

DELEGATED

**AGENDA NO
PLANNING COMMITTEE**

DATE 15th November 2006

**REPORT OF CORPORATE
DIRECTOR OF
DEVELOPMENT AND
NEIGHBOURHOOD SERVICES**

Unauthorised Works 13-15 Station Road, Eaglescliffe, Stockton-On-Tees

Update

Members will recall that the item was discussed at planning committee on the 25th of October. Following discussion the item was deferred for further clarification of the issues which members considered were outstanding. Appendix A attached contains a summary of all the issues raised.

Summary

Following concerns that the development that at 13-15 Station Road Eaglescliffe had not been built in accordance with the approved plans, Enforcement officers inspected the site and measured the works. Officers found that the height to the eaves was 7 metres, an increase of 1 metre from approved plans. The height of the extension from ground level to apex of the roof was 10.7 metres, an increase of 1.2 metres from the approved plans. Other breaches of control found included alterations to the approved window details and failure to discharge relevant conditions.

In order to address these deviations and in light of the Sage ruling, the developer was requested to submit a new planning application. This application would be required to address issues regarding:

- The size of the rear extension to include all accurate actual dimensions
- The discrepancy in size and location of all windows facing Swinburne Road
- Details of all means of enclosure including materials to be used (a condition of the planning approval which has not been discharged)
- A car-parking scheme, which shows all vehicle access from Swinburne Road and not Station Road and to including the parking layout and materials to be used (a condition of the planning approval not discharged)

The local planning authority has been advised that the developer does not intend to submit a new planning application, however, his planning consultant has recently submitted a plan showing the implemented work, with the intention of seeking to regularise the present unauthorised development.

Members are now required to consider whether the changes to the development are acceptable in planning terms or whether it is expedient to take enforcement action.

Members cannot reconsider the merits of the application as a whole and must determine whether the variations to the approved plans result in such significant harm in planning terms to justify enforcement action.

RECOMMENDATION

It is recommended Members be advised that:

- 1. It is not expedient to take enforcement action in respect of the following breaches of planning control:**
 - a) Apex of the roof higher than approved**
 - b) Windows on the elevations are not accurate in terms of size and location.**
 - c) Car parking cheme implemented and premises occupied in breach of condition No 6 of permission 04/2058/FUL**
 - d) Materials not approved in breach of condition No 3 of permission 05/0178/FUL**

- 2. Should a new planning application be submitted for the unauthorised works that these would be found to be acceptable and permission would be forthcoming.**

BACKGROUND

1. An application for planning permission was submitted to the planning authority for consideration in March 2005 for an extension to 15 Station Road for the creation of four flats (planning application number 04/2058/FUL). This application was approved and a further application (05/0178/FUL) submitted in 2006 for a further extension to the previous approval to allow additional kitchen and dining facilities. This subsequent application was also granted approval by Members and development commenced on site.
2. Members will recall that they have previously been asked to consider the size of the development at 13/15 Station Road Eaglescliffe (Planning Committee on Wednesday 19th April 2006).
3. Members resolved that it was not expedient to take any enforcement action against the owner of 13/15 Station Road Eaglescliffe for the following reasons:

It is the opinion of the Head of Planning that the increase in length of the rear wall of the extension by a maximum of 0.08 metres would be regarded as de minimis.

It is the opinion of the Head of Planning that the increase in the depth of the bay window by 0.01 metres would be regarded as de minimis.

4. The planning system has until recently considered that legally there was flexibility to grant minor amendments to development, following planning permission having first been granted. However as a result of a recent High Court decision (*Sage v Secretary of State*) the legal position has changed and the effect is that any changes from the approved plan now require a new planning application to be submitted for the change to be considered. There is no longer any provision for minor amendments to be given consideration unless the works would be regarded as *de minimis*.
5. This means that if the work is carried out other than in complete accordance with the approved plans, the whole development may be unauthorised, as it will not have the benefit of the original planning permission.
6. Following concerns that the work was not being implemented in accordance with the approved plans, Enforcement officers inspected the site and found several deviations from the approved plans. In addition a number of relevant conditions have not been complied with. The developer was asked to submit a new planning application for the deviations. This was not forthcoming, however, his planning consultant has recently submitted a plan showing the implemented work, which seeks to regularise the present unauthorised development. This plan is discussed in paragraph 35 of this report. Members are now asked whether or not it is expedient to take enforcement action against the breaches found. Neighbours have been consulted and asked for any comments in relation to the development as built.

PLANNING POLICY CONSIDERATIONS

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. In this case the relevant Development Plans are the Tees Valley Structure Plan (TVSP) and the Stockton on Tees Local Plan (STLP).
8. The following planning policies are considered to be relevant to the consideration of this application:

Policy GP1

Proposals for development will be assessed in relation to the policies of the Cleveland Structure Plan and the following criteria as appropriate:

- (i) The external appearance of the development and its relationship with the surrounding area;
- (ii) The effect on the amenities of the occupiers of nearby properties;
- (iii) The provision of satisfactory access and parking arrangements;
- (iv) The contribution of existing trees and landscape features;
- (v) The need for a high standard of landscaping;
- (vi) The desire to reduce opportunities for crime;
- (vii) The intention to make development as accessible as possible to everyone;
- (viii) The quality, character and sensitivity of existing landscapes and buildings;
- (ix) The effect upon wildlife habitats;

(x) The effect upon the public rights of way network.

Policy EN24

New development within conservation areas will be permitted where:

- (i) The siting and design of the proposal does not harm the character or appearance of the conservation area; and
- (ii) The scale, mass, detailing and materials are appropriate to the character and appearance of the area

Policy HO12

Where planning permission is required, all extensions to dwellings should be in keeping with the property and the street scene in terms of style, proportion and materials and should avoid significant loss of privacy and amenity for the residents of neighbouring properties.

PUBLICITY

Neighbours

9. The following responses have been received from local residents and neighbours to the development:

Ms L Taylor, Yarm Road

10. Concerns regarding:
- building materials, change from brick to render.
 - Height of extension, concerns that this may be used to create a third storey
 - Roof pitch steeper than approved plans
 - Scale and mass out of proportion with neighbours
 - Impact on number 15 Swinburne Avenue unacceptable in terms of privacy, loss of light and amenity.
 - Drains run off directly into the alley this is hazardous
 - The grassed areas shown on the original plans have completely disappeared, now no amenity space contrary to GP1 and concerns of flooding.
 - The developer has removed edging stones from the alley and filled with tarmac this is unacceptable.
 - The ground floor windows open directly into the alley which is single width this is a health and safety issue for pedestrians and vehicles.
 - Original plans not shown in context with neighbouring buildings and street scene and projects beyond building line.

Mrs G Place 18 Swinburne Road

11. Objects:
- a. The walls are 4 courses higher than the original plans
 - b. The walls are not brick built but block and render
 - c. The roof pitch is steeper than approval and concerned that the developer will use this space for additional flats

- d. The drains run straight into the alleyway, which is unpleasant and potentially dangerous
- e. There is no grass unlike the original plans
- f. The ground floor windows open into the alley which is potentially dangerous.
- g. Massive scale out of character with the area, inappropriate building materials and has an overwhelming impact on the neighbouring property.

D Place, Altona, Swinburne Road

12. Concerns:

- a. Swinburne Road is the only street affected by the development but is the only one not shown on the plans.
- b. Objects as the building is not brick as previously stated and is of block and render
- c. Objects to the rainwater discharge from the roof into the alleyway which could be a hazard when frozen
- d. Objects to the windows opening into the alleyway as may be dangerous.

Mr Alan Nelson, Yarm Road

13. Concerns are:

- a. The scale and mass is out of proportion with the adjacent properties
- b. The building overwhelms number 15
- c. Unacceptable loss of privacy to number 15
- d. Negative impact on whole area
- e. The building is rendered and not brick built as stated
- f. The extension is four courses higher than approved
- g. There is insufficient parking provision
- h. The roof pitch is steeper than shown on the approved plans
- i. The drains have not been constructed properly and run into the alleyway
- j. There is no amenity space
- k. The ground floor windows open into the alley which is potentially dangerous
- l. The developer has removed edging stones from the alley and filled with tarmac this is unacceptable.

Mrs Elsie Taylor 25 Pennypot Lane

14. Concerns are:

- a. The walls have been constructed a metre higher than the approved plans
- b. The developer hoped to make a third storey as the insertion of the roof joists and roof lights suggested, the roof pitch is steeper than approved again in keeping with a 3rd storey.
- c. As a result- scale and mass is out of proportion with neighbours
- d. Building overwhelms number 15 Swinburne Road
- e. Number 15 suffers from loss of light and loss of privacy

- f. Drains run off directly into the alley this is hazardous
- g. The grassed areas shown on the original plans have completely disappeared, now no amenity space contrary to GP1 and concerns of flooding.
- h. The developer has removed edging stones from the alley and filled with tarmac this is unacceptable.
- i. The ground floor windows open directly into the alley which is single width this is a health and safety issue for pedestrians and vehicles.
- j. Original plans not shown in context with neighbouring buildings and street scene and projects beyond building line.

Mr M Stokeld 11 Station Road

15. Objections are:

- a. Original plans showed the development was to be in Albert Road
- b. The extension is in fact a new set of terrace houses along Swinburne Road as each property has a front door access to Swinburne Road.
- c. The development was for two storeys and it has three storeys.
- d. 11 Station Road suffers from lost of light.
- e. Car parking spaces exceed the original plan causing public hazard for pedestrians and turning traffic and kerbs have not been dropped for access.
- f. Added pressure for car parking causes cars to double park creating safety issues for pedestrians /school children.
- g. No garden or landscaping completed as detailed in original plan.
- h. Roof space on development exceeds those of existing terraces in Swinburne Road. All water drains externally onto Swinburne Road or the alley way causing flooding and hazard to residents.
- i. Drains not been upgraded for the development and been blocked on numerous occasions.
- j. Building is Breeze Blocks and rendering not as Matching Face Bricks as originally proposed.
- k. PVC Windows, paint colour and plaster render, doors and associated furniture and not in keeping with a Victorian Conservation Area.
- l. Edging stones in alley way have not been replaced to original condition.
- m. Height of extension exceeds original approved plans with roof windows being installed on a third floor.
- n. Windows been installed that open beyond the boundary line causing hazard to pedestrians and traffic.
- o. Building protrudes over the sight line of Swinburne Road and onto Albert Road.
- p. Development has no storage for Refuse Bins so bins left in alley way and causing obstruction to pedestrians and traffic and aesthetically devalues the area.

R D Purvis 14 Swinburne Road

16. Objects:

- a. Building higher and wider than dimensions shown on the plans.

- b. Recent flooding of the downpipe on the north side into the alley way
- c. Windows on the north side of the development project into the alley way when open, causing a hazard to pedestrians.
- d. Privacy lost to adjacent residents on Swinburne Road.
- e. Inadequate car parking facilities for the development.
- f. No provision been made for Wheelie Bins which are left on the street.
- g. Building is rendered breeze blocks, surface finish inconsistent with doors and bay windows not matching those on the plans.

Mr D Harding, Dunottar House,1 Dunottar Avenue, Eaglescliffe

17. Issues:

- a. Raised concerns regarding the excess of 1.2 metres in roof height and increased height of the eaves by 16.6% from the approved plans.
- b. Loss of light and privacy to neighbouring properties.
- c. Raised the issue over whether a site visit was appropriate.
- d. Insertion (and subsequent removal) of additional side windows
- e. Concerns over the internal staircase in the building.

Eaglescliffe Preservation Action Group (EPAG)

18. Raised concerns regarding the legality of the development.

MATERIAL PLANNING CONSIDERATIONS

19. The built development on site now deviates from the approved plans in the following terms:

a) Apex of the roof higher than approved

The windows shown on the plans appear to be just under the eaves. However there are 4 courses of block work between the top of the windows and the eaves.

Measurements taken on site by use of a 5m measuring pole and counting of the block work courses resulted in the following measurements being obtained.

Approved height of roof from ground to eaves 6m

Existing Height of roof from ground to eaves 7m, increase of 1m.

Approved height from ground to roof apex 9.5m

Existing height from ground to roof apex 10.7m, increase of 1.2m

20. Neighbours have concerns that the increase in roof height has been done with the intention to create further flats in the roof space. Previously unauthorised roof lights had been installed in the extension which with further discussions with the applicant were subsequently removed.

21. Extensions have no permitted development rights therefore if the applicant did intend to make the roof void into formal living accommodation he would require planning permission. The local planning authority cannot take into account speculative future works and must consider the development as it stands. Members have already decided not to take enforcement action against the increase in footprint and now only the increase in height can be considered in terms of the scale of the development as the bulk of the development has been granted planning approval. (It should be noted that Enforcement Officers have inspected the property 3 times so far and confirmed this roof void has not been converted to living accommodation)
22. This one metre increase although altering the appearance of the extension is not considered to have significantly altered the bulk and mass of the extension to the detriment of the street scene or conservation area. It is considered that should an application be submitted for such works that this would be acceptable to the Head of Planning and is not considered sufficient to warrant enforcement action.

b) Windows on the elevations are not accurate in terms of size and location.

23. The windows on the Swinburne Road elevation deviate from the approved plans in terms of location and sizes. The applicant states this has been done to improve fenestration and to correspond with internal floor levels.
24. The original fenestration on the existing two-storey extension was a single top opening window on the far left, a small square window and a double with side opening at first floor level. As approved, the fenestration at first floor level on the western elevation was for 4 top opening casements of varying sizes, with three doorways and two individual small top opening windows at ground floor below.
25. As constructed the two central casements windows at first floor level has been constructed as one large central window with a smaller window either side. At ground floor a double width central window has also been installed mirroring the window above. The built arrangement reflects the width of the bays in the extension and it is not considered that this revised arrangement has had an adverse impact on the design or appearance of the extension.
26. In addition a proposed and approved window on the Eastern Elevation at first floor level has been installed smaller than shown on the approved plans. This again is not considered to have any adverse impact on the appearance of the extension, and the previous build was a mis-match in window styles, sizes and designs.
27. The minor amendments to the window arrangement and styles have not had an adverse visual impact in regards the extension or the property itself and it is not considered that they have any wider impact on the character of the Eaglescliffe with Preston Conservation area.
28. The changes to the windows as approved has not resulted in any adverse impact on the amenities of neighbouring properties and are not sited any

closer to any neighbouring dwellings to cause any impact on amenity. It is therefore considered that the main consideration of the unauthorised changes to the windows is the impact visually on the extension as now constructed, which as stated above is considered to be acceptable.

c) Car parking Scheme implemented and premises occupied

29. The parking area associated with the development was conditioned as below to come off Swinburne Road with details to be agreed in writing with the local planning authority, this has been implemented without the conditions being discharged.

“For the avoidance of doubt, car parking spaces shall be all provided from Swinburne Road to the side NOT from Station Road, details should be submitted to and approved by the Local Planning Authority.

Reason: To make proper provision for off street parking.”

“Car parking space, to Local Planning standards, shall be constructed, surfaced and marked out, to the satisfaction of the Local Planning Authority, before the development hereby approved is brought into use, in accordance with a layout plan to be agreed with the Local Planning Authority before work commences and that area shall not thereafter be used for any purpose other than the parking, loading and unloading of vehicles.

Reason: To make proper provision for off-street parking.”

30. The premises are currently occupied and the above conditions clearly state that the development should not be occupied until the parking condition is discharged in writing to the satisfaction of the local planning authority.
31. These conditions were placed on the approval to ensure that adequate parking provision was provided for the development and that the parking area was in accordance with local authority parking standards.
32. Following consultation with the Head of Integrated Transport and Environmental Policy no objections have been raised and the parking area has been implemented to his satisfaction.
33. The applicant is also aware that he requires a drop kerb and the Head of Integrated Transport and Environmental Policy is aware that this is to be provided. This is not a planning matter and will be monitored by the Head of Integrated Transport and Environmental Policy.
34. Although the scheme has removed the grassed areas as indicated on the approved plans. The applicant was required by Members to move parking provision from Station Road to Swinburne Road, which effectively removed scope for any amenity provision on Swinburne Road. The original application (04/2058/FUL) was granted on these terms therefore it is considered that the loss of this space cannot be a determining factor at this stage.

d) Materials not approved

35. The applicant has not discharged the materials condition (No 3) attached to planning approval 05/0178/FUL. However the use of render to ensure the building has a uniform appearance is acceptable and the previous extension was rendered. The use of block work (rendered) is also acceptable as the extension is a modern addition and the use of this material has not adversely affected the appearance of the extensions.
36. The applicant's planning consultant has recently submitted a plan showing the implemented car park together with details of materials as well revised elevations, which seeks to regularise the present unauthorised development. Whilst there are still officer reservations in respect of the accuracy of the elevational drawing, the details of the car park and materials as implemented are satisfactory and if the development were lawful, would have been sufficient for the relevant conditions to be discharged. Accordingly, it is not considered enforcement action should be taken for the Breach of Planning Conditions.

OTHER ISSUES

Alley Windows and Drainage

37. The issues raised by neighbours in regards to windows opening into the alleyway and down pipe discharging into the alleyway drain are not planning issues. The Head of Integrated Transport and Environmental Policy has advised the applicant to install restraints on the windows to prevent opening and that any resulting impact on highway safety would be the site owners responsibility. The down pipe discharging on to the Highway and the removal of the edging stones from the alley are issues, which are to be addressed by the Head of Integrated Transport and Environmental Policy.

Refuse Storage

38. The location of bin storage is not relevant to the consideration of the unauthorised changes.

Site Visits

39. The issue of a site visit for this development was addressed and a response provided. It was noted that a site visit by the Planning Committee was made on the 10th January 2006.

CONCLUSION

40. The proposed extension is not considered to be materially different from the previous approval for flatted development in terms of the visual impact on the street scene and the impact on neighbouring properties, and it is considered that it is not expedient for the Council to take enforcement action against the unauthorised changes.
41. Members should note that if the changes are found not to be acceptable, they should consider authorising all appropriate enforcement action.

42. Members should note that in the absence of the applicant submitting an application to vary the development as built the development as a whole will remain unlawful and any resulting council land charges search will reveal the unlawful extension to any prospective purchaser. The applicant will be advised accordingly.
43. The Head of Planning is of the opinion that, taking into account all the above information, it would not be expedient to authorise enforcement action and the Council could be liable to costs on defending an enforcement appeal.

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Financial Implications.

Possible costs in defending an appeal should enforcement action be pursued.

Environmental Implications.

As Report.

Community Safety Implications.

Not Applicable.

Human Rights Implications.

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.

Background Papers.

Complaint file 22.0.1
Planning applications 04/2058/FUL & 05/0178/FUL
Adopted Stockton-on-Tees Local Plan (June 1997)

Ward(s) and Ward Councillors(s).

Ward	Egglescliffe
Ward Councillor	Councillor J.A. Fletcher MA Councillor Mrs M Rigg Councillor M Cherret