

SCHEDULE A: Applications with Recommendation

21/0657

Item No: 02

Date of Committee: 22/10/2021

Appn Ref No:
21/0657

Applicant:
Mr George Kinnaird

Parish:
Carlisle

Agent:

Ward:
Belah & Kingmoor

Location: 11 Newfield Park, Carlisle, CA3 0AH

Proposal: Removal Of Hedge And Erection Of 1.8M High Boundary Fence To Incorporate Additional Land Into Domestic Curtilage

Date of Receipt:
29/06/2021

Statutory Expiry Date
24/08/2021

26 Week Determination
13/09/2021

REPORT

Case Officer: Barbara Percival

1. Recommendation

1.1 It is recommended that this application is approved with conditions.

2. Main Issues

- 2.1 Impact of the proposal on the character of the area
- 2.2 Impact of the proposal on the living conditions of neighbouring residents
- 2.3 Impact of the proposal on the adjacent Public Footpath 109003
- 2.4 Scale, design and visual impact of the fence
- 2.5 Impact of the proposal on archaeology
- 2.6 Impact of the proposal on biodiversity
- 2.7 Other Matters

3. Application Details

The Site

3.1 Number 11 Newfield Park is a detached dwelling located on the eastern periphery of the Newfield Development. The property is surrounded by residential properties to the north, south and west whilst along its eastern boundary is California Lane along which Public Footpath 109003 runs.

The Proposal

3.2 The application seeks full planning permission for the incorporation of a strip of land immediately behind the rear boundary of 11 Newfield Park and the adjacent public footpath. The land would have a depth of 2 metres with an overall length of approximately 26 metres and is proposed to be enclosed by a 1.8 metre high wooden fence, similar in appearance to others within the immediate vicinity. The fence would be set back from the outer edges of the hard surfaced public footpath.

4. Summary of Representations

4.1 This application has been advertised by the direct notification of two neighbouring properties and the posting of a site notice. In response, nine representation of objection have been received.

4.2 The representations identify the following issues:

1. existing path would make an excellent cycle way;
2. narrowing of path may reduce the opportunity to make the path into a cycle way;
3. records indicate that this lane was the main route into the city and dates back to the Romans;
4. definitive plan may be inaccurate and may actually be a restricted byway for horses and carts;
5. works should take place outside of bird nesting season;
6. potential impact on biodiversity.

4.3 Councillor Davison has also raised concerns which have been reproduced in full for Members. In summary, the issues raised centre on:

1. question how and whether the proposed development would impact on the future development of California Lane into a traffic free route for pedestrians and cyclists in the future;
2. there is planning approval for a significant housing estates to the east of California Lane and this are of open space will become a critical nature corridor; as well as a rout for leisure and also everyday journeys;
3. aware that there are Section 106 monies available to develop this route and would like councillors to have a full understanding of what plans have been made about this route;
4. garden extensions within the area have been approved previously, however; concerns have been raised by a resident as to whether the Highways Department have previously made a mistake as to the width of the route;
5. fences have detracted from the general well-being benefits from getting out into nature;
6. the lane is the route of an old Roman Road;
7. some of the route is classified as a public footpath on the definitive map but given the historical context it would seem that the classification of

restricted byway or bridleway would be more appropriate for this track. If this were to be changed into a cycle way it has to remain wide enough to happen. Advised by a county council official that the width of a cycle way would have to be a minimum of 3 metres;

8. detrimental impact on biodiversity and suggests planting of hedge adjacent California Lane.

4.4 The application was withdrawn from discussion at the previous meeting of the DC Committee in order to consider issues raised by Councillor Davison in a written representation which she requested be read to Members of the committee. This statement has been reproduced in full for Members but in summary, the issues highlighted were:

1. aware that a precedent may have been set by previous applications, however; requests committee considers this application on its own merits;
2. questions status of the highway / footpath along California Lane;
3. a Freedom of Information request has been made by a third party to Cumbria County Council in respect of the status of California Lane and a decision deferred until such time that this information is available;
4. retaining width of lane is critical when the large housing estates to the east of this path is built;
6. loss of biodiversity and visual impact;
7. suggests that a native hedgerow could be planted in lieu of a wooden fence;
8. questions the comments of the county council's Historic Environment Officer;
9. questions the previous consultation responses from the county council's Highways Department in respect of other similar applications.

5. Summary of Consultation Responses

Cumbria County Council - (Highway Authority - Footpaths): - Public Footpath 109003 follows an alignment to the east side of the development area and must not be altered or obstructed before or after the development has been completed, if the Footpath is to be temporarily obstructed, then a formal temporary closure will be required.

In response to questions raised by third parties and the ward councillor the Highways Authority provided an extract of the definitive footpath statement for Public Footpath 109003 together with the definitive map overlaid with Ordnance Survey data to indicate its relationship with Newfield Park (which has been reproduced for Members in the committee papers). This document confirms the width and alignment of the footpath. Furthermore, the Highways Authority has advised that should any aspect of the definitive footpath be questioned / amended this would require an application to be made under Section 53 of the Countryside and Wildlife Act 1981;

The Ramblers: - FP109003 is an ancient FP going back to Roman Times, an artefact, a milestone from this site resides in Tullie House, Carlisle; 2. local 19 century titles may show this to be untaxed it could actually be a "Restricted

Byway” for horses and carts; 3. walking is good for physical, mental and spiritual wellbeing as has been proved since the coronavirus pandemic; 4. This FP connects with other local paths and eventually with LDP’s (Long Distance Footpaths) The Miller’s Way, Hadrians’ Wall Path, Cumbria Way and The Cumbria Coastal Way now the England Coast Path; 5. The Ramblers don’t approve of encroachment, creepage and annexation of PROW’s (Public Rights of Way); 6. Taking over parts of the countryside is unsustainable; 7. Grant Shapps, Secretary of State for Transport. has said that “Walking is good for you and a £338m package is available to increase the number of people adopting active travel as a healthier and more environmentally-friendly way to get around and make walking and cycling safer; and 8. other residents in this area have already annexed some of this land so may have set an illegal precedent.

The Ramblers oppose and object to this Planning Application on the grounds of encroachment, the impact on a nature corridor, large hedgerow removal used by birds for nesting and other wildlife for food and shelter. This 1.8m fencing would become the main landscape feature character instead of the countryside it would dominate and impact on;

Cumbria County Council - Historic Environment: - it was outlined in the original consultation response that the line of California Lane is thought to be a Roman road although, when a section was cut across it 70 metres to the south of the application site during the construction of a new access road, no evidence for a Roman road was revealed. If any remains of a Roman road survive here, the evidence suggests that they would not be in a good state of preservation and so the erection of a short section of fence is unlikely to have a significant impact upon it, therefore, raise no objections to the application.

In response to questions raised by third parties and the ward councillor the further comments of the Historic Environment Officer have been sought and are as follows: *"I am not arguing for or against the application and I support any proposal that protects archaeological remains, including a Roman road. I do not consider however, that there are reasonable archaeological grounds to object to this particular application. The archaeological evidence indicates that (i) the course of the Roman road may not be actually on the line shown on OS maps and (ii) if remains of a Roman road survive on the development site it is unlikely to be in a reasonable state of preservation and so the erection of a short section of fence is unlikely to have a significant impact upon it. This evidence is based on:*

- (i) the results of an archaeological investigation of a 300 metre long section of road at Greymoorhill to the north of the application site indicates that the Roman road may be located 20-30 metres away from the line shown on OS maps. The work was undertaken by a professional archaeological organisation and I visited the site during the work;*
- (ii) the results of an archaeological excavation of a section across the supposed course of the road located 70 metres to the south of the application site where there was an absence of Roman remains and finds of any sort. The work was undertaken by a professional archaeological*

organisation and I visited the site during the work.

To reiterate, I am not arguing for or against the application. I am merely pointing out that there are no reasonable archaeological grounds to object to this particular application based on the evidence highlighted above".

6. Officer's Report

Assessment

6.1 Section 70(2) of the Town and Country Planning Act 1990/Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that an application for planning permission is determined in accordance with the provisions of the Development Plan unless material considerations indicate otherwise.

6.2 The relevant planning policies against which the application is required to be assessed is the National Planning Policy Framework (NPPF), the Planning Practice Guidance (PPG) and Policies SP6, CM4, CM5, GI3 and GI5 of the Carlisle District Local Plan 2015-2030.

6.3 The proposals raise the following planning issues:

1. Impact Of The Proposal On The Character Of The Area

6.4 Planning policies within the local plan seek to respect local landscape characteristics and ensure that development proposals respond to the local context and established street patterns and by making use of appropriate materials and detailing. As highlighted earlier in the report, the application seeks planning permission for the incorporation of a section of land into the domestic curtilage of 11 Newfield Park. The land is located immediately to the rear boundary of the property adjacent to Public Footpath Number 109003 which follows the route of California Lane.

6.5 When assessing this application against the relevant planning policies, sections of California Lane have become overgrown with vegetation, fly tipping and littering has/is occurring and sections of the public footpath appears to be in need of repair. Other properties which also border California Lane along the western edge of the public footpath have incorporated sections of land into their domestic curtilages including the property next door but one, number 39 Newfield Park which was granted planning permission by Members of the Development Control Committee at its meeting in January 2014 (application reference 13/0908).

6.6 The proposal would be similar in scale and design to its close neighbour and others within the immediate vicinity. The land has been enclosed by a wooden fence similar in appearance with other boundary fences along the western side of California Lane. In overall terms, the development is relatively small scale and would not have a significant detrimental impact on the character of the area.

2. Impact Of The Proposal On The Living Conditions Of Neighbouring Residents

- 6.7 Given the scale, boundary treatment, orientation and use of the land in respect of adjoining properties, the proposal is unlikely to have a detrimental impact on the living conditions of neighbouring residents through intensification of use or overlooking.

3. Impact Of The Proposal On The Adjacent Public Footpath Number 109003

- 6.8 Public Footpath 109003 follows California Lane which runs northwards from the eastern end of Public Footpath 109020 for approximately 560 metres before joining California Road. The Newfield Housing Development is located immediately to the west of the footpath.
- 6.9 The application permission for the incorporation of part of a strip of land immediately behind the rear boundary of 11 Newfield Park and the adjacent public footpath 109003. As previously highlighted, the land would have a depth of 2 metres with an overall length of approximately 26 metres enclosed by a wooden fence which would be set back from the outer edges of the hard surfaced footpath.
- 6.10 Cumbria County Council, as Highways Authority, has been consulted and the Countryside Access Officer has raised no objections to the incorporation of the land into domestic curtilage subject to the imposition of an informative ensuring that there is no alteration / obstruction of the public footpath before or after the development has been completed.
- 6.11 It should also be noted that during the determination of the application for number 39 Newfield Park (application reference 13/0908) the Countryside Access Officer advised that the Definitive Map Statement details that Public Footpath Number 109003 has a prescribed width of between 2 and 3 metres, therefore, it does not span the entire width of California Lane. Although the Statement details the relevant width of the footpath, it does not indicate at which points where the width of the footpath should be 2 metres or where it should be 3 metres. Accordingly, at that time the Countryside Access Officer was of the opinion that provided that any works do not reduce the available footpath width to less than 2 metres, when measured from the centre line of the footpath as indicated on the Definitive Map, then these works are not unlawful.
- 6.12 The ward councillor, The Ramblers and third parties have questioned the status of the public footpath and its alignment. The Highway Authority has been made aware of these concerns and its further comments sought. The Highways Authority has confirmed that California Lane is a public footpath and not a highway / cycle way with the width and alignment of the footpath clearly detailed within the definitive footpath statement. Should any aspect of the definitive footpath be questioned / amended this would require an application to be made under Section 53 of the Countryside and Wildlife Act 1981. An extract of the definitive footpath statement and associated map has

been reproduced for Members in the papers following this report.

- 6.13 In respect of this current application and based on the definitive footpath statement and map provided by the Countryside Officer, the line of proposed fence would be located approximately between 3 metres and 5 metres from the route of public footpath number 109003, therefore, there would be no encroachment on the alignment of the public footpath.

4. Scale And Design and Visual Impact Of The Development

- 6.14 The development is visible from the adjacent public footpath which runs along California Lane; however, the scale, design and materials of the boundary fencing are similar in appearance and would follow a similar line to other boundary fences within the immediate vicinity. In such a context, the proposed fence would not form a discordant feature within the immediate vicinity.

5. Impact Of The Application On Archaeology

- 6.15 Concerns have been raised by residents as to the impact of the application on archaeology as a Roman Road lies to the east of Public Footpath 109003. Cumbria County Council's Historic Environment Officer has been consulted and originally detailed that the line of California Lane is thought to be a Roman road although, when a section was cut across it 70 metres to the south of the application site during the construction of a new access road, no evidence for a Roman road was revealed. If any remains of a Roman road survive here, the evidence suggests that they would not be in a good state of preservation and so the erection of a short section of fence is unlikely to have a significant impact upon it, therefore, has raises no objections to the application.
- 6.16 The ward councillor, The Ramblers and third parties have questioned the potential for the development to impact on archaeological remains. Their concerns have been passed to the county council's Historic Environment Officer for further comment. The Historic Environment's further comments have been included in full within Section 5 of this report. In summary, the Historic Environment Officer reiterates that: " ... there are no *reasonable archaeological grounds to object to this particular application based on available evidence*".

6. Impact Of The Application On Biodiversity

- 6.17 Concerns have been expressed by third parties and the ward councillor as to the potential impact on biodiversity through the loss of the existing domestic hedgerow which currently delineates the boundary. This applicant has subsequently detailed the proposed measures to be implemented to mitigate for any loss of biodiversity. These measures include the retention of approximately a quarter of the existing hedgerow within which birds currently nest and the applicant has installed bird boxes. The remaining section, including two large tree stumps, would be removed and replaced with 'bird friendly' bushes with dense foliage and high winter berry content. Adjacent to

the retained strip and within the proposed extended garden area a wildlife pond would be created which would create a new habitat for amphibians and insects and an area of grass sown with meadow flowers would remain uncut to also provide a habitat for insects. Other flowering plants will be grown adjacent to the proposed fence. Furthermore, a wildlife corridor would be created by the insertion of holes in the proposed fence to allow access for garden hedgehogs etc.

- 6.18 Given the scale of the development together with the implementation of landscaping and a wildlife pond it is unlikely that the development would harm a protected species or their habitat. Nevertheless, an informative is recommended drawing the applicant's attention to their requirement to comply with conservation legislation such as the Wildlife and Countryside Act 1981 etc.

7. Other Matters

- 6.19 Objectors and the ward councillor have raised concerns about plans for future cycle routes and the potential for a route to use California Lane. When considering planning applications members have to be aware of material considerations when making those decisions and the weight to give to such matters. Section 106 monies have been set aside for improvements to cycle routes from both the Story and Gleeson housing developments current under construction to the north of this site. At the time of considering this application, there are no fixed plans and no proposed drawings of route improvements between the aforementioned housing developments and the city centre. Without definitive proposals in place, it is not possible to consider how this proposed fencing would impact on those proposals. It is however worth noting that as referenced earlier in the report there have already been extended gardens on the western side of California Lane which would have to be taken into account when any improvements for cycle route provision are made should they be in the vicinity of this site.
- 6.20 The ward councillor has requested that the application be deferred until such time that the findings of a Freedom of Information (FOI) request to Cumbria County Council has been received. At the time of preparing the report, no further information has been provided to the city council. The FOI centred on the status of the public footpath which the Highways Authority has fully responded to in paragraphs 6.8 to 6.13 above.

Conclusion

- 6.21 In overall terms whilst the application site is visible from the adjacent public footpath within the context of the wider area, the principle of the change of use of the land is acceptable. Furthermore, the rear boundary follows that of other properties within the immediate vicinity and the fence is of a similar scale and design. The application would not adversely affect the living conditions of the occupiers of the neighbouring properties nor would it impact on biodiversity. In all aspects the application is compliant with the objectives of the NPPF, PPG and relevant local plan policies and the application is recommended for approval.

7. Planning History

7.1 There is no relevant planning history.

8. Recommendation: Grant Permission

1. The development shall be begun not later than the expiration of 3 years beginning with the date of the grant of this permission.

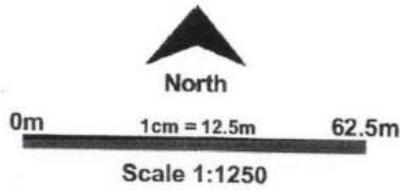
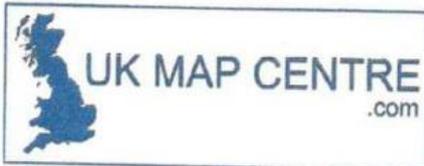
Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:

1. the submitted planning application form received 29th June 2021;
2. the site location plan received 29th June 2021 (Drawing No. 1);
3. the block plan received 29th June 2021 (Drawing No. 2);
4. the fence details received 29th June 2021 (Drawing No. 3);
5. the Notice of Decision;
6. any such variation as may subsequently be approved in writing by the local planning authority.

Reason: To define the permission.

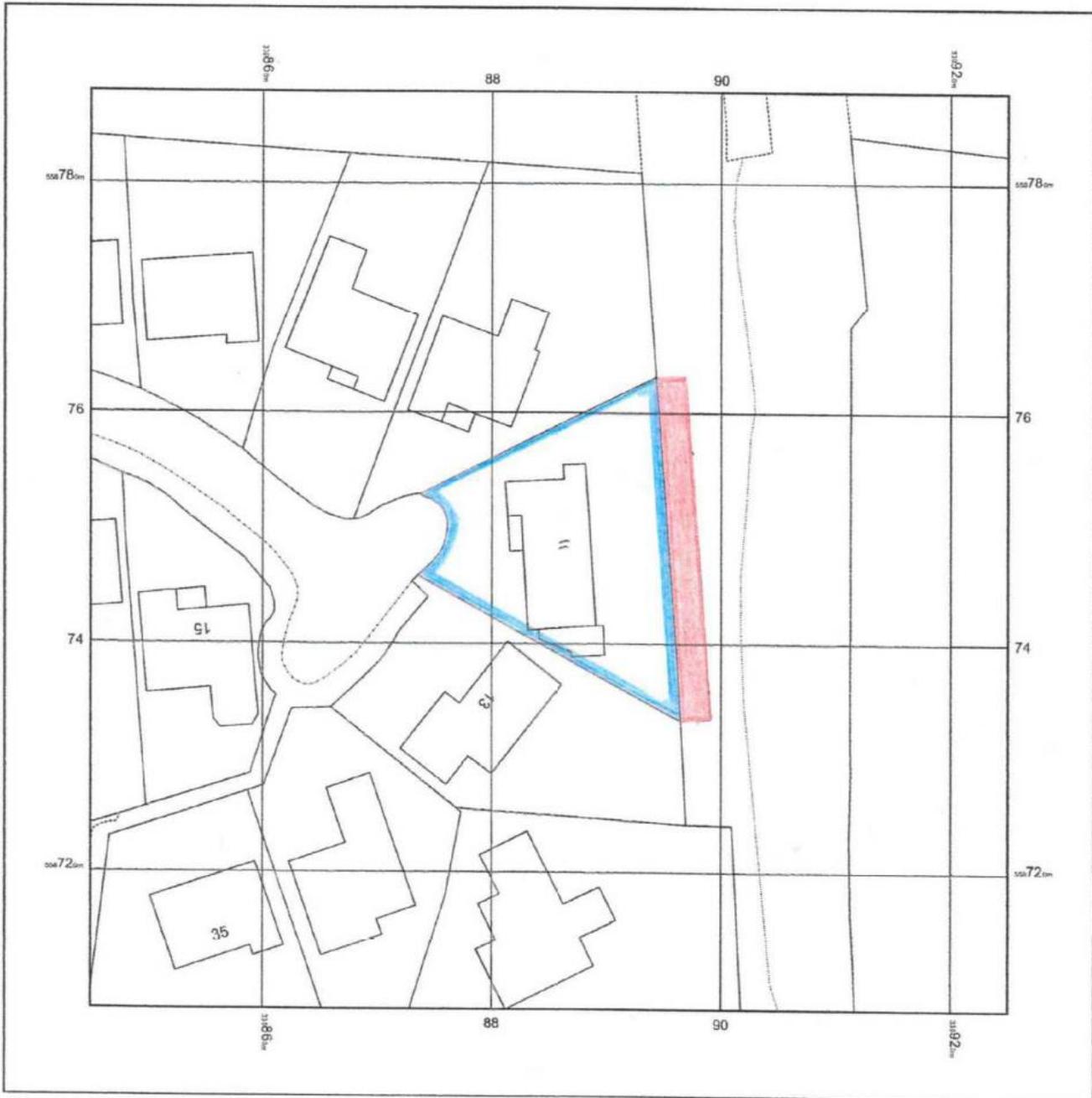
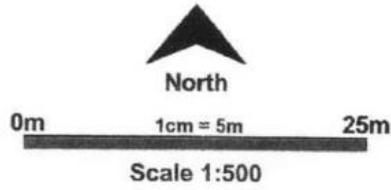
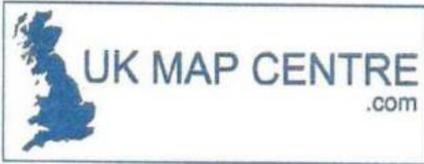
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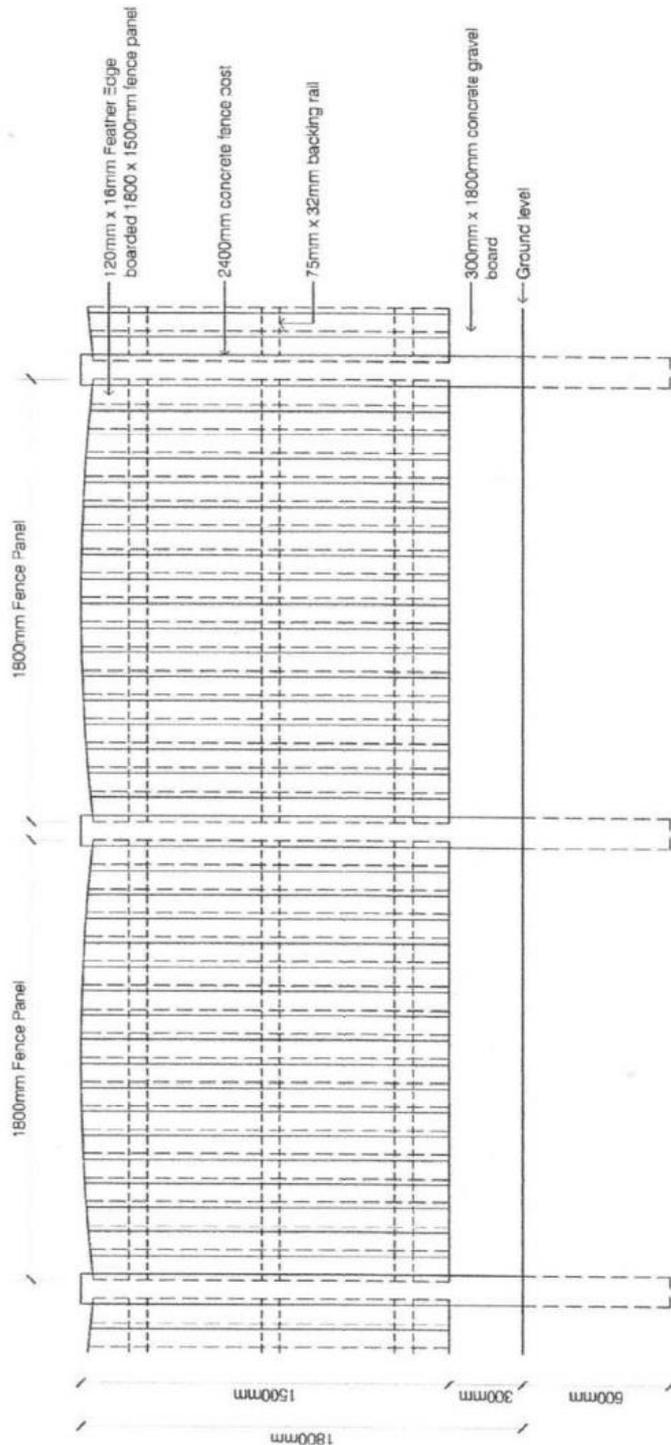
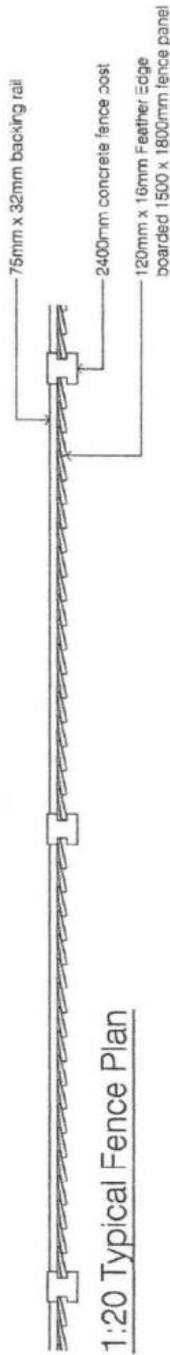


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PLAN N° 3.



Project: Installation of New Fence Panel
Address: 11 NEWFIELD PARK, CARLISLE.
Dwg No: PLAN N° 3.
Scale: 1-20

109003

Footpath

From the eastern end of Footpath 109020 from Kingstown Road, Stanwix, generally northerly for approximately 560 m towards California Road along hedged lane 2-3 m wide, passing between Newfieldhead and Newfield Grange and joining with California Road at its eastern end.

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