
Application for Planning Permission

19/00384/REG3

Change of use from public footpath to private garden AT 42
Dresden Close, Corby**1. Site and Surroundings**

- 1.1. Dresden Close is a residential cul-de-sac within the Danesholme Estate. 9 residential properties are located at the end of the cul-de-sac with driveways radiating off the highway. Foot paths run through the cul-de-sac and wider area providing pedestrian access to public open space to the north and east of Dresden Close.
- 1.2. 42 Dresden Close is mid-terrace property. A footpath runs from the highway's edge to a window looking into the dwelling's primary living space.

2. The Proposal

- 2.1. The application seeks to change the use of this footpath into residential amenity space.

3. Site History

- 3.1. A footpath would have originally run between the front gardens of 42 and 43 Dresden Close, through an undercroft between the two properties, connecting to a footpath running along the northern edge of the wider area.
- 3.2. Planning application reference 03/00465/COU saw the change of use of some of the public open space to private residential garden, including the undercroft space, removing any direct pedestrian connectivity between this element of Dresden Close and the footpath to the north. Planning application reference 14/00236/DPA saw a single storey extension infill this undercroft, further permanently and physically removing this connection.
- 3.3. The footpath that originally ran to the undercroft remains unaltered, resulting in a footpath running from Dresden Close, between two driveways, to 42 Dresden Close's kitchen window.
- 3.4. 14/00236/DPA – Single storey side and rear extension. Application permitted.
- 3.5. 03/00465/COU – Change of use of public open space to private residential garden land. Application permitted.

4. Planning Policy

- 4.1. Policies 8 and 15 of the North Northamptonshire Joint Core Strategy (2016)
- 4.2. The National Planning Policy Framework (2019)

5. Internal Consultations5.1. Property Officer

No comments.

5.2. Environmental Health Officer

No comments.

5.3. Legal Officer

As discussed yesterday an applicant who wishes to incorporate a path into their garden would have to apply for the planning permission first which they can do then they would have to obtain the stopping up order and then they would purchase the land from us

They would do this in this order because until they have the pp and the stopping up order they would have no certainty that they would want the land

6. External Consultees6.1. Highways Officer

Recommendations:

- 6.1.1. The LHA [Local Highways Authority] objects to the approval of this application on the grounds that the footpath is public highway.
- 6.1.2. Observations:
- 6.1.3. The proposal is the conversion of a section of highway into a private garden. The very purpose of a highway is to allow the public to freely pass and repass over it. Conversion of this section of highway into a private garden would not allow the public to freely pass over the land and therefore the LHA must object.
- 6.1.4. The applicant may wish to consider applying to stop up this section of highway. The LHA is unlikely to have any objection in principle to the removal of this area of highway on the grounds that it serves little or no public utility.
- 6.1.5. This advice is given without prejudice to the views which may be expressed by Northamptonshire County Council as Highway Authority, should an application be made.
- 6.1.6. The application site is not affected by a Public Right of Way.
- 6.1.7. Planning Permission does not give or imply permission for adoption of new highway or to implement any works within the highway and / or a Public Right of Way.

7. Advertisement and Representations

- 7.1. Neighbour letters sent 31/07/2019.
- 7.2. Site notice posted 08/08/2019.
- 7.3. No representations received.

8. Key Determining Issues

- 8.1. Impact upon the Street Scene
- 8.2. Impact upon Neighbouring and Occupier Amenity
- 8.3. Highways Connectivity

9. Officer Assessment

9.1. Impact upon the Street Scene

- 9.1.1. There will be a positive impact upon the street scene. Currently there is a footpath running towards a residential property's window. This is an incongruous and unusual feature within a quiet residential cul-de-sac. Changing the use of this land will relieve the street scene of this unusual feature.
- 9.1.2. Moreover, as the footpath does not naturally read to the general public as a footpath, due to it clearly leading nowhere within the public domain, it has resulted in a mismatched patchwork of hard surfacing types between the driveway of 42 Dresden Close, the footpath and driveway of 43 Dresden Close. Following the change of use of this land, the owner would be able to bring uniformity to the hard surfaces utilising their permitted development rights, further improving the street scene.
- 9.1.3. As such, the proposed change of use would comply with Policy 8 of the NNJCS (2016) and the NPPF (2019) in relation to the developments relationship to the street scene.

9.2. Impact upon Neighbouring and Occupier Amenity

- 9.2.1. The change of use would vastly improve the amenity of both 42 and 43 Dresden Close. Members of the public could still freely use the footpath to walk right up to 42 Dresden Close's window, which is just on the un-demarcated boundary to 43 Dresden Close. This could potentially lead to privacy concerns, noise issues and fears of crime. Changing the use of this land would mitigate against this.
- 9.2.2. As such, the proposed change of use would comply with Policy 8 of the NNJCS (2016) and the NPPF (2019) in relation to the enhancement and protection of future occupiers and neighbouring amenity.

9.3. Highways Connectivity

- 9.3.1. In principle, the loss of a footpath would be contravene policies 8 and 15 of the NNJCS (2016) and chapter 8 of the NPPF (2019) which place a great emphasis on street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods. This emphasis on protecting and enhancing pedestrian connectivity would imply the safeguarding of pedestrian connections.
- 9.3.2. However, this interpretation does not take into account the function of the footpath. The existing footpath, running only towards a window, serves no reasonable public function or connection within the neighbourhood. The original permission to sever this link was granted in 2003, with a 2014 permission effectively removing any opportunity to reinstate the connection following the infill of the previous undercroft with internal living space.
- 9.3.3. As such, the benefits raised in the previous two sections of the officer assessment (Impact upon the Street Scene and Impact upon Neighbouring and Occupier Amenity) and the lack of practical function of the existing footpath and limited probability of it ever being brought back into use should be balanced against the loss of a pedestrian footpath. This process draws logically to a conclusion that the loss of this section of footpath would be acceptable.
- 9.3.4. The Local Highways Authority have drawn a similar conclusion, although at this stage are still formally objecting. Whilst they are objecting to the loss of a footpath in principle, they state 'The applicant may wish to consider applying to stop up this section of highway. The LHA is unlikely to have any objection in principle to the removal of this area of highway on the grounds that it serves little or no public utility.' Following the successful acquisition of the Stopping Up Order, the LHA would fully support the application.
- 9.3.5. Advice sought from our Planning Locum Legal Officer indicates that planning permission should be achieved first, followed by the Stopping Up Order. This direction will be included within an informative on any positive decision.
- 9.3.6. As such, the proposed loss of the footpath would be an acceptable deviation from Policies 8 and 15 of the NNJCS (2016) and chapter 8 NPPF (2019) due to its lack of function and wider benefits to amenity and the street scene.

10. **Conclusion**

- 10.1. The loss of a pedestrian footpath when balanced against the benefits to street scene, neighbouring and occupier amenity and the lack of functionality of this portion of footpath is considered an acceptable deviation from policy. As such, the proposal is considered acceptable and compliant with Policies 8 and 15 of the North Northamptonshire Joint Core Strategy (2016) and the National Planning Policy Framework (2019).

11. **Recommendations: Approve subject to the following conditions:**

1. Full planning permission

The development hereby permitted shall begin before the expiration of three years from the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. List of Approved Plans and Drawings

The development shall conform in all aspects with the plans and details shown in the schedule of plans as listed below, unless variations are agreed by the Local Planning Authority.

Reason: For the avoidance of doubt and to ensure a suitable form of development in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

Informative

The applicant should note that following the receipt of a favourable decision notice, they should pursue a 'Stopping Up Order' from the Local highways Authority in line with the advice

received from Corby Borough Councils Planning Locum Legal Officer. This must be in place before the sale of the land can be finalised.

12. Human Rights Act 1998

12.1. Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8/or Article 1 of the First Protocol of the Act and consider that it is appropriate.

12.2. Officers have also considered the interference with the human rights of the applicant under Article 8/and or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of the property in accordance with the general interest. The interferences are therefore justifiable and proportional.

13. Section 17 of the Crime and Disorder Act 1998

13.1. Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with Section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to grant planning permission.

Officers to Contact:

Stuart Moseley

Tel No: 01536 464141

Email: stuart.moseley@corby.gov.uk