and alterations to dwelling and erection of new boundary treatments  
Approved 23<sup>rd</sup> June 2010

10/0841/NMA Application for non-material amendment to 10/0841/FUL (Erection of extensions and alterations to dwelling and erection of new boundary treatments)  
Approved 20<sup>th</sup> June 2011

### **Outstanding Enforcement Notice**

There is an outstanding enforcement notice at the site relative to the initial works undertaken and the appeal is currently awaiting a site visit to be made by the Planning Inspector.

### **The Enforcement Notice was issued for the following reasons;**

- A. *the works undertaken have served to urbanise, formalise and attack the semi natural character of the river bank, thereby harming the landscape and its associated value in this area which is part of a designated 'Special Landscape Area', being contrary to Saved Local Plan Policy EN7 and being contrary to Core Strategy Policy CS3 (8) - Sustainable Living and Climate Change which requires new development to be designed in a manner which makes a positive contribution to the local area, by protecting and enhancing important environmental assets, biodiversity and geodiversity, responding positively to existing features of natural, historic, archaeological or local character, including hedges and trees.*
- B. *it is considered that this development would require other formalising urban features to be added to complete the development which would be further at odds with the semi natural landscape character as would any extensive use of the area which the works would allow for. Allowing these works would set a particularly undesirable precedent which would be difficult to resist for adjoining and nearby garden areas which could cumulatively result in a significant detrimental impact on the character of this area designated for its special character.*

*The Council do not consider that planning permission should be given because planning conditions could not overcome these objections to the development.*

The requirements of the Enforcement Notice were to

- (i) *Remove from the land all the metal uprights that have been installed on the levelled ground.*
- (ii) *Undertake earthworks to restore the land back to the condition and gradient that existed prior to the breach of planning control took place.*
- (iii) *Reduce the northern boundary fence to 2 metres in height for a distance of 30 metres, from its starting position at the edge of the River Tees in a westerly direction (towards the dwelling house).*
- (iv) *Remove from the land all the resultant debris/materials associated with complying with points 5 (i) & 5 (iii) above.*

## **SITE AND SURROUNDINGS**

The application site is a domestic garden within Eaglescliffe, in an area characterised by large properties in large curtilages, with notable landscaping and with the end of gardens forming the river bank to the River Tees. Land on the opposing side of the river is relatively open agricultural land with some river edge landscaping.

Gardens abutting the river vary in appearance although the defining characteristic is that of large mature trees and a semi-natural environment. Some small scale garden structures such as decking, summer house and jetty's exist.

The application site and that of the adjoining property at no. 11 Teesbank Avenue are notably more open than other gardens along this run of properties due to having less mature trees within them adjacent to the river edge.

## **PROPOSAL**

Retrospective planning permission is sought for the creation of a retaining structure within a sloping section of the rear garden adjacent to the River Tees and for earth moving works to create a raised and flattened area of garden behind it. The scheme details the retaining structure being constructed using metal uprights with large timber sleepers inserted between and also details landscaping being planted immediately in front of it. The retaining structure measures approx. 20m in width and between 1m and 1.5m in height above a slightly raised ground level. The land levelling works affect approx. 9m of the gardens depth.

Amended drawings have been submitted during the course of the application which have reduced the height of the retaining structure.

## **CONSULTATIONS**

Consultations were notified and any comments received are summarised below:-

### Parish Council

Members were concerned at the level of neighbourhood concern at this development as evidenced by the number of comments from neighbours.

Members were also concerned that there appears to have been no evidence from experts as to the impact of the development on the environment, particularly on the lasting effect on the river bank.

As always, this Council would seek to support the local residents in their response to any planning application.

### Highways Transport and Environment

#### General Summary

The Highways, Transport & Environment Manager considers the sleeper wall to be an acceptable structure in the landscape, as detailed in the Landscape and Visual comments below. Planting details are requested to soften the impact of the wall.

#### Highways Comments

There are no highway objections.

#### Landscape & Visual Comments

Consideration has been given to a number of drawings relating to the proposal which were initially considered as being unsuitable in view of the impact of the scheme on the semi natural character of the area. As these works have been undertaken on site a clear appreciation of the impacts has been achieved. The latest drawings have been issued to overcome officers concerns and

regarding the latest drawing submitted as dwg. reference 1425/L100 the following comments are made;

The reduction in height of sections of the sleeper timber retaining structure, to lessen the visual impact of the structure, is accepted in landscape and visual terms. Although the structure is not symmetrical with the southern end being slightly higher than the northern end, and the retaining structure remaining to be a relatively significant structure in its own right, it is considered the impact is no longer sufficient to maintain an objection to the scheme. However, as previously discussed with the applicant, it is vitally important that the structure is softened by onsite planting. To this effect, the depth of topsoil at the base of the wall must be increased to 400mm (16") to ensure good growth of planting up the wall to soften its appearance. Planting details are requested in lieu with the previous advice sent to the applicant.

### **PUBLICITY**

Neighbours were notified. 8 letters of objection and 5 letters of support have been received. In addition, 4 letters of supporting comments have been received from the applicant and his family. Comments received are summarised below:-

#### ***Comments of support***

Christopher Cotton, 10 Ruislip Close, Stockton on Tees

Matthew Holdsworth, 14 Turton Rd Yarm

James Snowdon, 98 Kenwood Crescent, Ingleby Barwick, Stockton on Tees

Nick Coleman, 2 Warsett Crescent, Skelton, Saltburn

Mrs Jackie Stephenson, 39 Sorrel Close, Stockton on Tees

It will make the surrounding area look a lot better, especially for boats which pass on the river.

A dock type structure in the river will not only add a aesthetic improvement to the property, but also add value to the property if the current owners choose to sell.

Approve of this planned development.

The structure looks to serve the river by providing a place for the owners to dock craft but to also protect the river bank from the river.

The planting of the tees and plant life should provide more than adequate area and habitat for animal life, much needed in the area.

Other houses have decrepit structures built to land craft and should follow by example and provide a well built structure to last.

This will only add value and will look superb when complete. Some of the other comments show exaggerated heights of fences and height from the water.

A perfectly acceptable development.

#### ***Comments of objection were received from the following and are summarised as follows;***

O Murray, 17 Teesbank Avenue,

David Craig, 19 Teesbank Avenue, Eaglescliffe

E A Parker, 73 The Slayde, Yarm

F, M Richardson, 6 Piercebridge Close, Stockton

K Farmery, 18 Teesbank Avenue, Eaglescliffe

Kenneth Shepherd, 15 Teesbank Avenue, Eaglescliffe

Maurice Burns, 11 Teesbank Avenue

Mrs Douglas, 26 Ashville Avenue, Eaglescliffe

The increase in height at the water's edge is unnatural and a great danger to children and pets as it's is next to the water. The elevated fence is above permitted development rights. The steel beams are both unnecessary and dangerous and likely to fall over when the river floods. There are no structural calculations given in respect to the retaining structure. Land adjacent to the river is slowly moving and is unstable.

The works look very unsightly, too informal and entirely at odds with the surrounding area, not blending with the environment and adjacent properties. A once pristine natural riverbank has now been removed forever. The development is staggeringly ugly yet this is one of the best areas of riverbank for visitors and river users. The scheme turns natural amenity into urban blight. The development is out of scale with the scale and character with the adjoining gardens. The development is out of scale and character with the adjoining gardens and the building techniques are more akin to industrial development.

The fencing leading to the river edge is too high and out of keeping. Wildlife will not be able to pass by and no wildlife or environmental assessment has been undertaken.

The works will set a precedent for further impacts.

Reference made to Environment Agency Guidelines about living on the edge of a river relating to maintaining the bed and banks of the watercourse and trees growing on the banks and leaving the river edge development free, amongst other points.

Highlighted that voles and otters live on the river.

There are large trees close to the works and due to the excavation that has taken place a tree is now leaning towards no. 11. The whole riverbank is constantly on the move due to floodwater.

The area has recently been designated as being within the Tees Heritage Park. It is one of the most attractive and admired areas within the river park. Gardens leading to the river have either being left natural or enhanced with landscaping. The works proposed have desecrated the land.

There is no professional assessment or engineering assurance in relation to the retaining structure and this may be unsafe. People should not be allowed to dump rubble and excavation material on the riverbank. Objections have been raised that there is inadequate information to detail the support structures and in relation to other parts of the development and that details of the submission make incorrect statements and references and do not cover parts of the development which have been undertaken.

***Comments from applicant and family members***

Mrs Angela Munro, 12 Teesbank Avenue Eaglescliffe

Mr Gary Munro, 12 Teesbank Avenue Eaglescliffe

Lord Thomas Munro, 12 Teesbank Avenue Eaglescliffe

Miss Victoria Munro, 12 Teesbank Avenue, Eaglescliffe

The residents of the application site have lived in the local area for 50 years and are trying to improve the local area.

Planting more trees and creating a living wall will provide a better habitat for wild life and improve biodiversity.

Some of the objector's comments are personal attacks on the family.

The fence between no's 11 and 12 is not part of the application and is required to prevent trespass.

The tree that is mentioned by objectors is not part of the application.

The proposed retrospective planning is a much needed rejuvenation of the area, lifting the appearance of the riverbank from the dispiriting shabby shed and ill maintained jetty of 11 Teesbank Avenue, to meeting the higher standards of the river in Yarm. Helping to restore the aging reputation of Teesbank Avenue and Eaglescliffe, into a more vibrant, sought-after location.

Contrary to the comments made by some, the proposed planning is simply a more sturdy adaptation of the landscaping the other local residents have erected. Interestingly, there is only one resident in the avenue that has ever applied for planning permission to carry out landscaping to the riverbank, and nobody has applied for the cheap buildings and structures next to the river. No one else in Teesbank Avenue (apart from No.16 and our-selves) have actually bothered to put in planning applications for sheds and jetty's.

As for objectors comments in regards to the riverbank at no.12 historically being a source of natural beauty, I consider myself to be an environmentalist, and the bottom of the river (prior to our moving in, from around the corner in Ashville Avenue) was an absolute mess of an overgrown and under-kept wasteland. In addition to which, the riverbank a mere few yards North (Preston Park) is brimming with litter, so the idea that the riverbank was some form of blooming environmental utopia before my family, is (unfortunately) a joke.

Comments from objectors about river levels are not true as are comments about no vertical structures existing on the river bank as other vertical structures do exist, sheds, decking etc.

The proposed works are more in keeping with what the captains of industry require when looking to relocate/invest into Teesside, and surely this will be not only welcomed, but immensely encouraged by the planners.

Having reviewed some comments, I find it hypocritical of tenant of 11 & and owners of 15 Teesbank Avenue have vertical drops of circa 5 feet and newly built raised seating (without planning permission) area of over 5 feet with no balustrades.

No metal of any form was used at river level, the only steel used is on top to secure the timber. The timber has been in place since 2010 and have not moved with all the heavy rain fall. There are no structural issues, the steel beams metres from river have been in place since 2013' and are anchored with steel triangle to the rear with cannot be seen from the river, the soil weight on top of the supports allows the weight to be transferred to the ground.

With regards to amenity, the application site is a rear garden which now can be used safely and the design of the living wall and planting to river frontage will increase the biodiversity.

### **PLANNING POLICY**

The application will be considered in line with the Planning (Listed Buildings and Conservation Areas) Act 1990

Section 16 (2) of the Planning (Listed Building and Conservation Areas) Act 1990 (the "Listed Building Act") provides that "in considering whether to grant listed building consent for any works to a listed building, the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses"

Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, unless material

considerations indicate otherwise. In this case the relevant Development Plan is the Core Strategy Development Plan Document and saved policies of the Stockton on Tees Local Plan

Section 143 of the Localism Act came into force on the 15 Jan 2012 and requires the Local Planning Authority to take local finance considerations into account, this section s70(2) Town and Country Planning Act 1990 as amended requires in dealing with such an application [planning application] the authority shall have regard to a) the provisions of the development plan, so far as material to the application, b) any local finance considerations, so far as material to the application and c) any other material considerations

The following planning policies are considered to be relevant to the consideration of this application:-

### ***National Planning Policy Framework***

Paragraph 14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking;

For decision-taking this means:

approving development proposals that accord with the development without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or-
- specific policies in this Framework indicate development should be restricted.

### ***Saved Policy EN7 of the adopted Stockton on Tees Local Plan***

Development which harms the landscape value of the following special landscape area will not be permitted:-

- (a) Leven Valley
- (b) Tees Valley
- (c) Wynyard Park.

### ***Core Strategy Policy 3 (CS3) - Sustainable Living and Climate Change***

8. Additionally, in designing new development, proposals will:

- \_ Make a positive contribution to the local area, by protecting and enhancing important environmental assets, biodiversity and geodiversity, responding positively to existing features of natural, historic, archaeological or local character, including hedges and trees, and including the provision of high quality public open space;
- \_ Be designed with safety in mind, incorporating Secure by Design and Park Mark standards, as appropriate;
- \_ Incorporate 'long life and loose fit' buildings, allowing buildings to be adaptable to changing needs. By 2013, all new homes will be built to Lifetime Homes Standards;
- \_ Seek to safeguard the diverse cultural heritage of the Borough, including buildings, features, sites and areas of national importance and local significance. Opportunities will be taken to constructively and imaginatively incorporate heritage assets in redevelopment schemes, employing where appropriate contemporary design solutions.

### ***Core Strategy Policy 10 (CS10) Environmental Protection and Enhancement***

2. Development throughout the Borough and particularly in the Billingham, Saltholme and Seal Sands area, will be integrated with the protection and enhancement of biodiversity, geodiversity and landscape.

3. The separation between settlements, together with the quality of the urban environment, will be maintained through the protection and enhancement of the openness and amenity value of:



i) Strategic gaps between the conurbation and the surrounding towns and villages, and between Eaglescliffe and Middleton St George.

ii) Green wedges within the conurbation, including:

- \_ River Tees Valley from Surtees Bridge, Stockton to Yarm;
- \_ Leven Valley between Yarm and Ingleby Barwick;
- \_ Bassleton Beck Valley between Ingleby Barwick and Thornaby;
- \_ Stainsby Beck Valley, Thornaby;
- \_ Billingham Beck Valley;
- \_ Between North Billingham and Cowpen Lane Industrial Estate.

iii) Urban open space and play space.

4. The integrity of designated sites will be protected and enhanced, and the biodiversity and geodiversity of sites of local interest improved in accordance with Planning Policy Statement 9: Biodiversity and Geological Conservation, ODPM Circular 06/2005 (also known as DEFRA Circular 01/2005) and the Habitats Regulations.

5. Habitats will be created and managed in line with objectives of the Tees Valley Biodiversity Action Plan as part of development, and linked to existing wildlife corridors wherever possible.

6. Joint working with partners and developers will ensure the successful creation of an integrated network of green infrastructure.

7. Initiatives to improve the quality of the environment in key areas where this may contribute towards strengthening habitat networks, the robustness of designated wildlife sites, the tourism offer and biodiversity will be supported, including:

- i) Haverton Hill and Seal Sands corridor, as an important gateway to the Teesmouth National Nature Reserve and Saltholme RSPB Nature Reserve;
- ii) Tees Heritage Park.

9. New development will be directed towards areas of low flood risk, that is Flood Zone 1, as identified by the Borough's Strategic Flood Risk Assessment (SFRA). In considering sites elsewhere, the sequential and exceptions tests will be applied, as set out in Planning Policy Statement 25: Development and Flood Risk, and applicants will be expected to carry out a flood risk assessment.

### **MATERIAL PLANNING CONSIDERATIONS**

The application site is a residential garden which abuts the River Tees. The site is within the limits of development and within a Special Landscape area (designated under saved Local Plan Policy EN7) and adjacent to designated Green Wedge. The site is also within the Tees Heritage Park. The works have now been undertaken and the application is therefore retrospective.

There is an outstanding Enforcement Notice for the application site and partly for the development being proposed. The Enforcement Notice was served after the application was submitted but before the application was validated and was based on the works that had taken place at the time. The Enforcement Notice relates to the land levelling works that have taken place as well as the retaining structure and the fence between no's 11 and 12 Tees Bank Avenue. Whilst the earthworks and retaining structure are part of this application the fence is not and therefore cannot be considered as part of this application.

Saved Local Plan Policy EN7 advises that development harming the landscape value of the Tees Valley will not be permitted although it is recognised that the development is taking place within a residential garden where domestic use and some extent of domestic development would normally be expected. In the instance of this property and those on the adjacent plots abutting the river, the rear gardens are particularly large and vary in their character. Generally, the areas closest to the

houses beyond the top of the river bank are more formal lawned gardens and the river bank areas of gardens have a more semi natural character although some works have taken place to have more highly maintained river banks further along this stretch of the river bank.

The more semi natural areas of the gardens which form the riverbank are the areas which fall within the Special Landscape Area and it is these areas which are visually related to the river and therefore a defining part of the character of the valley of the River Tees. Officers have had concerns over a prolonged period with the works that have been undertaken at the site without the benefit of planning permission, having the view that works taking place were having an urbanising and formalising impact on the character of the river bank and the 'Special Landscape Area' contrary to policy requirements.

Whilst comments submitted by the applicant, his family and other supporters suggest that other similar development exists along this stretch of river and that the works will improve the character of the area from an overgrown unkempt river bank, officers consider that other development along the river bank, which includes decking, retaining structures, jetty's and sheds is of a much more reduced scale to that which is the subject of this application and has generally retained the natural slope of the river bank rather than forming a raised plateau across a significant width of the river bank. As such, although other structures and development exists within other gardens, it is considered that these do not set a precedent for the extent of work undertaken at this site and this proposal should therefore be considered on its own merits. Officers also consider that whilst formalising and 'tidying / improving' an area may be beneficial in many instances, the positive character of this designated area relates to a semi natural landscape and formalising works and urban structures work against this specific character.

Objectors to the scheme consider that the works are unsightly, too informal and at odds with the surrounding area. They consider the steel uprights supporting the timber retaining structure are unnecessary and that these works are urban blight on the once pristine natural riverbank and that they will set a precedent for further impacts.

Both this garden and that of the adjacent property are noticeably more open than other gardens forming the riverbank which have managed to retain more tree and landscape cover. The works are therefore a relatively prominent addition to the area. Some of the concerns of local residents mirrored the concerns of officers and following dialogue with the applicant, changes have been made to the height of the retaining structure and have detailed planting to offset some of its appearance. The changes have reduced the height of the structure at the edges and increased soil at the base of the structure which reduces the apparent height of the structure and its bulk as viewed from the opposing side of the river. The extent of the earthworks that have taken place (which also require permission) have resulted in a large flattened plateau on what was previously a sloping river bank. These works also add to the development being visually different to the other sections of riverbanks within adjacent gardens. As the works have been undertaken on site a clear appreciation of the impacts has been achieved.

The Highways Transport and Environment Manager considers that based on the revised details and associated reductions to the retaining structure and subject to a well detailed planting scheme, that the development would now be acceptable in its visual impacts. It is suggested however that it is vitally important that appropriate landscaping is achieved.

An Enforcement Notice was served on the applicant for the unauthorised works which would require the retaining structure to be removed and the ground levelling earthworks to be put back to their form prior to the works commencing as well as the reduction in the height of the fence between no. 11 and no. 12 Teesbank Avenue. The applicant has appealed this Enforcement Notice and this is on-going, currently awaiting the Inspector's site visit. This application was submitted to regularise the current situation and the latest version of the scheme which is the subject of this application is of a reduced bulk to the works that the Enforcement Notice was based

upon. The changes to the scheme have led to officers now considering that the revised development works and their impacts are now acceptable.

### ***Impacts on the Tees Heritage Park and general character***

Core Strategy Development Plan Policy CS10(7) advises that initiatives to improve the quality of the environment in key areas where this may contribute towards strengthening habitat networks, the robustness of designated wildlife sites, the tourism offer and biodiversity will be supported, including within the Tees Heritage Park. This is a private domestic development and as such does not relate to the context of this policy principle.

Objections are raised that the proposal is within the Tees Heritage Park and that it will affect this. Whilst noted, the development is within a residential garden and is essentially a large garden structure and associated earthworks. The works have no impacts over the ability to use the public areas of the Tees Heritage Park and only impact on the Heritage Park as a result of its appearance. The considerations over the impacts on the 'Special Landscape Area' are considered to be relevant to the significance of the Tees Heritage Park.

With regards to impacts on general character, Core Strategy Development Plan Policy CS3(8) indicates developments should make positive contributions to the local area and protect local character amongst other things. This considerations of impacts on character are detailed within the above paragraphs relative to the Special Landscape Area.

### ***Flood Risk***

The site is located in Flood Zones 2 and 3 where built development of a vulnerable nature would not normally be supported. Vulnerability is generally classified depending on whether the development is of a hazardous nature or whether there is any residential accommodation / overnight accommodation associated with it. In the instance of this proposal, being a garden structure, the works do not amount to a vulnerable development in flood risk terms and as such no special requirements are required in respect to flood risk.

### ***Impacts on residential amenity***

Whilst the works are in close proximity to the adjoining gardens either side, they are a considerable distance from the properties associated with the adjacent gardens. The works will allow for a more formal use of the land, however, it is a residential garden where such use would be normally expected. The raised area allows for some views over boundary treatments into the adjacent gardens, however, as the river bank is sloping, there are already notable views between gardens. As such, notwithstanding objections received, it is considered that this does not raise undue impacts on privacy or amenity for the adjoining residents.

### ***Other matters***

Residents have raised objections over the structural integrity of the retaining structure relative to the river and the areas potential / propensity for flooding. No structural calculations have been submitted in respect to this although being within a residential garden the structural integrity is not a significant planning consideration. Timber sleepers and other elements of the development could be placed around a garden without the need for planning permission which if in flood would be affected in a similar manner and in view of these matters; the structural integrity of the retaining structure raises no significant concerns. Importantly, officers are aware that the Environment Agency have been made aware of the development at the site.

Residents have highlighted that otters and voles use the river and the surrounding area and that the fence will prevent deer and other wildlife from passing through gardens which is indicated by objectors as happening in the past. As mentioned above, the fence is not being considered as part of this application. With regards to wildlife and biodiversity, the earth levelling works had largely taken place prior to the Local Planning Authority's involvement in the site and any damage or

impacts on such would have already taken place. Whilst this is no excuse for not adequately taking into account impacts on wildlife and biodiversity, officers are unable to retrospectively address this situation.

The applicant has raised the matter of other development along the riverbank and no planning applications having been submitted for this. In dealing with this site, officers have been made aware of numerous other works in surrounding gardens and have considered them accordingly. Ultimately, these are either considered to be permitted development or having a limited impact which would not warrant enforcement action being taken. Officers are satisfied they have considered all relevant matters which impact on this proposal.

Objectors have indicated that there are large trees close to the works and due to the excavation that has taken place a tree is now leaning towards no. 11. The Council's Arbourist has visited the sites of 11 and 12 Teesbank Avenue on several occasions over recent years following a number of complaints in respect to works to protected trees and requests to fell trees. No objections have been raised via the Highways Transport and Environment Manager in respect to the impacts of these works on trees.

A number of comments have been made about the accuracy of details submitted and statements made in the submission. These have all been noted. The key parts of the submission relate to the proposed plan as this is what any permission is tied to and notwithstanding challenge over comments, the development has now been completed and officers have considered the proposal based on the latest plan and details on site.

Objectors have suggested that the increase in height at the water's edge is unnatural and a great danger to children and pets as it's is next to the water. Whilst noted, this proposal relates to a small section of the wider rivers edge and it is not known to be an area where pets and children need access into and out of the river. As such this raises no concerns with officers.

## **CONCLUSION**

The proposed works, in their reduced revised version are considered to have an urbanising and formalising impact on the semi natural riverbank which is part of a 'Special Landscape Area' designated under saved Local Plan Policy EN7. However, subject to appropriate landscaping being undertaken as part of these works, it is considered that the extent of the impact is now to at an acceptable level. It is considered that there are no undue impacts on surrounding residents as a result of the development. It is recommended that the application be Approved with Conditions for the reasons specified above.

**Corporate Director of Development and Neighbourhood Services**  
**Contact Officer Mr Andrew Glossop Telephone No 01642 527796**

## **WARD AND WARD COUNCILLORS**

Ward	Eaglescliffe
Ward Councillor	Councillor Phillip Dennis
Ward Councillor	Councillor Stefan Houghton
Ward Councillor	Councillor Laura Tunney

## **IMPLICATIONS**

Financial Implications:

There are no known financial implications in determining this application.

#### Legal Implications:

There are no known legal implications in determining this application.

#### Environmental Implications:

The development detailed within the application is considered to have an impact on the character and appearance of the surrounding area although changes to the scheme through the course of the application have resulted in officers now considering the development to be of an impact to an acceptable level. Whilst there may have been impacts on wildlife and biodiversity, these would have largely occurred prior to the Local Planning Authorities involvement with the site.

#### Human Rights Implications:

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report. The detailed considerations within this report take into account the impacts on adjacent residential properties and have taken in to account comments made.

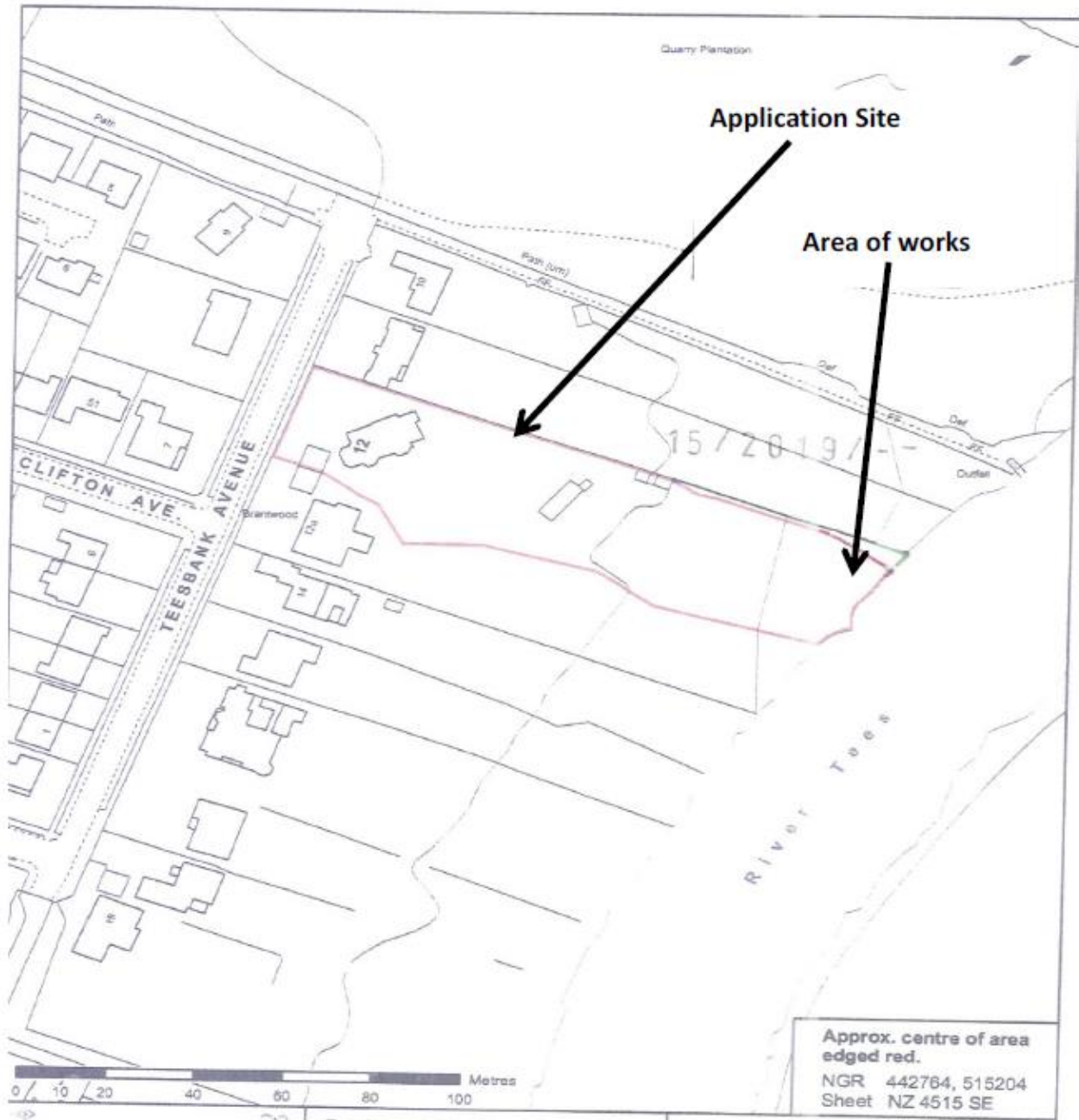
#### Community Safety Implications:

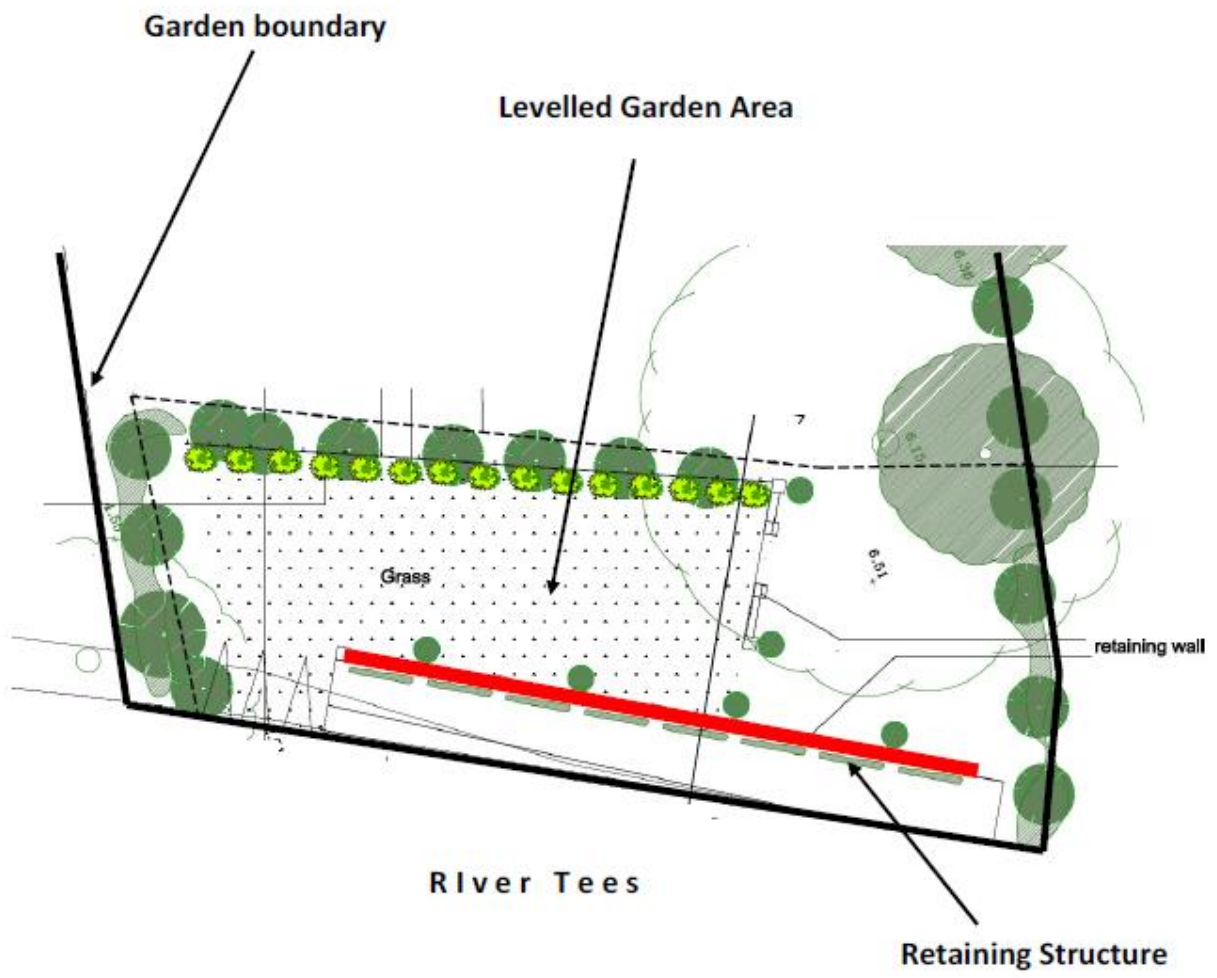
The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report. The development is on private land adjacent to the river and it is considered that there are no impacts on the scheme which would unduly affect community safety.

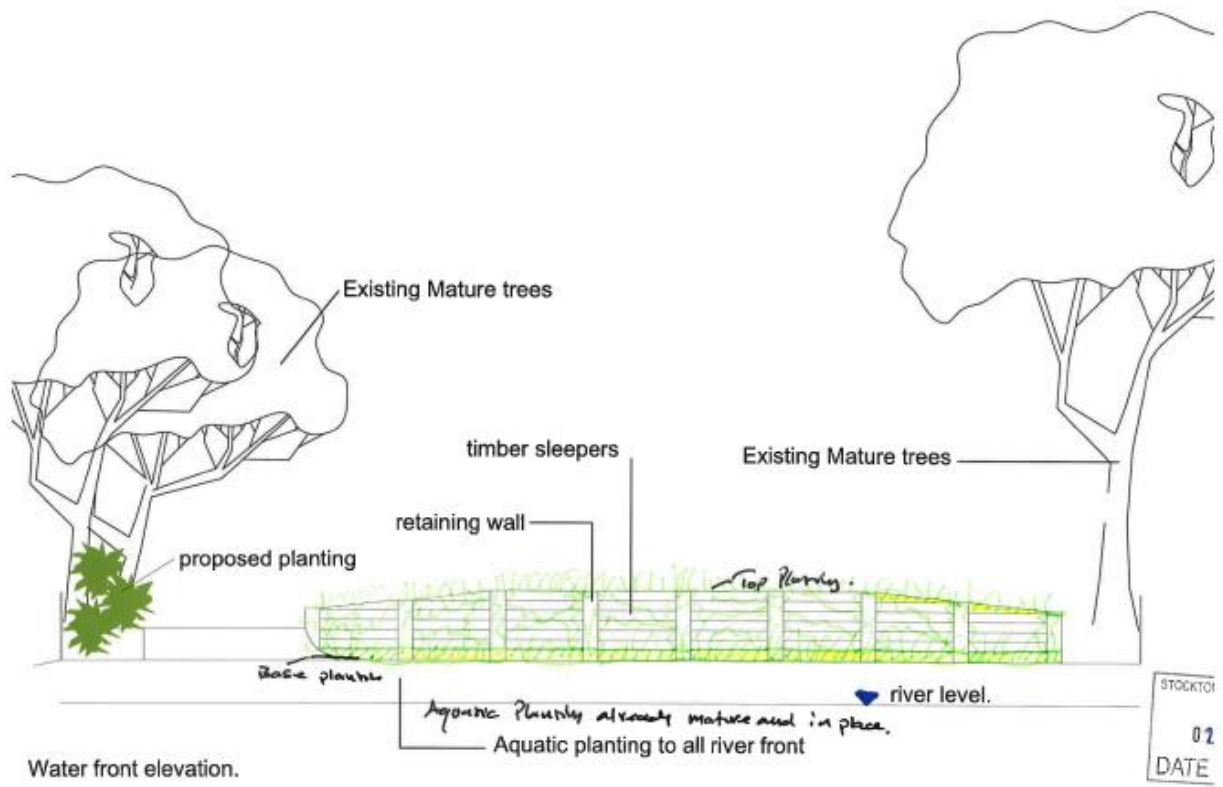
#### Background Papers:

Core Strategy Development Plan  
Local Plan

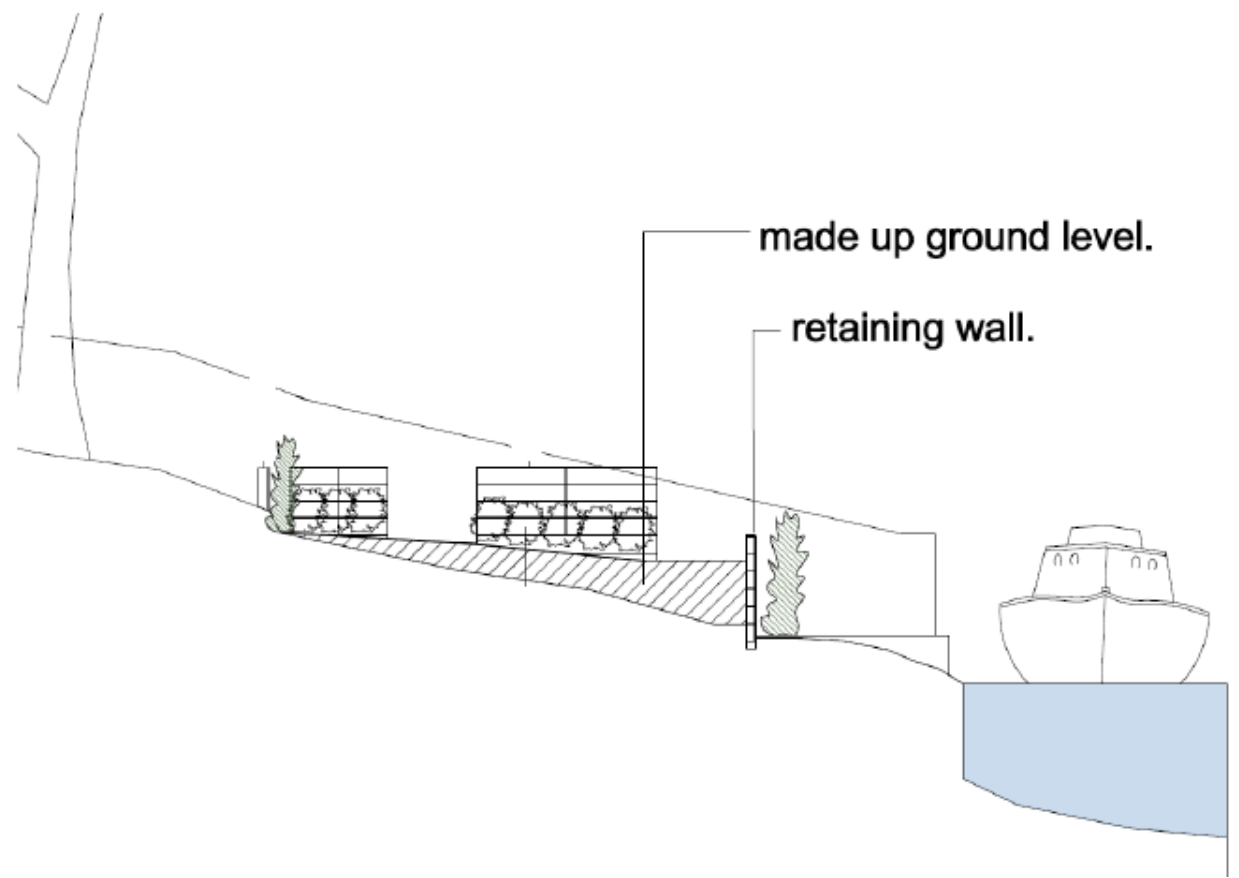
**APPENDIX 2 – Application Plans**







Water front elevation.







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## Appeal Decisions

Site visit made on 10 November 2015

**by Martin Joyce DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 December 2015

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**Appeal Refs: APP/H0738/C/15/3002588 & 3002589**

**Land at 12 Teesbank Avenue, Eaglescliffe, Stockton-on-Tees TS16 9AY**

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Gary and Mrs Angela Munro against an enforcement notice issued by the Stockton-on-Tees Borough Council.
- The Council's reference is 13/0395/EWKS.
- The notice was issued on 10 December 2014.
- The breach of planning control as alleged in the notice is the earthworks (engineering operation) conducted (*sic*) to create a large level area of ground, the installation of metal uprights on the levelled ground and the erection of a northern boundary fence of over 2 metres high, at the rear of the land (adjacent to the River Tees) without planning permission.
- The requirements of the notice are to:
  - (i) Remove from the land all the metal uprights that have been installed on the levelled ground;
  - (ii) Undertake earthworks to restore the land back to the condition and gradient that existed prior to the breach of planning control took place;
  - (iii) Reduce the northern boundary fence to 2 metres in height for a distance of 30 metres, from its starting position at the edge of the River Tees in a westerly direction (towards the dwelling house); and,
  - (iv) Remove from the land all the resultant debris/materials associated with complying with points 5 (i) and 5 (iii) above.
- The period for compliance with the requirements is four months.
- The appeals are proceeding on the grounds set out in Section 174(2)(a), (d) and (f) of the Town and Country Planning Act 1990 as amended. The deemed planning applications also fall to be considered.

**Summary of Decision: The appeals are allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.**

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### Matters Concerned the Notice

1. The allegation contained in the notice is phrased rather awkwardly in respect of the first element of the alleged breach of planning control. This concerns the undertaking of engineering operations to create a large area of level ground. I consider that the notice, and the corresponding description of development in the deemed planning application under ground (a), would be better phrased as I have stated in the preceding sentence. I do not consider that such alteration to the wording of the notice would cause any prejudice or injustice, thus I shall use my powers of correction under Section 176(1) of the Town and Country Planning Act 1990 (The Act) accordingly.

### **Other Preliminary Matters**

2. The appellants contend that they have complied with the third requirement of the notice, as the fence along the northern boundary has been reduced in height to 2m, or less, for 30m as measured from the edge of the river in a westerly direction. I checked the height of the fence at my inspection and confirmed that it had been reduced to that required by the notice. In this respect, therefore, the notice has been complied with and no further consideration needs to be given to that element of the unauthorised development under the various grounds of appeal.

### **THE APPEALS ON GROUND (d)**

3. The appeal on this ground relates to the levelling of a large area of land, measured at my site inspection to be about 18m in length, across the plot in a north-south direction, and 10m in width. The Council do not dispute that this level area was created in 2010, as shown in contemporaneous photographs produced by the appellants, and as confirmed in a number of statutory declarations submitted on their behalf. However, they contend that the operational development at which the notice is aimed was not substantially completed and that the levelling was merely part of an overall scheme that had not been completed at the date of issue of the notice.
4. The notice concerns three elements of operational development – the creation of a level area, the installation of metal uprights and the erection of a fence along the northern boundary of the site. At my inspection I saw that there are two level areas; one adjacent to the river, and one about 1.5m higher, with the latter being that attacked by the notice<sup>1</sup>. Between the two is a retaining wall, comprising nine metal stanchions or uprights, with timber sleepers inserted between them to create a retaining wall in order to prevent land slippage.
5. I consider that the retaining wall is clearly an essential component of the land levelling exercise, as the large area created on a terrace above that adjacent to the river needs supporting. At the date of issue of the notice, the only part of that retaining wall in place was the metal uprights, hence the inclusion of these features in the allegation contained in the notice, rather than reference to a retaining wall. As other parts of the wall have been added since then it is clear that the overall development was incomplete. There can be no argument, therefore, that the scheme for the levelling of the land was substantially completed more than four years before the date of issue of the notice, as this essential element of the scheme was not finished at the date at which the notice was issued. It follows, therefore, that the appeals on ground (d) must fail.

### **THE APPEALS ON GROUND (a)**

#### **Main Issue**

6. The main issue in these appeals is the effect of the development on the character and appearance of the surrounding area.

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<sup>1</sup> This point was confirmed as factually correct by the Council's representative at my site inspection.

## Reasoning

7. The character of the surrounding area is mixed, albeit semi-rural. The substantial gardens of large houses on the eastern side of Teesbank Avenue slope down to, and border, the River Tees. To the north are the grounds of Preston Hall, a public park with extensive wooded areas on its southern side, whilst east of the river is open agricultural land and, beyond, the large housing estates of Ingleby Barwick, albeit that the latter are some distance away. In terms of appearance, the area has particular scenic quality, as a consequence of the varied topography either side of the River Tees, which curves through this part of its valley, and the substantial mature vegetation, including that within the gardens of Teesbank Avenue.
8. The area around and including the appeal site is designated as a Special Landscape Area (SLA) in the Council's adopted Local Plan (LP)<sup>2</sup>, and Policy EN7 states that development which harms the landscape value of such areas will not be permitted. Policy CS3 of the more recent Core Strategy Development Plan Document (CS)<sup>3</sup>, concerning Sustainable Living and Climate Change, requires *inter alia* that, in designing new development, proposals will make a positive contribution to the local area, by protecting and enhancing important environmental assets, biodiversity and geodiversity, responding positively to existing features of natural, historic, archaeological or local character, including hedges and trees, and seek to safeguard the diverse cultural heritage of the Borough, including features, sites and areas of national importance and local significance. Although these Plans predate the publication of the National Planning Policy Framework (The Framework), I am satisfied that they meet the aims of relevant policies within that document, thus they carry significant weight in the context of these appeals.
9. I also understand that the Council have published a submission version of a potential new Local Plan<sup>4</sup> which proposes the designation of the Tees Heritage Park, within which the appeal site would be situated. However, this Plan is at an early stage in the adoption process and is not relied upon by the Council in their statement. Consequently it carries very little weight in my consideration of these appeals.
10. The Council contend that the engineering operations and other works that have taken place have resulted in a formalisation or urbanisation of the SLA which, at this point, is a semi-natural river bank. The regrading and levelling works across most of the plot's width have some dominance and have become a feature in its own right which, together with the retaining wall and the fencing, are contrary to the aims of Policy EN7 of the LP. In relation to Policy CS3(8) of the CS, the works fail to make a positive contribution to the area, as they neither protect nor enhance the semi-natural character of this area and have not taken account of the natural features of the site, which include its previous landform and the wider appearance of the river bank.
11. The appellants, however, argue that the works carried out are merely the stabilisation of an existing garden area to create level terracing, as has been carried out in other riverside properties in the vicinity. Moreover, the

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<sup>2</sup> Stockton-on-Tees Local Plan, adopted 23 June 1997.

<sup>3</sup> Stockton-on-Tees Borough Local Development Framework, Core Strategy Development Plan Document, adopted 24 March 2010.

<sup>4</sup> Stockton-on-Tees Regeneration Environment Local Plan (Publication Draft) 2015.

landscape quality of the area has not been materially harmed as the site is not readily visible in public views, except from the river itself, when the site is viewed in the context of other gardens. Additionally, the works are currently seen in a raw state, but increasing maturity of landscaping will soften their impact. The terms of the Council's policies are not, therefore, infringed.

12. In considering these matters, I start by observing that the works carried out have clearly involved more than the mere stabilisation of the existing garden area, as two level terraces have been created, albeit that it is only the higher one that is the subject of the notice. Significant earth-moving operations have been required, including the installation of a retaining wall to insure against land slippage. However, I accept that the works lie entirely within the existing garden area of the appellants' plot, and that they are aimed primarily at increased enjoyment of their land, including the creation of a level area next to a mooring for their boat.
13. I was able to see that other plots along this part of the river bank have been altered, to varying degrees, to similarly make fuller use of their waterside location, including that to the north (No 11). Others to the south have lawns, garden structures and ornate fencing, as well as timber retaining walls to enable boats to be moored. This is not, therefore, an unspoilt and natural river bank, rather it shows how domestic features have been integrated into the landscape over a period of time following the construction of the various houses in Teesbank Avenue. I see no reason why the same would not apply to the appeal site as planting matures, both that already undertaken and that which may take place in the future as suggested by the appellants.
14. I note also that the Council have not sought to enforce against the lower terrace, or an area of decking and a garden summerhouse-type structure adjacent to the higher terrace. Such features could also be considered to "urbanise" the area, albeit that I consider that any formalisation is slight, given the very limited views available of the site, and the likelihood that shrubbery and other planting will screen such features, at least partially, in the future.
15. My conclusion on this issue is that the development does not materially harm either the character or the appearance of the surrounding area, and does not conflict with relevant Council policies or The Framework. The appeals on ground (a) therefore succeed and planning permission will be granted. In such circumstances, the appeals on ground (f) do not need to be considered.

### **Conditions**

16. The Council has not suggested any conditions in the event of the appeals succeeding and planning permission being granted. I have considered whether a condition is required relating to the submission and implementation of a landscaping scheme but, in the absence of any request from the Council for such a condition, I have decided that it would be unfair to impose one. In any event, it is in the appellants' own interests to make their land look attractive, and they have already undertaken planting along the retaining wall. This will reduce the rawness of that aspect of the development as it matures.
17. One condition is, however, required. This concerns the fence along the northern boundary, as it is necessary to ensure that it is maintained at a height of 2m or lower for the 30m from the edge of the river, given that the deemed planning applications would include the words in the allegation of the notice of



the "erection of a northern boundary fence of over 2 metres high". Such a condition could not be prejudicial to the appellants, given the reduction in height already undertaken, but it ensures that the undisputed aims and requirements of the notice, in this respect, would apply to any future landowners.

### **Other Matters**

18. I have taken account of all other matters raised in the written representations, including those put forward by third parties. In this context, I visited the neighbouring plot to the north at my inspection and viewed the development from there. I have taken account of the concerns raised by the occupier of that land in my consideration of the appeals under ground (a), so far as they are relevant to my deliberations. These and the other matters raised do not, however, outweigh the conclusions I have reached in respect of the main issues and grounds of these appeals.

### **Conclusions**

19. I have concluded that the description of the development in the enforcement notice is awkwardly phrased and would benefit from correction. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice in that respect, in order to clarify the terms of the deemed applications under Section 177(5) of the 1990 Act as amended.

20. For the reasons given above, however, I conclude that the appeals should succeed on ground (a) and I will grant planning permission in accordance with the applications deemed to have been made under Section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.

### **FORMAL DECISION**

21. The enforcement notice is corrected by the deletion of the words "The earthworks (engineering operation) conducted to create" in Section 3, and the substitution therefor of the words "The undertaking of engineering operations to create".

22. Subject to this correction the appeals are allowed and the enforcement notice is quashed. Planning permission is granted on the applications deemed to have been made under Section 177(5) of the 1990 Act as amended, for the development already carried out, namely the undertaking of engineering operations to create a large level area of ground, the installation of metal uprights on the levelled ground and the erection of a northern boundary fence of over 2 metres high on land at 12 Teesbank Avenue, Eaglescliffe, Stockton-on-Tees TS16 9AY, subject to the following condition:

- 1) The northern boundary fence hereby permitted shall be kept and maintained at a height of 2 metres or lower for a distance of 30 metres from the edge of the River Tees as measured in a westerly direction (towards the dwelling house).

*Martin Joyce*

INSPECTOR