

Appendix 6

Notice of Review Process – Further Submissions

Submission From

- ◆ Statement of Observations from Planning Officer on Applicant's Notice of Review

STATEMENT OF OBSERVATIONS

Planning Application No: CL/11/0109

Subdivision of garden ground and erection of one and a half storey dwellinghouse

96 Lawhill Road, Law ML8 5EZ

1.0 Planning Background

1.1 Kevin Whitelaw submitted a planning application for detailed planning permission (CL/11/0109) on 21 March 2011 to South Lanarkshire Council for the subdivision of garden ground and the erection of a dwellinghouse on land in the side garden of the property. The application was subsequently registered on 22 March 2011. After due consideration of the application in terms of the Development Plan and all other material planning considerations, the planning application was refused by the Council under delegated powers on 10 June 2011. The report of handling dated 8 June 2011 explains the decision and the reasons for refusal are listed in the decision notice. These documents are available elsewhere in the papers.

2.0 Assessment against the development plan and other relevant policies

2.1 Section 25 of the Town and Country Planning (Scotland) Act 1997, as amended requires that an application for planning permission is determined in accordance with the Development Plan unless material considerations indicate otherwise.

2.2 In the South Lanarkshire Local Plan the site is identified as lying within a Residential Land Use Area where Policy RES 6: Residential Land Use opposes any development which would be detrimental to amenity. Each application will be judged on its individual merits with particular consideration given to the impact upon residential amenity and proposed servicing and parking arrangements. The character and amenity of the area must not be impaired by reason of traffic generation, parking, visual intrusion or noise. The proposed development must relate satisfactorily to the adjacent and surrounding development in terms of scale, massing, materials and intensity of use. Policy ENV 31: New Housing Development requires that all proposals respect the local context, ensure provision of appropriate levels of amenity space, waste storage and avoid conflict with adjacent land uses. Policy DM5: Subdivision of

Garden Ground is also relevant and this policy states that there will be a presumption against the development of a new house within the curtilage of an existing house unless all of the criteria listed in the policy can be met.

- 2.3 The proposal fails to comply with Policies RES6, DM1 and DM5 of the adopted local Plan. While policies RES6 and DM1 provide general guidance on this form of development, policy DM5 deals specifically with the erection of new houses within the garden ground of existing properties. Criteria states that the proposed house(s) must be of a scale, massing, design and materials sympathetic to the character and pattern of development in the area and must not result in a development that appears cramped, visually obtrusive or be of an appearance which is so out of keeping with the established character that it is harmful to the amenity of the area.

In this case the gable to gable distance between the proposed and donor dwellings is only 3m and from the proposed house to the mutual boundary only 1 m. This does not meet guidelines in the Council's residential development guide which recommends distances of 4m and 2m respectively. Although there are examples in the locality of such close proximity the majority of dwellings have wider separating distances. In terms of the impact upon adjoining properties, No 21 Swan Way has a narrow rear garden with limited depth. The side and rear elevations of the proposed dwelling would sit uncomfortably close to the side boundary and loom over this small garden to an unacceptable degree. The physical presence of the mass of the building would have an adverse effect upon residential amenity. The amenity of no 23 Swan Way would be affected to a lesser extent as a result of its larger rear garden, however the impact would still be considerable due to the close presence of the side elevation and roof of the proposed house. The existing leylandii hedge along the mutual boundary would mask the impact to an extent but not sufficient to remove the effect to a satisfactory degree. However it is doubtful in any case whether the feature would survive development so close to its roots system and therefore the potential to mitigate the impact of the proposal is likely to be lost. The impact on amenity would be unacceptable and there are neither design measures nor opportunities to re-site the house which could be introduced to minimize the visual impact due to the constraints of the site.

3.0 Observations on applicants 'Notice of Review'

3.1 The applicants have submitted a statement to support their review. The grounds are summarised below.

- (a) **The case officer's line managers became involved due to certain objections raised by neighbours, which also now involved the Councillor for the Area.**

Response: At a delegated level all decisions are authorised by the Area Manager or the Planning Team Leader. In complex cases or where objections have been raised it maybe appropriate for other Council officers to become closely involved in the determination and assessment process. In this case, residents adjoining the application site contacted their Local member and raised their concerns about the proposal. It is acceptable for elected members to become involved in planning matters in this way and they are free to raise concerns on behalf of constituents.

- (b) **After a seemingly positive response new issues were raised about the close proximity of the development to neighbouring boundaries. During the pre-application discussion nothing was ever raised or highlighted regarding minimum distances or concerns from boundaries. From the pre-application discussion this would have been an area that should have been easily highlighted and raised at the time, sufficient drawings were made which indicated position and elevations, however no such indication was ever mentioned and positive feedback given.**

Response: Pre-application discussions on the proposal first took place in November 2010. The Council's response to the original draft submission in a letter, dated 24 November 2011 stated the northern elevation with windows and door would be in close proximity to the elevation of the existing house (no more than 2 metres). Such a situation would not be conducive to ensuring an acceptable level of privacy and amenity for any future occupier of the proposed house or for that or that of the existing. An amended scheme was re-submitted but the case officer considered the issue of the close proximity to the existing house had not been adequately addressed. In a further response, dated 7 February 2011, the Council advised that while the applicant had responded to most of the issues raised earlier and as such compatibility with the policy may be possible. However no

comfort was given that the proposal as tabled was acceptable and the applicant was advised that ultimately the only way the matter can be fully and properly assessed is through the submission of a formal planning application. At no point was advice provided that all points of concern had been satisfactorily resolved. This advice was backed up by a request for a planning application to enable a proper assessment.

- (c) **When the issue of the close proximity to the boundary was raised we made reference to the existing property at 114 Lawhill Road, noting that this property is very close to the boundary and fails to meet any criteria now suddenly being imposed on this development.**

Response: 114 Lawhill Road was formerly a shop which was converted to a house under a planning consent granted in 2003. This pre-dates guidance on distances to boundaries which are found in the latest version of the Residential Development Guide. The situation is also different in that the building that has been converted is parallel to the adjoining houses rather than perpendicular.

- (d) **Planning advised that this development would appear cramped, be very obtrusive and would reduce residential amenity to a significant degree due to the sheer physical presence of the building. However the new property is sufficiently set back from boundaries, has a smaller footprint, smaller in height to objecting neighbours and allows sufficient garden space for both the existing and new property on the site. The property is also sufficiently screened by conifers from objecting neighbours. The property does not have any overlooking issues.**

Response: The proposed house relative to the existing houses is considered to be too close. Even though the proposed development may be smaller in size and height than the objectors' dwellings that in itself does not negate the adverse visual impacts due to its orientation towards the rear elevations and gardens of the neighbouring properties. It is accepted that there would be no impact upon privacy and the garden area would be of a sufficient size. However the closeness of the development to the boundary trees may disrupt the root system and jeopardise the future survival of these trees in which case the screening potential referred to would be lost.

4.0 Conclusions

4.1 In summary, the proposed development does not accord with the provisions of the adopted local plan or the Councils Residential Development Guidelines. In addition, there are no material considerations which outweigh the development plan. Subsequently, the Planning Authority therefore requests that the Review Body refuse Planning Permission in Principle.

5.0 List of Productions

Production 1 - Submitted plans CL/11/0109

Production 2 – Various photographs taken from within and outwith the appeal site

Production 3 – Report of handling CL/11/0109

Production 4 – Decision notice CL/11/0109