Planning Applications Committee Report

ERECITION OF DWELLINGHOUSE WITH INTEGRAL GARAGE, FORMATION OF ACCESS AND INFILLING OF SITE (PARTLY RETROSPECTIVE) AT SITE A, LAND OPPOSITE STAINTON LE VALE, MANSEHEAD, TERREGLES, DUMFRIES

Application Type: Full Application

Applicant: Mr & Mrs Hamid Ref. No.: 17/1331/FUL

Recommendation: Approve subject to conditions

Ward: Castle Douglas And Crocketford

Hierarchy Type (if applicable) - Local

Case Officer: Claire Eckstein

1 BACKGROUND

1.1 Under the Scheme of Delegation, this application requires to be considered by the Planning Applications Committee as more than 6 separate, individual and timeously received third party objections on material planning grounds have been received. Furthermore, a statutory consultee (Terregles Community Council) has objected to the application and officers are recommending approval.

1.2 The application site bounds the western edge of the village of Terregles and is situated on the southern side of the C14n road. Land levels on the site originally sloped downwards from the road from north to south but the land has been infilled and levelled without the benefit of planning permission. To the east is an undeveloped house plot (Site B) and further to the east is the dwellinghouse known as Ladywell House. To the north on the opposite side of the road is the dwellinghouse called Stainton Le Vale. To the west is an area of trees and to the south is grassland and a burn, beyond which is an archaeological feature entitled Ladye Chapel.

1.3 The application has been submitted to regularise the house and site levels currently under construction, in particular the infilling of the site which was not detailed correctly on the 16/1277/ARC application, i.e. no change to site levels was shown, hence the proposal is partly retrospective.

1.4 Further revised plans (15/09/2017) were submitted to reduce the level of infill which has been brought into the site, in order to create a terraced rear garden area, to
provide some boundary planting and to reduce the levels around the dwellinghouse slightly to the rear in order to reduce the height of the flat area to the rear. These further revisions show proposed levels as 29.425m (rear of house), 28.126m (mid rear garden) down to the banking at the end of rear garden at 27.2m. The levels will bank up from 27.05 (house), 26.78m (mid) to 26.62m (end).

1.4 The house is as approved for a detached 1½ storey dwellinghouse with integral garage (11.463m by 10.052m) with dormer windows on front and rear with solar PV panels on rear. The proposed house would have grey Russell Galloway tiles, off-white k-rend walls and grey stone band course and anthracite grey UPVC windows and doors, soffits and fascias. The dwellinghouse would have a finished floor level of 30.002m with eaves height of 32.297m and ridge height of 37.816m.

**Planning History**

1.5 The most recent / relevant planning history for the site is noted below:-

**Application Site (Site A)**

16/1277/ARC - Erection of dwellinghouse with integral garage and formation of access (approval of matters specified in Conditions 2 (layout), 3 (design), 4 (external appearance) and 5 (landscaping) of planning permission in principle 15/P/3/0341) - Approved subject to conditions 29/11/2016

16/P/3/0288 - Erection of dwellinghouse with integral garage and formation of access - Withdrawn 21/09/2016 [NB – *the withdrawal related to a developer contribution requirement.*]

15/P/3/0341 – Planning permission in principle (PIP) for erection of dwellinghouse and formation of access - Approved subject to conditions 28/01/2016 by the Planning Applications Committee

**Adjoining Site (Site B)**

17/0695/ARC – Erection of dwellinghouse with integral garage and formation of access (approval of matters Specified in Conditions 2 (layout), 3 (design), 4 (external appearance) and 5 (landscaping) of planning permission in principle 15/P/3/0342 - withdrawn 26/06/2017

15/P/3/0341 – Planning permission in principle for erection of dwellinghouse and formation of access - Approved subject to conditions 28/01/2016 at Planning Applications Committee

**2 CONSULTATIONS**

2.1 **Terregles Community Council** - Objection

The amount of infill, already used, has greatly exceeded the amount allowed in the outline plan, resulting in a greatly elevated site. The house is very much elevated above the neighbouring properties. TCC consider this level is wholly out of keeping with the environment, and totally out of character for the site. In addition, this vast
amount of infill is liable to cause run-off into the water course and the Lady Well and into adjacent properties. TCC consider the flood risk is increased from this land raising. This land raising is in clear breach of conditions of planning in the outline permission. In addition, the access recommended by roads officers was to be a joint access from a double layby; this is not shown and TCC believe the sight lines are not sufficient. On road safety grounds, TCC would like assurance this will be done.

2.2 Council Roads Officer - No objection subject to conditions
The proposed dwellinghouse is to be served via a new access from the C14n public road. Appropriate visibility of 2.4m x 120m can be achieved to the west and the minimum of 2.4m x 50m can be achieved to the east from the proposed new access. The proposed access should be surfaced in bituminous materials for the first 5m and be trapped and drained to an outfall or soakaway. Any works carried out within the public road boundary will require the issuing of a road opening permit(s). Parking and turning for 2 cars should be provided within the curtilage of the site.

2.3 Council Flood Risk Management Team (FRMT) - No objections
Development lies outwith the medium Likelihood (0.5% Annual Exceedance Probability) Pluvial and Fluvial floodplain as detailed on DGi (information from SEPA), DGi is an indicative tool designed to highlight areas potentially at risk of flooding, Dumfries and Galloway Council have no historical data showing flooding to the proposed site. However, the site appears to be greenfield. The FRMT have no objection to this application based on the information provided but would advise the following:
Developer needs to manage run-off from the site during and after construction. Run-off should mimic that of existing conditions, i.e. greenfield run-off.

2.4 Scottish Water - No objections
Advise that further contact should be made in regards to Water and Foul Drainage for the site regarding connections to Terregles Water Treatment and Terregles Waste Water Treatment Works. In regards to Surface Water, for reasons of sustainability and to protect against potential future sewer flooding, Scottish Water will not normally accept any surface water connections into the combined sewer system.

2.5 Council Archaeologist –No objection (to 15/P/3/0341)
The development does not appear to impact on either the site of the motte and Ladye Chapel to the south-west or the Ladye Well to the south-east.

3 REPRESENTATIONS

Objection (8):
Lesley Bingham, Stoneycreek, Terregles
Mr & Mrs Clingan, Ladywell House, Terregles, Dumfries
Zoe Clingan, Ladywell House, Terregles, Dumfries
Mrs R King, Woodlea, Terregles, Dumfries
Ms Lesley Law, 17 Woodlands Avenue, Newbridge, Dumfries
Robert Potter & Partners, 51 Newall Terrace, Dumfries of behalf of Mr G King
3.1 5 standard letters noted objections on the following grounds:-
(a) The level of land raising to this site is significant despite a condition that there was to be no land raising.
(b) The original plans submitted under 16/P/3/0288 (now withdrawn) and 16/1277/ARC were misleading and the property, if built according to those plans, would not and could not comply with the conditions as set out in the PIP and conveyed to the developer.
(c) There is no material change in the new application as submitted, therefore the breach of conditions and the same objections still apply.
(d) The development of Site A is inextricably linked with any development of Site B. Whilst Site B is not the matter under consideration here, it is essential that the breach of conditions and the representations made in relation to Site B are taken into consideration. If Site A with its deficiencies is acceptable, then it would be fair to assume that 'anything goes' with Site B.

The other key reasons for objections are noted below:-

Infilling of Ground.
(e) Object that there have been approximately 30 lorry loads of rubble and soil brought in to raise the land of this site both surrounding the house and also at the bottom of this site now rendering it a level site. It is known the applicant was granted a licence in order to bring in some additional infill but the amount brought in has been significant and is a clear breach of condition as per the original PIP 15/P/3/0341 which clearly stated no land raising on this development. The house currently under construction now sits on what visually appears to be a bank of soil / rubble which would appear to be at variance with the conditions stipulated in the original PIP and the Supplementary guidance in the Local Development Plan - Design Quality of New Development (Form and Character), ignoring the contribution of existing topography to local character and distinctiveness. Clearly this application seeks to remedy these errors by securing permission for the development “as is”. This proposal is unneighbourly and fails to comply with the essential tests of Policy OP1: Development Considerations.

(f) The site sections existing and proposed confirm that the applicant proceeded to import of a vast amount of infill material to effectively create a flat site level with the public road where the finished ground level is 29.620 and finished floor level is 30.002. The depth of fill at the rear of these works is almost 3m. The effect of this is that the development has a very significant impact on the character and amenity of this part of the village, being wholly out of keeping and is likely to prejudice the residential amenity of Lady Well.

Original Drawings
(g) The original drawings, in hindsight, do not reflect the level of infill to the rear of this property which clearly they were proposing to bring in all along therefore rendering the drawings misleading in the first instance.
Access
(h) Access is not in compliance with the original PIP and layby access is not proposed. A possible side effect to this arrangement is that it may restrict the development options for Site B.

(i) With reference to the visibility splay of 2.5 x 50m extending over the frontage of Site B and gardens, this is not achievable - the visibility cannot be provided as it involves third party land. This is a matter for the planning authority to address in order to seek resolution and ensure that this does not compromise road safety of other users of the public road and the application should be refused.

Flood Risk
(j) Consider that the significant level of infill which has been brought in to this site has a dramatic impact on the landscape and has significantly changed the land levels of the surrounding area, which will ultimately have a negative impact on adjacent properties and ground. The Council's Flood Risk Management team made comment in the PIP Committee Report that no land raising is carried out to achieve required FFL.

(i) The SEPA flood map indicates flooding from the adjacent water course and a significant aspect of case reference 15/P/3/0341 related to no land raising being carried out to achieve the required floor level to prevent a flood risk. This also related to Condition 6 of that permission. The significant upfill now installed on the site is entirely at odds with this permission and can therefore fully expect that the flood risk which now affects their client's ground is now significantly increased.

Impact on Natural Drainage
(j) Concerned that the extent of infill will have an adverse effect on the natural drainage in the immediate area, that may encourage flooding in the lower lying ground adjacent to and beyond the application site. The Council is therefore called upon to secure an appropriate technical assurance from the developer that their client's interests in this respect are not prejudiced in any way. This should also be considered as relating to site B.

Impact on Residential Amenity
(k) Material adverse impact on residential amenity at Ladywell House. Ladywell House sits adjacent but one (Vacant Site B) to the application site. It would be naive to think that whatever is agreed for Site A will not have a direct impact on Site B and negative impact on Ladywell House. The proposal has failed to properly take into account the relationship between the existing and proposed property. Consequently, the proposal is unneighbourly and fails to comply with the essential tests of the LDP Policy OP1 Development Considerations under the heading General Amenities and Water Environment as it is not comparable with the character and amenity of the area east of this proposed site and will lead to unacceptable erosion of the well-established residential amenity and privacy currently enjoyed by Lady Well House and possibly affect the local drainage pattern creating conflict.
4 REPORT

Relevant development plan policies:
Dumfries & Galloway Local Development Plan
OP1 - Development Considerations
OP2 - Design Quality of New Development
OP3 - Developer Contributions
H2 - Housing Development in Villages
HE3 - Archaeology
IN7 - Flooding and Development
IN9 - Waste Water Drainage

Supplementary Guidance:
Housing Development in Villages
Design Quality of New Development
Developer Contributions

Other materials considerations include:
Scottish Planning Policy (SPP); and
Circular 4/1998 - The Use of Conditions in Planning Permissions

4.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that:
"Where, in making any determination under the planning Acts, regard is to be had to
the development plan, the determination is, unless material considerations indicate
otherwise, to be made in accordance with that plan".

Principle of Development
4.2 The principle of the development was established under the PIP application
15/P/3/0341 (Site A) and the subsequent house design under the approval of matters
application 16/1277/ARC, so the principle of a dwellinghouse in this location has been
accepted.

4.3 The key issue in the determination of this application is the acceptability of the
alterations (and in particular, the associated effects on visual impact, residential
amenity, flooding and drainage) as a result of the infilling which has taken place on
site due to the incorrect plans submitted for 16/1277/ARC.

Infilling
4.4 The key issue relates to the infilling of the site and the impact of this on adjoining
premises and the wider area. Following officer discussion, the revised proposal would
now reduce the infill on the site. The site is bounded to the north-west by woodland
and the proposed banking should grade it more into the area to mitigate the impact.
Again, the terracing and regrading should reduce the impact. Along the boundary with
undeveloped Site B, the removal of some of the infill material, combined with the
terracing and banking, should also reduce the impact. The revised plans indicate
planting along the banking but as the full details are not specified, this can be dealt
with via planning conditions. The proposal requires the removal of the existing hedge
boundary for visibility splays. The plans note it will be replanted further back but precise details of this have not been provided and so a condition will need to be added. Elsewhere a 1.2m high stock fencing is proposed which, given the location (part of cleared wooded area), is acceptable. In summary, whilst building on artificial mounds or underbuilding is not normally supported by Supplementary Guidance, in this particular instance, the infill will be largely hidden from public vantage points and can be appropriately landscaped. As an exception to policy, the infill and underbuilding is considered to be acceptable.

**Siting, Design and External Appearance**

4.5 The proposal is for a 1½ storey dwellinghouse set back from the public road (15m) with a parking / turning area to front and a garden to rear. The finishes are mixture of off-white render walls, flat grey tiles and grey windows. Given the wide variety of finishes within Terregles village, this palette of finishes is considered acceptable for this location.

4.6 The position of the house is also considered acceptable and will allow provision of a new hedge / fence along the frontage boundary. As noted above, the finished floor level is as per the level noted in the PIP application, so the principle is acceptable, but as a result, the site has been infilled. The revised cross-sections note the public road is at 29.740m and with house being at a similar level (30.020m with ground level at 29.620m) has required infill material to be bought in to achieve this, so the proposal is not considered to be in a highly elevated position above the road.

4.7 Objectors raise concerns that the proposed development does not accord with the character of the area. The proposal lies within Terregles village where in recent years new development has been characterised by large self-build houses, not dissimilar to this proposal, and to accommodate these houses ground works have been undertaken. Although a concern has been raised relating to the “elevated nature of the sites”, the houses on the other side of the road sit at a much higher and more prominent position in the village.

**Privacy and Overlooking**

4.8 The house has been sited to minimise any overlooking and the floor plans indicate the elevation facing onto proposed Site B are non-inhabitable rooms, i.e. utility and shower room only, so no adverse privacy issue are raised. Details of the precise boundary treatment have not been submitted, other than it would be a post and wire fence. However, a condition can be imposed to ensure precisely what is proposed and that it is implemented as agreed. It is accepted that approval of the current application would constrain the future development of Site B somewhat more than had been anticipated as part of the previous applications and that the siting and design of a house there will need to be carefully considered to ensure that appropriate levels of amenity are achieved at Site B and at both adjoining properties. Notwithstanding this, it is considered that a house can be appropriately sited and designed for Site B – the impact of the underbuild and infill at the application site is not so severe that it would sterilise Site B.
4.9 With regards to Site B, the exact position of the dwellinghouse is not yet subject to a detailed application but in order to minimise any overlooking issues being raised, a fence is proposed. In addition to this and in order to avoid buildings etc. being undertaken on the site or extensions to the building, it would be reasonable to remove the 'permitted development' rights from the curtilage of the proposed dwellinghouse and from the dwellinghouse itself in the interests of amenity.

Access and Servicing
4.10 The block plans reflect the requirement of the conditions imposed on the PIP, so whilst the Roads Officer’s advice remains the same for a lay-by to be formed (as requested previously), these were not deemed necessary for the previous AMSIC application, given the rural characteristic of this edge of village site, and the current application should also reflect this position. The conditions relating to roads, in line with the advice noted on the original PIP, along with recommended visibility splay conditions are recommended to be added. The alteration to 30mph speed limit as part of the traffic regulation order requirement has been undertaken.

4.11 The development would be served by the public water supply and use the mains sewer to the water treatment work in Terregles Village. Scottish Water have raised no objections.

Flooding
4.12 As highlighted previously, there was a condition in the PIP that the finished floor level (FFL) should be equal to or greater than 30.002m. This FFL had been the requirement of Flood Risk Team at the time of the PIP. The indicative drawings for that application indicated dwelling/s sited closer to the road and therefore not requiring any infill or underbuild. The current proposal adheres to the stipulated height requirement but sets the dwelling further back into the site, hence the infill. There is a recognition that this situation has arisen due to errors in the previous plans.

4.13 The consultation response from FRMT based on the present level of infill on the site indicated they have no objections but does advise that developer needs to manage run-off from the site during and after construction. Run-off should mimic that of existing conditions, i.e. greenfield run-off. Given that the developer would be undertaking further works to remove infill then a revised scheme noting the management of the surface water run-off could be incorporated and this can be dealt with via a planning condition.

Other Matters
4.14 There have been concerns raised that this proposal would set a precedent for the development of the adjoining undeveloped plot (Site B) and its impact on the property known as Ladywell. However, at this stage, no application for Site B has been submitted so its impact cannot be assessed.

4.15 No developer contributions are required in this instance, as the proposal falls under the thresholds set out in Supplementary Guidance.
Conclusion
4.16 In conclusion, the proposal is considered to be generally compliant with the provisions of the stated Development Plan Policies and as there are no material considerations which override the presumption in favour of a determination in accordance with the terms of the development plan, it is recommended that this proposal be approved subject to conditions listed below. Whilst the underbuild and infilling of land is not supported by Supplementary Guidance, the impact of the proposal in this instance on public vantage points is not such that it merits its refusal or enforcement and this element of the proposal is considered acceptable as an exception to policy.

5 RECOMMENDED DECISION

5.1 Approve on the following grounds:-

1. That the dwellinghouse hereby granted planning permission shall not be occupied unless a fully detailed scheme for SUDS and surface water drainage (including any associated landscaping and fencing), including timetable for implementation and for the maintenance of the scheme in perpetuity, has been submitted to and approved in writing by the Council as planning authority. The development shall be implemented in full accordance with such scheme as may be so approved.

2. That the dwellinghouse hereby granted planning permission shall not be occupied unless a more detailed scheme (to that noted on Drawing No 07/17/PL-02 Rev A 15092017 received 15/09/2017) detailing new tree and shrub planting has been submitted to and approved in writing by the Council as planning authority. The scheme shall include all grassed areas, hedges, retained trees and other retained vegetation and details of changes to existing levels. The scheme shall be plotted on an accurate plan of the site, to a recognised metric scale, and shall detail the number and species of trees and shrubs to be planted, locations, planting density, nursery stock sizes at time of planting, and initial maintenance to aid establishment.

3. That such scheme as may be so approved in respect of Condition 2 above shall be implemented in the first planting season following the completion or occupation of the dwellinghouse hereby granted planning permission. Thereafter, all trees and shrubs forming part of the approved scheme shall be maintained and replaced where necessary to the satisfaction of the Council as planning authority for a period of not less than 10 years. No trees forming part of the approved scheme shall be pruned or lopped during the 10 year period following planting without the prior written approval of the planning authority.

4. That the dwellinghouse hereby granted planning permission shall not be occupied unless a fully detailed scheme for boundary enclosures has been submitted to and approved in writing by the Council as planning authority and the approved scheme has been implemented in full. Thereafter, the said boundary enclosures shall be retained and maintained for the lifetime of the development unless otherwise agreed in writing by the Council as planning authority.
5. That the dwellinghouse hereby granted planning permission shall not be occupied unless a visibility area (insofar as it can be provided on land under the applicant's control) has been provided on the west side of the access between the public carriageway edge and the line joining two points defined as follows:-
(a) measured 2.4 metres back along the centre line of the access from the nearer edge of the main carriageway; and (b) measured 120 metres from the centre line of the access along the nearer edge of the carriageway of the C14n public road.

6. That the dwellinghouse hereby granted planning permission shall not be occupied unless everything exceeding 1 metre in height has been removed from the visibility areas referred to in Condition 5 above. Thereafter, nothing exceeding 1 metre in height (as measured from the adjoining carriageway level) shall be grown, placed or erected within the said visibility areas.

7. That the dwellinghouse hereby granted planning permission shall not be occupied unless the first 5 metres of the access from the C14n public road has been:-
a) surfaced in bituminous materials (or such other material as may be agreed in writing by the planning authority);
b) formed so as to have a gradient of no greater than 8 % (1 in 12.5); &
c) trapped and drained to an outfall or soakaway so as to prevent any surface water flowing onto the public roads or into the site from the public road.

8. That the dwellinghouse hereby granted planning permission shall not be occupied unless the following have been provided within the application site:-
a) an off-street car parking area sufficient for no less than 2 cars; and
b) a turning area in hardstanding sufficient to enable a car to enter and exit the public road in forward gear at all times. Thereafter, the said parking and turning areas shall be kept clear from obstruction and shall be retained only for that purpose for the lifetime of the development.

Relevant Drawing Numbers:

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NB - all relevant drawings, and any relevant associated correspondence/reports, are available on the Council’s ePlanning website (www.dumgal.gov.uk/planning)