

Planning Committee

Wednesday, 23 June 2021

Late Observations Schedule

Schedule Items

<u>Item</u>	<u>App No</u>	<u>Observations</u>
3	20/0876	<u>Late observations:</u>

Additional representations:

The Local Planning Authority re-consulted with neighbouring residents and relevant statutory consultees (including Elswick Parish Council) regarding the latest amendments to the scheme on 27 May 2021 for a period of 21 days, with the statutory period for receipt of comments expiring on 17 June 2021. Following the publication of the committee report, 8 additional letters of objection to the application from members of the public have been received. Many of the issues raised in the letters repeat points already made in earlier comments concerning access to services, flood risk, amenity impacts, potential alternative layouts and highway safety as summarised and addressed within the committee report and so these are not repeated again here. However, the additional issues raised in the extra representations are summarised as follows:

Proposed tree planting on western boundary:

- The 'Acer Campestre Streetwise' tree species proposed in close proximity to existing dwellings on the western boundary grows to a height of up to 12 metres, with a canopy up to 5 metres wide. Therefore, once mature, these trees would have a significant impact by blocking light and outlook to existing properties and their height would tower over neighbouring dwellings.
- The 'Acer Campestre Streetwise' tree species are of moderate water demand. The NHBC recommends that a house should have foundations 1.95 metres deep if built within 3 metres of this tree and 1.65 metres deep for a house built within 5 metres. Notwithstanding that the developer is unaware of the specifications of the foundations of neighbouring dwellings, the planting of this tree species in such close proximity to existing dwellings would increase the risk of damage to their foundations due to water extraction and ground shrinkage.
- As the proposed trees would be located in close proximity to the shared boundary with existing properties to the west their roots would encroach into neighbouring gardens, which could damage neighbouring properties, cause movement of the dividing banking between the existing and proposed dwellings and increase the potential for future subsidence.
- The height and proximity of the proposed trees to neighbouring dwellings has insurance implications for existing occupiers.
- Several residents maintain their side of the existing hedge that runs along

the western boundary. However, the proposal implies that the developer is claiming ownership of the hedge in its entirety. It is unclear where the ownership boundary between the existing and proposed dwellings lies in relation to the ditch/hedge and who will be responsible for its future maintenance.

Drainage ditch on western boundary:

- The submitted plans do not acknowledge the presence of a drainage ditch along the western site boundary. This ditch has moved further west over the years, causing erosion of the banking that separates the field from the elevated gardens of neighbouring dwellings. Several existing occupiers have reinforced the boundary adjacent to the ditch because the gardens have a tendency to collapse into it.
- The proposed houses are located too close to the drainage ditch on the western boundary, which will prevent any future maintenance of its channel.
- The red line boundary shown on the submitted plans is not in the correct position. This is because the banking along the western boundary which separates the site from existing dwellings has previously eroded and collapsed into the ditch. Therefore, approximately 24-30 inches of the land shown within the red line boundary actually belongs to the occupiers of the dwellings to the west.

Amenity impacts:

- Existing properties bordering the site to the west presently enjoy open views across an undeveloped field and are not overlooked. Introducing a dense row of houses alongside the western boundary bordering these properties, along with the limited spacing distances that would be achieved between existing and proposed dwellings, would result in an unacceptable loss of outlook, overshadowing and loss of privacy that would harm the amenity of existing occupiers.
- Existing properties on adjoining land to the west have habitable room windows in their side and rear elevations facing the site. The spacing distances that would be achieved between these existing windows and the proposed dwellings (including their garden areas) fall below the recommended separation distances identified in Design Note 1D of the Council's "Extending Your Home" SPD (which must also be equally applicable to new residential developments) and are therefore substandard. This would be accentuated for future occupiers due to the elevated position of existing dwellings in relation to them where views towards their gardens would be readily available from neighbouring ground floor openings. This would result in unacceptable overlooking for both existing and future occupiers. The SPD also confirms that "the presence of trees, hedges, or other soft landscaping that provides a screen between properties will not justify a reduction to the separation distance required as they are non-permanent features" and so the line of tree planting proposed alongside the shared boundary would not overcome this issue.
- The proposed development would contravene the 'Right to Light' of existing occupiers enshrined in the Prescription Act of 1832. Access to light would be affected by any fencing or landscaping carried out by the

developer.

Alternative layout:

- There is ample space available within the site to re-locate the proposed dwellings away from existing properties to the west. This would minimise impacts on adjacent occupiers through the provision of an undeveloped buffer strip between them, allow access for future maintenance of the drainage ditch and limit the potential for future erosion of the intervening banking.

Highway safety:

- The proposed pedestrian/cycle route onto Bonds Lane would take users onto a narrow country road which lacks any footpath. The siting of the cycle/pedestrian pathway directly opposite the driveway to Ash Farm would also result in a dangerous arrangement and create conflicts with vehicles accessing the driveway.

Additional statutory consultee comments:

The Local Planning Authority received updated comments from the Lead Local Flood Authority (LLFA) on 17 June 2021 in relation to the amended surface water drainage scheme submitted in connection with condition 7 of the outline permission for both the reserved matters (20/0876) and associated condition discharge (20/0875) applications. The LLFA's updated response confirms that the additional details submitted in connection with the discharge of condition 7 are acceptable to them.

The following additional comments were received from Elswick Parish Council on 22 June 2021:

"It was resolved to offer the following observations:

- Flooding is still a concern especially on Bonds Lane.
- Noted that eroding of land where differing heights to Ash Close plus the proposal of foresting of the boundary is unsuitable.
- A request that FBC are made aware that the PC is working with Create Homes regarding ownership of the land known as dedicated open space."

Officer responses:

Additional representations:

The majority of the issues raised in the additional representations are addressed within the various sections of the committee report relating to each of the topics in question. While these are not repeated in the late observations, references are made to specific parts of the committee report where relevant. In respect of the matters raised in the additional representations as summarised above, members are advised as follows:

Proposed tree planting on western boundary:

- As identified on p. 69 of the agenda papers, the proposed tree planting

shown alongside the western boundary has been introduced in response to the specific request made by members of the Planning Committee in relation to the scheme approved under reserved matters application 18/0318. The principal purpose of this tree planting is to provide enhanced screening between the existing and proposed dwellings (including their garden areas). All specimens proposed along this boundary are “Acer Campestre Streetwise” (Field Maple). While their planted height will be 3m-3.5m, these specimens are advertised as having a mature height of 7-12m and mature spread of 3-5m. The final height and spread is, however, dependent on several factors and the “Streetwise” version has deliberately been bred with a narrow, upright canopy to limit its spread in environments where space is more limited. The soft landscaping scheme shows that all trees would be planted on the field side of the existing hedge/ditch away from the shared boundary line and, given the slender, upright profile of their canopies, the extent of overhanging branches onto neighbouring dwellings is likely to be limited, particularly in the short-medium term (the specimen reaches maturity after approximately 25 years). The specimen is deciduous, its crown is pear shaped and comprises a consistent canopy of upright branches that limit its density. With proper maintenance, there is no reason why the siting and species of these specimens would cause unacceptable obstruction of light or outlook to neighbouring dwellings.

- Guidance from the National House Building Council (NHBC) is referred to, though no details are given as to the name or section of the publication from which the figures cited are taken. In any case, the NHBC provides warranties/insurance options on new build homes and its guidance/standards sit outside the remit of the planning system and so are not for use in planning decisions. The submitted landscaping scheme indicates a minimum separation of approximately 4.8m between the centreline (trunks) of the trees proposed along the western boundary and the closest of the existing buildings set on higher ground to the west, with a linear hedgerow also intervening between them. There is no reason to conclude that the planting of trees in the positions proposed would damage the foundations of existing dwellings or result in ground stability issues. Matters relating to insurance are not material planning considerations.
- Future maintenance of the curtilage trees proposed within the gardens of plots 1-19 will be the responsibility of the individual homeowners. It should, however, also be noted that the planting of trees does not, in itself, require planning permission and the rectification period contained in the landscaping condition runs for 5 years. Accordingly, future occupiers of the dwellings could choose to plant additional trees without the need for planning permission or, equally, opt to remove these specimens after the 5 year retention period expires.

Drainage ditch on western boundary:

- Page 76 of the agenda papers responds to objector comments relating to the existing drainage ditch on the western boundary. This ditch is not be altered as part of the scheme, it is not relied upon as part of the formal surface water drainage infrastructure for the development and there is no reason to conclude that the development would result in additional

erosion of the banking to the west of the ditch. There is nothing on site to indicate that the existing ditch is subject to any formal maintenance arrangement (much of its narrow channel is obscured by overgrown vegetation) and it is not a watercourse. Instead, the ditch comprises a shallow channel of standing water which collects at a low point on the boundary where surface water from neighbouring gardens at a higher level runs off onto the application site. This situation would not be altered by the development, nor is there any reason to suggest that formal maintenance arrangements are required.

- Queries are raised with respect to the extent of the red line boundary, with objectors opining that past erosion of the banking along the western boundary has resulted in a false and understated impression of their land ownership to the extent that the red line boundary includes land falling within their ownership. Objectors also indicate that they maintain part of the existing hedge along the western boundary. The red line boundary shown on the location plan submitted with this application does not extend beyond that referenced in the list of approved plans for the outline permission. All notices on the relevant landowners required under the planning legislation were served as part of the outline application. As the red line cannot be extended at the reserved matters stage there is no requirement for the same notices, nor can land ownership issues be re-visited at this stage. In any case, issues relating to boundary disputes are private, civil matters between adjoining landowners dealt with under separate legislation outside the planning system and, accordingly, are not material planning considerations.

Amenity impacts:

- The development's effects on the amenity of existing occupiers are assessed in detail on p. 68-70 of the agenda papers. Objectors have, however, referred to Design Note 1D of the Council's "Extending Your Home" SPD which, among other matters, sets out recommended minimum garden lengths and spacing distances for "windows to first floor habitable rooms" to ensure appropriate relationships between existing and proposed dwellings in terms of overlooking and privacy. The glossary at the start of the SPD defines "habitable rooms" as including "bedrooms, kitchens, living rooms and principal dining areas" while also clarifying that this definition "does not include bathrooms, halls/stairs or landings, utility rooms, conservatory, porch or garage". In addition, parts ii) and iii) of Design Note 1D make clear that the distances of 10.5m (for gardens) and 21 metres (between opposing habitable room windows) apply only in relation to "habitable rooms at first floor level" (and not ground floor windows).
- In this case, nos. 21-29 Ash Close are orientated with their rear elevations backing onto the site and so all contain principal, habitable room windows at first floor level. As set out on p. 69 of the agenda papers, all the proposed dwellings would achieve the minimum 21m spacing distance with these existing dwellings recommended in Design Note 1D iii) of the SPD. In the case of dwellings with a side facing aspect to the site (nos. 9 & 10 Linden Fold, 14 Bonds Lane and 19 Ash Close) windows in their side facing elevations do not all serve habitable rooms (as defined in the SPD), are often secondary openings to a room which is also served

by a principal window on the front or rear and, the case of nos. 9 and 10 Linden Fold, would face side elevations of proposed dwellings that do not contain habitable room windows. Accordingly, the 21m spacing distance recommended in Design Note 1D iii) of the SPD does not apply in these situations. Where the proposed dwellings have first floor habitable room windows overlooking neighbouring gardens (plots 4-19), they have minimum rear garden lengths of 12m and so all exceed the 10.5m minimum distance recommended in Design Note 1D ii).

- Reference is also made to Design Note 1D i) of the SPD which indicates that “windows to habitable rooms at ground level should not enable or allow an unrestricted view into neighbouring garden areas or into ground floor windows of any other property” and point 15 which states that “the presence of trees, hedges, or other soft landscaping that provides a screen between properties will not justify a reduction to the separation distance required as they are non-permanent features”. This is of greatest relevance with respect to the privacy of future occupiers where elevated ground floor windows in the east side of no. 14 Bonds Lane and no. 19 Ash Close would face the rear gardens of plots 12-14 and 17-19 over short distances. However, the ground floor windows to the side of no. 14 set close to the shared boundary serve a lean-to sun room extension with a glazed roof which has the character of a conservatory and so is not a “habitable room” for the purposes of the definition in the glossary of the SPD. While it is unclear what type of room the window in the east side of no. 19 Ash Close serves, plans showing the configuration of the same house type elsewhere on the cul-de-sac suggest this is likely to be a secondary window to a living room which is also served by a window on the front elevation. Accordingly, the rear gardens of plots 12-14 and 17-19 would not be unacceptably overlooked by principal, habitable room windows in the sides of no. 19 Ash Close and 14 Bonds Lane.
- While it is recognised that the row of tree planting proposed within the rear gardens of plots alongside the western boundary is not a substitute for adequate spacing distances, for the reasons given above and within the committee report, this landscaping is not relied upon as a means of ensuring appropriate levels of privacy and amenity for existing and future occupiers. Instead, the tree planting has been introduced in accordance with members’ request when granting the previous reserved matters application 18/0310 as a means of enhancing the screening available along the western boundary. It is not, however, the case that without the landscaping being in place the proposed development would be unacceptable.
- It should also be noted that the guidance contained within the “Extending Your Home” SPD contains a series of recommendations and not a rigid set of “rules” (the terminology used by objectors) that must always be achieved in every situation regardless of site-specific context and circumstances.
- Objectors also refer to a “right to light”. This is, however, a legal protection for natural light and easements of light are individual, private property rights which sit outside the remit of the planning system and so are not material planning considerations. This is clarified in paragraph 008 of the ‘determining a planning application’ chapter to the PPG which

states that “the scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property **or loss of private rights to light** could not be material considerations.”

Alternative layout:

- As indicated on p. 61-62 of the agenda papers, the development layout must accord with the parameters set out in condition 4 of the outline permission. This prevents the re-location of developable areas (one of which runs alongside the western site boundary with existing dwellings) away from those shown on the illustrative masterplan to the outline permission. The alternative layout presented would conflict with the restrictions imposed by condition 4 of the outline permission and so is unfeasible.

Highway safety:

- Page 71 of the agenda papers provides a commentary relating to the access arrangement for the shared pedestrian/cycle link onto Bonds Lane, including the reasons why this is appropriate in highway safety terms. There is also no objection to the siting and design of this component of the scheme from the Local Highway Authority.

Additional statutory consultee comments:

The LLFA’s advice that the updated surface water drainage scheme is sufficient to satisfy the requirements of condition 7 of the outline permission confirms that there are no unresolved issues with this condition. The Local Planning Authority has no reason to conclude differently and, as set out in the committee report, the discharge of condition 7 is a matter to be dealt with primarily through associated condition discharge application 20/0875 (where those details will be formally approved) rather than this application for approval of reserved matters.

The matters raised by the Parish Council repeat elements of the public representations received to date (as responded to above and within the agenda papers) and do not raise any further issues requiring a specific response.

Having regard to the above, no modifications are required to the recommendation and/or conditions as presently set out in the agenda papers.

4 21/0298 Parish Council Comments

Following a re-consultation with the Parish Council on the proposals under consideration by Committee the Parish Council offered the following response:

It was resolved to maintain the previous objections to the proposal and strongly RECOMMEND REFUSAL

Considerations:

- *Scale and over development of the site is a concern*
- *Damage to the character of the conservation area*
- *The extension is overbearing*

Officer Response to Parish Council

The matters raised (scale of extension and its impact on the conservation area as a result) are matters addressed in the officer report.

The proposed extension does build onto an existing extension, but it is not excessive in size for the property or the garden area available and will not create an overbearing form of development to neighbours, or detract from the conservation area.

Applicant Comments

The applicant has submitted information in response to the views from the Parish Council. These are summarised as follows:

- That 2 of the 5 cottages in the terrace have similar extensions
- That the council has previously approved an extension of this scale
- That the adjoining neighbour will be provided with access around the extension, and that this neighbour has confirmed that he has no concerns with the additional distance to travel with bins around the extension

Officer Response to applicant

No comments to add.

5 21/0345 Comments of Local Highway Authority

The comments of Lancashire County Council as local highway authority were not available at the time that the agenda was prepared, but have since been received and are included here in full:

“LCC Highways is of the opinion that the proposed change of use of dwelling house (Class C3) to dental surgery facilities for use in association with adjoining dental practice (Class E) will not have a detrimental impact on highway safety and capacity in the immediate vicinity of the site, although recommends the impact on highway amenity is considered, as detailed in this report.

Ribby Road and the surrounding streets in the vicinity have footways on both sides, are lit by system of street lighting and within a 20mph area. There waiting restrictions opposite the site on Ribby Road and into St Nicholas Grove.

The Lancashire County Councils five-year data base for Personal Injury Accident (PIA), was checked on the 17th July. The data indicates there has not been any reported incidents near the accesses to the development. Whilst any accident is regrettable, the highway network surrounding the site is considered to have a good accident record and indicates there are no underlying issue which the proposed development would exacerbate.

The site has established parking fronting the site shared with the adjacent hairdressers. This shared frontage allows for staff and customers to park off the highway.

There have been no reports of obstructive parking on Manor Road or St Nicholas Grove in the past 4 years.

The applicant has supplied further information and has stated that the proposed maximum number of staff and patients is seven. This can be accommodated with the use of the frontage (4 spaces) and the parking accessed from Manor Road (3 spaces).

The existing dwelling house has three parking spaces accessed from Manor Road. It is expected that staff will park here and encourage customer parking on the frontage. If the frontage is at capacity customers are likely to park on Manor Road or St Nicholson Grove. The highway amenity of Manor Road and St Nicholson Grove is requested to be considered.

There are no highway safety concerns for this change of use."

Officer Comments on LHA comments

Their lack of objection to the proposal supports the officer view as set out in the agenda papers and so no further comments or change to the recommendation is appropriate.

7 21/0438 Parish Council Comments

These were provided on 15 June and are to support the application.