

DELEGATED

**AGENDA NO
PLANNING COMMITTEE**

DATE 2nd JULY 2008

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

08/0693/VARY

Portus Bar, Ingleby Barwick, Stockton On Tees

Application under Section 73 to vary condition 2 (elevations and boundary treatment) and condition 12 (levels) with regard to Plot 419 of planning approval 06/2100/REM for residential development of 35 no. dwelling houses.

Expiry Date : 15 August 2008

SUMMARY

Planning permission was granted under application 06/2100/REM for the reserved matters for 35 dwellings and included 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 site was constructed prior to levels being agreed and whilst levels are considered to be acceptable on all other plots, they were not initially considered acceptable for Plot 419 as the levels on this plot are such that the height of ground floor windows would have allowed view over the boundary fence into the adjoining garden. Furthermore, a raised path had been constructed along the rear of the property, which afforded the same views.

A previous application to vary this plot details including mitigation works was submitted and refused planning permission by the Planning Committee following a site visit. The applicants appealed against the decision and the appeal was dismissed with the Planning Inspector concluding that the only unacceptable element of the proposal was the raised ground to the side of the site adjacent to the boundary with 20 Brougham Close which could be used to gain view over the boundary fence, thereby affecting privacy and amenity associated with this property.

The applicant has amended the previously submitted plans to remove this raised section of land and has also removed the kitchen window which also faced this boundary.

Several letters of objection have been received from the occupiers of surrounding properties with main objections relating to the impact of the development on their amenity and privacy, on sunlight and on the ability to control the site in the future were permission granted.

The revised scheme addresses the concern previously raised by the Planning Inspector, as well as further removing the kitchen window from the scheme. The proposal is therefore considered to accord with Policies GP1, HO3 and HO11 of the Stockton on Tees Local Plan.

RECOMMENDATION

It is recommended that planning application 08/0693/VARY be approved subject to the 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.***

Plan Reference Number	Date on Plan
SBC0001	14.03.2008
1902-23 Rev A	14.03.2008
1902-24 Rev C	01.05.2008
1902-40 Rev E	01.05.2008
SBC419	

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. Notwithstanding details hereby approved, this permission does not affect any other conditions or any legal agreements associated with Planning Approval Ref: 06/2100/REM.**

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

- 05. 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.

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. The applicant advised that the levels, as built, were required to achieve an adequate fall on the drainage system. A section 73 application was submitted to vary the level of this plot and the precise house type design. This application was considered, recommended for approval by officers, although refused by committee following a site visit. An appeal was made to the Planning Inspectorate who dismissed the appeal concluding that the only unacceptable element of the proposal was the raised ground to the side of the site adjacent to the boundary with 20 Brougham Close which could be used to gain view over the boundary fence, thereby affecting privacy and amenity associated with this property. A copy of the Planning Inspector's report is attached at appendix 2

PROPOSAL

3. In order to address the issue 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.
4. 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 lowering of this land to that of adjacent garden.
 - Removal of kitchen window within the side elevation of plot 419 facing Brougham Close.
 - 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 received are set out below:-

5. Northumbrian Water Limited
No Objections
6. Northern Gas Networks
Have advised that they do not have any pipes within the area although their records show that other operators may have pipes within the locality.
7. NEDL
Requested information on the site location although have not commented further since the submission of this information.
8. Ingleby Barwick Town Council
It should be ensured that the occupants of the neighbouring properties are fully consulted. Are the residents living adjacent to the property satisfied with the alterations? If not the planning department should do everything within its power to ensure this is the case.
9. Urban Design Engineers
No Highway comments given.

Urban Design Landscape & Visual Comments

10. No objection. The planting along the boundary will require the use of advanced nursery stock specimens to ensure immediate visual impact and details of soft landscaping will therefore be required and provided to a specific standard.

Environmental Health Unit

11. Environmental Health has no objections to the planning application vary in conditions.

PUBLICITY

Neighbours were notified and any comments received are summarised below:-

12. Paul.emma@talktalk.net'
I live out of the back, and some houses down of Plot 419. I assume this is the house that is built too close to the building line and too high. Well it should be quite simple, Charles Church is a big company with big pockets. Make Charles Church knock it down and build it correctly, like you would for any member of the public. Builders have it far too easy in Ingleby Barwick, and the Council and Councillors are either too weak or don't care about the local communities or they would not have ridden rough shot over the Ingleby Barwick master plan that allowed for a public house and shops on each village. Ingleby Barwick is an extreme case of over density due to bad Councillor management, designed to satisfy the greed of the builders over the wishes of the residents who elect them.
13. John Bale, 49 Lullingstone Crescent' Ingleby Barwick
Plot 419 is higher than expected and is dauntingly overlooking the rear garden of our property. Also concerns that the property is higher than ours that it water will drain onto our property.
14. Jane Nolan, 18 Brougham Close' Ingleby Barwick
I refer to your letter dated 1st April 2008. I would once again like to formally object to the proposals for the following reasons.
Due to the raised height of the property the external door and ground floor windows which overlook our property I consider this an intrusion of privacy. I realise some of the changes made by Charles Church are obscure glass and trees along a foot path but these are not permanent changes and the modifications are not enforceable therefore I do not think this is an acceptable solution.
15. Lee Hyndman, 22 Brougham Close' Ingleby Barwick
The amended plans are still contrary to local polices gp1 and ho11.the planning inspectorate stated that the footpath affects privacy and amenity of the surrounding properties. the floor levels have not been amended they are just trying to get away with not knocking it down. the occupiers of plot 419 can easily see into my property and into my front room. how are the measures permanent or enforceable?
16. Brian Sutherland, 4 High Street' Norton
I have taken great interest in continued attempts by Charles Church to bully their way to planning permission. They built the house wrongly why not make them knock it down and start again as stated by Councillor Gibson at the last meeting. Why do the council continue to bend over backwards to accommodate large companies when their priority should be to help the residents.
17. Nick Matthews, 20 brougham close' Ingleby Barwick
The amended plans are still contrary to local polices gp1 and ho11.the planning inspectorate stated that the footpath affects privacy and amenity of my house. The plans do not do anything to eradicate this. The occupiers of plot 419 can still see over my fence from the rear patio area. This has been refused at committee level had its appeal

dismissed yet the council planning department seems to want to bend over backwards to help Charles Church!!!!why???. Surely the easiest way would be to knock it down. come on Stockton Council do the job i pay my council taxes for you to do!!! the floor levels have not been amended all they have done is lower the footpath. How does this meet policies ho11 and gp1?

Victoria Billington, 22 brougham close' Ingleby Barwick

18. The amended plans are still contrary to local polices gp1 and ho11.the planning inspectorate stated that the footpath affects privacy and amenity of the surrounding properties. the floor levels have not been amended they are just trying to get away with not knocking it down. The occupiers of plot 419 can easily see into my property and into my front room. how are the measures permanent or enforceable?

Louise Matthews, 20 brougham close' Ingleby Barwick

19. The Council would not support me if i wanted to plant 2m high trees along my garden boundary so why should they allow Charles Church. The plans do not alleviate the Planning Inspectorates Issues with regard to Privacy or amenity

20. The amended plans are still contrary to local polices gp1 and ho11.the planning inspectorate stated that the footpath affects privacy and amenity of my house. The plans do not do anything to eradicate this. The occupiers of plot 419 can still see over my fence from the rear patio area. This has been refused at committee level had its appeal dismissed yet the council planning department seems to want to bend over backwards to help Charles Church!!!!why???. Surely the easiest way would be to knock it down. Come on Stockton council do the job i pay my council taxes for you to do!!!

Sean Nolan. 18 Brougham Close' Ingleby Barwick

21. I strongly object to the complete invasion of privacy. The proposed modifications are not enforceable and can therefore be removed once the house is occupied. The building blocks daylight has caused undue stress for 18 months whilst its height is causing flooding I reiterate the comments made by my neighbours and also the comments made by the planning Inspectorate. The amended plans do nothing to prevent my loss of privacy and amenity and infact make the situation even worse by the planting of trees.

22. I strongly object to the Planning Application as it is a complete invasion of privacy. The changes made by Charles church are ridiculous which includes obscure glass and planting of trees. These modifications are not enforceable and therefore can be removed once the house is occupied. We have lived with this ludicrous building blocking daylight and causing undue stress for 18 months and I feel this needs to be resolved by knocking it down. Because of the height of the house we are also suffering the garden flooding and see this as a continuing problem as long as the building is there.

Ken Dixon, 41 Henshaw Drive, Ingleby Barwick, Stockton on Tees

23. The lowering of the footways around the house will not result in the lowering of the access likely to construct a raised walkway along the side / rear of the property to address the levels issue which would impact on the occupiers of the adjacent property (20 Brougham Close) as a result of allowing unobstructed views into this property which was the initial reason for the application being rejected.

24. The idea of putting hedges up to 3m to obstruct views is absurd as it would result in complaint relating to the High Hedges legislation, which consider the number of hedgerow trees where over 2m in height and where they block sunlight. Such a hedge would also affect the garden of the adjoining property due to loss of sunlight.

PLANNING POLICY

The relevant development plan in this case is the adopted Stockton on Tees Local Plan.

Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, 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)*.

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 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.

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.

MATERIAL PLANNING CONSIDERATIONS

25. 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 material planning considerations in determining this application are the level of the dwelling and the way in which this impacts on amenity, privacy and sunlight, flooding, other matters and the Planning Inspector's view as set out in his report on the previous planning application. These are considered as follows:

Amenity and sunlight

26. In considering the levels issues for plot 419, Members previously 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, unduly dominated surrounding properties and significantly altered the character of the area. Objections have also been received from adjacent residents about the height of the dwelling as built and loss of sunlight. The Planning Inspector in considering the previous planning application did not consider that there were issues over the height of the building as built or any significant loss of sunlight or daylight

Privacy

27. Due to the orientation of the property and the location of surrounding properties it is considered that the only elements of Plot 419, which could affect privacy, are those on the elevation facing Brougham Close. Within this elevation there are two 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. and a utility room. There was formerly a kitchen window within this elevation. However, this has now been removed from the scheme. The W.C. and utility windows are not considered to affect privacy due to the nature of the rooms and the windows being obscurely glazed. The Planning Inspector previously concluded that the position and nature of windows within the building elevation facing 20 Brougham Close would not unduly compromise privacy. The applicant has since removed the kitchen window from this elevation.
28. Within the previous scheme, there was a raised area along the side of the house, which if used as a walkway, would detrimentally impact on privacy. The Planning Inspector considered that although the previous scheme did not indicate this as being a footpath, it may have been used as one and as such, that while a path was not being provided, the raised area of land could be used as a platform from which views over the adjoining garden fence could be achieved and it was not acceptable. This revised scheme has removed this raised area of land all together and is considered to address the Planning Inspectors reasons for dismissing the previous appeal. The applicant has also indicated the removal of the personnel door from this elevation, which serves the garage, to the side and a gate running down the north side of the property to prevent any over looking from the path which leads to the front of the house. Although there may still be some limited views from the patio area serving the breakfast room of Plot 419, it is considered that the proposed works will prevent any significant undue loss of privacy and amenity for the adjoining site.

Flooding

29. Objection has been made with 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 (immediately adjacent to proposed dwelling) is clearly shown as being at the same level of that of the adjoining gardens. This rises up beyond the boundary and past the side elevation of the property elsewhere within the garden, however, it is not considered to be significant across the site whilst it should be noted that there is likely to be less water falling on the ground within the site generally as a result of the water which falls on the dwelling being piped to the drainage system.

Other matters

30. The Permitted Development Rights were removed from the original approval for the site (06/2100/OUT) and therefore conservatories, extensions, raised decking etc would require planning permission and if such were being proposed, the impacts on privacy and amenity could be considered at the time of any future application.
31. Comment has been made that a high hedge forming the boundary would be inappropriate in this location due to future problems normally associated with high hedges such as loss of daylight. A hedge of suitable species is generally considered suitable as a garden boundary detail as it can offer both screening as well as a softer and greener treatment. Such detail can be controlled by condition. Furthermore, should the hedge become a statutory nuisance then this could be dealt with under the relevant powers in force.

CONCLUSION

32. In view of the details of the application now submitted which include windows being obscurely glazed which serve minor rooms within the property, the garage door being removed, the "footpath" being lowered to "ground level" and amendments to the boundary treatments, it is considered that the proposal would not unduly compromise the privacy of surrounding properties and is acceptable. The application whilst not addressing the concerns of the Planning Committee, does address the sole concern of the Planning Inspector who determined and dismissed the appeal in respect of the previous planning application. The overall height of the property was not considered to be significantly detrimentally or affect the day lighting requirements for surrounding houses by the Planning Inspector.
33. Taking into consideration the objections and concerns of the neighbouring occupiers and the remedial measures now proposed and the Planning Inspector's conclusions in respect of the appeal into the previous planning applications, it is considered that the 'variation' of the existing conditions to allow the implementation of the specified measures, is acceptable.

**Corporate Director of Development and Neighbourhood Services
Contact Officer Mr Andrew Glossop Telephone No 01642 527796**

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 AND WARD COUNCILLORS

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