

Planning Committee Report	
Planning Ref:	FUL/2020/2761
Site:	Land to the South of the Cemetery Lodge, Canley Crematorium, Cannon Hill Road, CV4 1DF
Ward:	Wainbody
Proposal:	Erection of a sound screen, to the land south of Cemetery Lodge within the Canley Crematorium
Case Officer:	Joshua Veeranna

SUMMARY

The proposal is for the erection of a 2.5-2.7m high 62.5m long acoustic fence along the southern dividing boundary between the Canley Cemetery yard and properties off Jacob Drive (Numbers 1 and 2). The new screen will be single sided, of a vertical timber board construction (Noise Wall). The area of the storage/maintenance yard is approximately 1163 sq. m.

The main issues to consider are: principle of development, the impact upon the character of the area, the impact upon neighbouring amenity, noise, ecology and trees.

BACKGROUND

The proposal site is located within Canley Crematorium. On the north side of the proposed fence is a yard used for the storage of vehicles and machinery which forms part of Canley Crematorium and is owned by Coventry City Council. The residential border of Jacob Drive to the South is marked by a number of tall evergreen trees, forming a green edge to the conservation area.

It has been confirmed by the applicant, on 18.9.2021, that the

...Grave diggers and Gardeners were moved into the service yard in mid to late 1990's following the land being sold off. Streetpride have had a presence on site from around 2008.

KEY FACTS

Reason for report to committee:	5 objections against the officer recommendation. Councillor Blundell has also requested that the case goes to committee
Current use of site:	Storage/maintenance yard. Wider area is a Crematorium/Cemetery
Proposed use of site:	No change of use

RECOMMENDATION

Planning committee are recommended to delegate the granting of planning permission to the Strategic Lead - Planning, subject to the conditions listed in the report.

REASON FOR DECISION

The proposal is acceptable in principle.

The proposal is acceptable in design

The proposal will not adversely impact upon highway safety.

The proposal will not adversely impact trees

The proposal will not adversely impact upon the amenity of neighbours.

The proposal accords with Policies GE4, DE1, HE1 and HE2, together with the aims of the NPPF.

BACKGROUND

SITE DESCRIPTION

The proposal is located within Canley Crematorium, to the south of the Cemetery Lodge and borders the north side of the Ivy Farm Conservation Area. To the south there are several properties, namely 1 and 2 Jacob Drive, with gardens bounded partially by evergreen trees.

The site can be accessed via Cannon Hill Road, to the east of the site. The rear area of the Cemetery lodge, which forms part of the storage/maintenance yard, is not typically accessible by the public.

APPLICATION PROPOSAL

The proposal is for the erection of a 2.7m high 62.5m long acoustic fence along the southern dividing boundary between the Canley Cemetery yard and properties off Jacob Drive (Numbers 1 and 2). The new screen will be single sided, of a vertical timber board construction (Noise Wall), and will be supported by steel "H" posts, incorporating a gravel rail at ground level. This will replace an existing 1.7m to 1.75m steel fence.

PLANNING HISTORY

There have been a number of historic planning applications on this site; the following are the most recent/relevant:

<u>FUL/2019/2534</u>	Erection of a modular garage. Approved 04/12/2019
<u>AD/2012/2350</u>	Non-material amendment involving alterations to rear extensions changing from 'conservatory' style extensions to external brickwork to planning permission FUL/2012/0578 granted on 11/06/12 for extensions to cemetery lodge to provide improved staff/public facilities and demolition of small outbuilding. Approved 15/01/2013
<u>FUL/2012/0578</u>	Extensions to cemetery lodge to provide improved staff/public facilities and demolition of small outbuilding. Approved 11/06/2012

<u>AD/2011/0329</u>	Submission of amended details involving - insertion of louvre doors and roof vents - to planning permission reference 44116/D. Approved 28/04/2011
<u>R/2008/1513</u>	Elevational alterations to crematorium building and provision of substation with associated enclosure. Approved 26/06/2009
<u>R/2006/0065</u>	Erection of single storey temporary building. Withdrawn 05/02/2007
<u>S/2005/4308</u>	Erection of Chapel of Remembrance. Decision date not listed
<u>L/1997/1631</u>	Gas meter house. Approved 23/01/1998
<u>L/1997/1402</u>	Extension to form additional crematorium building. Approved 05/12/1997
<u>L/1991/1915</u>	New chapel and ancillary buildings, provision of temporary chapel, associated access roads and car parking provision. Approved 19/03/1992

POLICY

National Policy Guidance

National Planning Policy Framework (NPPF). The NPPF sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system only to the extent that is relevant, proportionate and necessary to do so. The NPPF increases the focus on achieving high quality design and states that it is "fundamental to what the planning and development process should achieve".

The National Planning Practice Guidance (NPPG) adds further context to the NPPF and it is intended that the two documents are read together.

Local Policy Guidance

The current local policy is provided within the Coventry Local Plan 2016, which was adopted by Coventry City Council on 6th December 2017. Relevant policies relating to this application are:

Policy GE4: Tree Protection

Policy DE1: Ensuring High Quality Design

Policy HE1: Conservation Areas

Policy HE2: Conservation and Heritage Assets

Supplementary Planning Guidance/ Documents (SPG/ SPD):

SPD Trees and Development

CONSULTATION

Consultee responses

No Objections received from:

- CCC Planning Policy
- CCC Archaeology
- CCC Urban Design
- CCC Highways
- Legal (external)
- CCC Ecology

No objections subject to conditions/Informatives have been received from:

- CCC Tree Officer- request an appropriate Pre-commencement Tree Protection (as satisfactory supplied) Condition
- CCC Conservation- request an informative to ensure only necessary removal of vegetation occurs
- CCC Environmental Protection- request a relevant condition for the maintenance of the fence.

Public consultation responses

Immediate neighbours were notified on 17/11/2020, a site notice was posted on 20/11/2020, and a press notice was displayed in the Coventry Telegraph on 26/11/2020

Although multiple comments have been submitted, five letters of objection from separate addresses have been submitted. In summary, they raise the following material planning considerations:

- a/ The survey may not account for all the potential noise sources, reading may have been taken in isolation, and could include errors
- b/ Neighbours not given an opportunity to comment on any draft noise report.
- c/ The noise level is seen as unacceptable next to a residential area, and various machinery has been noted to be used on site, including a wood chipper
- d/ Possible change of use of the “lodge yard”
- e/ There could be a further loss of surrounding vegetation, and wildlife as a result of the associated works

Any further comments received will be reported within the late representations document.

Alongside these comments, on 26.11.2020, Cllr Blundell noted

Further note I am supporting residents neighbouring the application site and would wish to understand how objections on the following planning grounds will be addressed.

1. Loss of light or overshadowing.
2. Overlooking and loss of privacy.
3. Visual amenity
4. Noise and disturbance resulting from use.
5. What assurance re any hazardous materials that may be used in the construction of the screen.

APPRAISAL

The main issues in determining this application are; the impact upon the character of the area, the impact upon neighbouring amenity, noise, ecology and trees.

Principle of development

The Council is required to make decisions in accordance with the statutory development plan unless material considerations indicate otherwise. (Section 38(6) PCPA 2004 and Section 70(2) TCPA 1990). The statutory development plan is the Coventry Local Plan adopted in December 2017. The National Planning Policy Framework (NPPF) is a key material planning consideration.

Legal, on 28.12.2020, noted that the assessment should be made strictly for the erection of the acoustic fencing. From this standpoint, the primary considerations would be for design/visual amenity, placement, materials, and impact on neighbouring amenity. As such, Policy DE1 related to design, and Policies HE1, and HE2 in connection to a Conservation Area would be applicable.

Impact on character of the area

Policy DE1 of the Local Plan seeks to ensure high quality design and development proposals must respect and enhance their surroundings and positively contribute towards the local identity and character of an area.

The National Planning Policy Framework, paragraph 127, states that "Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

The NPPF further states (paragraph 130) that

Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development.

The proposal should also accord with Policy HE2, in particular parts 2 and 3 of the policy.

2. Proposals likely to affect the significance of a heritage asset or its setting should demonstrate an understanding of such significance using currently available evidence.

3. Development proposals involving heritage assets in general and listed buildings in particular, should acknowledge the significance of the existing building and the area by means of their siting, massing, form, scale, materials and detail.

Although the fence may be viewed from Jacob Drive, and partially from Cannon Hill Road, the fence is not deemed overbearing, and will be suitable in this location. Conservation and Urban Design are satisfied that the development adheres to Policy HE2 and DE1. The proposed development is considered to have been designed to enhance the area having regard to the existing physical context of the site, and the materials used are appropriate for the area.

Impact on residential amenity

There will be little to no loss of light or overshadowing due to the height of the fence. Overlooking and loss of privacy will not be an issue, and it is noted that the neighbours at 1, and 2 Jacob Drive will likely experience an increase in privacy from the adjoining yard. No issues have been flagged regarding hazardous materials that may be used in the construction of the screen.

Noise and disturbance resulting from use has been considered by the associated Noise Report. To confirm, Environmental Protection (EP) were contacted, on 27.11.2020, after the initial consultation. On 04.12.2020, EP note that no further reports are needed as the survey should have accounted for the main noise sources.

Other- Legal Considerations

It is noted in the neighbour comments that the erection of the fence is tied closely with the use of the associated yard. It was stated that, "the simple increase in size of the

yard and consequent increase in noisy activity I believe in law would be considered a change of use”.

Additionally, the following High Court case was cited in another comment

R (on the application of Childs) v First Secretary of State, 18 October 2005 (High Court). The High Court has considered whether intensification of use of a caravan site amounted to a material change of use. It held that an increase in the number of caravans located on the site would result in a change of character of the use for which planning permission would be required. Prior to this case, the issue of whether an increase in number was capable of amounting to a material change of use had not been definitively determined by the courts

Planning Enforcement has investigated these allegations and concluded that no authorised change of use or breach of planning control has been identified.

Additionally, an independent legal expert, on 18.02.2021, investigated whether a material change of use has taken place that would require planning permission. To avoid paraphrasing, the full segment has been included below

In the Planning Practice Guidance at paragraph 011, this is the part of the Planning Practice Guidance which is headed When is Permission Required; it states the following at that paragraph.:

“A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of a material change of use; however, it is linked to the significance of the change and the resulting impact on the use of land and buildings. Where a material change of use that has taken place is a matter of fact and degree then it will be determined on the individual merits of each case”.

In the case of R (on the application of Childs) v First Secretary of State 18 October 2005 the High Court considered whether intensification of the use of a caravan site amounted to a material change of use. It held that an increase in the number of caravans located on the site would result in a change of character of the use for which planning permission would be required. As a consequence from this case law, we need to ask the question if the use of the crematorium site buildings for the operation of parks equipment, I understand this is no more than two vehicles, would change the character of the use as a crematorium; we also need to consider whether this use has intensified in such a way that it could be regarded as a material change of use.

I have reviewed particularly one response you have had in relation to the issues at the crematorium site raised by local residents where reference is made to the Childs v Secretary of State case in 2005. The local resident quotes from the High Court case in the following way: “Any change, in order to constitute a material change of use by intensification, must be agreed that it amounts to a change in the character of a use. In looking at the character of this use, however, it is legitimate to take into account the impact, in planning consequences, of the change in the immediate surroundings outside the planning unit. I consider that that would exclude examining such matters as the

appearance of the site in the landscape and its impact on the visual amenity of the area; the activity taking place on the land; the traffic generated by the use both in terms of the number of vehicles and patterns of movement and also the effect on the immediate surrounding roads”.

In my opinion the important points to be drawn from the Childs case is whether intensification of the use of a site amounted to a material change of use; that the new use would result in a change of character of the planning unit. In my consideration of this matter I have taken the planning unit as the crematorium. I cannot see that the limited operations of the park service at the crematorium can be regarded as changing the character of the planning unit, particularly when the operation of the crematorium requires maintenance of graves, digging of graves and the maintenance of trees, flowerbeds and grassland. I cannot see that the limited operation of the park service to assist with the maintenance of park areas in other parts of the city can be regarded as an intensification of the use of the crematorium site sufficient to create a material change of use. A material change of use is linked to the significance of the change and the resulting impact on the use of land and buildings. In my opinion a significant change resulting impact on the use of land and buildings has not taken place when considering the overall use of the crematorium. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of the case; considering the situation here I am of the opinion considering as a matter of fact and degree, that a material change of use has not taken place.

If anything the additional operations at the crematorium can be regarded as de minimis particularly taking into consideration the overall operation of the crematorium and also the fact that there is a need to maintain the park land i.e. flower beds, trees and grassland within the area of the crematorium planning unit.

In conclusion I am satisfied that a material change of use has not taken place taking into consideration the additional park operations from the crematorium and that the additional use is de minimis when considered against the use of the crematorium site

Having taken all of the above into account, it remains my professional opinion that whilst there may have been a minor or ‘de minimis’ change in the nature of the use undertaken on the land to the rear of the Cemetery Lodge; I do not consider those relatively minor changes themselves constitute a ‘material change of use’ which triggers the requirement for planning permission, as overall the primary use of the land has not changed and the predominant use of the land to the rear of the Lodge remains ancillary to that primary lawful use.

Planning are satisfied that this issue has been investigated thoroughly and can proceed to determine the proposal as it currently stands.

Equality implications

The proposal has been reviewed and it is considered there are no known equality implications as a result of this proposal, in accordance with the Equality Act 2010.

Conclusion

The proposed development is considered to be acceptable in principle and will not result in any significant impact upon neighbour amenity, ecology or infrastructure, subject to relevant conditions. The reason for Coventry City Council granting planning permission is because the development is in accordance with Policies GE4, DE1, HE1, and HE2 of the Coventry Local Plan 2016, together with the aims of the NPPF.

CONDITIONS:/REASON

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.

Reason: *To conform with Section 91 of the Town and Country Planning Act 1990 (as amended)*

2. The development hereby permitted shall be carried out in accordance with the following approved plans:
Environmental Noise Assessment, dated 10.08.2020
Site Plan "Proposed Acoustic Fence Location", dated 22.10.2020
Location Plan "Canley Cemetery", dated 16.07.2019
Noisewall Design of Screen DWG No: RANS/Noisewall ©/Steelpost/001 Acoustics Test Information, dated 17.06.2010
Indicative map to show extent of the Service Yard, dated 25.01.2021
Preliminary Arboricultural Assessment, January 2021

Reason: For the avoidance of doubt and in the interests of proper planning.

3. No plant and/or machinery shall be operated in the service yard at any time.

Reason: *To safeguard the amenities of the adjoining occupiers of the development in accordance with Policy DE1 of the Coventry Local Plan 2016.*

4. There shall be no use of the service yard before 07:00 hours or after 17:00 on any day unless in an emergency.

Reason: *To safeguard the amenities of nearby occupiers in accordance with Policy DE1 of the Coventry Local Plan 2016*

5. Trees shall be retained in accordance with the submitted details and within three months of the erection of the sound screen, replacement boundary planting shall be in place to compensate for those trees removed in accordance with details which shall first be submitted to and approved in writing by the local planning authority. All planting shall be carried out in strict accordance with the approved details within the first planting and seeding seasons following the commencement of the development. Any tree(s) or shrub(s) which within a period of five years from the

completion of the development dies, is removed or becomes; in the opinion of the Local Planning Authority; seriously damaged, defective or diseased shall be replaced in the next planting season with another of similar size and species. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS 8545:2014 Trees: from nursery to independence in the landscape - Recommendations and BS4428 - Code of Practice for General Landscape Operations.

Reason: *To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policy DE1 of the Coventry Local Plan 2016*

6. Once installed the acoustic fence shall be regularly inspected and maintained in its approved state at all times thereafter.

Reason: *To prevent the deterioration of the structure, and to safeguard the amenities of the adjoining occupiers, in accordance with Policy DE1 of the Coventry Local Plan 2016.*