

Application Number: DC/2018/00218

Proposal: Retention of timber close boarded fence on south boundary, and raise level of no. 21 garden between 120mm and 810mm over the fence length.

Address: 21 Jasper Tudor Crescent Abergavenny NP7 9AZ

Applicant: Mr & Mrs S Johnson

Plans: All Proposed Plans BP2612/00 - Rev E,

RECOMMENDATION: Refuse

Case Officer: Mr Andrew Jones

Date Valid: 26.03.2018

1.0 APPLICATION DETAILS

1.1 This planning application was deferred at the meeting of Committee held on 4th February 2020 to be refused, contrary to the recommendation of officers. The application is therefore represented to Committee with a reason for refusal as set out in paragraph 1.2 below.

1.2 Members concerns related to there being insufficient information regarding the harmful effect on neighbour amenity from surface water. The reason for refusal offered to reflect those concerns is set out below:

“1. 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.”

PREVIOUS REPORT

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

1.0 APPLICATION DETAILS

1.1 This application relates to a detached property on a modern housing estate on the edge of Llanfoist. The application has been submitted as the result of an enforcement case as the owners of the property carried out works to raise the ground level of the rear garden to make the area one level. In addition because of the alteration to the new ground levels works were also carried out which led to a new close boarded boundary fence being erected at a higher height than the original fencing. The ground levels were raised at No.21 up to 810mm at the highest point. As a result of increasing the height of the ground level the close boarded fencing was raised from 1.82m to 2.52m at its highest point.

1.2 Since the application has been submitted several amendments have been made which include a reduction in the height of the existing fence and the proposed introduction of trellis fencing and a planting scheme. It is now proposed to reduce the solid fence to 1.3m in height and to install trellis panels above that would see the overall structure stand 1.72m at its highest point.

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.	Pending Determination	

3.0 LOCAL DEVELOPMENT PLAN POLICIES

Strategic Policies

S13 LDP Landscape, Green Infrastructure and the Natural Environment
S17 LDP Place Making and Design

Development Management Policies

DES1 LDP General Design Considerations
EP1 LDP Amenity and Environmental Protection

4.0 NATIONAL PLANNING POLICY

Planning Policy Wales (PPW) Edition 10

4.1 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.

4.2 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 - Members reviewed the case file documents and noted that this application is (i) connected with enforcement proceedings and (ii) the subject of a neighbour's objection. Members considered that this application rests on planning technicalities upon which this Community Council does not feel it constructive to comment further.

The community council also followed up with comments on amended drawings that were submitted - comments were the same as originally stated

Local Member – requests that the application be presented to the Council's Delegation Panel on the grounds of amenity and privacy.

5.2 Neighbour Notification

Objections from one party have been made in response to the consultation period and amendments to the scheme.

Comments are as follows:

1. Fence Height - object to the new fence height which now stands at 2.7 metres off the original land fall, clearly way above the approved planning regulations. The new fence which has been attached to the original existing fence towers above our garden overshadowing the property and preventing light from entering the downstairs windows.
2. Land raising - groundworks have been carried out where a breeze block wall has been built at height of 70cm for several metres across the boundary length. This has raised the land level next door across the boundary considerably and does not fall under permitted development; this has consequently raised the height of the fence.
Regarding the latest application, should this level is given approval and the fence reduced by 280mm it would lead to a privacy issue with the neighbour being able to see over the top into our garden. Thus any land raising consent causes overlooking and a breach of our privacy.
3. The building work has altered the natural flow of water drainage and we now have severe waterlog in that area of the garden. This has now caused movement in the original fence due to the excess build up of water.
4. The new fence has been attached to the original fence, thus directly abutting the existing fence and therefore does not allow any maintenance works to be carried out.

Amended drawings were submitted following discussions and neighbours consulted. Objections to the proposed amendments are as follows:

Issues that have led to this objection result from the significant groundworks that have been implemented by the owners of No.21. The re-profiling of the site has resulted in levels that are alien to those that existed when the original development was completed. Objections are raised with regard to the description of the application as the applicant has not included extensive groundworks into the description. The problems have not just resulted from the erection of the means of enclosure but the totality of the extensive works that have been undertaken at No.21. Comments received are as per the original consultation with the addition of comments regarding the revised drawings.

1. Revision B is merely replacing part of the height with a trellis and planting. This means the height will still be the same and overshadow the garden, thus, impacting on our residential amenity, with the lack of light impacting this area and the benefit enjoyed from our physical external space. The proposed plans submitted also indicate the trellis is to be put on top of the fence at a higher level in some parts than the feathered edge board is now.
2. Land Raising Rev B - once again has not applied for planning permission for such groundworks making the application deficient and it does not include the change in the land profiles which have created the issue. Should this new ground level be given approval and the fence reduced with trellis, it would lead still to a privacy issue with the neighbour being able to see over the top into our garden; thus any land raising consent causes overlooking and a breach of our privacy.
3. The plans submitted for revision B are most confusing and omit essential detail. Although BS Technical Services state in their supporting letter that the close boarded fence will be reduced to the original level, their diagrams indicate otherwise. They still show a proportion of feather edge board remaining above the original level. Furthermore they do not show the original level of the land next door or the measurements of the retaining wall built to increase the level of the lawn.

Revision C - the proposed trellis on top of fencing will still be the same and overshadow the garden, thus impacting on our residential amenity with the lack of light impacting this area. In terms of the land raising - new revision clearly states that their groundworks have been built in excess of permitted development regulations of 810mm.

The plans submitted for revision c) again are most confusing and omit essential detail. Although BS Technical Services state in their supporting letter that the close boarded fence will be reduced to the original level, their diagrams indicate otherwise. They still show a proportion of feather edge board remaining above the original level.

Furthermore, the original level of the land at no.21 was always the same as no.19, not as shown on the diagram; if it had been different then the original fence would have been supporting the

earth which it was not. There was no earth against the fence. If there had been it would be visible on the rear fencing panels.

The latest revision indicates shrubs which they intend to plan. We must note here that the applicant has already planted in this area with planting towering above the fence already.

6.0 EVALUATION

6.1 Visual Impact

6.1.1 The application relates to the retention of a close boarded fence along the southern boundary and the change of ground levels to the rear garden of No 21 Jasper Tudor Crescent. The works undertaken are largely only visible from within the application site and from the neighbouring dwelling No 19 Jasper Tudor Crescent. The impact with regard to amenity impact and No 19 are considered in Section 6.2 and 6.3. However, the provision of close board fence between neighbouring properties is prevalent within the wider residential estate. Therefore with regard to visual impact the development is considered to be in accordance with relevant criteria set out within Policy DES1 of the adopted LDP.

6.2 Residential Amenity

6.2.1 In relation to the effect the development has on the neighbouring property the issues have been raised in the objections to the application. Discussions have taken place with the applicant and agent in order to resolve these issues and subsequent revisions have been submitted to overcome this.

6.2.2 In terms of the changes to the ground level at No.21 the reason for the groundworks was so that the garden was made level across the rear of the property. This was carried out because of personal reasons which are not part of the application details. The difficulty in this issue is that when the housing estate was developed No.21 was constructed on higher ground than that of the neighbouring property below, therefore any alteration to the enclosure or raising of ground levels could have potential impact on residential amenity. The changes to ground level were such that they required the benefit of planning permission.

6.2.3 As a result of the change to ground levels, the new fence that was erected along the southern boundary posed an issue with regard to having an overbearing impact on the neighbouring property as well as obstructing the neighbours right to have access to natural light. In order to overcome both issues it was discussed on site with the agent and applicant and separate meetings with the neighbour what could be done in order to deal with these issues. It was therefore proposed to reduce the height of the close boarded fence to the internal frame and replace the solid structure with trellis fencing. By securing these amendments via a planning condition it would alleviate the overbearing impact of the solid fencing but allow for light to go through the trellis fencing, but at the same time still give privacy to both No.21 and the neighbour.

6.2.4 The implementation of this revision is not considered to have a harmful impact on any other party's residential amenity. The harmful overbearing impact of the unauthorised fence would be mitigated; furthermore the revised plans 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 In light of the correspondence received from the objecting third party with regard to drainage issues within the garden of 19 Jasper Tudor Crescent the Local Planning Authority (LPA) engaged in consultation with the Flood Risk Management team within the Council. 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. Whilst the advice from the Flood Team was that it was impossible to be

certain, they did advise there was a potential mechanism for the works to be causing the problem or exacerbating an existing problem.

Drainage solutions were discussed between all parties and it was proposed that, prior to determination of the planning application, the owners of number 21 install a French drain (shallow gravel filled trench) in the garden of number 19, discharging into the surface water drainage system of number 19. As these works, in part, would have to take place outside of the red line boundary of the planning application and within land not in the ownership/control of the application it was agreed that these works would need to take place prior to any decision being taken on this planning application as they could not have been controlled through planning condition.

The works were undertaken in December 2019 and whilst required no formal consent from the Flood Risk Team, were inspected by one of their Engineers. However, this has not resulted in the objection on this matter being withdrawn from No 19 who had anticipated that the drainage solution would have included a land drain being laid along the grassed area to the rear of No 19.

Whilst it is acknowledged that the drainage works did not include this, the Council's Flood Risk Team are satisfied that the works undertaken were sufficient to alleviate any detriment to the drainage system in the neighbouring garden caused by the unauthorised ground works. Upon inspection the Engineer confirmed that the new drainage system was working well to remove water from the area around the wall. Although water was standing in the lawn of No 19 it is heavy clay soil - typical of the natural soils of much of Monmouthshire. Moreover, ground conditions have also been affected by the very heavy rainfall since the autumn.

6.3.2 Therefore with regard to the issue of land drainage and in particular the impact on the rear lawn of the lower neighbouring property, No 19, it is considered that the applicant has undertaken reasonable and appropriate works to mitigate any adverse drainage impact on third parties. This matter has been very carefully considered in close consultation with the relevant technical expert within the Council's Flood Risk Team, who is satisfied that even though no land drain extends along the lawn of No 19 the solution installed is sufficient to alleviate any unacceptable harm.

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

6.4.1 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.

ul 6.5 Conclusion

6.5.1 The application has been subject to considerable negotiation and amendment in order to mitigate the impact caused by the changing of the rear garden levels and new close board fencing. It is also noted that the amendments proposed and mitigation measures implemented (drainage) have not resulted in the objection from the neighbouring property No 19 being withdrawn and their concerns remain.

However, it is considered on balance that subject to a planning condition to secure implementation of the revised fence together with associated landscaping and the drainage works already undertaken to mitigate any drainage impact, that the harm caused by the unauthorised works can be overcome and therefore acceptable.

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 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 E, 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.

3 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.

4 The fence shall be reduced and the trellis panels installed in accordance with drawing BP2612/00 Rev E within 2 months from the date of this permission and retained in perpetuity.

REASON: In the interests of residential amenity.

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.