

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 24 September 2008

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APPLICATION REF. NO:	08/00589/FUL
STATUTORY DECISION DATE:	3 September 2008
WARD/PARISH:	Park West
LOCATION:	17 Linden Avenue
DESCRIPTION:	Erection of single storey residential dwelling incorporating improvements to existing track surface
APPLICANT:	Mr Keith Mash

APPLICATION AND SITE DESCRIPTION

This planning application was deferred from the previous Planning Committee in order to clarify the access rights and arrangements for the proposed dwelling. As Members will see this is discussed further in the report under “Highway Matters”

The application site is within a long garden to the rear of No 17 Linden Avenue. It contains a detached garage. The proposal involves the erection of a single storey dwelling in the rear garden consisting a living room; breakfast room; kitchen; utility room; two ensuite bathrooms; two bedrooms and a garage. It would measure 7.3m wide; 22m long (at its longest dimension) with an overall height of 5.5m under a hipped roof. A fence and retaining wall would be erected to subdivide the rear garden into two plots. The property would be accessed via an existing track, which would be upgraded and resurfaced.

The surrounding area is predominately residential and the site lies within the Stanhope Road/Grange Road Conservation Area.

A Design and Access Statement has been submitted with the application and considered by Officers.

PLANNING HISTORY

07/00539/FUL A planning application for a two storey residential dwelling incorporating access improvements to existing track was WITHDRAWN

08/00301/FUL In May 2008, planning permission was REFUSED for the erection of a two storey residential dwelling incorporating access improvements to existing track. The reasons for refusal were:

1. The proposed dwelling would have a detrimental impact upon the amenities of No 19 Linden Avenue by reason of its size and its close proximity to the neighbouring rear garden area. The dwelling would be a prominent and overbearing building and would not comply with Policy E29 (The Setting of New Development) and H11 (Design and Layout of New Housing Development) of the Borough of Darlington Local Plan 1997.
2. The proposed dwelling would have a detrimental impact upon the character and visual appearance of the Stanhope Road/Grange Road Conservation Area by reason of its location and design. The development would be contrary to Planning Policy Guidance Note 15 - Planning and the Historic Environment.

An appeal against this application has recently been lodged with the Local Planning Authority

PLANNING POLICY BACKGROUND

The following policies within the Borough of Darlington Local Plan are relevant:

- E2 Development Limits
- E12 Trees and Development
- E29 The Setting of New Development
- H3 Locations for New Housing Development
- H11 Design and Layout of New Development
- H13 Backland Development
- T13 New Developments - Standards

Government guidance on conservation areas is contained within Planning Policy Guidance Note 15 – Planning and the Historic Environment (PPG15)

RESULTS OF CONSULTATION AND PUBLICITY

Twenty two letters of objection have been received. The concerns can be summarised as follows:

- *Knoll Avenue is a private road;*
- *Access to the lane via the rear of the apartments is sure to lead to revving of engines; smoke pollution and clashing of doors;*
- *Too many trees being removed to the detriment of the visual appearance of the area;*
- *The approval of this development will set a precedent for future applications;*
- *Insufficient parking spaces;*
- *Loss of green space and greenery*
- *The development is out of character with the Stanhope Road/Grange Road Conservation Area;*
- *The roof will be used for living accommodation. Is this really a single storey development?*
- *I don't want builders vans and lorries on the private road*
- *The application is contrary to Policy H13 (Backland Development) of the Borough of Darlington Local Plan;*
- *The proposed access is unsuitable for motor vehicles and emergency vehicles;*
- *The proposed development would cause loss of privacy to neighbours on all sides;*
- *The dwelling has a very small garden;*
- *Not in keeping with the two and three storey buildings in the surrounding area;*
- *The access track is currently used by dog walkers and children;*

- *The development would result in the loss of wildlife;*
- *The proposed development is unnecessary. The Council is already meeting requirements for new housing in the town.*
- *A restrictive covenant on No 17 allows only one residential dwelling per plot;*
- *What will happen for refuse collection?;*
- *The proposal fails to meet the criteria required for development in a conservation area;*
- *The development does not comply with the requirements of PPG 15 – Planning and the Historic Environment*
- *The lane has a rural charm within an urban area;*
- *Concerns over ground levels;*
- *The applicant does not own the access track or some of the trees to be removed;*
- *The access road will attract local reprobates;*
- *The development will have an impact on neighbouring dwellings due to its roof height*

PLANNING ISSUES

The main issues to be considered here are whether or not the development is acceptable in the following terms:

- Planning Policy
- Character and Appearance of the Conservation Area
- Residential Amenity
- Highway Matters
- Trees
- Precedent
- Other Matters

Planning Policy

The application site lies within the development limits for the urban area and therefore it would comply with Policies E2 (Development Limits) and H3 (Locations for New Housing Development) of the Borough of Darlington Local Plan.

The development is considered to be acceptable in principle, subject to detailed matters of development control, which are considered in the remaining sections of this report.

Conservation Area

The surrounding area is predominately residential. Linden Avenue is a mixture of large semi detached dwellings with long rear gardens and a grouping of three storey flatted developments, also found on Knoll Avenue directly to the south of the application site. There are dormer bungalows further south on Pine Grove.

The application site lies within the Stanhope Road/Grange Road Conservation Area. PPG 15 states that Section 72 of the Act requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of a conservation area. PPG 15 continues that there is no requirement in the legislation that conservation areas should be protected from all development, which does not enhance or positively preserve. The objective of preservation can be achieved by development, which makes a positive contribution to an area's character or appearance, or by development, which leaves character and appearance unharmed.

In the Design and Access Statement, it states that the applicant has confirmed that the palate of materials for the proposed development has been influenced by the dwellings in the locality and the conservation area. Also, the entrance door canopy, bay windows and brick plinths are design characteristics found in the area. In design terms, Officers the proposed development as an improvement on previous submissions and that the location of the dwelling would leave the character and appearance of the conservation area unharmed, due to its revised design and reduced scale. The development would accord with Policies E29, H11 and H13 of the Local Plan in design terms, and the requirement of PPG15.

Residential Amenity

The rear elevation of the proposed dwelling is approximately 29m from the nearest part of Nos 17 and 19 Linden Avenue and this would comply with the minimum separation distance guidelines used by the Council. The privacy levels would be further enhanced by the dividing wall and fence. The north elevation fronting No 19 contains three window openings and a doorway, which would all be fitted with obscure glazing and a condition, can be imposed to secure this and the level of obscurity. There are no openings in the northern roof slope. There would be seven rooflights in the southern roof slope looking onto the gable end of the adjacent three storey flatted development.

The rear gardens of the dwellings on Linden Avenue are long and narrow. The previous application for the site was for a two-storey dwelling measuring 8.2m wide; 19m long with an overall height of 8.2m under a hipped roof. It was considered by Officers that this proposal would be overbearing when viewed from the neighbouring gardens. This single storey dwelling would have less of an overbearing impact and an existing fence between Nos 17 and 19 would partially screen the development from the neighbouring gardens. The ground level of the application site does slope from the area immediately behind No 17, to where the proposed dwelling would be sited. The ground level where the dwelling would be sited would not have to be significantly raised at all to level this section of the garden, however, a planning condition can be imposed to request cross sectional plans of the development.

It is considered that the upgrading of the track to be used for vehicles would not have a significant impact upon the amenities of the occupiers of the flatted development, Nos 2 – 12 Knoll Avenue.

The development would accord with Policies E29, H11 and H13 of the Local Plan, in residential amenity terms.

Highway Matters

Access to the new dwelling would be from an existing track off Knoll Avenue, which runs all the way through to Cleveland Terrace. A section of the track would be upgraded and resurfaced using Marshalls Tegula Priota permeable block paving, which is to the satisfaction of the Council Traffic Section. The dwelling would include a garage projecting from its front elevation and space to park one further vehicle to the front.

The track is a public right of way. The track was dedicated by deed for 'use by the public' in 1949. As the deed does not restrict the right in question there is a presumption that there is included rights on foot, horse, cycle, and motor vehicles. It should be noted that the track has in fact been used by motor vehicles. However, the way was not entered to the list of streets as an adopted highway. Nor was it recorded on the definitive map of rights of way. Consequently, on the commencement of the Natural Environment and Rural Communities Act in 2006, the right

for 'mechanically propelled vehicles' was extinguished (this is part of the general consolidation of rights of way law which seeks to protect 'green lanes' and the like from use by motor vehicles). This would now prevent all mechanically propelled vehicles from using the track.

However, section 67 of the Act provides that although the public right of way for mechanically propelled vehicles is extinguished there is then deemed to be a private right of way for such vehicles where this is 'reasonably necessary' to allow a person with an interest in land (or a part of a land holding) to access that land. It does not matter whether the public right of access for such vehicles was being exercised before 2006. In the case of this development proposal, therefore, it is very likely that the public right for mechanically propelled vehicles has been extinguished but that there is a possibility that private rights have been substituted in their place. The applicant is of course advised to clarify the position on private rights for mechanically propelled vehicles with his own advisers, but the rights of way issues are not sufficiently adverse to the proposal to suggest that the development has no reasonable prospect of being implemented (if planning permission were granted).

In terms of land ownership, the applicant has correctly signed Certificate D on the application forms, which confirms that ownership of the track is unclear but the applicant has advertised the application in the local press.

Trees

There are trees in the rear gardens and along the track, but none of them are covered by a tree preservation order. An Arboricultural Assessment has been submitted with the application and a total of eight trees; a hedge and a grouping of trees would be removed to facilitate the development. Also, it has been recommended that other trees would need to be pruned. As part of the survey the significant trees were inspected from ground level for signs of wildlife habitation, in particular birds and bats and no evidence was found.

The Council's Senior Arboricultural Officer has confirmed that the trees are not worthy of a tree preservation order and has raised no objections to the felling and pruning works. He has requested the imposition of a planning condition for protective fencing to be placed around the trees to be retained. The development would accord with Policy E12 of the Local Plan.

Precedent

A number of objections relate to a concern that if planning permission is granted for this application, it will lead to future applications for residential development in the rear gardens of the dwellings on Linden Avenue.

If further applications were to be submitted Officers would consider them on their own individual merits and this application cannot be recommended for refusal on the grounds of creating a precedent, especially as there are no guarantees that other applications may be submitted.

Other Matters

The issue of there being a covenant on the dwellings restricting the number of dwellings to one per plot is a civil matter, which Officers cannot comment upon.

If any of the trees to be pruned or felled are not on land within the ownership of the applicant, he must seek authorisation from the owners to carry out the work. The granting of this application does not remove the necessity of this requirement.

SECTION 17 OF THE CRIME AND DISORDER ACT 1998

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

CONCLUSION

The application site lies within development limits identified in the development plan. Planning permission (ref no: 08/00301/FUL) has been refused previously for a two storey dwelling on residential amenity grounds and impact upon the Stanhope Road/Grange Road Conservation Area. Officers consider that the design and layout of the revised development accords with the relevant policies in the development plan and the guidance contained within Planning Policy Guidance Note 15 – Planning and the Historic Environment. The development respects both residential amenity and the visual amenity and general character of the area. The matter that relates to the track at the rear of the application site does raise some right of way issues, but this is for the applicant to resolve and Officers consider that this does not suggest that the development has no reasonable prospect of being implemented. The proposal accords with the relevant policies in the development plan set out below:

- E2 Development Limits
- E12 Trees and Development
- E29 The Setting of New Development
- H3 Locations for New Housing Development
- H11 Design and Layout of New Development
- H13 Backland Development

RECOMMENDATION

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

- A3 - Implementation Limit (Three Years).
- B4 - Details of Materials (Samples).
- No works shall commence on site until protective fencing, in accordance with BS5837 2005 has been erected around the trees in and adjacent to the application site. The fencing should be at least 2.3m high and consist of a scaffolding frame, braced to resist impacts, supported by a weldmesh wired to the uprights and horizontals to dissuade encroachment. The extent of the protection should be inspected by a Council Officer prior to the commencement of the development.
REASON - To ensure the retention of the trees and their protection from damage, in the interests of visual amenity
- The window openings in the north elevation of the dwelling shall be obscured and shall not be replaced or repaired other than with obscure glazing. Details on the level of obscurity shall be submitted to and approved by the Local Planning Authority prior to the commencement of the development. The development shall not be carried out otherwise than in accordance with the approved details
REASON - To prevent overlooking of the neighbouring gardens.

- The development hereby approved shall not be commenced until sectional details showing existing and approved ground levels for the proposed buildings and the neighbouring gardens and dwellings have been submitted to and agreed in writing with the Local Planning Authority.
REASON - In order to ensure a satisfactory form of development.
- C5 - Restriction of PD Rights (Residential).
- Notwithstanding the details shown on the approved plans, precise details of the proposed means of enclosure shall be submitted to and approved by the Local Planning Authority prior to the commencement of the development. The development shall not be carried out otherwise than in complete accordance with the approved details.
REASON: In the interests of the visual amenity of the locality and the residential amenities of the neighbouring dwellings.
- B5 - Detailed Drawings (Accordance with Plan).

SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION

The application site lies within development limits identified in the development plan. Planning permission (ref no: 08/00301/FUL) has been refused previously for a two storey dwelling on residential amenity grounds and impact upon the Stanhope Road/Grange Road Conservation Area. Officers consider that the design and layout of the revised development accords with the relevant policies in the development plan and the guidance contained within Planning Policy Guidance Note 15 – Planning and the Historic Environment. The development respects both residential amenity and the visual amenity and general character of the area. The matter that relates to the track at the rear of the application site does raise some right of way issues, but this is for the applicant to resolve and Officers consider that this does not suggest that the development has no reasonable prospect of being implemented. The proposal accords with the relevant policies in the development plan set out below:

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- H11 Design and Layout of New Development
- H13 Backland Development

INFORMATIVES

The applicant is advised that works are required within the public highway and contact must be made with the Assistant Director Highways and Engineering (contact Mr. A. Ward 01325 388743) to arrange for the works to be carried out or to obtain authority under Sec.184 of the Highways Act 1980 to execute the works.