

	REPORT TO PLANNING & DEVELOPMENT COMMITTEE TO BE HELD ON THURSDAY, 7 November 2019	
APPLICATION REFERENCE NO: 19/01960/FLA	TARGET DATE: 3 December 2019	GRID REF: 511735-481301

REPORT OF THE PLANNING SERVICES MANAGER – PSM/19/232

SUBJECT: Variation of condition 1 (plan list) and 11 (floor levels) on decision 17/02734/FL dated 03.04.2019 to allow alterations to site levels, associated retaining structures and boundary treatment at Site At Church Cliff Drive Filey YO14 9ES for McCarthy And Stone Retirement Lifestyles Ltd (Mr David Tyro)

1.0 THE PROPOSAL

1.1 The application site is situated on the northern side of Church Cliff Drive, between the Wooldale Drive estate and the Country Park, opposite the Church Cliff Farm housing complex.

1.2 The site is 1.45 Ha in area.

1.3 Earlier this year planning permission was granted for a retirement development comprising a 2 story block of 39 flats and 20 bungalows. This is an application to make a minor amendment to the proposal and vary one of the drainage conditions attached to the planning permission.

1.4 The amendment involves lowering the ground levels on which the apartment block would be situated and construction of a retaining wall at the northern end of the block to accommodate this.

1.5 The drainage condition to be varied was recommended by the Lead Local Flood Authority and states:

"The development shall not commence until details of finished floor levels of the development hereby approved have been submitted and approved in writing by the Local Planning Authority. The details should include levels of all properties adjoining the application site. Finished Floor Levels should be set above the 1 in 100 year plus climate change flood level with an additional 300mm freeboard above the flood level. The development shall be carried out in accordance with the approved scheme satisfying this condition."

Reason : In the interest of amenity of the occupiers of the new and adjoining properties and flood risk mitigation in accordance with policy DEC4 and ENV5 of the Scarborough Borough Local Plan.

1.6 Fundamentally, the applicants wish to avoid the requirement to set the finished floor levels in the apartment block at 300mm above flood level. They have explained that this would necessitate having to incorporate extensive ramps to all the principle entrance doors which are something they are keen to avoid as the development is specifically designed for the older generation. They have submitted revised drainage details in lieu of the condition.

1.7 This application has been brought to Committee for determination because flooding and surface water run-off has been a major concern in this area and the variation of the drainage condition may be regarded as a significant change to the scheme in that context.

2.0 SCREENING OPINION REQUIRED?

2.1 No

3.0 PRE-APPLICATION COMMUNITY ENGAGEMENT

3.1 None reported.

4.0 CONSULTATIONS AND COMMENTS

The following is a summary of the key and relevant comments received from consultees and interested parties. Their full comments and any accompanying documentation are available to view on the Council's website.

4.1 Filey Town Council - Object to variation of Condition 11 in the strongest terms. They are very concerned about the increased flood risk to future residents of these dwellings, which would be increased as a direct result of the variation of this condition. The Lead Local Flood Authority state that in addition to the site bund some further precautions could be incorporated to safeguard against overtopping of the bund structure. NPPF policies and NPPF Government guidelines state that no properties should be at risk of flooding and therefore it is not reasonable to remove conditions 11 for some plots and retain it for others. All properties within the site should be protected by condition 11.

4.2 Lead Local Flood Authority - The condition requires the finished floor levels to be set 300mm above the flood level. The site is in flood zone 1 with a very low surface water flood risk. The site is known for generating a high rate of runoff, but given the topography this is unlikely to accumulate on site. Given that we have no flood events on site, it could be argued that if the 300mm was based on the nearest areas shown to be at risk (to the north and west), then the finished floor levels would equate to existing site ground levels. Clearly this is not what we want the condition to achieve. In light of the proposal to construct a flood bund above the site, this increases the residual risk of overtopping and breach of the bund. The details for the bund have been approved in a

prior application. It is therefore imperative that the areas at highest risk of breach are raised above adjacent ground levels by 300mm. Given the topography of the site, the bund has a finite capacity before it's overtopped. The drainage layout drawing shows that water will only accumulate to a level of 37.800m (up to plots 14/15) before it overtops via the formalised channel behind plot 21. To ensure that the residual risk of breach is managed, the applicant has proposed to raise all of the plots that are adjacent to the bund (11 to 21). During a breach scenario, the properties that are at greatest risk are those immediately adjacent the bund. As the breach flood water dissipates, the depth of water reduces and the risk to properties further away is less. Given the steeply sloping nature of the site, the flood water is likely to dissipate quickly. Furthermore, the drainage layout provided by the applicant suggests that a formalised channel would be created at the lowest point of the bund in the north eastern corner of the site, with a formalised channel down the south eastern boundary of the site. This formalised overflow from the bund further reduces the risk of breach. The LLFA supports the proposal to change in wording for condition 11, as the condition does not provide the required protection to the site. The LLFA requests that condition 11 is replaced with the following wording:

"The development shall not commence until details of finished floor levels of the development hereby approved have been submitted and approved in writing by the local planning authority. The details should include levels of all properties adjoining the application site. Finished floor levels of plots adjacent to the bund should be set at 300mm above adjacent ground levels, with all remaining plots raised 150mm above adjacent ground levels."

4.3 Publicity - Consultation period expired on 17 October 2019.

4.4 Six letters of objection have been received from local residents which make the following points:

- The site is in a flood sensitive area and is within the Filey Flood Alleviation Scheme.
- Condition 11 was imposed to address the flood sensitive nature of the site (NPPF and NPPF Government Guidance notes, SBC local plan policy DEC4). The application conflicts with these policy requirements.
- Flooding of properties in Church Cliff Drive in 2002 and 2007 was the result of storm water runoff because there is no porosity on this site. Even the developer's Design and Access Statement states there was no porosity and tests were abandoned. The present application does not recognise this fact.
- Even now, footings are waterlogged highlighting storm water runoff and surface water flooding on this site. The application does not recognise this fact.
- The site bund does not prevent a breach or overtopping of the bund structure as the application states: "they still consider that some further precautions could be incorporated to safeguard against a breach or overtopping of the bund structure." Condition 11 safeguards against this possibility.
- There is no indication where the exceedance / overtopping flows down the Eastern side of the site will be captured before it reaches plots 1 -10. Condition 11 safeguards against this possibility.

In conclusion, the developer is looking for cost cutting measures that contravene and undermine the integrity of the site. They were aware of these conditions from the start and are certainly aware of the flood sensitive nature of the site which they are ignoring. The application to remove condition 11 should be rejected.

- A floor level of 300mm above ground level will not result in excessive ramps to entrance door; the gradient required is achievable by careful consideration of the approach.

5.0 RELEVANT SITE HISTORY

5.1 1990 - Outline planning permission refused for residential development; contrary to policies in the Draft Filey Local Plan, being development in the open countryside and resulting in an over provision of housing. A subsequent appeal was dismissed.

5.2 2019 - Full planning permission granted for a retirement development comprising 39 apartments and 20 bungalows.

5.3 2019 - Non Material Amendment involving elevational changes to apartment block approved.

6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of The Town and Country Planning Act 1990 require that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise (in the case of advertisement applications the Advertisement Regulations 2007 are applicable). Attention is drawn to the following Development Plan and other planning policies and guidance which are considered to be particularly relevant to the consideration of this application:-

Scarborough Borough Local Plan 2017

DEC 4 - Protection of Amenity

ENV 3 - Environmental Risk

National Planning Policy Framework

NPPF14 - Meeting the challenge of climate change, flooding and coastal change

Scarborough Borough Supplementary Planning Documents

None relevant

Local Planning Policy and Guidance

None relevant

7.0 ASSESSMENT

Lower Ground Levels and Retaining wall

7.1 The original approved scheme involved a number of changes in level of the apartment block to accommodate the north to south slope of the site. The applicants wish to build the block on more level ground which will require digging in to the site towards the northern end of the block and supporting the ground with a retaining wall

situated between the main spine road of the development and the apartment block. The Maximum height of the wall would be 1.65m.

7.2 The main consequences of this are as follows:

- Towards its northern end the apartment block will be set below road level and the drop from the back of the pavement to ground level will be protected by railings which would be 1.2m in height. It is considered that this will result in a slightly less attractive street scene than if the building was set at road level. But the appearance would not be unacceptable in its own right,

- The outlook from the ground floor apartments at the northern end of the block would be constrained by the retaining wall and railings and there may be a reduction in privacy to some rooms due to the elevated position of the footpath. The separation between the building and the retaining wall would vary from 5.8m to 3.8m and generally rooms with the lower separation have windows on other, more open elevations. Therefore, it is not considered that this result in an unacceptable level of amenities for future residents.

- As the northern half of the apartment building would be constructed at a lower level than originally approved, it will have less impact on neighbouring properties both within and outside the site and a marginally lower impact of Filey Country Park.

7.3 It is considered that the lowering of the ground level and construction of the retaining wall is an acceptable revision to the scheme.

Condition No. 11

7.4 The primary purpose of this condition was to ensure that the floor levels of the buildings on site were set high enough above ground to avoid flooding in an extreme case where the bund to the north of the site overflowed or for some reason was breached. So it was designed to deal with an extreme situation. The on-site drainage has been designed to cope with rain falling directly on the site and the bund to the north would intercept and hold surface water run-off from the higher land to the north in most cases, in the same way as the remainder of the Filey Flood Alleviation scheme.

7.4 The applicants have provided a supporting statement which makes the following points:

- This is a fairly standard condition for sites within a flood zone, but this site is not within a designated flood zone;

- Historically there has been runoff from the site due to the low porosity of the subsoils and topography;

- The flood risk has been mitigated by an earth bund along the northern boundary of the site designed to the same criteria as the Filey Flood Alleviation scheme and additional underground surface water storage has been provided to cater for potential runoff from soft landscaped areas within the site.

- The LLFA require on-site precautions in case the bund is breached or overtopped, therefore it is proposed to raise the floor levels of plots 11 to 21 (in closest proximity to

the bund) to give 300mm above flood levels, allowing any water to dissipate around the buildings and be channelled into the underground on-site storage.

7.5 Condition No. 11 was attached to the planning permission of the recommendation on the Lead Local Flood Authority. As such their advice is crucial in determining whether this condition should be varied. Their response is set out in paragraph 4.2 above. Rather surprisingly, they have stated that the wording of the original condition would not provide for the flood risk protection they require, therefore, they have no objection to the variation of the condition and have recommended alternative wording which would ensure the finished floor levels for plots adjacent to the bund are set 300mm above ground level and 150mm for all other plots.

7.6 It is anticipated that the applicants will submit a revised plan to demonstrate this prior to the meeting, but until that is received and satisfies the LLFA, it is considered that the revised condition that they recommend be imposed on any replacement planning permission which may be granted.

Other Matters

7.7 As any new permission granted would be a replacement for the previous planning permission all relevant conditions should be repeated.

7.8 The previous planning permission was subject to a legal agreement obligating the developer to make a contribution of £300,000 towards off-site affordable housing and £31834.98 towards off-site public open space. Therefore it will be necessary for them to enter into a deed of variation to transfer this obligation on to any new permission which may be granted.

Pre-Commencement Conditions

7.9 The developer's agreement to recommended condition No15 is required or a formal notice would need to be served. However, the applicant is intending to submit further details in order to dispense with the condition prior to any decision being issued.

POSITIVE & PROACTIVE STATEMENT

The following steps were taken in an effort to achieve a positive outcome to this application.

Whilst processing the application, the Local Planning authority has negotiated with the developer to avoid pre-commencement conditions.

RECOMMENDATION

That, subject to the completion of a Deed of Variation to the existing legal agreement which obligates the applicant to make a £300,000 contribution to affordable housing provision and a £31834.98 contribution to public open space provision, Planning Permission be granted subject to the following conditions:

- 1 The development hereby approved shall be carried out in accordance with the following plans and documents:

Proposed Site Plan - Draw No: NE-2429-03-AC-07 Rev F, received on 12.6.2019
Elevations A & B - Draw No: NE-2429-03-AC-SK-12, received on 12.6.2019
Elevations C & D - Draw No: NE-2429-03-AC-SK-12, received on 12.6.2019
Bungalow Types A1, B1, B2 & B4 - Draw No: NE-2429-02-AC-15, received on 28.6.2018
Bungalow Types A, A+ & B3 - Draw No: NE-2429-02-AC-14, received on 28.6.2018
Site Location Plan - Draw No: 12156.DB3.S01.DR.A.SK003 Rev A, received on 5.6.2018
Retaining Wall Sections - Draw No: NE-2429.05.AC-007, received on 28.8.2019
External Works Layout - Draw No: NE-2429-05-AC-003, received on 28.8.2019
Garden Shed Details, received on 7 May 2019
Substation Details - Draw no: NE-2429-04-AC-006 Rev A, received on 7 May 2019
Landscape Proposals - Draw No: NE-2429-04-LA-01 Rev M, received on 7 May 2019
Enhanced Landscape Proposals - Draw No: NE-2429-04-LA-02 Rev C, received on 7 May 2019
External Works Details - Draw No: NE-2429-05-AC-04 Rev F, received on 7 May 2019
Proposed Exceedance Flow Routes - Draw No: NE-2429-04-DE-04 Rev A, received on 7 May 2019
Drainage layout RL Block - Draw No: NE-2429-04-DE-05 Rev B, received on 7 May 2019
Drainage Construction Details Draw No: NE-2429-04-DE-06 Rev B, received on 7 May 2019
Manhole Schedules - Draw No: NE-2429-04-DE-07 Rev D, received on 7 May 2019
Ecological Enhancement Plan V1, received on 11 December 2017
Extended Phase 1 Habitat Survey E-13990, received on 11 December 2017
Written Scheme of Investigation for Archaeological Excavation received on 7 May 2019

Reason: To avoid doubt.

- 2 Prior to installation, details of the Type F railing to be used above the retaining wall shall be submitted to and approved by the Local Planning Authority. All boundary treatments and other means of enclosure shall be provided before the first occupation of the building to which they relate.

Reason: In the interests of the appearance of the area, the amenities of existing and future residents and crime prevention in accordance with Policies DEC 1 and DEC 4 of the Scarborough Borough Local Plan.

- 3 The approved landscaping scheme shall be carried out in its entirety within 12 months of the first occupation of the site. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: In the interests of the setting of the buildings and visual and residential amenity of the area in accordance with Policies DEC 1, DEC 4 and DEC 5 of the Scarborough Borough Local Plan.

- 4 There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site until the access to the site has been set out and constructed in accordance with the published Specification of the Highway Authority and the following requirements:

The crossing of the highway footway and that part of the access road extending 6 metres into the site shall be constructed in accordance with the Standard Detail number E7;

Provision to prevent surface water from the site discharging onto the existing highway shall be constructed and maintained thereafter to prevent such discharges;

Provision of tactile paving in accordance with the current Government guidance, at Arndale Way and Church Cliff Drive.

Reason: To ensure a satisfactory means of access to the site from the public highway in the interests of vehicle and pedestrian safety and convenience.

INFORMATIVE

You are advised that a separate licence will be required from the Highway Authority in order to allow any works in the adopted highway to be carried out. The 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by North Yorkshire County Council, the Highway Authority, is available at the County Council's offices. The local office of the Highway Authority will also be pleased to provide the detailed constructional specification referred to in this condition.

- 5 No part of the development shall be brought into use until the approved parking, manoeuvring and turning areas have been constructed in accordance with the submitted drawing (Reference McCarthy and Stone drawing number NE-2429-03-AC-7 Rev F) and are available for use. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason: To provide for appropriate on-site vehicle facilities in the interests of highway safety and the general amenity of the development.

- 6 No building or other obstruction including landscape features shall be located over or within 3 (three) metres either side of the centre line of each of the public rising mains i.e. a protected strip width of 6 (six) metres each, that crosses the site. If the required stand-off distance is to be achieved via diversion or closure of the sewer, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been agreed with the relevant statutory undertaker and that prior to construction in the affected area, the approved works have been undertaken.

Reason: In order to allow sufficient access for maintenance and repair work at all times.

- 7 There shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works.

Reason: To ensure the provision of adequate and sustainable means of drainage in the interests of amenity and flood risk in accordance with policy ENV5 of the Scarborough Borough Local Plan.

- 8 No part of the development shall be brought into use until the development flow restriction works comprising the approved scheme has been completed. The approved maintenance and management scheme shall be implemented throughout the lifetime of the development.

Reason: To mitigate additional flood impact from the development proposals and ensure that flood risk is not increased elsewhere in accordance with policy ENV5 of the Scarborough Borough Local Plan.

- 9 The development shall take place in accordance with the submitted Written Scheme of Archaeological Investigation. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: This condition is imposed in accordance with policy DEC6 of the Scarborough Borough Local Plan as the site is of archaeological significance.

- 10 Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) (England) Order 2015, (or any Order or Statutory Instrument, amending revoking and re-enacting that Order), none of the following developments or alterations shall be carried out without the prior written approval of the Local Planning Authority:
- (i) the erection of freestanding curtilage buildings or structures including car ports, garages, sheds, greenhouses, pergolas or raised decks;
 - (ii) the erection of house extensions including dormer windows, conservatories, garages, car ports, porches or pergolas;
 - (iii) alterations including the installation of replacement or additional windows or doors and the installation of roof windows;
 - (iv) the erection of walls, fences or other means of enclosure.

Reason: The relatively small gardens, open plan and communal character of the development represent special circumstances whereby the exercise of permitted development rights could severely harm the character and appearance of the development and the amenities of neighbouring residents.

- 11 All of the external walls of the buildings hereby approved shall be constructed in the Weinerberger Apollo Red Multi brick to accord with the sample panel constructed on the site. The Roofs of the apartment Block and bungalow plots 1 to 7 shall be clad in the Sandtoft Olympus red natural clay pantile to accord with the submitted sample. The roofs of bungalow plots 8 to 21 shall be clad in either

the Sandtoft Olympus red natural clay pantile or the Sandtoft Rivius Antique tile to accord with the submitted samples.

Reason: In the interests of visual amenity to accord with Policy DEC1 of the adopted Scarborough Borough Local Plan.

- 12 The dwellings hereby approved shall only be occupied by persons aged 55 years and older.

Reason: In the absence of this age restriction, the development may have required a financial contribution towards education provision in accordance with policy HC10 of the Scarborough Borough Local Plan and a larger contribution to public open space in accordance with policy HC14.

- 13 The development shall not commence until the drainage bund approved by planning permission reference 18/01504/FL has been completed.

Reason: To mitigate additional flood impact from the development proposals and ensure that flood risk is not increased elsewhere in accordance with policy ENV5 of the Scarborough Borough Local Plan.

- 14 In addition to the recommendations in the Habitat Survey and biodiversity plan submitted with the application, the bat and bird boxes shall be subject to annual checks by a qualified ecologist and replacement and relocation when the checks indicate that is appropriate. Boundary fences shall be provided with 13cm x 13cm gaps at ground level in locations identified by a qualified ecologist to permit the free movement of hedgehogs.

Reason: To enhance biodiversity in accordance with policy ENV5 of the Scarborough Borough Local Plan.

- 15 The development shall not commence until details of finished floor levels of the development hereby approved have been submitted and approved in writing by the local planning authority. The details should include levels of all properties adjoining the application site. Finished floor levels of plots adjacent to the bund should be set at 300mm above adjacent ground levels, with all remaining plots raised 150mm above adjacent ground levels.

Reason: In the interest of amenity of the occupiers of the new and adjoining properties and flood risk mitigation in accordance with policy DEC4 and ENV5 of the Scarborough Borough Local Plan.

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Reason: To enhance biodiversity in accordance with policy ENV5 of the Scarborough Borough Local Plan.

David Walker

Background Papers:

Those documents referred to in this report.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT MR N READ ON 01723 232483 email nick.read@scarborough.gov.uk



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