

DELEGATED

**AGENDA NO
PLANNING COMMITTEE**

DATE 18 July 2007

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

07/1356/ARC

**Application under Section 73 to vary Condition 2 (Approved Documents) and Condition 12 (Levels) with regard to Plot 419 of planning approval 06/2100/REM for Residential Development of 35 no. dwellinghouses
Portus Bar, Ingleby Barwick,**

Expiry Date 15 August 2007

Summary

Planning permission was granted under application 06/2100/REM for the reserved matters for 35 dwellings. Amongst others, the permission was approved subject to a Condition (12) relating to the provision of ground and floor levels to be agreed with the Local Planning Authority prior to commencement of development.

The levels have not been agreed and development has commenced. Levels have now been submitted and have found to be acceptable for all Plots, but not at 419. On this plot, the levels are such that the position and treatment of windows, doors and an internal path allow overlooking of neighbouring properties, and have an unacceptable adverse impact on the privacy expected to be enjoyed by the occupants of those neighbouring dwellings.

The condition imposed on the reserved matters permission remains outstanding and cannot be discharged formally until the issue of the levels on this plot has been addressed. In order to do so, amendments have been sought to the existing approved house type to remove a pathway from the side of the property, relocating a garage door, fixing and obscuring glazing windows, and to amending boundary treatments. This requires an alteration to Condition 2 - a list of the approved documents to include the amended house type and garden features and levels at Plot 419, and rewording of Condition 12 which allows consideration of levels (apart from Plot 419, details of which now form part of the list of approved documents) prior to occupation of the dwellings rather than prior to commencement of development.

In respect of this application, a total of 6 objections have been received in respect to this application with objections mainly relating to privacy, amenity, and daylight and flooding matters.

It is considered that the proposed amendments; distance of the dwelling at Plot 419 from adjoining dwellings, its respective height and the level of the proposed garden area would ensure that the property would not unduly compromise the privacy and day lighting of surrounding properties whilst would not result in the flooding of adjoining properties or their associated gardens. As such, the proposal is considered to accord with Policies GP1, HO3 and HO11 of the Stockton on Tees Local Plan.

RECOMMENDATION

It is recommended that planning application 07/1356/ARC be approved subject to conditions set out below:

- 01** *The development hereby approved shall be in accordance with the following approved plan(s); unless otherwise agreed in writing with the Local Planning Authority.*

<i>Plan Reference Number</i>	<i>Date on Plan</i>
<i>SBC0001</i>	<i>03.05.2007</i>
<i>1902-23</i>	<i>03.05.2007</i>
<i>1902-24</i>	<i>03.05.2007</i>
<i>1902-40 Rev B</i>	<i>05.07.2007</i>
<i>SBC419</i>	

Reason: To define the consent.

- 02.** *The plans hereby approved shall relate only to details associated with plot 419 of the scheme approved under application reference 06/2100/REM and to no other plot within the site.*

Reason: To reserve the rights of the Local Planning Authority with regards to these matters.

- 03.** *Full details of the proposed means of disposal of surface water and foul drainage shall be submitted to and approved in writing by the Local Planning Authority prior to the development hereby permitted being brought into use and drainage shall be provided in accordance with the approved details before the development is brought into use.*

Reason: To achieve a satisfactory form of development.

- 04.** *Within two months from the date of this permission a scheme for hard and soft landscaping and its maintenance, details of ground modelling, protection of existing trees, drainage runs and street furniture of all open space areas shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out during the first planting and seeding season following the substantial completion of the development, and any trees or plants which within a period of five years from the date of planting, die are removed or become seriously damaged, shall be replaced with others of a similar size and species in the next planting season unless the Local Planning Authority gives written consent to any variation.*

Reason: To ensure satisfactory landscaping to improve the appearance of the site in the interests of visual amenity.

- 05.** *Notwithstanding details hereby approved the highways within the site shall be constructed in accordance with a scheme of traffic calming to be submitted to and approved in writing with the Local Planning Authority prior to commencement of the construction of the highways.*

Reason: In the interests of highway safety.

- 06.** *No dwellings shall be occupied until a scheme of insulation to mitigate against noise generated by the adjoining site has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with*

these approved details unless agreed otherwise in writing with the Local Planning Authority.

Reason: In order to achieve adequate amenity for the future occupiers of the proposed dwellings.

- 07. *During construction of the scheme hereby approved there shall be no development works undertaken outside the hours of 8.00a.m. - 6.00p.m. weekdays, 8.00a.m. - 1.00p.m. Saturdays and at no times on Sundays or Bank Holidays.***

Reason: To avoid excessive noise and disturbance to the occupants of nearby properties.

- 08. *Notwithstanding the provisions of classes A, B, C, D & E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order), the buildings hereby approved shall not be extended or altered in any way, nor any ancillary buildings or means of enclosure erected within the curtilage without the written approval of the Local Planning Authority.***

Reason: To adequately control the level of development on the site to a degree by which the principle of the permission is based.

- 09. *Notwithstanding details shown on the plans hereby approved, prior to occupation of properties within the site, a scheme of ground levels and finished floor levels for all properties within the development, excluding plot 419, shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with these approved details.***

Reason: To take into account the sites location in respect to surrounding development.

- 10. *Notwithstanding details hereby approved, the utility room window of the dwelling on Plot 419 shall be glazed with obscure glass of a type to be agreed in writing with the Local Planning Authority prior to installation and this obscure glazing shall be retained in perpetuity unless agreed otherwise in writing with the Local Planning Authority.***

Reason: In order to protect the privacy of surrounding properties and to comply with Policies GP1 and HO11 of the Stockton on Tees Local Plan.

- 11. *Notwithstanding details hereby approved, the kitchen window of the dwelling on Plot 419 shall be glazed with obscure glass of a type to be agreed in writing with the Local Planning Authority prior to installation and the window shall have fixed panes with no opening lights. The window and glazing type of this window shall be retained in perpetuity unless agreed otherwise in writing with the Local Planning Authority.***

Reason: In order to protect the privacy of surrounding properties and to comply with Policies GP1 and HO11 of the Stockton on Tees Local Plan.

- 12. *The area of land which is at a raised level and illustrated as being within the railings as indicated cross hatched on plan no. SBC 419 relating to Plot 419 shall not be used as either a footway or seating area in association with the residential use of the property.***

Reason: In order to adequately protect the privacy of the occupiers of surrounding properties in accordance with Policies GP1 and HO11 of the Stockton on Tees Local Plan.

BACKGROUND

1. Planning permission was granted under application 06/2100/REV for the Reserved Matters for a development of 35no. dwelling houses at Portus Bar, Ingleby Barwick. This approval was granted subject to several conditions, one of which related to the levels of the site, and the need for the Local Planning Authority to agree these prior to commencement on site. The developer commenced on site without discharging the requirements of this condition. Complaints were received from the occupiers of surrounding properties in respect to the level of properties on the site. Following these complaints, a site visit was made by Officers to assess the situation.
2. The levels for the whole site were subsequently submitted and to the Local Planning Authority and considered to be acceptable for all plots apart from Plot 419. At this Plot, it was considered that the floor and ground levels, and a raised walkway adjacent to a boundary with a neighbouring property would result in an unacceptable loss of privacy for the existing properties adjacent in Brougham Close.
3. The applicant has advised that the levels as built, are required to achieve an adequate fall on the drainage system.

THE PROPOSAL

4. In order to address the issues arising from the elevated position of the dwelling on Plot 419 the applicant has submitted a Section 73 application to alter Condition 2 - a list of the approved documents to include the amended house type and garden features, and rewording of Condition 12 which allows separate consideration of the levels of Plot 419.
5. The proposed amendments that relate to plot 419 are as follows:
 - Relocation of external garage personnel door from elevation facing Brougham Close to side elevation of garage.
 - Removal of footpath from elevation facing Brougham Close and for this area to be demarked with railings.
 - Increase in height of boundary detail and to include 300mm trellis.
 - The kitchen window within the side elevation of plot 419 facing Brougham Close to be fixed and with obscurely glazed panes.
 - Provision of a self closing gate and increased side boundary detail adjacent to footpath.
 - Change in the garden level to the elevation facing Brougham Close to match that of the gardens in Brougham Close

CONSULTATIONS

The following Consultations were notified and comments they made are summarised below:

Ingleby Barwick Town Council

6. The rear fence appears to be quite high and there are railings to the rear of the property. The obscure glass to the kitchen window would suggest that the house overlooks the neighbouring properties. If so, and the properties are occupied it should be ensured that the residents are consulted.

Northern Gas Networks

7. No objections

NEDL

8. Standard comments re care of work etc.

Urban Design – Landscape

9. We have no objection to vary condition no.2 and 12 with regard to plot 419 as long as the landscaping next to the house front and notably the proposed tree is retained.

Environmental Health Unit

10. I have no objection to this application.

PUBLICITY

11. Neighbours were notified and a total of 6 objection letters have been received from the following addresses: Walsh.eric@btinternet.com, occupiers of 22 Brougham Close, 20 Brougham Close, 18 Brougham Close. Objections and comments received were as summarised below :-
 - Loss of privacy through overlooking.
 - Loss of light through increased height of building and trellis on fence.
 - Overbearing and change to character as a result of increased height.
 - The living room, dining room and kitchen windows are considered to affect 22 Brougham Close.
 - When the new occupants use the new footpath they will be able to look directly over the boundary into the garden.
 - The height of the fence in the rear garden of 18 Brougham Close has already been extended through the erection of trellis in an attempt to retain privacy but due to the property being significantly higher this has had little affect.
 - Concern is raised over excess water in poor weather and it is anticipated that the bottom of adjoining gardens will be prone to flooding as a result of being below the level to that of Plot 419.
 - It is estimated that the existing properties will lose the sun at approximately 7 p.m. due to the location of the new plot.
 - Question is raised as to whether a retaining wall would be required adjacent to the fence line to deal with changes in ground levels.
 - Inadequate measures proposed to resolve these issues.
 - The imposition of fixed obscure glazing in a kitchen window is not enforceable if approved.
 - The increased height of the fence will give the impression of a prison whilst there is a discrepancy over the detail on the plan with regard to its height.

- Occupiers of Brougham Close feel misled and invaded in view of the layout of the Charles Church development being different to that which was indicated at the time of Brougham Close being sold.

PLANNING POLICY CONSIDERATION

12. 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 Regional Spatial Strategy (RSS), Tees Valley Structure Plan (TVSP) and the Stockton on Tees Local Plan (STLP).

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 HO11

New residential development should be designed and laid out to:

- (i) Provide a high quality of built environment which is in keeping with its surroundings;
- (ii) Incorporate open space for both formal and informal use;
- (iii) Ensure that residents of the new dwellings would have a satisfactory degree of privacy and amenity;
- (iv) Avoid any unacceptable effect on the privacy and amenity of the occupiers of nearby properties;
- (v) Pay due regard to existing features and ground levels on the site;
- (vi) Provide adequate access, parking and servicing;
- (vii) Subject to the above factors, to incorporate features to assist in crime prevention.

Policy HO3

Within the limits of development, residential development may be permitted provided that:

- (i) The land is not specifically allocated for another use; and
- (ii) The land is not underneath electricity lines; and
- (iii) It does not result in the loss of a site which is used for recreational purposes; and
- (iv) It is sympathetic to the character of the locality and takes account of and accommodates important features within the site; and
- (v) It does not result in an unacceptable loss of amenity to adjacent land users; and
- (vi) Satisfactory arrangements can be made for access and parking.

MATERIAL PLANNING CONSIDERATIONS

13. The application has been submitted as a variation to the approved details for the entire development of 35 houses, however, only relates to Plot 419 and as such, it is only this plot that is being reconsidered as part of this application. The issues surrounding the level of the dwelling relate to the impact on amenity and sunlight and the impact on privacy. These are considered as follows:

Amenity and sunlight

14. In considering the levels issues for plot 419, it was considered that the overall height of the building (effectively having a ground floor slab which is 400mm (1 foot 4 inches) above that of the adjoining property in Brougham Close, would not unduly dominate surrounding properties or significantly alter the character of the area, whilst these existing surrounding properties would remain to achieve adequate sunlight in view of the difference between property levels being relatively limited and the distance in between properties ranging from 12.7m to 15.2m. (See Appendix Reference 1)

Privacy

15. Due to the orientation of the property and the location of surrounding properties it is considered that the only elements of Plot 419, which would affect privacy, are those on the elevation facing Brougham Close. Within this elevation there are three windows at ground floor and two windows at first floor. First floor windows serve an ensuite and a principal bathroom, and as these would be obscurely glazed, it is considered that these would not unduly affect the privacy of adjoining properties. The ground floor windows would have normally been screened from the adjoining properties by the garden fence, however, as a result of the raised floor level, the existing boundary fence no longer achieves this. Windows at ground floor level include a W.C., a utility room and a kitchen window. The W.C. and utility window are not considered to affect privacy due to the nature of the rooms. Views from the kitchen would be restricted, as that window is to be non-opening and obscurely glazed. A condition requiring the utility window to be obscurely glazed and the kitchen to be fixed and obscure is recommended.
16. Concern was initially raised regarding the location of a raised footpath along the rear of the house. The submitted plans indicate this footpath has been removed, although the raised area remains, as this is where drains are located and which require a degree of ground cover to give protection from frost. In order to prevent the use of this area as a footpath, the applicant proposes the removal of the personnel door from this elevation, which serves the garage, to the side. In addition, the path has been replaced with a gravelled area and has been cornered off by railings. There is a small retaining wall adjacent to the railings beyond which the garden is shown to be level, matching that of the adjoining property. It is considered that removing the path and relocating the garage door further protects the privacy of adjoining properties.
17. Initially, the applicant proposed to increase the height of the boundary fence with 600mm of trellis. This would help screen neighbouring properties from views from ground floor windows in Plot 419. However, this was considered excessive and would degrade the appearance of the fence, an issue which has formed objection from the residents of adjoining properties. As such, the applicant was requested to reduce the height of the trellis to 300mm which again will assist in screening the new development and reducing the impact of its level.
18. The new garage access door to the side of the garage and footpath which leads along the side of the garage remain to be at a raised level from that of the surrounding ground level. However, the boundary treatment has been increased in height here with a self closing gate

being specified at the rear corner nearest to the boundary with properties in Brougham Close and as such, this should prevent any significant overlooking issues from the site.

Flooding

19. Objection has been made with regard to the raised property in respect to the potential of flooding from the site into the rear garden areas of properties in Brougham Close. However, the garden level on the submitted plan is clearly shown as being at the same level of that of the adjoining gardens. This may rise up beyond the boundary elsewhere within the garden, however, it is not considered to be significant across the site whilst it should be noted that there is generally going to be less water falling on the ground as a result of the water which falls on the dwelling being piped to the drainage system. Furthermore, in view of the garden height being level with adjoining properties at the boundary, it is considered that there is no requirement for a retaining wall as advised by one of the objectors.

Other matters

20. Comment is made that the condition in respect of obscure glazing cannot be enforced. This is untrue. However, it should be noted that some form of artificial ventilation may be required for Building Regulation purposes.
21. Objection has been raised to the living room and dining room windows within plot 419 which are located within the south western elevation. These windows are at right angles to the properties in Brougham Close whilst are set a reasonable distance away from properties. As such, it is considered that these windows and their associated height would not unduly compromise the privacy of properties in Brougham Close. (See Appendix Ref. 2.)
22. Objection has been made with respect to the layout of the Charles Church site being different to that which was indicated to them when they bought their property, which has occurred through the consideration of subsequent planning approval to the initial site layout being established. Whilst the grounds for objection are appreciated, this is not considered to be a material planning consideration.

CONCLUSION

23. In view of the windows within the elevation facing Brougham Close generally serving minor rooms within the property, the kitchen window being fixed and obscurely glazed, the garage door and footpath being removed from this elevation and amendments to the boundary treatments, it is considered that the proposal would not unduly compromise the privacy of surrounding properties and as such the level of the property is acceptable.
24. The overall height of the property is not considered to significantly detrimentally affect the day lighting requirements for surrounding houses in view of the distances between opposing properties.
25. Furthermore, in view of the indicated level of land immediately adjacent to the boundary of the property, it is considered that flooding of adjacent sites should not be a significant issue.
26. Taking into consideration the objections and concerns of the neighbouring occupiers and the remedial measures proposed, it is considered that the 'variation' of the existing conditions to allow the implementation of the specified measures, is acceptable.

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Human Rights Implications

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

Financial Implications

None

Environmental Implications

As Report

Community Implications

As Report

Ward	Ingleby Barwick West
Ward Councillor	Councillor K Dixon
Ward Councillor	Councillor L Narroway
Ward Councillor	Councillor R Patterson

