

Planning Application F/TH/22/1341 – 16 Sowell Street, Broadstairs

Meeting Planning Committee – 18th October 2023

Report Author: Gillian Daws, Planning Officer

Planning Reference: F/TH/22/1341

Site Address: 16 Sowell Street, Broadstairs

Applicant: Mr Laurence Waitt

Status: For Decision

Classification: Unrestricted

Previously Considered by: Planning Committee 14 June 2023

Ward: St. Peters

Executive Summary:

This report concerns a full planning application for the variation of condition 2 of planning permission F/TH/20/0575 for the “Erection of 4No. two story 4 bed detached dwellings with associated access, parking and landscaping” to allow removal of trees and change to finished floor levels

The application was reported to the Planning Committee on the 14th June 2022. At this meeting, a motion to approve the application subject to safeguarding conditions was voted down and a motion was passed to defer the application back to officers and bring back to Members following discussions with the applicant to seek alternative measures and/or changes to the layout to ultimately seek the retention of the trees. No objections were raised to the increase in the finished floor levels.

Following this an updated statement has been provided by the applicant to justify the tree removal, for clarity the number of trees for removal - four (T1, T7, T8 and T15) are still proposed to be removed.

The application is reported back to the Planning Committee for determination.

Recommendation:

Members approve the application following the additional information submitted subject to the safeguarding conditions as detailed within the original planning committee report (annex 1).

Corporate Implications

Financial and Value for Money

The Planning Committee is not bound to follow the advice of Officers. However, should Members decide not to accept the advice of Officers it should be mindful of the potential cost implications in doing so.

The advice from Central Government within the National Planning Practice Guidance sets out the circumstances in which costs may be awarded against either party in planning appeals. Costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Costs may be awarded following an application by the appellant or unilaterally by the Inspector. An authority is considered to have behaved unreasonably if it does not produce evidence to substantiate each reason for refusal.

The advice outlined is that if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, costs may be awarded against the authority. There are no funds allocated for any potential fines meaning cost awards will result in spend that is outside of the budgetary framework.

Legal

However, if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision.

The reasons for any decision must be formally recorded in the minutes and a copy placed on file.

If Members decide not to accept the advice of Officers it should be mindful of the potential for legal challenge and associated cost implications.

Corporate

The delivery of new residential units through the Local Plan and planning applications supports the Council's priorities of providing a five year supply of housing.

Equalities Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy and maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

In the opinion of the author of this report the Public Sector equality duty is not engaged or affected by this decision.

1.0 Background

1.1 Members considered the application at the Planning Committee meeting on the 14th June 2023 for the variation of condition 2 of planning permission F/TH/20/0575 for the "Erection of 4No. two storey 4bed detached dwellings with associated access, parking and landscaping" to allow removal of trees and change to finished floor levels. The application was recommended for approval subject to safeguarding conditions, following previous consideration at the meeting on the 14th June 2023. The motion to approve the application fell when put to a vote. A motion for officers to bring back the application once a discussion was had with the applicant to seek alternative measures and/or changes to the layout to ultimately seek the retention of the trees was then carried.

1.2 The site has an extant planning consent for four residential properties which this application seeks to vary, and as such the principle is wholly accepted. This application is to assess the impact of the changes now sought; removal of four trees and increase in floor finished levels.

2.0 Additional Information

2.1 Following the Planning Committee meeting on the 14th June, the applicants' agent was advised of the discussions of Members at the Planning Committee meeting and their request to seek the retention of the trees proposed for removal using alternative measures or alterations to the layout. The applicant has submitted an updated statement from the applicant's arboriculturist. This statement details that under BS 5837:2012 "Trees in Relation to Design, Demolition and Construction - Recommendations", Category U trees (of less than ten years safe lifespan/dead/dying/dangerous) should not be a material planning consideration. T15 is identified as this category of tree. The arboriculturist concludes that this

sycamore is of no relevance to the planning process and is required to be removed on safety grounds. Officers noted previously that T15 was the only tree within the four proposed to be removed that was classed as being over mature.

- 2.2 In terms of the cited British Standard “Trees in Relation to Design, Demolition and Construction - Recommendations” (BS 5837) (2012), this details the steps that should be taken to ensure that trees are appropriately and successfully retained when a development takes place. There are several elements that are essential when considering development - species, height, stem diameter, ranch spread, height of crown clearance above ground, age class, physiological and structural condition, preliminary management requirements, estimated safe useful life expectancy and category grading. In terms of category U trees not being a material planning consideration, the applicant's Tree Consultant has arrived at this conclusion as Table 1 ‘Cascade Chart for Tree Quality Assessment’ identifies BS category U as ‘Trees unsuitable for retention’. Furthermore it is put forward within Section 5.2 (Constraints posed by existing trees) that “...The RPA (see 4.6) and any other relevant constraints should be plotted around each of the category A, B and C trees ...”. By not including BS category U trees, this defacto indicates that BS category U trees are not a potential constraint and should therefore not be considered in the design process. Officers consider that category U trees can offer some amenity to groups of trees when viewed within this context, however it is also considered that those trees of this category are unlikely to survive beyond the short term irrespective of any development proposal. It is therefore considered that the removal of the category U tree cannot be reasonably objected to.
- 2.3 The remaining sycamore trees; T1, T7 and T8 are detailed to be within 50cm of the stem to the agreed access drive, visitor layby parking and turning head. The arboriculturist details that this is not physically possible to achieve without significant root loss and a no-dig solution (such as the cellular system suggested at the previous meeting) is not viable due to the site conditions. Furthermore it is detailed that the existing ground levels next to T1 are raised with a low retaining wall. Levels are 60cm+ above the floor level of Unit 4 and 50cm above the level of Unit 3. As such he considers that it would not be practical to build up the access drive with a no dig solution (adding circa 25cm to the level differences) and then drop within reasonable gradients to the approved units. As such it is concluded in the submission that the practicalities of construction would require T1, T7 and T8 to be removed.
- 2.4 Officers recognise the difficulties with providing access to the site and retaining these three trees. Whilst it is acknowledged that their loss will have some impacts on the verdant feel of Sowell Street, a large portion of the trees on site will remain. Weight is also attached to the fact that the trees in question are not considered to be covered by the Tree Preservation Order on the site due to their age.. Replacement tree planting (5 trees) as detailed within the original planning report is also be conditioned if Members accept the justification put forward by the applicant's arboriculturist. This in itself would offer the LPA control over replacement tree planting. . Whilst the trees lost would not be immediately replaced

with the same ecological value by the additional 5 trees, this would occur in the long term and the proposal would provide replacement trees of native species, as opposed to the sycamore trees to be lost.

3.0 Potential reasons for refusal

- 3.1 The proposal relates to an extant planning consent as such there is no objection to the principle of residential use of the site. It is confirmed to Members that only the changes proposed by this variation can be considered. The development would result in economic and social benefits that come from the creation of residential units, including anticipated job creation.
- 3.2 As outlined in the “Protocol for the Guidance of Planning Committee Members and Officers” as part of the Council’s constitution, if the Planning Committee is minded to refuse planning permission against officer advice the Planning Committee is required to give adequate and intelligible reasons on good planning grounds for refusing to grant planning permission and these ground(s) of refusal must be in the minds of members of the Planning Committee at the point of refusal.
- 3.3 Members have previously raised concerns about the loss of the trees only. The previous committee report outlined how officers considered that the changes to the finished floor levels of unit 4 would not impact negatively on the street scene or neighbour amenity.
- 3.4 Following the receipt of additional information from the applicant's qualified arboriculturist, it is considered that their justification clearly sets out the reasons why it is necessary to remove the four trees and why other options/solutions are not practical. In the professional opinion of officers it could not be considered a reasonable planning judgement that the development, by virtue of the loss of these four trees, would result in harm to the character and appearance of the area that would outweigh the benefits of bringing forward four new dwellings within the District, especially with the incorporation of 5 trees to offset the loss of the tree, and the inability for the Council to demonstrate a 5 year supply of housing land. The views of the site from the public realm would not be demonstrably altered by the removal of the 3 category C trees, given their location adjacent to larger groups of retained trees meaning that wider views of the site would not be affected. . Therefore a reason for refusal on the impact on the character and appearance of the area would not be justified on planning grounds in the opinion of officers.
- 3.5 It is highlighted to Members that the Council is at risk of having costs awarded against it, if, subsequently on appeal, it is unable to justify a ground of refusal. Costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Costs may be awarded following an application by the appellant or unilaterally by the Inspector. One of the aims of the costs regime, outlined by the National Planning Practice Guidance, is to “encourage local planning authorities to properly exercise their development

management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay”.

- 3.6 The proposed development is located on a site which has an extant permission on for four dwellings, this application seeks to vary this consent. This development would enable access to the site that otherwise would not be feasible due to the trees. Whilst members have expressed disappointment that the trees which were previously stated to have been retained are now proposed to be removed, the decision on this application must be made on the merits of the case taking into account the need to take reasonable planning decisions in accordance with government guidance. The applicant has demonstrated through the submission of additional information from the arboriculturist the rationale behind the decision to remove the trees in question. Conditions would be applied to ensure that this proposal incorporates the replacement trees to mitigate the loss of the trees sought for removal in this application. It is considered that following the submission of the additional information and the changes to the approval proposed, that there is no justifiable reason for refusal in the view of officers, and that the replacement trees of native species would sufficiently offset any amenity lost in the long term..

4.0 Options

- 4.1 Members approve the application following the additional information submitted subject to the safeguarding conditions as detailed within the original planning committee report (annex 1).
- 4.2 Members propose an alternative motion.

5.0 Recommendations

- 5.1 Officers recommend Members of the Planning Committee to agree to option 4.1.

Contact Officer: *Gillian Daws, Senior Planning Officer*
Reporting to: *Iain Livingstone, Planning Applications Manager*

Annex List

Annex 1: Committee Report F/TH/22/1341

Annex 2: Applicant's Arboriculturist Comment

