

DARLINGTON BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 10 July 2019

APPLICATION REF. NO:	19/00092/FUL
STATUTORY DECISION DATE:	14 June 2019
WARD/PARISH:	HEIGHINGTON AND CONISCLIFFE
LOCATION:	Rosebank Nurseries, 1 Merrybent
DESCRIPTION:	Application submitted under Section 73 of the Town and Country Planning Act 1990 for the variation of condition 15 (accordance with proposals) attached to planning permission 17/00789/FUL dated 12 December 2017 - to permit changes to garage and internal/external alterations to dwelling (Plot 1) (amended Site Location Plan received 10 May 2019)
APPLICANT:	Mr William Barton

APPLICATION AND SITE DESCRIPTION

The application site is part of a larger development site that has planning permission for the erection of three dwellings. Planning permission was first granted in October 2016 (16/00496/FUL) for the redevelopment of the former nursery site for the erection of three dwellings. A revised scheme was approved in December 2017 (17/00789/FUL) for revisions to the dwelling at Plot 1 and to erect a detached garage to the rear of this property.

Construction of the dwelling and garage at Plot 1 has not taken place in accordance with the approved plans and this is an application under Section 73 of the Town and Country Planning Act 1990 which seeks to vary condition 17 of the 2017 permission, that development be carried out in accordance with the approved plans, to regularise the following changes to the approved plans:

- The garage has been set in approximately 0.55m from the west boundary rather than being sited on the shared boundary with No 5 Merrybent;
- There are two roller doors inserted in the front elevation (east) of the garage rather than three;
- A door and new window have been inserted into the north elevation of the garage;

- A ground floor lounge window has been inserted in the south facing elevation of the dwelling;
- A first floor en-suite window has been inserted in the south facing elevation of the dwelling;
- The two, two storey bay windows on the rear elevation of the dwelling have been reduced to single storey bay windows;
- An first floor balcony in the rear elevation of the dwelling has been removed and the space has been infilled and replaced with a bathroom;
- Internal alterations to the dwelling.

An amended Site Plan has been submitted to revise the extent of the red line boundary so that it does not incorporate any part of the adopted public highway. Work has stopped pending consideration of the application.

Application documents including Planning Statement, Design and Access statement, detailed plans, consultation responses, representations received and other background papers are available on the Darlington Borough Council website.

PLANNING HISTORY

The relevant entries are:

16/00496/FUL In October 2016 planning permission was GRANTED for the redevelopment of former nursery site and erection of 3 No. dwellings

17/00789/FUL In December 2017 planning permission was GRANTED to permit the variation of condition 22 (accordance with proposals) attached to planning permission 16/00496/FUL to permit a variation of house type on plot 1 and erection of a detached garage (Additional Noise Assessment received 24 November 2017)

RESULTS OF CONSULTATION AND PUBLICITY

Following the Council's publicity exercises, four letters of objection have been received. Three of the objections are from persons who reside outside of Merrybent. However, the comments can be summarised as follows:

- *The plans don't show that the adjoining plot is higher than our land level (No 3 Merrybent) by estimated 1 metre which needs to be addressed. This is the reason why the height of the garage actually works out even higher with the result being that the garage has even more of a significant overbearance on our property.*
- *The original plans show only half of our rear boundary being taken up by the garage. However, developers started building the garage further in from the west boundary and yet kept the same dimensions meaning they take up more of our rear boundary. As a result, for us even more light is lost and is even more overbearance from the garage*
- *The most significant issue for the new house is the new windows in the south elevation that has appeared. These windows now overlook into our property leading to a loss of privacy and in future will have a significant impact after the*

hours of darkness with light levels coming from those windows and shining directly into rooms at the back of the property (children's bedrooms)

- *It is alarming that a garage of this size has been granted in a residential area. What conditions will be made to ensure noise pollution does not become a problem and to ensure this is used as a domestic garage?*
- *The garage is in the wrong location which is having a massive impact on the privacy, loss of light and mental health of the residents of Nos 1, 3 and 5 Merrybent*
- *The road leading to the development has been severely damaged by the developers partially due to the fact they have on two occasions cut through major electricity cables which necessitated the digging up of the road;*
- *The developers drive too fast down the narrow road leading to the development, which is a massive safety concern;*
- *The values of Nos 1, 3 and 5 Merrybent will be impacted and substantial potentially leaving the Council responsible for the devaluation and possibly subject to legal action for compensation*
- *It is obvious that the overbearing nature of this garage will have a significant negative affect on the surrounding properties;*
- *The developers have made a lot of changes to the garage and house which will have an impact on the privacy and loss of light to the neighbouring dwellings;*
- *The garage and window placement in the property directly behind No 3 Merrybent is overbearing and drastically impacts on the light and privacy of the back garden and rear face of No 3 Merrybent;*
- *The garage is hugely imposing and very large for the sole use of storing cars. I am unsure of the need for such a large domestic garage*
- *The work that has been conducted to the shared road access to install utilities and the repairs that have been done are unsatisfactory;*

The Low Coniscliffe and Merrybent Parish Council has objected on the following grounds:

- *The re-positioning of the garage from its original location is in appropriate as it will be overbearing to the adjoining neighbours property and it will be an intrusion into privacy and loss of light;*
- *The site plan outlined in red may have be in error as it shows the public road area within their total boundary ownership when the road is a public right of way (maintained at public expense)*

Consultee Responses

The **Councils Highways Engineer** has raised no objections

PLANNING POLICY BACKGROUND

The relevant planning policies are:

National Planning Policy Framework 2019

Borough of Darlington Local Plan 1997

E2 Development Limits

E4 New Buildings in the Countryside

- E14 Landscaping of Development
- H7 Areas of Housing Development Restraint

Darlington Core Strategy Development Plan Document 2011

- Policy CS1 Darlington's Sub Regional Role and Locational Strategy
- Policy CS2 Achieving High Quality, Sustainable Design
- Policy CS10 New Housing Development
- Policy CS14 Promoting Local Character and Distinctiveness
- Policy CS15 Protecting and Enhancing Biodiversity and Geodiversity
- Policy CS16 Protecting Environmental Resources, Human Health and Safety

Other Documents

Council's Supplementary Planning Document – Design for New Development

PLANNING ISSUES

The redevelopment of the larger site for residential purposes and the erection of a dwelling and garage on Plot 1 have been established by the previous planning permissions that have been granted on the site. As such the principle of development cannot be reconsidered. Officers consider that the proposed changes would not fundamentally alter the original planning permission and an application under Section 73 of the Act is appropriate in this instance. The main issues for consideration are therefore whether the changes to the approved plans, as set out at the beginning of this report, are acceptable having regard to the following matters:

- Residential Amenity
- Impact on the Visual Appearance and Character of the Area
- Highway Safety and Parking Matters
- Planning Conditions

Residential Amenity

Policy CS16 (Protecting Environmental Resources, Human Health and Safety) of the Core Strategy seeks to ensure that new developments do not harm the general amenity and health and safety of the local community which echoes one of the core principles of the National Planning Policy Framework, 2019.

Plot 1 is bounded to the north by a new dwelling currently under construction (Plot 2); to the east by the A1 (M); to the south by Nos 1 and 3 Merrybent; and to the west by No 5 Merrybent.

Nos 1 and 3 Merrybent are a pair of semi detached dwellings whose rear elevations and gardens face the application site. The rear gardens are approximately 9 metres in depth and the application site sits approximately 1 metre higher than these properties. The shared boundary to the north comprises a mix of close boarded fencing with sections of trellis work above and the external walls of a building that previously occupied part of the rear garden of No 3 Merrybent. A row of high leylandii trees within the application site are positioned to the rear of No 1 but they have been removed from the shared boundary with No 3 Merrybent.

No 5 Merrybent is a detached bungalow located to the south west of Plot 1 whose rear garden runs the full length of the wider development site. This boundary is formed with a fence and hedge and there is a large detached building to the rear of this property, adjacent to the site of the detached garage to the rear of Plot 1.

The footprint of the garage as built is in accordance with the approved plans, albeit it has been set in approximately 0.55 metres from the west boundary (adjacent to No. 5 Merrybent) rather than being sited on the boundary as approved. The garage has been constructed to eaves level, pending the outcome of the application, and the submitted plans show that the eaves and ridge heights of the garage will remain as per the approved plans: 2.73 metres to the eaves and 4.7 metres to the ridge.

The garage is directly to the rear of No 3 Merrybent and is sited approximately 1m off the shared boundary with this dwelling. As built, the garage is highly visible from the rear of this property and its rear garden, with approximately 1m of brick work above the fence line. The dual pitched roof, which slopes away from the shared boundary and has yet to be constructed, would also be visible. While there will be no change to the southern elevation of the garage when viewed from this property, the occupants of this property are concerned that the effect of repositioning the garage off the western boundary by 0.55 metres has resulted in it extending further along their rear boundary which they consider to have a greater overbearing impact upon the rear of their property which is exacerbated by the change in levels between the two properties.

Despite the repositioning of the garage from the western boundary it is not considered that the garage would be so imposing and overbearing when viewed from the garden and dining room/living room of No 3 Merrybent, when compared to the approved plans, to justify recommend refusal of planning permission on this basis.

The garage would not adversely affect the outlook from No 1 Merrybent due to the height of the boundary fencing between the two properties and due to the garage being offset from the common boundary. Similarly, the garage would not adversely affect No 5 Merrybent nor the dwelling that is currently under construction on Plot 2 due to the location and spatial relationship between the garage and these neighbouring dwellings.

A planning condition is recommended restricting the use of garage for purposes incidental to the enjoyment of the dwelling and not for any commercial or business activities.

The alterations to the dwelling, which include the insertion of new ground and first floor windows in the south elevation of the dwelling, alterations to existing window openings in the rear elevation and the omission of a rear balcony, do not raise any unacceptable issues of residential amenity. The new first floor window in the south elevation has been fitted with obscure glazing (en-suite bathroom window) and the separation distance between the dwelling at Plot 1 and Nos. 1 and 3 Merrybent would ensure that the ground floor window would not adversely affect the neighbouring dwellings taking into account the difference in ground levels, the presence of the boundary fencing and the current height and position of the leylandii trees to the rear of No 1 Merrybent, which obscure the side elevation of the dwelling from both properties.

Impact on the Visual Appearance and Character of the Area

Policy CS2 (Achieving High Quality, Sustainable Design) and CS14 (Promoting Local Character and Distinctiveness) of the Core Strategy includes provision that new development should reflect or enhance Darlington's distinctive nature; create a safe and secure environment; create safe, attractive, functional and integrated outdoor spaces that complement the built form; and relate well to the Borough's green infrastructure network and also seeks to protect, and where appropriate enhance, the distinctive character of the Borough's built, historic, natural and environmental townscapes, landscapes and strong sense of place.

The amended design of the dwelling and garage remain in-keeping with the character and appearance of the other dwellings that form this small housing development on the edge of Merrybent.

The A67 which runs to the south of the site is slightly elevated above the application site at this point and as such the garage can be seen from this aspect. There are no views of the site from the A1 (M) due to mature trees and hedgerows along the motorway verge and embankment. However, it is considered that the proposed alterations to the approved development would not harm the character and appearance of the surrounding area.

Highway Safety and Parking Matters

Policy CS2 (Achieving High Quality Sustainable Design) of the Core Strategy seeks to ensure that new developments provide vehicular access and parking provision that is suitable for its use and location reflecting the standards set out in the Tees Valley Design Guide and Specification.

The site is accessed off the A67 via a private road. There will be sufficient in-curtilage parking provision for this four bedroom dwelling. The Highway Engineer has raised no objection to the development.

Planning Conditions

The planning conditions attached to the original planning permission need to be reattached to any new approval and this is reflected in the wording.

Other Matters

Members are advised that the potential impact that any development may have on the value of a neighbouring dwelling is not a material planning consideration in the determination of a planning application. The planning application cannot be refused on such grounds.

The concerns that have been raised over the use and condition of the private access road is a civil matter between the owner of the road and those that have a right of access over it and not a material planning consideration.

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 development has not been carried out in complete accordance with the approved plans but having taken into account the site context, its surroundings and relationship with the neighbouring dwellings, the proposed alterations to the approved plans are considered to be acceptable in terms of their impact on residential amenity, design and highway safety.

RECOMMENDATION

THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The development hereby permitted shall be commenced not later than 20 October 2019.

REASON – Due to the planning application being submitted under Section 73 of the Town and Country Planning Act 1990 (as amended).

2. The garage/workshop hereby approved shall be used for purposes incidental to the enjoyment of the dwelling house only and shall not be used for any business or commercial activities

REASON: In the interests of residential amenity

3. The first floor window formed in the south facing elevation of the dwelling shall be obscure glazed and shall not be repaired or replaced other than with obscured glazing

REASON: In the interests of the residential amenity

4. The materials used in the external surfaces of the dwelling and garage hereby permitted shall be in complete accordance with the photographs/samples submitted with planning permission reference number 17/00789/FUL dated 12 December 2017 unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of the visual appearance of the development and surrounding area

5. Prior to the development hereby approved being first occupied, a 3 meter high reflective acoustic barrier shall be constructed along the entire eastern site boundary and 20 meters along the northern boundary as shown on the approved Means of Enclosure plan. The barrier shall have a minimum surface density of 10kg/m² and form a continuous barrier with no gaps with the ground. Thereafter the barrier shall be retained and maintained for the life of the development

REASON: In the interests of residential amenity

6. The glazing specification for all windows associated with the development shall have a minimum acoustic performance value of 36dB (Rw + Ctr).

REASON: To safeguard the amenities of the future occupiers of the dwelling

7. The acoustic window ventilator specification for all windows associated with the development shall have a minimum acoustic performance value of 42dB (Dne,w)

REASON: To safeguard the amenities of the future occupiers of the dwelling

8. Prior to the commencement of the development or at a time agreed in writing by the Local Planning Authority a Phase 3 Remediation and Verification Strategy shall be prepared by a "suitably competent person(s)" to address all human health and environmental risks associated with contamination identified in the Phase 2 Site Investigation and Risk Assessment. The Remediation and Verification Strategy which shall include an options appraisal and ensure that the site is suitable for its new use and no unacceptable risks remain, shall be submitted to and agreed in writing with the Local Planning Authority, unless the Local Planning Authority dispenses with the requirement specifically and in writing.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled. To ensure that risks from land contamination to the future uses of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out without unacceptable risks to receptors, in accordance with the National Planning Policy Framework.

9. Any contamination not considered in the Phase 3 Remediation and Verification Strategy, but identified during subsequent construction/remediation works shall be reported in writing within a reasonable timescale to the Local Planning Authority. The contamination shall be subject to further risk assessment and remediation proposals agreed in writing with the Local Planning Authority and the development completed in accordance with any further agreed amended specification of works.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled. To ensure that risks from land contamination to the future uses of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out without unacceptable risks to receptors, in accordance with the National Planning Policy Framework.

10. The Phase 3 Remediation and Verification works shall be conducted, supervised and documented by a "suitably competent person(s)" and in accordance with the agreed Phase 3 Remediation and Verification Strategy. No alterations to the agreed Remediation and Verification Strategy or associated works shall be carried out without the prior written agreement of the Local Planning Authority. A Phase 4 Verification and Completion Report shall be compiled and reported by a "suitably competent person(s)", documenting the purpose, objectives, investigation and risk assessment findings, remediation methodologies, validation results and post remediation monitoring carried out to demonstrate the completeness and effectiveness of all agreed remediation works conducted. The Phase 4 Verification and Completion Report shall be submitted and agreed in writing with the Local Planning Authority within 2-months of completion of the development or at a time agreed unless the Local Planning Authority dispenses with the requirement specifically and in writing. The development site or agreed phase of development site, shall not be occupied until all of the approved investigation, risk assessment, remediation and verification requirements relevant to the site (or part thereof) have been completed, reported and approved in writing by the Local Planning Authority.

REASON - The site may be contaminated as a result of past or current uses and/or is within 250 metres of a site which has been landfilled. To ensure that risks from land contamination to the future uses of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out without unacceptable risks to receptors, in accordance with the National Planning Policy Framework.

11. The development shall not be carried out otherwise than in complete accordance with the document entitled "Construction Management Plan" dated 12 June 2017 produced by ADG Architects and submitted with planning permission reference number 17/00789/FUL dated 12 December 2017 unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of the residential amenity and highway safety

12. Notwithstanding condition 9, construction work, including deliveries to and the removal of material from the site, shall not take place outside the hours 08.00-18.00 Monday to Friday and 08.00-14.00 on a Saturday with no working on a Sunday and Bank/Public Holidays without the prior written permission from the Local Planning Authority.

REASON: In the interests of residential amenity

13. If piled foundations are proposed, prior to the development commencing details of the piling method including justification for its choice, means of monitoring vibration and groundwater risk assessment if necessary in accordance with recognised guidance shall be submitted and agreed in writing by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with the approved Plan

REASON: In the interests of residential amenity

14. The development, including the demolition works, shall not be carried out otherwise than in complete accordance with the mitigation/countermeasures outlined in the document entitled “Arboricultural Survey, Arboricultural Impact Assessment, Arboricultural Method Statement – Merrybent Nursery, Merrybent, Darlington. REF: ARB/AE/948” dated July 2016, produced by Elliot Consultancy Limited and submitted with planning permission reference number 17/00789/FUL dated 12 December 2017 unless otherwise agreed in writing by the Local Planning Authority.

REASON: To safeguard the life of trees in the interests of visual amenity

15. The development, including the demolition works, shall not be carried out otherwise than in complete accordance with the mitigation measures and recommendations outlined in Section F of the approved document entitled “Bat Risk Assessment – Merrybent Nursery. Report No 3” dated June 2016 and produced by E3 Ecology Limited and submitted with planning permission reference number 17/00789/FUL dated 12 December 2017 unless otherwise agreed in writing by the Local Planning Authority.

REASON: To preserve and enhance the biodiversity of the site and surrounding area

16. The development hereby permitted shall be carried out in accordance with the approved plans, as detailed below:

- a) Drawing Number 9-9 Rev A Proposed Garage Elevations
- b) Drawing Number 00-2 Elevations/Ground Floor Plan
- c) Drawing Number 00-3 First Floor Plan
- d) Drawing Number 21-1 Proposed Site Plan

REASON – To ensure the development is carried out in accordance with the planning permission

THE FOLLOWING POLICIES AND DOCUMENTS WERE TAKEN INTO ACCOUNT WHEN ARRIVING AT THIS DECISION:

National Planning Policy Framework 2019

Borough of Darlington Local Plan 1997

- E2 Development Limits
- E4 New Buildings in the Countryside
- E14 Landscaping of Development
- H7 Areas of Housing Development Restraint

Darlington Core Strategy Development Plan Document 2011

Policy CS1 Darlington's Sub Regional Role and Locational Strategy
Policy CS2 Achieving High Quality, Sustainable Design
Policy CS10 New Housing Development
Policy CS14 Promoting Local Character and Distinctiveness
Policy CS15 Protecting and Enhancing Biodiversity and Geodiversity
Policy CS16 Protecting Environmental Resources, Human Health and Safety

Other Documents

Council's Supplementary Planning Document – Design for New Development

INFORMATIVES

Highways

The applicant is advised that contact be made with the Assistant Director : Highways, Design and Projects (contact Mrs. P. McGuckin 01325 406651) to discuss naming and numbering of the development.