

Hyndburn Borough Council – Report for Planning Committee

Application Ref: 11/21/0644

Application Address: Land at Maple Crescent, Rishton, Blackburn

Full Application: Variation of Condition No 2 of 11/20/0096 including changes to roof design, external appearance and alterations to fenestration, balcony and porch.

Date Registered: 13th April 2020

Date for Decision: 15th June 2022

Date Report Written: 1st June 2022

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:-

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

Site and Proposal

In November 2020 planning permission was granted for the development of a large detached dwelling on land at Maple Crescent, Rishton. The house was constructed but not in accordance with the approved plans.

This planning application has been submitted to regularise those matters by seeking to substitute a new plan in Condition 2 of planning permission 11/20/0096. The proposed changes to the elevations are set out at Appendix 1, comparing each of the elevations. The main changes are as follows:

- I. Height of building: An increase in height from ground floor from 7.943 to 9.092m, an increase of 1.149m.
- II. Width of building: An increase in width from 6m to 9.8m
- III. Changes to the height of the porch and window arrangements, illustrated on elevations attached at Appendix 1.

Consultations

LCC Highways: No Objection

Canals and Rivers Trust No observations

Development of Contaminated Land

A Remediation Statement, detailing the recommendations and remedial measures to be implemented within the site shall be submitted to the LPA in writing for written approval. On completion of the development/remedial works, the developer shall submit written confirmation, in the form of a verification report, to the local planning authority, that all works were completed in accordance with the agreed Remediation Statement. Written confirmation is required from the local planning authority that this has been completed satisfactorily. Any works identified in these reports shall be undertaken when required with all remedial works implemented by the developer prior to occupation of the first and subsequent dwellings.

REASON: To ensure that:

- the site investigation and remediation strategy will not cause pollution of ground and surface waters both on and off site, and
- the site cannot be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990, in accordance with:
- the National Planning Policy Framework.

Neighbour Representations

Two letters of representation have been received raising the following points:

- The development has been completed without planning permission
- The scale of the property does not fit in with the other properties on the close
- The property is on 4 levels and overlooks all the properties on Maple Close
- Residents cannot sit in parts of their garden without being over-looked
- The roof is a completely different shape to the other properties on Maple Close
- The external appearance is out of character with the properties in the close, including the porch
- The balcony's at the rear may result in the removal of more trees
- Other residents driveways have been used during the development and gardens have been damaged
- People are wanting to move out because of the effect this development as had on views
- There are windows over-looking private decking area and views have been lost
- The building is too high and there is a swimming pool and kitchen where the garden used to be
- Waste has been tipped at the back of the development towards the stream
- Work has been going on over bank holidays and weekends
- Cars have been going in at 3am with loud music

Relevant Planning History

- 11.20.0096 Erection of dwelling including additional lower ground level with rear and side single-storey extension with balconies to the rear and rear dormer to new build family house, approved.
- 11.18.0269 Discharge of Conditions 5, 6, 7, 8, 9, and 10 of planning permission 11.16.0074
- 11.16.0074 Erection of 2no detached dwellings with car-parking and access, approved 11.04.2016.

Relevant Policies

National Planning Policy Framework

Development Management DPD: Policies DM10, DM17, DM18, DM19, DM26, DM29 and DM32

Hyndburn Core Strategy Policies Env6 and Env7

Hyndburn Residential Design Guide

Observations

This application is seeking to regularise changes that have been made to the house that has been developed at the end of Maple Crescent. The principle of the development of a dwelling in this location has been established, however, the house has not been constructed in accordance with the approved drawing, listed by condition 2 of planning permission 11/20/0096.

In considering the proposed changes, it is necessary to consider whether they are acceptable in design terms (Policy Env6 of the Core Strategy and policies DM10 and DM27 of the Development Management DPD) , and necessary to consider whether they have an acceptable impact on local amenity (Core Strategy Policy Env7 and Policy DM10 of the Development Management DPD. In considering this retrospective planning application, members of Planning Committee should be aware that no weight should be given to the fact that development has commenced without planning permission. This is not material.

When viewed from further up Maple Crescent the house (north elevation) appears as a large building, however, the end of the close is at a lower elevation than many of the surrounding properties meaning that the application property does not have the appearance of being too large in relation to surrounding properties. The house is sufficiently distant from numbers 5, 7 and 9 Maple Close, and the new property proposed next to No 9, so as not to harm residential amenity or cause over-looking. The front of the house is no nearer the properties on the opposite side of the street.

Similarly, the east elevation (that incorporates the larger porch), is sufficiently distant from neighbouring properties not to result in loss of amenity or loss of privacy. Whilst there is an additional high level window on the east elevation, this should not cause harm to amenity or over-looking to a significantly greater extent than that arising from the already permitted design.

From the rear elevation the views from the windows and balcony's will be primarily of the trees and woodland immediately to the south of the house.

Policy DM10 of the Development Management DPD requires that new developments “*will not have an unacceptable adverse impact on neighbouring development...by virtue of it being over-bearing or oppressive, overlooking, or resulting in an unacceptable loss of light or amenity.*”

The application site immediately abuts No 11 Maple Close to the west. The potential impact arising from the scale of the development is partially mitigated by the presence of a short row of leylandii at the front of the property and by the presence of a detached garage that forms part of No11.

The garage helps to partially screen views of the application property from those parts of the rear garden closest to the house (No11), but there are clear views of the gable end when viewed from the area of decking towards the end of the rear garden of No 11. Whilst it is therefore considered that the scale of this elevation does harm the outlook from this part of the rear garden, it is not considered that this harm is sufficient to justify refusal of the planning application or justify taking enforcement action to remedy the breach of planning control. In reaching this conclusion, it is also necessary to recognise that there would have been an impact arising from the already approved design.

The applicant has inserted a frosted window into the bathroom at first floor level, and although there is a window at ground floor level that will allow views into the garden area, this is not considered unacceptable. The insertion of windows on side elevations at ground floor level is normally considered acceptable and the neighbour would be entitled to put up higher fencing if they were concerned about this. The orientation of the building is such that it should not give rise to significant over-shadowing or loss of light. An additional condition is recommended requiring details to be submitted of the measures to be taken to prevent over-looking of No 11 from the terrace on the first floor.

Policy DM29 is also referenced in DM10. This policy also concerns Environmental Amenity and seeks to ensure that there is sufficient distance between main windows and new development. The proposed development is viewed at an angle from the main windows at the rear of No 11 and the development is considered acceptable in this regard.

A number of representations have been made on this planning application, making the following points:

- I. The development has been completed without planning permission
 - This is not a material consideration
- II. The scale of the property does not fit in with the other properties on the close
 - The property is larger than other properties in the close, but the visual harm arising from this incompatibility is not considered sufficient to justify refusal of this application.
- III. The property is on 4 levels and overlooks all the properties on Maple Close
 - The original planning permission was also on 4 levels. Planning policy does not seek to prevent views into gardens, but seek to ensure that there are not

direct views into main windows. In this instance, the proposed development should not give rise to views into main windows that are within the relevant distance (21m).

- IV. Residents cannot sit in parts of their garden without being over-looked.
 - See observations above.
- V. The roof is a completely different shape to the other properties on Maple Close.
 - It is accepted that the design of the application property is not in the same style as other properties on Maple Close.
- VI. The external appearance is out of character with the properties in the close, including the porch.
 - It is accepted that the design of the application property is not in the same style as other properties on Maple Close.
- VII. The balcony's at the rear may result in the removal of more trees.
 - The applicant is not proposing the removal of additional trees.
- VIII. Other residents driveways have been used during the development and gardens have been damaged.
 - This is noted. This could have occurred regardless of the type of development being built at the site.
- IX. People are wanting to move out because of the effect this development as had on views
 - This is noted, but the planning system should not seek to protect private views.
- X. There are windows over-looking private decking area and views have been lost.
 - The design of higher level windows has been changed to reduce overlooking. Windows at ground floor level are generally acceptable.
- XI. The building is too high and there is a swimming pool and kitchen where the garden used to be.
 - See observations on scale above. A swimming pool is proposed at lower ground floor level.
- XII. Waste has been tipped at the back of the development towards the stream.
 - Noted.
- XIII. Work has been going on over bank holidays and weekends
 - There is a planning condition that prohibits this. This would need to be taken forward as an enforcement complaint. Construction works at the site are nearing completion with external works now being completed.
- XIV. Cars have been going in at 3am with loud music.
 - Noted, this is not a planning matter and should not be afforded weight.

Conclusion

In considering this planning application it is necessary to compare the details, and associated impacts, of the development that has taken place against those of the development that has been approved (11/20/0096). It is not considered that the impacts arising from the changes made to the north, east and south elevations will harm residential amenity. It is accepted that some harm to the amenity to the end of the rear garden of No 11 will arise from the development of this gable end being over-bearing.

However, taking into consideration the previous planning permission, it is not considered that the harm arising from the development is sufficient to make the development unacceptable and justify refusal of planning permission. On balance, it is therefore recommended that planning permission be granted subject to the conditions set out in this report.

Recommendation:

That planning permission be granted to vary Condition 2 of planning permission ref 11/20/0096 to substitute the revised plan and subject to the conditions set out below that are largely carried forward from planning permission 11/20/0096:

1. The development shall be carried out in accordance with the following documents unless otherwise required by the conditions below:
 - (a) Planning application form received 06 March 2020; GM Tree Consultants Tree Protection Plan. Drawing 1452/TTP/002 dated 6th September 2020; GM Tree Consultants. Arboricultural Impact Assessment and Arboricultural Method Statement. Ref. 1452 - V2 dated 6th September 2020; and, Verity Webster, Preliminary Ecological Appraisal, Land off Maple Crescent, dated June 2020
 - (b) Location Plan received 06 March 2020; Approved Drawing 2076-02 Drawn by S Alam Date: August 2021 and received by the Council on 13 April 2022 (showing plans and elevations); Proposed Layout with Tree Roots and Tree Canopy E/P-12 Rev B received 19 October 2020; Construction Management Site Layout Plan CON-11 received 19 October 2020; and, Vehicle Manoeuvring and Landscaping Detail P-03 Rev A received 04 June 2020

Reason: For the avoidance of doubt and to enable Hyndburn Borough Council to adequately control the development and to minimise its impact on the amenities of the local area and to conform with Policies Env6 & Env7 of the Hyndburn Core Strategy.

- 3 The parking areas (the extended hardstanding proposed) shall be formed and surfaced in bound porous material prior to the first occupation of the dwelling and retained as such thereafter for the duration of the development.

Reason: In order to ensure that satisfactory parking is provided before the proposal hereby permitted becomes operative, in furtherance of Policy DM32 of the Development Management DPD.

- 5 During construction, facilities shall be provided within the site by which means the wheels of vehicles will be cleaned before leaving the site. These facilities shall be used at all times during the construction, so that mud and/or loose materials are not deposited on the road surface of Maple Crescent, and the facilities removed only on completion of the development. Any mud and/or loose materials so deposited shall be removed by the developer to the satisfaction of the Local Planning Authority.

Reason: To avoid the possibility of the public highway being affected by the deposit of mud and/or loose materials thus creating a potential hazard to road users, in furtherance of Policy DM32 of the Development Management DPD.

- 6 Site preparation and construction phase times of operation: Construction deliveries to and from the site, and construction works, are restricted to between 0800 and

1800hrs Monday to Friday, 0900 to 1300hrs on Saturdays, and will not take place on Sundays and Bank Holidays, unless otherwise prior agreed in writing with the local planning authority. All works will be undertaken in accordance with BS5228:2009.

Reason: In the interest of residential amenity in accordance with the provisions of Core Strategy Policy Env7 and Development Management Development Plan Document Policy DM29.

- 7 Site preparation and construction phase control of noise/dust/fumes/vibration: Measures shall be in place to prevent nuisance being caused to residents from noise, dust, fumes and or vibration arising from the building works prior to the commencement of development works, and these measures shall be retained for the duration of the development. There shall be no burning off on site of construction waste.

Reason: In the interest of residential amenity in accordance with the provisions of Core Strategy Policy Env7 and Development Management Development Plan Document Policy DM29.

- 8 No tree shall be felled, pruned or otherwise harmed, including tree roots, as a consequence of development, except hereby approved the removal of T13 and T17 (AIA & AMS Sept 2020). All tree work shall be completed to the British Standard BS3998: 2010 Recommendations for Tree Work. All trees to be retained shall be first be protected, prior to the commencement of construction, by ground protection and with fencing to form a Construction Exclusion Zone and in accordance with BS5837:2012 'Trees In Relation To Construction' and in accordance with the hereby approved Arboricultural Method Statement and Tree Protection Plan. Within the protected area(s) there shall not be carried out or permitted, during the construction period, any building or other operations, parking or passage of vehicles, or storage of building or other materials or any other object. The protection measures shall be retained for the duration of the works, and only removed once the development is complete and all machinery and work material removed from the site.

Reason: To protect the trees adjacent the development in furtherance of Policy DM17 of the Development Management DPD.

- 9 Notwithstanding the approved plans, prior to occupation a satisfactory programmed landscaping scheme which shall include soft and hard landscaping, means of enclosure, planting of the development, shall be submitted to and approved in writing by the Local Planning Authority. The content of the scheme shall include 6 heavy standard (12-14cm girth) native trees planted at locations to be prior agreed with the Local Planning Authority, further details of the landscape scheme shall include the number of plants, species, planting size, planting and seed sowing methodology, British Standards, location of the planting, and annual landscape and habitat maintenance schedule. The work described in the scheme shall be carried out strictly in accordance with the approved details and shall be retained in this manner thereafter. The approved scheme shall be implemented during the first planting season following the first occupation of the development and any tree or shrub planted which dies or is felled, uprooted, wilfully damaged or destroyed in the first five year period commencing with the date of planting shall be replaced by the applicants or their successors in title.

Reason: To ensure adequate landscaping and tree replacement in furtherance of Policy DM17 and DM26 of the Development Management DPD.

- 10 Prior to the first occupation of the development, remedial work shall be undertaken to remove all construction material, including brick, kerbs, rubble, spoil, waste and any other foreign material used or created during construction, which shall be removed by hand, from the full extent of the construction site, including the adjacent woodland to an extent of 20m from the dwelling boundary. Discharge of this condition will only be given whereby the specified work has been satisfactorily completed. The trees and woodland shall be maintained in such a condition thereafter for the duration of the development.

Reason: To protect the trees adjacent the development in furtherance of Policy DM17 of the Development Management DPD.

- 11 Prior to occupation of the dwelling house hereby approved, 2 building integrated swift nesting boxes, 2 building integrated bat boxes, and 2 tree mounted Greenwoods Ecohabitat 2 Crevice box shall be installed in accordance with details first submitted and agreed in writing with the Local Planning Authority. The details shall include the manufacturer's specification, design and plans marking the location of installation in accordance with the manufacturer's instructions. The work described shall be carried out strictly in accordance with the approved details and shall be retained in this manner thereafter for the duration of the development.

Reason: In furtherance of Policy DM18 and DM19 of the Development Management DPD.

- 12 No external lighting shall be installed on the dwelling or site unless details of such lighting, including the intensity of illumination and predicted lighting contours, have been first submitted to, and approved in writing by, the Local Planning Authority. Any such lighting scheme shall comply with appropriate guidance (Bat Conservation Trust & Institution for Lighting Professionals 2018 or successor guidance) to minimise the impact on protected species. Any external lighting installed shall accord with the details so approved.

Reason: In furtherance of Policy DM18 and DM19 of the Development Management DPD.

- 13 Restrictions on development involving invasive Japanese Knotweed. No building works shall commence, including demolition, groundworks, site clearance, tree felling or otherwise similar, until an invasive non-native species protocol has been submitted to and approved by Hyndburn Borough Council, detailing the containment, control and removal of Japanese Knotweed on site. The measures shall be carried out strictly in accordance with the approved scheme. Discharge of this condition will only be given whereby the Japanese Knotweed has been fully eradicated in accordance with the approved non native species protocol.

Reason: In furtherance of Policy DM18 of the Hyndburn Development Management DPD.

14. Within three months of the date of this planning permission, details of the measures to be taken to prevent over-looking of neighbouring properties from the first floor roof terrace shall be submitted for approval in writing by the Local Planning Authority. The approved details shall be implemented within one month of the date of approval and retained thereafter.

Reason: To protect residential amenity and prevent over-looking in accordance with Policy Env7 of the Hyndburn Core Strategy and Policies DM26 and DM29 of the Hyndburn Development Management DPD.

Informative Notes

1. Subject to conditional control the proposal would be acceptable in terms of amenity and would not cause demonstrable harm to highway safety or any other matter of acknowledged importance and accordingly would suitably accord with local and national planning policies and in particular policies Env6 and Env 7 of the Hyndburn Core Strategy and Hyndburn car parking and access standards. The Local Planning Authority operates a pre-planning application advice service. All applicants are encouraged to engage with the Local Planning Authority at pre-planning application stage. As part of the determination of this planning application the Local Planning Authority has worked pro-actively and positively with the applicant ensuring that upon receipt all representations and consultation responses are available to view on the Council's web site. The Local Planning Authority has considered the application and where necessary considered either the imposition of planning conditions and/or sought reasonable amendments to the application in order to deliver a sustainable form of development in accordance with the National Planning Policy Framework.
2. This planning permission is granted in strict accordance with the approved plans. It should be noted however that:
 - (a) Any variation from the approved plans following commencement of the development, irrespective of the degree of variation, will constitute unauthorised development and may be liable to enforcement action.
 - (b) You or your agent or any other person responsible for implementing this permission should inform Development Control immediately of any proposed variation from the approved plans and ask to be advised as to the best method to resolve the matter. Most proposals for variation to the approved plans will require the submission of a new planning application.
3. This consent is granted subject to conditions and it is the owner and the person responsible for the implementation of the development who will be fully responsible for their compliance throughout the development and beyond. If there is a condition that requires work to be carried out or details to be approved prior to the commencement of the development this is called a "condition precedent". The following should be noted with regards to conditions precedent:
 - (a) If a condition precedent is not complied with, the whole of the development will be unauthorised and you may be liable to enforcement action.
 - (b) In addition if a condition precedent is breached, the development is unauthorised and the only way to rectify the development is the submission of a new application. If any other type of condition is breached then you will be liable to a breach of condition notice.
4. The enclosed approval is issued under the Town & Country Planning Act 1990. You may also require Building Regulation approval which is dealt with by this Department's Building Control Section (Tel: 01254 380194). You must ensure that all necessary permissions are obtained BEFORE starting work, otherwise abortive expense may be incurred.
5. The following policies of the Hyndburn Borough Local Plan, Hyndburn Core Strategy, Accrington Area Action Plan and National Planning Policies are considered to be relevant:
Local:

Development Management DPD: Policies DM10, DM16, DM17, DM18, DM19, DM26, DM29, DM31

Hyndburn Core Strategy Policies BD1, H1, Env3, Env4, Env6, Env7

Hyndburn Borough Council Car Parking and Access Standards

Householder Design Guide SPD

National:

National Planning Policy Framework

Planning Practice Guidance

6. Development Low Risk Area - Standing Advice

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority Standing Advice valid from 1st January 2019 until 31st December 2020

7. Japanese Knotweed Advisory Notice

Wildlife and Countryside Act 1981:

Japanese knotweed is listed on Schedule 9 of the Wildlife and Countryside Act 1981 (WCA 1981) and is subject to Section 14 of this Act. It is an offence to plant or cause this species to grow in the wild. This means that deliberate actions which causes the spread of Japanese knotweed may constitute an offence. Anti-social Behaviour, Crime and Policing Act 2014: Community Protection Notices can be issued by local councils or the police under the Anti-social Behaviour Crime and Policing Act 2014. These notices can be issued to individuals or organisations to compel them to control invasive species in situations where invasive species are having a detrimental effect on the quality of life of others.

Environmental Protection Act 1990: Japanese Knotweed is classed as 'controlled waste' and as such must be disposed of safely at a licensed landfill site according to the Environmental Protection Act (Duty of Care) Regulations 1991. Soil containing rhizome material can be regarded as contaminated and, if taken off a site, must be disposed of at a suitably licensed landfill site.

Appendix 1 Approved Drawings from Planning Permission ref 11/20/0096 compared to proposed 11/21/0644



11/20/0096



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Note: Changes to the design of the porch. The plans are not consistent in this respect.



11/20/0096



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Note: Changes to the alignment of windows on north elevation. Increase in height of porch.