

Report Title	PLANNING APPLICATIONS
Meeting	DEVELOPMENT MANAGEMENT COMMITTEE
Meeting Date	17TH MARCH 2026
Report Author	NEIL WATSON
Directorate	PLACE
Lead Executive Member(s)	COUNCILLOR L. WHIPP
Wards Affected	Whitefield & Walverden
Public. Part Exempt, or Fully Exempt	NONE
Appendices (if any)	NONE

REPORT TO DEVELOPEMNT MANAGEMENT COMMITTEE ON 17TH MARCH 2026

Application Ref: 26/0019/HHO

Proposal: Full: Retention of existing raised platform with the formation of a planting area to the rear garden.

At: 19 Highgate, Nelson

On behalf of: Mr Jabran Sajjad

Date Registered: 12/01/2026

Expiry Date: 09/03/2026

Case Officer: Craig Barnes

The application was called in to Nelson Area Committee by the chair of committee. Members were minded to approve the application, contrary to the recommendation.

The proposal is contrary to Policies DM16 and DM24 of the Pendle Local Plan Fourth Edition. There are clearly adverse effects on the amenity of the neighbouring property. Accordingly, approval of this application would represent a significant departure from policy and it must therefore be determined by the Development Management Committee in accordance with the Council's constitution.

Site Description and Proposal

The application site comprises the rear garden of 19 Highgate, Nelson. 19 Highgate is a detached dwelling situated within the settlement boundary of Nelson. The domestic curtilage of adjacent neighbouring dwellings border the site to the south, west and east.

The development comprises excavation works to the rear garden and the erection of a raised platform and a retaining wall. Finishes comprise of render / porcelain tiles and 1.8 high timber fencing. The proposal is retrospective with construction having been completed. The application seeks the retention of these works.

The application represents the second attempt to secure planning permission for this development. The first application was refused by the Council in September 2025 for its unacceptable adverse impact on residential amenity by way of overlooking (see app 25/0508/HHO). Only minor modifications have been made to the design of the development through this application. These modifications are insufficient to alter the previous recommendation.

Relevant Planning History

21/0533/HHO (Approved with Conditions) – Erection of a two storey side extension, single storey rear extension and landscaping works including a retaining wall.

24/0156/HHO (Approved with Conditions) – Full: Extension to front of property to form a store.

25/0508/HHO (Refused) - Full: Excavation works to part of the rear garden, raised platform and the erection of a retaining wall.

Consultee Response

Local Highway Authority

The above application is a revised scheme to that previously refused under planning reference 25/0508/HHO.

Having reviewed the documents submitted, the above development raises no highway concerns. Therefore, Lancashire County Council acting as the highway authority would raise no objection regarding the proposal on highway safety grounds.

Public Response

One comment in support has been received during the consultation period.

The comment is made by the current occupier of 21 Highgate setting out:

We have no issues with the garden landscaping at the above address. The height of the top terrace is no higher than the top of the slope of the previous lawn prior to the current landscaping. We have no concerns over privacy from next door as the height of the fencing gives us sufficient privacy. It is also to be noted; we would be replacing the existing timber fence by way of continuing the close boarded fence which would also reduce any undue concerns. Overall, the impact to our living conditions would not be affected or even worsened by our neighbour's development proposal.

Officer Comments

Policy

Pendle Local Plan Fourth Edition

Policy DM16 (Design and Placemaking) sets out that high quality, beautiful and sustainable design will be sought at all developments. It requires developments to demonstrate a good standard of amenity for all existing and future occupiers.

Policy DM24 (Residential Extensions or Alterations) sets out when and how proposals for householder extensions and alterations will be supported by the Council. It sets out

that proposals should ensure that the amenity and privacy of occupiers should not be unreasonably adversely affected as a result of development proposals.

National Planning Policy Framework

The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. It states that there are three dimensions to sustainable development: economic, social and environmental. The policies of the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.

Design and Amenity

The application is a resubmission of 25/0508/HHO which was refused by the Council in September 2025. Only very minor alterations are proposed to the design of the development with a planted area now proposed on submitted plans rather than a grassed area. The planted area occupies around one third of the raised platform surface and is situated towards the boundary with 21 Highgate.

The development comprises excavation works to the rear garden and the erection of a raised platform and associated retaining wall. The ground level has been increased at the location of the retaining wall which sits roughly mid-way through the rear garden. The ground is then cut to the same level of the existing dwelling for the remainder of the garden, creating two extensive flat areas. A stair case provides access from the lower area to the upper area.

The application site is not bordered by a public highway nor is it visible from public vantage points. The raised platform is of an acceptable appearance. The materials used for the development are suitable for a domestic setting noting the limited visibility of proposals from public vantage points and the absence of broader policy constraints affecting the application site.

Submitted plans show that the constructed retaining wall is 1.2 metres in height. The retaining wall helps support a raised platform which features a patio, a large planted area, and further planting areas which extend from the retaining wall to the rear boundary of the property.

Submitted plans show that at the western boundary, the boundary treatment is a minimum of 1.1 metres higher than the top of the retaining wall / raised platform. On the eastern side, plans show boundary treatments for only part way along this boundary. To the south, a new boundary fence has been constructed. Ground levels remain unaltered along this boundary. For this reason the development will not adversely affect the amenity of the occupiers of 23 Highgate.

The height and proximity of the retaining wall and raised platform to the adjoining side boundaries of the plot permits overlooking into neighbouring property to the degree where it is harmful to the privacy of adjacent occupiers.

Topographical changes between the application site and a new dwelling under construction to the east of the site (approved under ref 24/0452/FUL) means that overlooking can be satisfactorily addressed by the erection of a 1.8 metre high boundary fence along the entirety of the intervening boundary atop of the existing retaining wall. This can be secured by condition.

The rear garden of 21 Highgate is located to the west of the site. The corner of the retaining wall structure is approximately 6m from the rear elevation of 21 Highgate. The nearest opening of 21 Highgate to the development is a rear porch which features side windows and patio doors which open out onto the rear garden. This serves a sitting room (a habitable room).

The occupier of 21 Highgate (whom does not object to the application) has confirmed that they plan to rearrange the internal layout of their property, meaning that the patio doors would no longer serve a habitable room. Whilst this may be planned there is no guarantee this will occur, and any future occupier of the property could reverse these internal layout changes at any time without requiring permission from the local planning authority. This arrangement cannot therefore be controlled by the local planning authority.

The boundary treatment is not a sufficient height to prevent unobstructed views into this habitable room from the constructed platform / retaining wall because of the height and proximity of the platform / retaining wall to the site boundary.

The adverse effect on amenity caused cannot be satisfactorily mitigated by the erection of higher fencing along this boundary. This boundary treatment would result in an overbearing effect on 21 Highgate because of the height necessary to prevent overlooking. This mitigation measure would be a breach of the 45-degree rule and would not therefore be acceptable.

A condition requiring the retention of the planting area on top of the raised platform in perpetuity would similarly be ineffective noting the scale of this area, the need to secure its future maintenance, and continued visibility nonetheless afforded from the platform due to its height and proximity to the boundary and retained paved areas located along the boundary fence itself.

There is no permitted development fall-back position for this application to be considered. The application is retrospective and has been constructed to a level which exceeds permitted development requirements. Submitted plans are inaccurate in depicting ground level change pre and post development, with the completed platform well in excess of that allowed through permitted development rights. This is demonstrated by photos / plans set out in Annex A of this report which shows images of the application site pre, during and post construction.

The revised proposal fails to address the reason for refusal set out in 25/0508/HHO as issued by the Council in September 2025. Ultimately the raised platform is too high and too close to the boundary with 21 Highgate. The platform must be lowered to satisfactorily address the reason for refusal.

Whilst a new Local Plan has been adopted since this application was determined, its policies do not alter the decision made, and do not support the development subject to this planning application. As such, and in absence of any proposal to reduce the height of the platform, the development must be refused for the unacceptable harm caused to the amenity on the occupiers of 21 Highgate in accordance with Policies DM16 and DM24 of the Pendle Local Plan Fourth Edition.

Reason for Refusal

Section 38 of the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise. Whilst of an acceptable appearance and materials the development will have an unacceptable adverse effect on the amenity of the adjacent occupiers by way of overlooking which cannot be effectively or satisfactorily be mitigated. The development is therefore contrary to Policies DM16 and DM24 of the Pendle Local Plan Fourth Edition.

RECOMMENDATION: Refuse

For the following reason(s):

1. By virtue of its scale and location, the retaining wall and raised platform area will cause unacceptable adverse effects on the amenity of neighbouring occupiers by way of overlooking. The development is therefore contrary to Policies DM16 and DM24 of the Pendle Local Plan Fourth Edition.

Annex A

Pre-construction



During construction

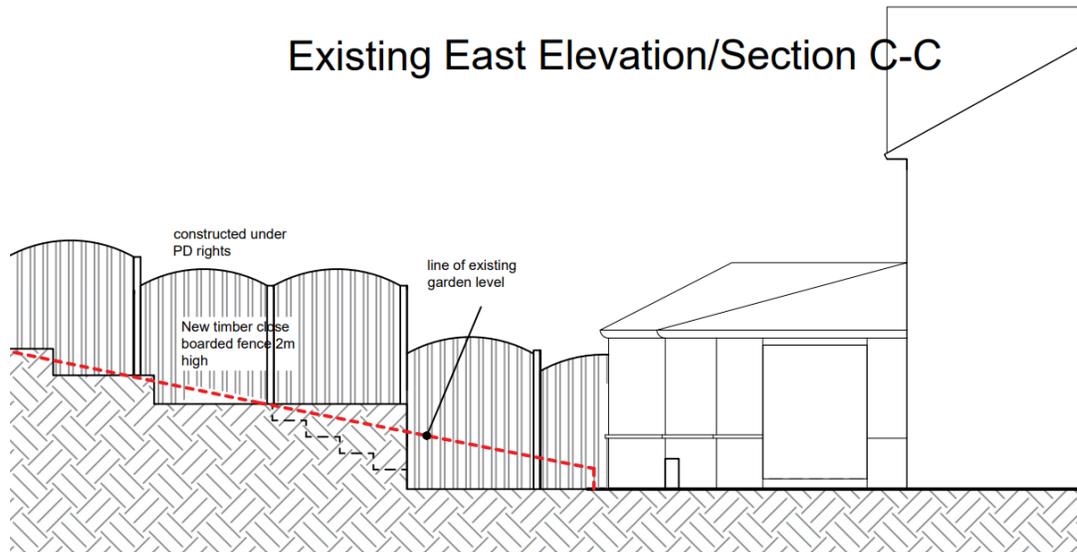


Post Construction



Submitted Plans (inaccurate depiction of previous ground level)

Existing East Elevation/Section C-C



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