

Proposed development: Full Planning Application for Replacement of existing concrete fence and dry stone wall with steel vertical bar fencing 1.8m in height with pedestrian access gate
Site address: The Dingle, Earnsdale Road, Darwen, BB3 0LA
Applicant: Mr Stephen Martin
Ward: Sunnyhurst

Councillor Dave Smith	
Councillor Brian Taylor	
Councillor Pete Hollings	



1.0 Details of Application

- 1.1 This application is before the Committee due to the receipt of a Member Referral request signed by ward councillors; Peter Hollings and Brian Taylor. The application has also received 2 letters of objection from local residents.
- 1.2 The application site relates to the area commonly referred to as the 'The Dingle' which occupies land to the north of Earnsdale Road, Darwen. The site comprises the most easterly part of Sunnyhurst Wood and contains two lodges that are currently used as fishing lakes by the 'Dingle Community Fishing Club'. The site has extensive tree coverage including a specimen fronting Earnsdale Road that has a Tree Preservation Order (TPO) upon it.
- 1.3 The main body of the site is accessed by an existing pedestrian link positioned adjacent to no.79 Earnsdale Road. This provides access via a sloping tarmac path that continues in to Sunnyhurst Woods. The fishing club area is entered via a gate within the palisade boundary fence and involves a steep level change and use of steps.
- 1.4 Planning approval is sought for the provision of a new pedestrian link in to the site, which the applicant advises is necessary to provide Disability and Discrimination Act (DDA) compliant access for disabled users. The proposal involves the removal of an existing 11m long section of concrete and stone walling that fronts Earnsdale Road adjacent to the rear garden of no.1 St Cuthberts Close and the TPO. Replacing the existing wall would be a 1.8m high metal rail fence/gate set in approximately 3m from the pavement. A path formed by crushed aggregate will then provide a new pedestrian access to the site.

2.0 Development Plan

- 2.1 The site is identified as being within the urban boundary within the Blackburn with Darwen Core Strategy, though has no formal land use designation. The following development plan policies are of particular relevance to the assessment of this application;

Local Plan Part 2:

Policy 9: Development and the Environment

Policy 10: Accessibility and Transport

Policy 11: Design

3.0 Planning History

- 3.1 There is no planning history affecting the site

4.0 Consultations

4.1 Public Consultation: 6 neighbouring properties were individually consulted by letter and a site notice was erected. 2 letters of objection and a further 2 letters offering comment on the proposal have been received. (see section 7 for summary)

4.2 Capita Highways: General concern that the proposal will encourage users of the fishing club to park on Earnsdale Road, where there are no parking restrictions. However, given that the existing access is being maintained accepted that any increase in traffic on Earnsdale Road would be incidental. No conflict with the new fence, though the proposed planting area would encroach in to the adopted highway, which is not acceptable.

4.3 Arboricultural Officer: There are concerns raised towards the impact of the proposal with the adjacent tree which is subject to a TPO. The concerns are listed as follows:

The site can easily be developed as a fishing venue and accessed normally by most people. The crux of the tree conflict is trying to get a DDA compliant access, which in its current position will lead to the death or a very mature healthy protected tree that fronts onto Earnsdale Road and has a high level of amenity. That DDA access can be achieved in another location that is far more suitable as it is currently signposted as Disabled Access into Sunnyhurst Woods.

The tree survey and principles used in designing the solutions to the scheme are flawed. Taking T9 of the second tree survey and area to the east, the tree surveyor has only measured one of the stems. Whereas British Standards clearly shows how to calculate the root protection area of a multiple stem tree to achieve a 'combined root protection area', which is significantly larger than has been stated.

In attempting to find a solution to the root protection problem the scheme designer has used a cellular confinement system. Unfortunately, this has not been applied correctly and has not taken the site constraints or product limitations into account within the design.

As the pavement meets the proposed new path this is where the largest discrepancy is. The site levels directly adjacent to the public pavement are 200 mm higher than the pavement. The depth of a cellular confinement system and associated wearing coarse is 250 – 300 mm. This means that there is up to half a metre difference between the pavement finished levels and the new proposed path. This is not acceptable for able bodied people and definitely not DDA compliant.

This means that in reality what will be constructed on site is a path structure that is dug into the ground by half of a metre resulting in significant root severance within the critical root protection zone. This is contradictory to British Standards 5837 Para 7.4.2.1 where it states “*The design should not require excavation into the soil including through lowering of levels and/or scraping off, other than the removal, using hand tools, of any turf layer or surface vegetation*”. Furthermore, the proposed single leaf gate and railings have significant foundations within the RPA this is not acceptable and will result in the trees death.

Even if the trees survival was guaranteed the trees future growth will be limited but it will still grow sufficiently to disturb the cellular confinement system and wearing coarse to the extent that the Council will be expected to make good the repairs at our own cost as our tree will do the damage. Post development the new area fronting this part of the site will require maintenance.

This proposal is contrary to Council Policy, British Standards and good arboricultural practice and is totally achievable without the loss of this specific protected tree. Therefore, I recommend refusal in accordance with LPP2 Policy 9 for the reasons outlined above.

5.0 Issues/Comments

- 5.1 The proposal seeks to provide a new access in to the existing Dingle Community Fishing Club site. The new access is to be formed by the removal of an existing 11m section of stone/concrete panel boundary wall and replacement with a new metal rail fence that is to be set in 3m from the highway. The proposal also incorporates the provision of a pedestrian footpath that will be formed in crushed aggregate. Low level planting will complete the scheme.
- 5.2 It is submitted to Members that the proposed boundary fence and gate, which is to be painted dark green, would provide a clear improvement on the appearance of the existing damaged and unsightly boundary wall. As such the overall design would be consistent with the requirements of LLP2 Policy 11. Therefore, the principle issues for Members to consider are;
- Will the proposal lead to the loss of the adjacent tree protected by a TPO; and if the tree will be lost, whether the desirability of the proposed development outweighs the amenity and/or nature conservation value of the tree
- 5.3 The principle policy assessment is set out within LPP2 Policy 9: *Development and the Environment*, which advises;

Development will be expected to incorporate existing trees into the design and layout of the scheme.

Where development is proposed which would result in the loss of protected trees, planning permission will only be granted where;

- i) The removal of one or more tree would be in the interests of good arboricultural practice; or*
- ii) The desirability of the proposed development outweighs the amenity and/or nature conservation of the tree.*

5.4 Members should note that the Council's Arboricultural Officer has stated his belief that the development set out in the application would compromise the adjacent TPO and be likely to lead to its loss. Furthermore, the officer believes that the purported disabled access benefits of the scheme do not provide the necessary exception as set out in Policy 9. The specific comments of the Arboricultural Officer are set out in section 4.3 of this report, but are also referred to in the subsequent body of this report.

5.5 The applicant has provided a rebuttal to the Arboricultural Officer's position, the most pertinent elements of which are set out below. The Arboricultural; Officer's comments are in italics, followed by the planning agent's response ;

5.6 *The site can easily be developed as a fishing venue and accessed normally by most people.*

The site is already a fishing venue. Access is limited, difficult and unsafe. Volunteers are hoping to make it accessible for people with disabilities and children and increase the safety of all use, whilst respecting the environment.

5.7 *The crux of the tree conflict is trying to get a DDA compliant access, which in its current position will lead to the death or a very mature healthy protected tree that fronts onto Earnsdale Road and has a high level of amenity.*

It is the tree officer's speculative opinion that our proposals will lead to the death of the tree. Myself and my client are not undertaking these proposals lightly, but we have carried out a full optioneering discussion with regards to alternative DDA compliant access to the site, which is not achievable at any other location (please refer to statement below). Furthermore, DingleCommunity Fishing Club have sought independent advice from a qualified aboriculturist at Landscape Design and Ecology to suggest sympathetic construction methods and ongoing third party monitoring to mitigate for any potential negative impact of the proposals on the tree. These steps clearly show that my client takes the protected status of the tree very seriously, but at the same time, they have no alternative to provide the multi-user access they require.

- 5.8 *That DDA access can be achieved in another location that is far more suitable as it is currently signposted as Disabled Access into Sunnyhurst Woods.*

DDA access cannot be achieved in another location. The disabled access commented on is signposted for Sunnyhurst Wood, not the Dingle. Access for disabled people from the main disabled access routes through Sunnyhurst Wood would require the building of a bridge across the brook and significant engineering works through the Dingle site between the existing lakes. We would like it to be noted that whilst there are no other protected trees within the Dingle site, such access proposals as suggested by the tree officer would result in the loss of numerous mature trees. There is an existing pedestrian access to the Dingle site, but unfortunately DDA compliant access cannot be achieved within a 1:20 profiled slope due to existing site constraints.

- 5.9 *The tree survey and principles used in designing the solutions to the scheme are flawed. Taking T9 of the second tree survey and area to the east, the tree surveyor has only measured one of the stems. Whereas British Standards clearly show how to calculate the root protection area of a multiple stem tree to achieve a 'combined root protection area', which is significantly larger than has been stated.*

Neither the tree survey nor design principles are flawed. To qualify our independent tree survey, when considering the Root Protection Area of T9 (the protected sycamore) we have taken into account the following statement as noted in paragraph 4.6.3 of BS5837 and discussed in our arboriculture mitigation statement dated 3rd August 2015 and as provided in response to the planning officer's initial comments on the planning application (received 24.09.15);

a) The morphology and disposition of the roots when influenced by past or existing site conditions e.g. presence of road and structure, and
b) Likely tolerance of the tree to root disturbance or damage based on factors such as species, age, condition and past management. In addition, we are proposing sympathetic construction methods and ongoing third party monitoring, again as detailed in the arboriculture mitigation statement dated 3rd August 2015.

- 5.10 *In attempting to find a solution to the root protection problem the scheme designer has used a cellular confinement system. Unfortunately, this has not been applied correctly and has not taken the site constraints or product limitations into account within the design.*

We disagree with the Tree Officer's comments. The Chartered Landscape Architect who has designed this scheme has been in contact with the manufacturers of the 'cellular confinement system'. The Geoweb Tree Root Protection (TRP) system (manufactured by Presto Geosystems) is a load distribution solution that provides protection to a tree's Root Protection Zone. By distributing and bridging applied loads, the Geoweb TRP system significantly reduces vertical

stresses that are typically applied to the underlying soil and root zone. The Geoweb is intended to be installed at the lowest specification and depth option (75mm) with a minimum of 10mm overfill of recycled aggregate on top of the Geoweb. This calculates to a nominal excavation depth of 85mm in accordance with manufacturer's recommendations. As detailed within our mitigation statement, provided as part of the supporting documentation in the planning application this excavation will be carried out by hand.

- 5.11 *As the pavement meets the proposed new path this is where the largest discrepancy is. The site levels directly adjacent to the public pavement are 200 mm higher than the pavement. The depth of a cellular confinement system and associated wearing coarse is 250 – 300 mm. This means that there is up to half a meter difference between the pavement finished levels and the new proposed path. This is not acceptable for able bodied people and definitely not DDA compliant.*

With regard to the suggestion that the land within the Dingle site is higher than the adjacent pedestrian highway, our topographical survey and site photographs suggests that this is not the case. We have included photographic evidence looking from within the site back towards the fence and Earnsdale Road with an approximate location of the gate and associate railings, a snapshot of the survey carried out by Survey Systems Ltd which circles the spot heights in red (based on a 5m grid) or the levels of physical site components such as the baseline of a hedge or fence in yellow, and suggests that the Dingle site is sloping away from the pedestrian highway by approximately 0.5m. We have included a second photo from Earnsdale Road looking over the top of the fence into the site on which you can clearly see the adjacent residents fencing stepping down indicating the drop in level. We do acknowledge that the spot height at the base of the TPO'd tree is suggesting slightly elevated ground at this location which you would expect at the base of a tree, however with the fall of the adjacent pedestrian highway taken into consideration, this elevation is no more than 10cm, less than 1/5 indicated by the tree officer and fully DDA compliant. Our proposed footpath adjacent to this tree will therefore not require any excavation within the root protection zone, apart from the top layer of grass/vegetation and soil to allow the installation of the Geoweb surfacing and aggregate infill, recommended at a nominal 85mm depth and carried out by hand. The cellular confinement system we are using (Geoweb TRP) does not require a sub-base for pedestrian access, nor does it require a wearing course of more than 10mm, therefore taking into account the depth of the Geoweb system at 75mm, the nominal excavation depth will be 85mm. Details of manufacturer's system installation specification have been supplied.

- 5.12 *This means that in reality what will be constructed on site is a path structure that is dug into the ground by half of a metre resulting in significant root severance within the critical root protection zone. This is*

contradictory to British Standards 5837 Para 7.4.2.1 where it states "The design should not require excavation into the soil including through lowering of levels and/or scraping off, other than the removal, using hand tools, of any turf layer or surface vegetation".

Please refer to paragraph above for correct level calculations. All excavations will be carried out by hand, and as stated in our mitigation statement and advice will be sought from an arboriculturist if clumps of roots greater than 25mm diameter are encountered.

- 5.13 *Furthermore the proposed single leaf gate and railings have significant foundations within the RPA this is not acceptable and will result in the trees death.*

We accept that our proposals do contain significant foundations (810mm depth x 300-600mm width) for gate and railing posts within the Root Protection Area of the TPO'd tree however, we have sought independent arboricultural advice and our mitigation statement qualifies that: "For the foundation works of the gate and railings limited manual excavation within the RPA is acceptable. Such excavation should be undertaken carefully, using hand-held tools and preferably by compressed air soil displacement. Roots smaller than 25 mm diameter may be pruned back, making a clean cut with a suitable sharp tool (e.g. bypass secateurs or handsaw), except where they occur in clumps. Clumps and roots greater than 25 mm diameter should be severed only following consultation with an arboriculturist". Following this advice we would request that it is noted that we feel we are exploring every possible option to prevent disruption or harm to the protected tree.

- 5.14 *Even if the trees survival was guaranteed the trees future growth will be limited*

The corresponding retention category of this tree in the tree survey in accordance with BS5837 is B2 (moderate quality and value, in such a condition as to be able to make a significant contribution of 20+ years with regards to landscape value). It has also been noted within our independent tree survey that the tree is significantly close to the public highway and therefore should be monitored.

- 5.15 *The tree may still grow sufficiently to disturb the cellular confinement system and wearing course*

The manufacturers of the cellular confinement system have been using this product for over 30 years and state:

- With permeable infill (topsoil/vegetation, aggregate, sand), perforated geoweb cell walls offer environmental benefits including:
- Water infiltration
- Lateral movement of air and water
- Water and nutrient migration
- Promotes root development

The system is specifically designed to be flexible and strong so as not be disturbed by future tree root growth. We would add that in the experience of the landscape architect involved in the design of this scheme, the disruption to cellular confinement systems by tree root structures is minimal in comparison to materials such as the adjacent concrete asphalt pedestrian highway.

- 5.16 *This proposal is contrary to Council Policy, British Standards and good arboricultural practice and is totally achievable without the loss of this specific protected tree.*

This proposal is supportive of Council Policy to promote health and wellbeing and volunteer action to promote sports and activity in the spirit of the Borough's Your Call campaign. It is compliant with British Standards and has fully taken into account good arboricultural practice through independent tree surveys and mitigation statements. These plans to improve access for people with disabilities to this wonderful site have been developed through community engagement (supported by Ward Councillors and the Neighbourhood Manager), an Environmental Survey by Lancashire Wildlife Trust, and specialist advice from Landscape Architects at Groundwork who have drawn up plans and technical specifications.

- 5.17 Conclusion: Members will note the technical disagreement between the applicant and the Council's Arboricultural Officer. Evidently there is a dispute as to whether the proposal will unacceptably compromise the TPO, or even lead to its death. Reverting back to LPP2 Policy 9, Members will recall that in exceptional circumstance the loss of trees (including TPO's) can be supported providing "the desirability of the proposed development outweighs the amenity and or nature conservation value of the tree". It is submitted to Members that notwithstanding the existing disabled access to Sunnyhurst Woods, access to the fishing lakes is unrealistic for people with ambulant disabilities given the steep level changes and presence of steps. It can be argued, therefore, that the provision of DDA compliant access could be viewed as providing sufficient justification for the loss or harm of the TPO.

- 5.18 Members may also wish to note that the submission includes a commitment to provide replacement planting including 3no Heavy Standard trees. This factor, allied to the debate over the loss of the tree and the desirability of providing DDA compliant access to the site, provides justification to support the proposal subject to the recommended conditions

6.0 Recommendation

- 6.1 APPROVE subject to the following conditions;

- Arboricultutral method statement to be agreed

- Tree protection measures during development
- Notwithstanding submitted details, a Landscape scheme, including tree planting with no encroachment onto the adopted highway, to be agreed

7.0 Summary of representations

Objection Dennis & Margaret Oldham 4 St Cuthberts Close Darwen

Regarding the proposed development of The Dingle, Earnsdale Road, Darwen.

We have lived in St Cuthberts Close for 42 years and from our back garden we have a view of part of the lodge dam. All the time we have lived at this address, teenagers have gathered on the lodge bank at various times of the year, drinking and generally behaving in an anti social manner. They access it either by climbing over the wall on Earnsdale Road, or over/through the fencing on the path from Falcon Avenue. The wooden steps up the lodge banking, originally for use of the fishermen were destroyed by youths many years ago and have never been replaced.

We feel that if easy access is made to that area as planned

- it would encourage anti social behaviour and could become a trouble spot
- it would create parking problems on Earnsdale Road at a point where the very busy road is quite narrow.

Adjacent to this area is of course Sunnyhurst Wood itself which has acres of paths and recreation areas, leading onto the moors

An article in the Lancashire Telegraph on 6th October about the need for Public Spaces Protection Orders in some outdoor play areas in Darwen highlights the potential problems which could arise in this area if the plan goes ahead.

We hope you will consider this point of view

Objection Alison McDonnell 9 Brian Avenue Norwich

Dear Mr Kenny,

Re: application 10/15/1052: Proposed gateway for the Dingle Community Fishing Club

I write as someone with an interest in a property adjoining the above site.

While I applaud any desire to make leisure facilities more easily available for all, I do have concerns about the location of this particular access point. No designated disabled parking has been made available for the proposed entrance on Earnsdale Road, which is a very busy road at all hours with limited on-street residential parking. As mentioned in the Sunnyhurst Woods Management Plan of 2010 there is a designated "disabled entrance" footpath signposted from higher up on Earnsdale Road. Disabled car parking is provided near the Visitors' Centre, with level access to the site through the gate near the former bowling green. Perhaps a better plan would be to make this existing access more attractive and easier to use?

In recent months, local residents have seen an increase in fly tipping on the site. No litter bins are shown on the plans, and there is concern that an increase in visitor numbers will lead to

an increase in the volume of rubbish left there. Some of the recent visitors, especially in the evenings, do not appear to be anglers and seem to be there for anti-social purposes. This is in spite of access being limited currently to keyholders who are members of the Angling Club. The report and wildlife survey by the Lancashire Wildlife Trust, made on behalf of the Dingle Community Fishing Club in August 2014, noted that "there is no public footpath through the site and there is no official public access into the site". I note with some apprehension the proposal that the site be opened to the general public from "dawn to dusk" at the weekends and by a booking system at other periods. This is deep water, currently fenced to protect the public, yet the plans make no mention of lifebelts or lifeguard patrols. In addition, who will be monitoring on-site behaviour? An uncontrolled increase in footfall could be detrimental to the waterfowl, especially at breeding times, and could also have an impact on the wildflowers and trees in the area. It could also become a nuisance to the adjoining properties.

Whilst the proposed railings are intended to match those edging the boundaries of the properties in St. Cuthbert's Close, they do not blend into the surrounding area, being an obtrusive bright green colour.

In conclusion, I would ask the committee members to take account of my concerns about parking and public safety, as well as the threat to the local habitat, when considering this proposal.

Comment David Ainsworth 28 Earnsdale Road Darwen

I'm not sure that my concern can be covered, but I am concerned about access to the land behind the fence by vandals and trouble-makers; we have had this in the past before the present fence was erected. Possibly a condition that the gate must be kept locked when the land is not in use by those who have the right to use it would suffice.

Comment Mr J Cooper

MR J COOPER
30 EARNSDALE ROAD
DARWIN
BB3 1HS
5th OCTOBER 2015

REF: PLANNING APPLICATION 10/15/1052

Dear Mr Bailey

With regard to above Planning Application, I have no objection to the proposal, however I need to point out a problem that will arise (see sketch →

There are daily deliveries to the Engineering firm & car repair business shown on the plan at the end of Ellesmere Road, very frequently large articulated lorries, some could be 70 feet or more have difficulty entering & leaving Ellesmere Road, they frequently ride over the pavements indicated on the plan. → I have in the past had the corner of my garden wall damaged.

Therefore should anyone using the Dingle pedestrian access gate park their car on the area shown it will impede the heavy goods vehicles entering and leaving Ellesmere Road and increasing the risk of damage to my property.

There is also the obstruction it will cause to the flow of traffic on this narrow road at particular times of the day & night.

Perhaps the difficulty could be solved by double yellow lines on that side of the road shown on the plan?

There is also the question of security of the site, could intruders misuse the site & facilities?

COMMENTS ON PLANNING APPLICATION 10/15/1052

(3)

