

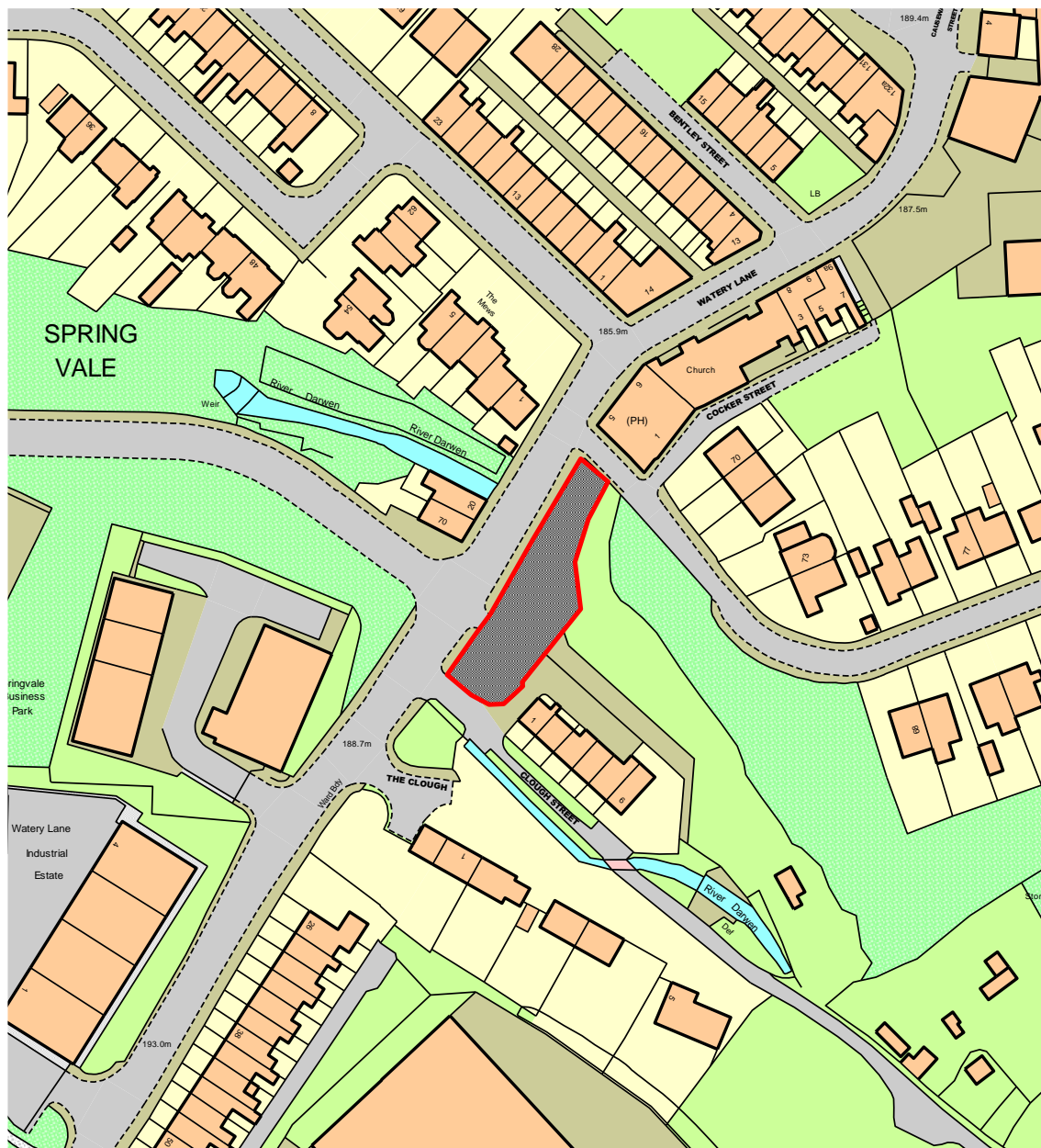
**Proposed Development: Erection of replacement 2m high fencing along the northeast and northwest site boundaries**

**Site Address: Land at Watery Lane (between Clough Street and Spring Vale Garden Village), Darwen**

**Applicant: Mr R Hancock**

**Ward: Darwen South**

**Councillor Kevin Connor  
Councillor Matthew Jackson  
Councillor Lilian Salton**



## **1.0 SUMMARY OF RECOMMENDATION**

- 1.1 The proposed development is recommended to be granted planning permission, subject to the conditions and informative note detailed in Section 5.

## **2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE**

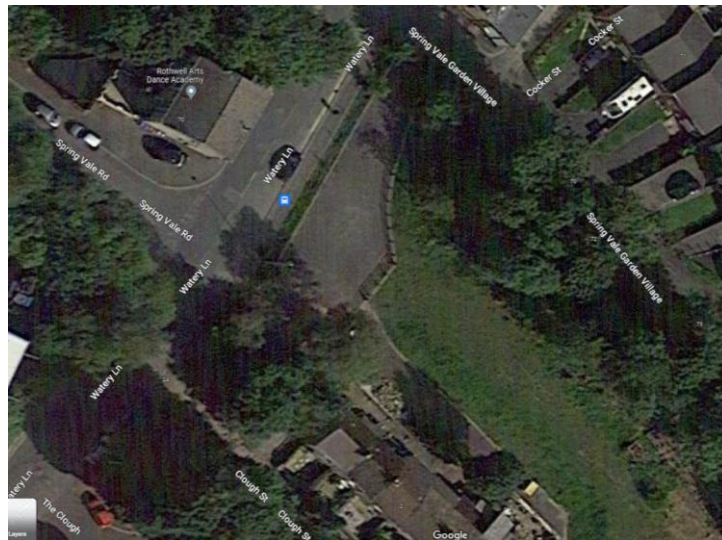
- 2.1 This application is presented to the Planning and Highways Committee, in accordance with the Council's Constitution, and given that a large number of objections have been received.
- 2.2 The proposed development has been publicised through letters to residents and occupants of the nearest 14 adjacent properties on 12<sup>th</sup> December 2022. Those neighbours were renotified on 25<sup>th</sup> January 2023 and 08<sup>th</sup> February 2023 given the receipt of amended information. A site notice was also displayed at the site access point on 19<sup>th</sup> December 2022.
- 2.3 Public comments have been received from 8 addresses objecting to the development. The objections received principally concern the temporary style of the fencing currently in place together with consequential visual impacts. Land ownership has also been cited as a concern. A summary of the objections received is detailed below in Section 7.6.
- 2.4 The Council's development plan supports new minor developments and associated works, provided they constitute sustainable development and accord with the development plan when taken as a whole.
- 2.5 This application involves the erection of replacement fencing around the northeast and northwest site boundaries. Temporary metal 'heras' style fencing is currently in place, which would be replaced by green 2m high weld-mesh fencing. Supplementary landscaping would also be provided along Watery Lane.
- 2.6 On balance, the proposals would be satisfactory from a technical point of view, with all issues having been addressed through the application process or capable of being controlled or mitigated through appropriately worded planning conditions.
- 2.7 The key issues to be addressed in determining this application are follows;
- Assessing any design and visual amenity impacts
  - Safeguarded the residential amenities of the immediate neighbours
  - Assessing any potential impacts on highway safety
  - Ensuring flood risk is not increased

### 3.0 RATIONALE

#### 3.1 Site and Surroundings

- 3.1.1 The application site is a private carpark located within the settlement of Darwen. The site covers an area of circa 680 square meters. Dwellings and open landscaped areas surround to all sides. A culverted stretch of the River Darwen runs beneath parts of the site and the site is partly within Flood Zones 2 and 3 as a result.

Figure One – Satellite image of the site



- 3.1.2 The site has historically been used as a carpark yet it has been enclosed by fencing for around 2 years and a locked timber gate has been installed at the access point from Watery Lane. In addition to the temporary metal fencing, timber post and rail fencing of various heights define the site boundaries. A number of mature trees are also positioned adjacent.

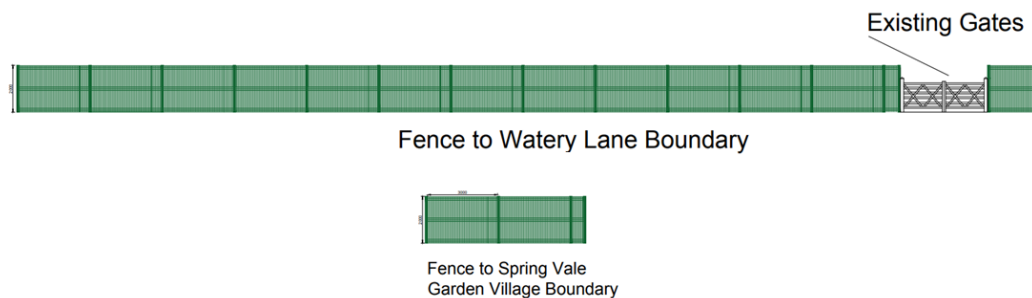
Figure Two – Submitted Location Plan/Proposed Site Plan (amended)



### 3.2 Proposed Development

- 3.2.1 As detailed above, this planning application involves the erection of replacement fencing. The temporary metal fencing currently in place would be entirely removed. Fencing is proposed along Watery Lane staggering the access point. The existing timber gate would remain in situ. A small stretch of fencing is also proposed along Spring Vale Garden Village.
- 3.2.2 The submitted Planning Statement identifies a need for the fencing in order to prevent antisocial behaviour in the form of fly tipping and congregations of vehicles. The application initially involved retaining the existing temporary metal fencing. However, amended plans have been received during the course of the application showing a more permanent form of fencing together with amendments to its position in order to avoid the culvert, which is shown above in Figure Two.
- 3.2.3 A green weld-mesh fencing is now proposed and the development description has been changed in order to reflect those amendments. The fence would have a height of 2m and it would be constructed from 3m wide perforated panels. Supplementary landscaping is also shown along Watery Lane in the form of 6 Alder trees.

Figure Three – Proposed Elevations Plans (amended)



### 3.3 Case Officer Site Photos





### 3.4 Development Plan

#### 3.4.1 Local Plan Part 2 (2015):

- Policy 8: Development and People
- Policy 9: Development and the Environment
- Policy 10: Accessibility and Transport
- Policy 11: Design

## 4.0 **ASSESSMENT**

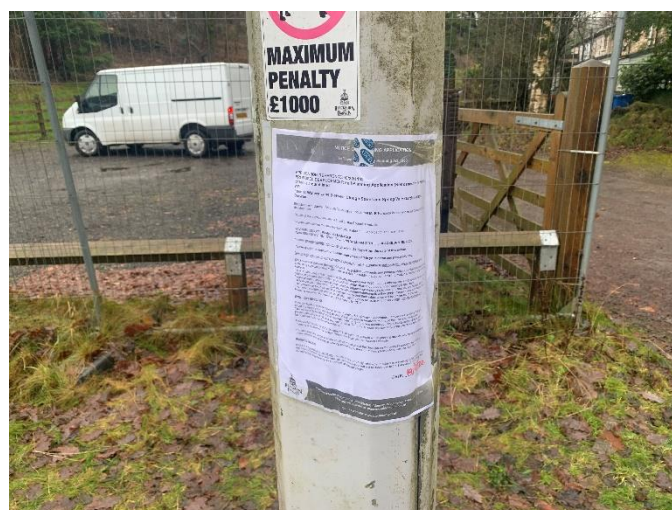
### 4.1 Procedural Matters

4.1.1 Concerns have been raised in public comments regarding land ownership. The application form initially submitted included the signing of Certificate A, which suggests the Applicant owns the full site. However, a Land Registry search was conducted during the course of the application and the land owners were identified.

4.1.2 The Agent subsequently submitted an amended application form and Certificate B has now been signed with notice served on both the landowners. Such an outcome is not uncommon with planning applications and the Agent has followed the correct procedures regarding land ownership and the serving of certificates following the issue with the application form initially being identified.

4.1.3 Public comments have also suggested that a site notice has not been displayed advertising the development. As detailed above in Section 2.2 and below in Figure Four however, such processes have been followed. A number of public comments have been received from addresses that were not notified by letter and the community as a whole is therefore aware of the application.

Figure Four – Photo of Site Notice (displayed 19/12/2022)



## 4.2 Design and Visual Amenity

- 4.2.1 The site is positioned within a location that has a relatively varied streetscene. In general terms, Policy 11 requires all development proposals to represent a good standard of design through demonstrating an understanding of the site's wider context and making a positive contribution to visual amenity. Concerns have been raised in public comments on design and visual amenity grounds.
- 4.2.2 As detailed above, the application initially involved retention of the temporary metal fencing currently in place. Such a style of fencing is designed to be used on a non-permanent basis and unacceptable implications would arise for the visual amenity of the area were the current fencing to be retained indefinitely.
- 4.2.3 Those concerns were discussed with the Applicant on site and were raised with the Agent following the site visit. Amended plans were subsequently secured during the course of the application showing a more visually sympathetic fence. Watery Lane and the surrounding highways are lined with boundary treatments of a variation of heights and styles. The erection of the fencing currently proposed would therefore not have a harmful impact upon the visual amenity of the area on that basis.
- 4.2.4 A condition is recommended to ensure the current fencing is removed and proposed fencing installed within a reasonable timeframe. A further condition is recommended to ensure the landscaping scheme shown on the submitted amended plans is implemented. Such a condition is necessary order to soften the expanse of the longest stretch of fencing from public vantage points along Watery Lane.
- 4.2.5 Subject to compliance with those conditions, the proposed development would be acceptable with reference to design and visual amenity, in accordance with Policy 11.

## 4.3 Residential Amenity

- 4.3.1 Dwellings are positioned nearby and safeguarding the amenities of those neighbours is an important material planning consideration. Policy 8 states that all development proposals must secure a satisfactory level of amenity and safety for surrounding uses and for occupants or users of the development itself with reference to and the general relationship between buildings and structures. Concerns have been raised in public comments on residential amenity grounds.
- 4.3.2 Any impacts in the way of overshadowing caused by the proposed planting scheme would be intermittent and limited to certain times of the day. Such potential impacts would also be similar to those caused by existing mature trees in the immediate locality. Impacts on private views are not material planning considerations and there would be no losses of public views to the extent that would lead to the conclusion that the application should be refused, subject to the replacement fencing being installed, which has been conditioned.

4.3.3 Furthermore, the proposed replacement fencing would not be harmful to the living environments of the closest neighbours when the levels of separation are considered alongside the perforated nature of the fence. As proposed, the development is thus acceptable with reference to residential amenity, in accordance with Policy 8.

#### 4.4 Highway Safety

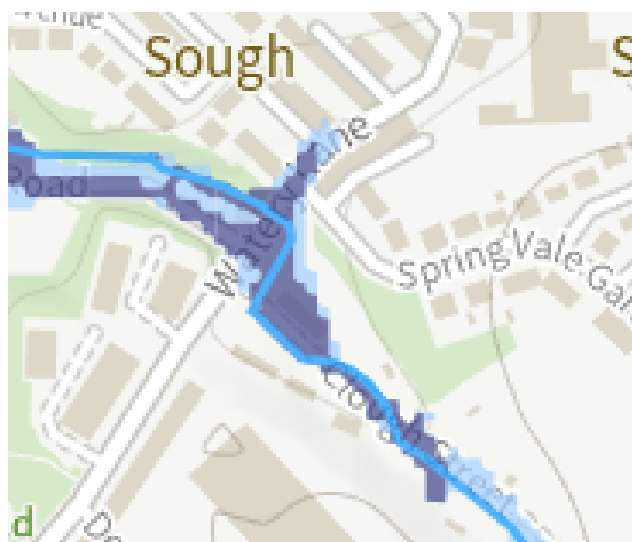
4.4.1 The site is currently accessed via a gated entrance point and those arrangements would remain unchanged. Policy 10 requires all development proposals to not prejudice road safety, or the safe, efficient and convenient movement of all highways users. Concerns have been raised in public comments on highway safety grounds.

4.4.2 However, those concerns relate to the blocks used to support the current fencing. Once the proposed fencing has been installed those potential issues would be removed. Furthermore, the proposed fencing would be sufficiently set back from the carriageway edge and adjacent junctions to ensure the visibility of highways users is adequately maintained. As proposed, the development is thus acceptable with reference to highway safety, in accordance with Policy 10.

#### 4.5 Flood Risk

4.5.1 The site is located adjacent to a culverted stretch of the River Darwen and within Flood Zones 2 and 3, as shown below in Figure Five. Policy 9 requires all development proposals to avoid unacceptable impacts on environmental assets or interests, including flood risk. A brief Flood Risk Assessment has been submitted in support of the application.

Figure Five – Flooding Designations Plan



4.5.2 Both BwD Drainage and the Environment Agency have reviewed the submitted assessment and the merits of the application as a whole. BwD Drainage have raised no objections and that position was initially adopted by the Environment

Agency. However, given that amendments to the proposals have been submitted that include a permanent fence alongside associated ground works and landscaping, an objection from the Environment Agency was received given the presence of the culvert.

4.5.3 In response to those concerns the Agent has removed the fencing from the land adjacent to Clough Street. Furthermore, they have confirmed the construction techniques that would be applied to install the fencing together with the depth of the foundations. The submission of such information was adequate to enable the Environment Agency to remove their objection.

4.5.4 Their latest comments contain permitting requirements given that works are proposed within close proximity to the culvert. An Informative Note should therefore be added to any approvals issued raising awareness to those legal requirements. Subject to those obligations being followed, the proposed development would be acceptable with reference to flood risk, in accordance with Policy 9.

#### 4.6 Wider Considerations

4.6.1 Further public comments have been received regarding a lack of functional purpose for the fencing, the potential for landscape maintenance to be obstructed around the site and the current presence of temporary fencing adjacent to the cottages on Clough Street.

4.6.2 As detailed above, the Agent has advised that the fencing is required in order to prevent antisocial behaviour. It is acknowledged that the solutions put forward seem like a costly solution to resolve those issues yet the application currently presented involves the erection of fencing that would not be harmful to the visual amenity of the area, as detailed above. No changes to the use of the land are proposed and the lawful use of the site is currently a private carpark. Any unauthorised deviations from that existing use would ultimately be unlawful, and liable to formal enforcement action.

4.6.3 Regarding landscape maintenance, erection of the fencing proposed would have a similar level of impact upon the maintenance regimes of the land when compared with the timber fencing that has historically been in place. Simply strimming around the fence would be a logical solution to overcome those potential issues.

4.6.4 Finally, the latest plans only include fencing along Watery Lane and Spring Vale Garden Village. This application does not involve any fencing outside of those locations and the fencing currently in place to the rear of Clough Street should be removed. The matter has been reported to the Enforcement Team and they will commence the necessary actions following the determination of this application.



## 4.7 Summary

- 4.7.1 This application involves the erection of replacement boundary fencing along the northeast and northwest site boundaries. Subject to appropriate conditions, the proposed development would be acceptable on all the relevant planning grounds, in accordance with the policies detailed in Section 3.4.
- 4.7.2 Section 38 of the Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. Subject to appropriate conditions, the proposals would be acceptable in terms of design and visual amenity, residential amenity, highway safety and flood risk.
- 4.7.3 The proposed development therefore complies with the development plan. There is a positive presumption in favour of approving the development and there are no material reasons to object to the application.

## 5.0 **RECOMMENDATION:**

**Delegated authority is given to the Strategic Director of Growth and Development to approve planning permission, subject to the following conditions;**

- 5.1 Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings: Location Plan (1:1250), Site Plan (1:200) (amendment dated 16/03/2023), Fence to Spring Vale Garden Village Boundary (1:50) (amendment dated 16/03/2023) and Fence to Watery Lane Boundary (1:50) (amendment dated 16/03/2023).

REASON: For the avoidance of doubt and to clarify which plans are relevant to the consent.

- 5.2 Within 12 months from the date of this decision, any metal fencing within/enclosing the site must have been removed in its entirety and the replacement fencing as shown on the approved plans 'Site Plan (1:200) (amendment dated 16/03/2023), Fence to Spring Vale Garden Village Boundary (1:50) (amendment dated 16/03/2023) and Fence to Watery Lane Boundary (1:50) (amendment dated 16/03/2023)' must have been installed entirely in accordance with those plans.

REASON: In order to ensure the current fencing is replaced with a more visually sympathetic alternative, in the interests of the visual amenity, and to comply with the requirements of Policy 11 of the Blackburn with Darwen Borough Local Plan Part 2.

- 5.3 Within the first available planting season following the issuing of this decision, the landscaping scheme as shown on the approved plan 'Site Plan (1:200) (amendment dated 16/03/2023)' must have been implemented in its entirety. Any tree that is lost, felled, removed, uprooted, dead, dying or diseased or is

substantially damaged within a period of ten years thereafter shall be replaced with a specimen of a similar species and size, during the first available planting season following the date of loss or damage.

REASON: In order to ensure soft landscaping measures are provided in support of the development, in the interests of the visual amenity, and to comply with the requirements of Policy 11 of the Blackburn with Darwen Borough Local Plan Part 2.

#### Case specific Informative Note

5.4 The Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in the floodplain of a main river if the activity could affect flood flow or storage and potential impacts are not controlled by a planning permission.

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

## **6.0 PLANNING HISTORY**

6.1 No relevant planning history.

## **7.0 CONSULTATIONS**

7.1 BwD Arboricultural Advisor – The development would not have any particular or notable impact on trees or shrubs.

7.2 BwD Drainage – No objections.

7.3 Environment Agency – We have no objection to the retention of the existing temporary fencing around the site. The Environment Agency's Flood Map for Planning indicates that the site lies within Flood Zones 2 and 3. The site may act as a route for overland flows during a flood and therefore we would recommend that, should the applicant wish to replace the existing temporary fencing with a more permanent solution, any proposed permanent fence should

be open structured at the bottom or at least a mesh style fence to allow the free passage of water.

Should the proposals be modified to include a permanent fence or other development, we would remind the applicant of the flowing requirements additional to planning approval.

(Update) The River Darwen, Watery Lane and Clough Street Bypass Culvert passes underneath the site and this watercourse is a designated, statutory, main river. We therefore object to the development as currently proposed.

Reason – The proposed replacement V -mesh fencing for the temporary Hera type fencing specification requires ground excavation and a 600mm dug foundation to fix the posts. The excavations required could compromise the integrity of the culvert beneath the site, no details regarding the excavations have been provided.

Overcoming the objection – The applicant should provide construction details and a methodology to demonstrate there will be no detriment to the integrity of the culvert.

(Update) Following confirmation of foundation details we remove our objection to this application on flood risk grounds, however the works still involve erecting a structure (whether temporary or permanent) in, over or under a main river. The proposals also include tree planting over the culvert. A permit may therefore be required as part of the Environmental Permitting (England and Wales) Regulations 2016.

#### 7.4 Darwen Town Council

#### 7.5 Ward Cllrs

#### 7.6 Summary of Public Responses

- The Applicant may not own the land
- A site notice has not been displayed advertising the application
- The existing fencing looks unsightly
- Private views are effected by the existing fencing
- The proposed trees may overshadow adjacent property once mature
- The existing fencing is only for temporary use
- A trip hazard is caused by the blocks supporting the fencing
- There is no functional purpose for the fencing
- Landscape maintenance is prevented by the fencing
- The existing fencing runs adjacent to the cottages on Clough Street

#### 8.0 **CONTACT OFFICER:** Christian Barton – Planning Officer

#### 9.0 **DATE PREPARED:** 04<sup>th</sup> April 2023

## 10.0 SUMMARY OF REPRESENTATIONS

### **Objection – Rachel Nicholson, 1 The Clough, Darwen. Received: 28/12/2022.**

I have received notice of an application to retain the fence on land at Watery Lane.

My concern is that the current fence is a temporary metal fence left by the environment agency when the work was done on the culvert a few years ago. It is not very aesthetically pleasing to look at and if this was to become a permanent fence I feel a more suitable structure should be put in its place in keeping with the surrounding area rather than looking like a building site which it currently looks like.

I would be grateful if my concerns could be noted on this matter.

---

### **Objection – Nicola Howarth, 1 The Mews, Thompson Street, Darwen. Received: 27/01/2023**

Hi thanks for the information.

How do I go about opposing the planting of 6 native alders.

These grow very quickly to approximately 20-30 m.

This will result in blocking light onto my house and gardens.

---

### **Objection – Maxine Walsh, The Old Function Room, Darwen. Received: 03/02/2023.**

Good morning

I would like to oppose the planning for the construction of a fence around the plots of land between Spring Vale Gardens and Clough Street Darwen. The fence has been there already for around two years. It is an eyesore and doesn't look very secure.

I run the local pub next door, and as you can imagine this has had an impact on my business.

I have rented this car park over the last eight years for my business and my landlord and the church have used it prior to this. We have concerns over the ownership of the land.

---

### **Objection – Amanda, 20 Watery Lane, Darwen. Received: 06/02/2023.**

Hi it's Amanda from 20 Watery Lane. We objected to the fencing across the road. It will spoil the view from my front windows.

---

### **Objection – Abby Conlon, 65 Spring Vale Garden Village, Darwen. Received: 13/02/2023.**

Hello, I would like to formally object to Planning Application 10/22/1152 - for retention of fencing on the land at the bottom of Watery Lane. I have included photos of the railings for your reference.

Please note, my objection is not to the wooden fencing in place which already prevents cars entering the land - by this, I refer to the knee height wooden fencing around the perimeter, the padlocked 5ft double wooden gate or large boulders in place where wooden fencing isn't - I only object to the metal 'temporary' railings.

I have attached photos showing the railings, the wooden fencing and gate and the obstruction of the footpath.

### **Structure of the railings**

- The metal railings have been in situ for well over a year. This would indicate that they are now a permanent fixture. They are intended for temporary use - and are sold under Bloknmesh fencing where the website clearly states that they are 'temporary'. [Temporary Fencing | Buy or Hire | Blok 'N' Mesh \(bloknmesh.com\)](#) Temporary fencing is intended for construction sectors or other industries. The land is in a residential area, has a row of cottages backing onto it, and facing it and is used for neither construction or industrial purposes.

As a result of only being temporary fencing, since it has been in place, several issues have arisen:

- The lightweight rubber bases extend onto the footpath on the hill next to the Function Room pub - creating a trip hazard. They move fairly frequently, so in Winter when it is dark their location cannot be predicted.
- The bases prevent the council maintaining the strip of grass between the land and the pavement. Until last summer, this was well maintained via strimming and weed control. This has resulted in overgrown weeds and grass in the summer, thus affecting the visual amenity of the area.
- Two weeks ago, two panels opposite the Function Room pub came down, obscuring the road, meaning they had to be moved back onto the land and the land owner reassembled them, leaving the rubber base in the footpath again.
- The panels are not sturdy enough to consistently withstand poor weather, as discussed above. This again is an indication that they should not be used long term.
- The railings have gaps at either end that are large enough to fit a person through and the existing wooden fencing and gate would already prevent a vehicle entering the land. Therefore this indicates that there is no 'functional' or security purpose that the railings serve.
- No wind load calculation has been carried out – the railings are dangerous, not permanently fixed and if they fall again will continue to create a trip hazard.

### **The Design of the railings**

- The bottom of Watery Lane has a number of properties and cottages. It is a residential area. Temporary metal railings are not in keeping with the character of the area due to being intended for construction and industrial purposes. Some of the railings run directly behind the row of cottages on Clough Street and by comparison to the local area, they ignore local design.
- There are no other temporary metal railings where works are not taking place in the area. Therefore these stand out and as well as looking ugly affect the visual amenity of the area.



- The materials of the temporary railings do not match the long standing and current aesthetic of the area which is brick and stone walls or wooden fencing.
- A visual amenity assessment has not been carried out to consider the impact the railings are having on the local area.

### **The Land**

Many residents and myself included were under the impression that the land was owned by the council and that the railings had been put up and forgotten about. Since finding out that the land is in fact privately owned, the local councillor has expressed concern, as have other residents about the temporary railings staying.

Residents have not been sent letters notifying them of the submission of the application which would have provided them the opportunity to object.

### **Concluding Points**

I fully appreciate and respect the right to fence off and protect land and property.

However, as previously stated, the existing wooden fencing (to which I have no objection) prevents vehicles from entering and the land is left as a closed car park - nothing is stored or left on there, no one has reason to access it other than the owner of the land. This therefore negates the need for the temporary metal fencing. Due to poor quality and gaps at either end, the temporary metal railings (which I do object to), do nothing in addition to the wooden fencing and would not stop a person entering the site if they so wished on foot.

The temporary metal railings do not fit in with the existing aesthetic or local design of the area, they are not being used within the manufacturer's recommendations as they are no longer 'temporary', they have not been risk assessed for wind load, they are flimsy and the bases are prone to movement - particularly onto the path opposite the pub, creating a trip hazard. The temporary metal fencing prevents the maintenance of the strip of grass between the land and the pavement at the bottom of Watery Lane, which again affects the aesthetic of the area, and I suspect some parts of the fence or bases may also encroach onto council land.

Neither the structure or design of the railings are fit for purpose or the environment in which they are being used, and I would request that planning permission for their retention is denied and that it is the metal fencing that is specified within the denial.

Please acknowledge receipt of this objection email.







**Objection – Janet Knowles, 45 Jacks key Drive, Darwen. Received: 14/02/2023.**

To whom it may concern,

I have been made aware via Facebook of an application to erect high metal fencing on land at the bottom of Watery Lane, Darwen.

I wish to lodge my objection for the reasons listed below:

1. A metal fence is not in keeping with the design of other structures in this area, which are predominantly brick, stone and wood.
2. If the aim is to prevent cars from parking on this land, then the wooden fence, boulders and gate currently in place are sufficient to achieve this.
3. The applicant has stated that there has been an issue with fly-tipping at the site but neither I, nor anyone else I have spoken to about this, has ever seen fly-tipping here. In addition, the proposed wooden gate is only 5 feet high, so there doesn't appear to be a rationale for having the fence built higher. The adjacent pub has CCTV too, which would be a deterrent to any future fly-tipping.
4. The cottages on Clough Street, the Function Room and the other houses in the vicinity are quaint in style, completely different in nature from this proposed fencing, which would adversely affect the visual amenity of the area.
5. Although I don't live in the immediate vicinity, I enjoy walking my dog in this area and have thought for many months what an eyesore this high metal fence is, and how it spoils this residential area. I have no objection whatsoever to the wooden fence remaining, or even the erection of a more sturdy wooden fence, but I feel that it is wholly inappropriate to have a permanent structure of this industrial nature at this location.

I was surprised, when I saw on Facebook last weekend, that this planning application had been submitted. No notices have been posted, either on the fence or nearby lampposts for example, to inform residents; neither has anyone received notification to their home address to inform them of the application and their right to object. I find this concerning as the deadline for lodging an objection is next week.

---

**Objection – Brad Langford, Cranberry Meadows, Darwen. Received: 21/02/2023.**

Good morning.

I have noticed a planning application for the owner of a plot of land on Watery Lane Darwen to erect a permanent metal perimeter fence ref 10/12/1152.

I am a resident and home owner on the Cranberry Meadows development on Cranberry Lane. I pass by this plot daily and would like to object to this fencing becoming permanent.

There is currently a wooden small boundary in place around this plot and a locked wooden gate that is much more in keeping with the local environment and aesthetics. I feel a metal fence on a permanent basis makes the area look untidy and would likely result in the plots upkeep being neglected over the long term such as uncontrolled undergrowth making its way over the pavement.

---

**Objection – Jennifer Saul, 15 Crosby Close, Darwen. Received: 21/02/2023.**

Good evening

I'm writing to object against the above planning application.

This Harris type security fencing is not fit to be a permanent fixture. These flimsy fences are not safe to be used long term.

---