

Application Number: DM/2020/00616

Proposal: Retention of existing 1.65m high close boarded timber fence and reduction of existing ground level by circa 300mm

Address: 21 Jasper Tudor Crescent, Llanfoist, Abergavenny, NP7 9AZ

Applicant: Mr & Mrs S Johnson

Plans: All Drawings/Plans BP2612/00 - F,

RECOMMENDATION: APPROVE

Case Officer: Mr Andrew Jones

Date Valid: 26.06.2020

This application is presented to Planning Committee at the request of the Local Ward Member, Councillor Giles Howard

1.0 APPLICATION DETAILS

1.1 Site Description

This application relates to a detached property on a modern housing estate on the edge of Llanfoist. The original garden was levelled in July/August 2017, this saw the garden raised between 120mm and 810mm along the southern boundary and a new close board timber fence (1.65m high) also installed along this boundary.

Subsequently planning application DC/2018/00218 for the "retention of timber close boarded fence on south boundary, and raise level of no. 21 garden between 120mm and 810mm over the fence length" was refused by Planning Committee in March of this year for the following single reason:

Insufficient information has been provided to demonstrate that the harmful effect on neighbour amenity from surface water, as a result of the changes to the garden level, has been mitigated. The development is therefore contrary to Policies DES1 (d), EP1 and SD4 of the adopted Monmouthshire Local Development Plan.

1.2 Value Added

No amendments to the proposal have been made following submission of this application.

1.3 Proposal Description

Planning permission is now sought to lower the entire grassed rear garden area of the property by 300mm. The garden fence erected along the southern boundary would be reduced from 1.65m to 1.37m with 430mm of trellis installed on top. A new railway sleeper raised bed would be installed where the lowered garden meets the fence.

2.0 RELEVANT PLANNING HISTORY (if any)

Reference Number	Description	Decision	Decision Date
-------------------------	--------------------	-----------------	----------------------

DC/2017/01142	Retention of 1.65m timber close boarded fence on south garden boundary.		05.12.2017
DC/2018/00218	Retention of timber close boarded fence on south boundary, and raise level of no. 21 garden between 120mm and 810mm over the fence length.	Refused	16.03.2020

3.0 LOCAL DEVELOPMENT PLAN POLICIES

Strategic Policies

S12 LDP Efficient Resource Use and Flood Risk
 S13 LDP Landscape, Green Infrastructure and the Natural Environment
 S17 LDP Place Making and Design

Development Management Policies

SD4 LDP Sustainable Drainage
 DES1 LDP General Design Considerations
 EP1 LDP Amenity and Environmental Protection

4.0 NATIONAL PLANNING POLICY

Planning Policy Wales (PPW) Edition 10

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being as required by the Planning (Wales) Act 2015, the Well-being of Future Generations (Wales) Act 2015 and other key legislation. A well-functioning planning system is fundamental for sustainable development and achieving sustainable places.

The planning system should create sustainable places which are attractive, sociable, accessible, active, secure, welcoming, healthy and friendly. Development proposals should create the conditions to bring people together, making them want to live, work and play in areas with a sense of place and well-being, creating prosperity for all.

5.0 REPRESENTATIONS

5.1 Consultation Replies

Llanfoist Fawr Community Council - The consensus view of those Community Council Members who responded is to take a neutral stance on this matter as Members consider that this application rests on technical planning issues which should be determined by the Planning Authority.

MCC Flood Risk Management - I have no objection to the proposed application but offer the following comment:

I note that alleviation of damp problems in the garage of No 20 is proposed. No details of these works are provided and it is not clear whether the works make up part of this application. Our team does not have technical expertise with regard to damp in buildings. Should review of these measures be required I recommend that MCC's Building Control team are consulted. It may be advantageous for a detailed scope of works, already agreed with the owner of No 20 to make up part of this application.

MCC Building Control - Has confirmed Building Regulation Consent is not required.

5.2 Neighbour Notification

One letter of objection received raising the following areas of concern:

- Fence Height
- Land raising is still above permitted development
- The building of the wall has altered the natural flow of water drainage
- The drainage put in place in November 2019 has not alleviated the problems caused
- Inaccurate plans
- Original level of the land of No 21 was always the same as No 19
- New fence does not allow maintenance works to be carried out
- Applicant has already planted in the area which towers above boundary
- Not contacted before works took place, breach under Party Wall Act
- Previous decision has not been upheld by Planning Department.

5.3 Local Member Representations

County Councillor Giles Howard - Requests the application is presented to Planning Committee.

6.0 EVALUATION

6.1 Good Design/ Place making

6.1.1 As per the previous application the works that have been undertaken are largely only visible from within the application site and from the neighbouring dwelling No 19 Jasper Tudor Crescent, and also No 20. The impact on the amenity of these properties is considered in sections 6.2 and 6.3 below. However, the provision of a close boarded fence between neighbouring properties is prevalent within the wider residential estate. The reason for refusal of application DC/2018/00218 did not relate to visual impact and therefore with regard to this material consideration the development is considered to be in accordance with relevant criteria set out within Policy DES1 of the adopted LDP.

6.2 Impact on Residential Amenity

6.2.1 For the purposes of clarity the impact upon the two adjoining properties (Numbers 19 and 20 Jasper Tudor Crescent) shall be addressed separately.

6.2.2 No 19 Jasper Tudor Crescent

6.2.3 No 19 sits immediately to the south of the application site. The rear garden area of No 19 and the rear corner of the property directly face the fence as installed. The fence in situ, which remains unauthorised in planning terms, and any associated visual impact did not form a reason for refusal by Planning Committee in respect of application DC/2018/00218.

However, the fence (standing 1.65m high) which is elevated above the fence of No 19 as a result of the ground works is considered by officers to have a harmful impact in its present form. This application proposes to overcome this concern by reducing the solid extent of the entire fence by 280mm with trellis (measuring 42cm at its highest point) to be installed along the full extent of the fence to the southern boundary.

Officers are of the view that the current proposal would alleviate the overbearing impact of the solid fencing but would allow for light to go through the trellis fencing and at the same time still give acceptable privacy to both parties.

6.2.4 No 20 Jasper Tudor Crescent

6.2.5 No 20 sits to the west of the application, it has a detached garage (approximately 6m in length) that runs along the boundary with the application site and a small area of garden (approximately 3.3m in length) to the south to the rear of the garage.

Owing to the changes in ground levels, which is at its greatest on the western edge of the site at present, the current situation affords overlooking in the direction of No 20 when stood in the application site facing towards the small section of garden to the rear of No 20's garage. The proposed reduction in ground level of 300mm would improve this and this can be improved further by a condition requiring the trellis to be installed along the top of the existing fence along the western boundary with No 20 running from the southern boundary to the rear of the garage of No 20. Officers are of the view that on this basis, subject to condition, the issue of loss of privacy to No 20 can be appropriately mitigated.

6.2.6 Therefore in respect of the two adjoining properties, subject to appropriate conditioning to secure the implementation of the current proposal, it is not considered to have an unacceptable impact on their residential amenity. The harmful overbearing impact of the unauthorised fence in situ would be mitigated; furthermore the current proposal would not have an unacceptable impact on any party's privacy or obstruct any party's access to natural light. The application is therefore in accordance with Policies DES1 c) and EP1 of the Local Development Plan.

6.3 Drainage

6.3.1 As part of the previous application the Flood Risk Management team within the Council were engaged for professional advice on drainage matters. A number of site meetings were conducted and it was determined that the unauthorised works to the rear garden levels in 21 Jasper Tudor Crescent could have led to the wet conditions affecting the garden of 19 Jasper Tudor Crescent. The advice from the Flood Team was that it was impossible to be certain, but they did advise there was a potential mechanism for the works to be causing the problem or exacerbating an existing problem.

During the course of the previous application a drainage solution was installed, December 2019, that saw the owners of No 21 install a French drain (a shallow gravel-filled trench) in the garden of No 19, discharging into the surface water drainage system of No 19. However, the owner of No 19 had anticipated that the drainage solution would have included a land drain being laid along the grassed area to the rear of No 19. Accordingly, the Local Planning Authority (LPA) understands that the removal of all items installed at No 19 are subject to legal proceedings outside of the planning process. On this basis the drainage solution that was installed can no longer be considered.

As noted in Section 1.1 of this report the reason for the refusal for the previous application by Planning Committee was based on "the harmful effect on neighbour amenity from surface water, as a result of the changes to the garden level". The reason for refusal did not specify which neighbouring property was being harmed, therefore as per Section 6.2 above the impact of drainage shall be considered in separate in respect of both the adjoining properties in the interest of clarity.

6.3.2 No 19 Jasper Tudor Crescent

6.3.3 An objection has been maintained from No 19 in respect of the drainage issue, the correspondence received asserts that the drainage solution as installed did not alleviate the issues in respect of the ground condition of No 19 and that the proposal to reduce the ground by 300mm would also not solve the issue.

The correspondence also disputes the original garden level, as detailed on the submitted plans, is incorrect and the original level of the land at No 21 was always the same as No 19. The LPA is not in possession of any evidence to confirm or reject this observation, no topographical data in respect of the original rear garden of No 21 as originally built is known to exist. With regard to the soil levels, the applicant has maintained that ground from the higher side (the east) was moved to the lower side (west) to create the current level. Once again the LPA is not in possession of any information to the contrary.

Whilst the reduction of ground levels proposed across the entire rear garden by 300mm would not revert the ground back to its original uneven topography, given the lack of evidence as to what this would be (particularly given the third party dispute with what is shown on the submitted plans) it is not possible to confirm definitively the overall increase in ground level now proposed. However,

officers are of the view that the reduction in ground is materially different to that previously refused by Planning Committee and brings the proposal closer to what the original levels would have been. Taking the rear patio area of No 21 as a fixed point of reference, the rear garden of No 21 would have at least in part have always been higher than No 19. Furthermore the garden areas feature heavy clay soil - typical of the natural soils of much of Monmouthshire.

Having regard to the original advice provided by the Council's Flood Risk Team, that it was impossible to be certain that the works in situ were responsible for causing the problem or exacerbating an existing problem, officers are of the view that that subject to the implementation of the reduction of ground levels there are no grounds to recommend refusal. Policy SD4 of the LDP seeks proposals "to reduce surface water run-off and minimise its contribution to flood risk elsewhere". On the basis of the evidence available and having regard to the Council's own drainage professional it is considered that the proposal does not fail to accord with this policy.

6.3.4 No 20 Jasper Tudor Crescent

6.3.5 The changes to the ground level had result in earth being moved up against the garage wall of No 20 along the eastern boundary. It is accepted that as the levels are in situ then in the long term this could lead to damp problems in the garage of No 21. The proposed reduction of the levels by 300mm would significantly improve this situation; in addition a condition can be attached requiring measures (including external tanking) to safeguard issues of damp and water ingress in respect of the garage wall. Whilst approval under Building Regulations would not be required for such works, their technical advice could sought as part of the need to agree details formally through such a condition.

Therefore subject to appropriate conditioning it is considered that the proposal would not adversely impact the garage or garden area of No 20 in respect of any additional surface water run-off.

6.4 Response to the Representations of Third Parties

6.4.1 A number of the concerns raised in the third party correspondence have already been addressed in the preceding sections of this report. With regard to the accuracy of the plans submitted, notwithstanding details provided within the cover letter, the plans are considered enforceable in respect of both the ground and fence levels detailed. With regard to the dispute over the original ground level of the garden of No 21, as shown on the plans, this point is addressed in para. 6.3.3 of this report.

The issues of maintenance of the fences being compromised given their physical attachment is a private civil matter between the relevant interested parties as are the requirements set out in the Party Wall Act.

With regard to the previous decision (DC/2018/00218) of Planning Committee of 03/03/2020 not being upheld by the Planning Department, the applicant is entitled to submit a revised application the submission of which was delayed due to the lockdown in respect of the global COVID19 pandemic, effective of 23/03/2020. However, if Members of Planning Committee were minded to refuse this current application then an Enforcement Notice requiring the removal of the breach of planning control would be issued concurrently with the decision notice of this application.

6.5 Well-Being of Future Generations (Wales) Act 2015

6.5.1 The duty to improve the economic, social, environmental and cultural well-being of Wales has been considered, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching this recommendation, the ways of working set out at section 5 of the WBFG Act have been taken into account and it is considered that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WBFG Act.

6.6 Conclusion

6.6.1 For the reasons detailed in the preceding sections of this report, officers are of the view that the revised proposal, subject to detailed planning conditions, is acceptable having regards to the

impact on the material planning considerations (both drainage and residential amenity) of the two adjoining properties No's 19 and 20 Jasper Tudor Crescent.

With regard to the former of these two issues, and in the absence of definitive evidence to the contrary, Officers have taken the advice of the Council's relevant specialist internal consultee in respect of drainage and the recommendation is formed on this basis. In addition areas that are of identified harm based on the works in situ, can be acceptably overcome through the imposition of appropriate planning condition, as set out in this report.

7.0 RECOMMENDATION: APPROVE

Conditions:

1 The development shall be carried out in accordance with the list of approved plans set out in the table below.

REASON: To ensure the development is carried out in accordance with the approved drawings, for the avoidance of doubt.

2 The entire rear grassed garden area shall be reduced by 300mm in accordance with approved drawing BP2612/00 Rev F within 3 months of the date of this permission.

REASON: To safeguard local residential amenity in accordance with Policies EP1 and DES1 (d) of the adopted Local Development Plan.

3 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion of revised fence line and trellis as shown on drawing no. BP2612/00 Rev F, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

REASON: To safeguard the landscape amenities of the area in accordance with Policy DES1 (d) of the adopted Local Development Plan.

4 The lattice design spacers on the trellis fencing shall be no more than 70mm spacing and retained in perpetuity.

REASON: In the interests of residential amenity in accordance with Policies EP1 and DES1 (d) of the adopted Local Development Plan.

5 The fence shall be reduced and the trellis panels installed in accordance with drawing BP2612/00 Rev F within 2 months from the date of this permission and retained in perpetuity. Notwithstanding the plans hereby approved, the trellis panels (as detailed in BP2612/00 Rev F) shall also be installed along the top of the existing fence along the western boundary with No 20 running from the southern boundary to the rear of the garage of No 20.

REASON: To safeguard local residential amenity in accordance with Policies EP1 and DES1 (d) of the adopted Local Development Plan.

6 Within 2 months of the date of this permission a scheme for damp proofing and ground retention along the western boundary with No 20 shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented within 3 months of agreement and be retained as such in perpetuity.

REASON: To safeguard local residential amenity in accordance with Policies EP1 and DES1 (d) of the adopted Local Development Plan.

INFORMATIVES

1 The developer is advised that the provisions of the Party Wall etc. Act 1996 may be applicable to the proposal and is advised to seek appropriate advice prior to any work commencing on site.