

Item 6

SEDGEFIELD BOROUGH COUNCIL

PLANNING APPLICATIONS - TO BE DETERMINED

1. 7/2007/0711/DM APPLICATION DATE: 17 December 2007

PROPOSAL: **ERECTION OF TRANSPORT GARAGE (RETROSPECTIVE)**

LOCATION: **LAND AT ELDON HOPE DRIFT OLD ELDON CO. DURHAM**

APPLICATION TYPE: Detailed Application

APPLICANT: Mr J Cant
Eldon Hope Drift, Old Eldon, Co. Durham, DL4 2QX

CONSULTATIONS

1. WINDLESTONE PC
2. Cllr. A. Hodgson
3. Cllr. T D Brimm
4. DCC (TRAFFIC)
5. ENGINEERS
6. Rodger Lowe

NEIGHBOUR/INDUSTRIAL

Eldon Hope Building Materials

BOROUGH PLANNING POLICIES

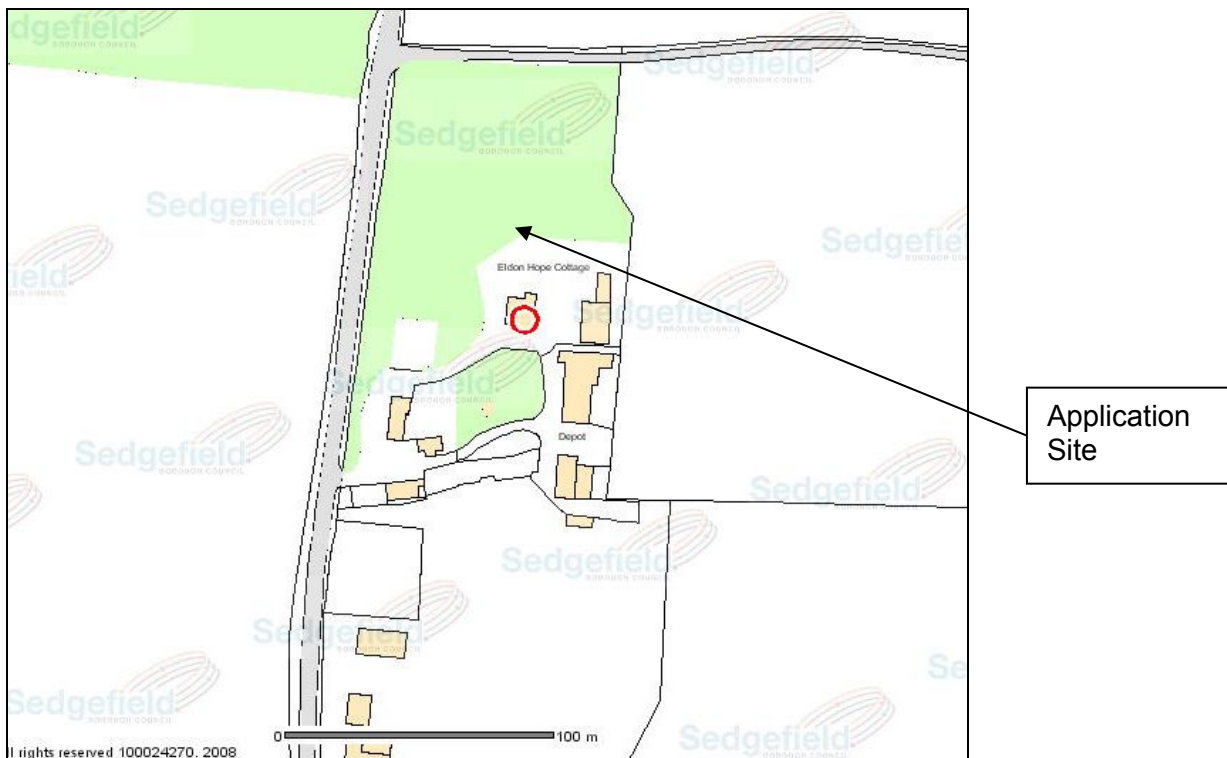
E15 Safeguarding of Woodlands, Trees and Hedgerows
D1 General Principles for the Layout and Design of New Developments

This application would normally be determined under the scheme of delegation but has been brought to committee for determination as the application is retrospective and authority is being sought to take enforcement action

Background

Eldon Hope Drift is located to the north of Old Eldon to the West of the Borough. The site comprises of a variety of buildings associated with an old drift mine along with a residential dwelling and buildings associated with a haulage business. The site is well screened by mature trees, the majority of which are protected by tree preservation orders.

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Planning History

This application has arisen, through routine inspection of the trees on the site, where it was noticed that a large commercial building had been partially built within an area of protected woodland.

A number of previous planning applications have been refused for the erection of dwelling houses at the site and the use of the site as a haulage business is believed to have been established when the drift mine closed.

A Tree Preservation Order was made at the site in 1976 (Order no. 29/9/76), comprising of a woodland area, individual trees and areas of trees

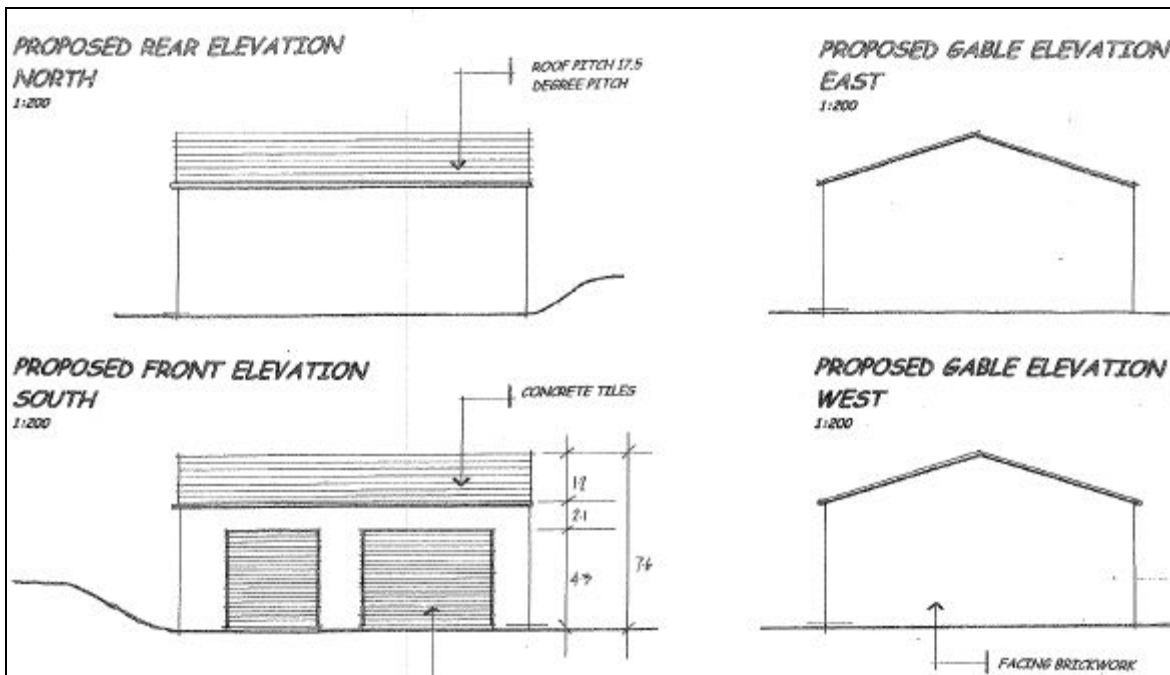
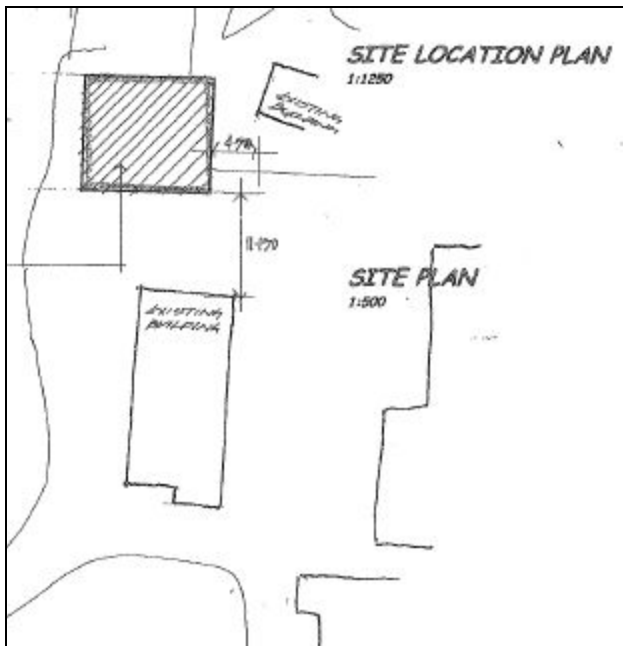
The Proposal

This applicant seeks retrospective permission for the erection of a detached garage to be used in conjunction with the haulage business which operates from the site. The applicant claims that the structure is required to provide additional garaging and maintenance services on the site as the current facilities do not meet current requirements.

The garage has been built up to eaves height, and is located approximately 11m from the existing dwelling on the site in a wooded area to the north of the site. Once fully constructed the garage will measure 14.6m in width by 13.6m in length and the ridge height will have a maximum height of 7.6m.

The garage has been constructed from brick with block work internal walls; two large access points are located to the front elevation.

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Consultation Responses

Windlestone Parish Council have made no comment to date.

Durham County Council as the Highway Authority have offered no objection to the proposal on highway grounds.

The Council's Tree Officer has recommended that the application should be refused and the woodland reinstated to its former size and boundary features.

The neighbouring property Eldon Hope Building Materials were notified of the application by an individual notification letter, no letters of representation have been received to date.

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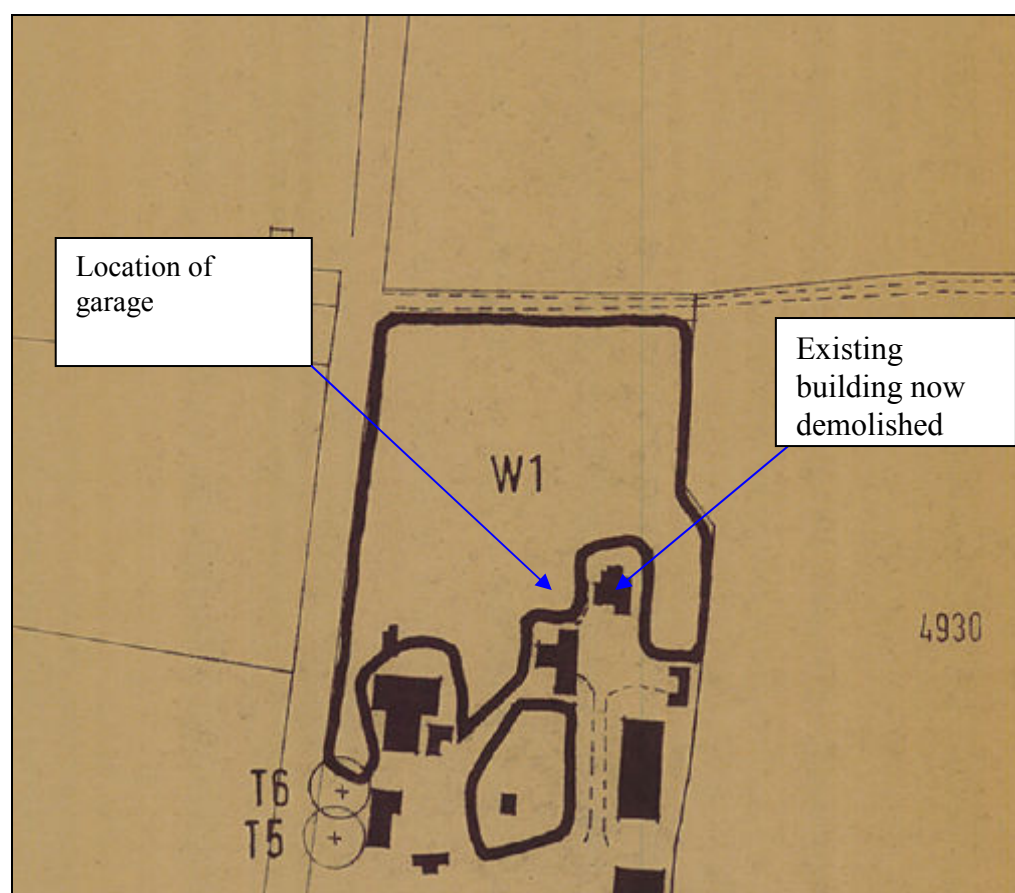
Material Considerations

The main considerations in regard to this application is the impact that the development has upon the existing woodland which is protected by a Tree Preservation Order and the impact on the ecology of the area.

Impact upon the woodland

Policy E15 (Safeguarding Woodlands) of the Sedgfield Borough Local Plan requires developments to retain areas of woodlands and important groups of trees. In addition policy D1 of the Local Plan expects that developments take account of the sites natural and built features.

As stated above the garage has been constructed in an area of mature woodland to the north of the site. It is considered that this woodland area significantly contributes to the visual amenity of the surrounding area by screening the existing industrial development. As a result of this the area was protected by a Tree Preservation Order 29/9/76 as shown W1 below.



The applicant states in the Design and Access Statement which accompanies the application that a number of trees have been removed to the north of the site to accommodate the development. Whilst it is unclear how many trees have been removed as the woodland is relatively dense it is estimated that a significant number have been lost. In addition no account has been taken of the roots of surrounding trees when the foundations of the garage were put in place. It is however estimated that trees within a 8m buffer of the development may have

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severely been affected, jeopardising their long term future. When combining the footprint of the building and the 8m buffer the development will have either removed or affected trees over an area of 532m² as demonstrated below.



Overall it is considered that the erection of the garage leads to an unacceptable loss of mature protected woodland which represents an important landscape feature screening the existing developments on site and contributing to the overall landscape character of the Old Eldon area. The application is therefore considered contrary to policy E15 (Safeguarding Woodlands) and D1 (General Principles) of the Sedgefield Borough Local Plan on these grounds.

Furthermore, photographic evidence clearly demonstrates that the woodland is densely planted and that development which has been undertaken would have necessitated the removal of a significant number of trees. In addition, the Design and Access Statement accompanying the application states that '*Some trees have been removed to accommodate the development*'. In the circumstances it is considered that the removal of the trees represents a flagrant and deliberate act in breach of the Tree Preservation Order.

The consequences of the breach of a Tree Preservation Order are set out in sections 206 and 210 of the Town and Country Planning Act 1990.

Section 206 provides for the replacement of trees, which have been cut down, uprooted or removed in contravention of a TPO. It is the duty of the landowner to plant another tree of an appropriate size and species at the same place as soon as he reasonably can, and the TPO will apply to the replacement tree(s) in the same way as it did to the original one(s). If it appears to the local authority that this duty has not been complied with, it may serve a notice on the landowner requiring him to replace the tree(s) within a specified period, and if the landowner

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fails to do so the local authority can enter the land and carry out the planting and recover the cost from the landowner.

So far as other penalties are concerned, Section 210 states that anyone who, in contravention of a TPO, cuts down any tree or tops, lops or wilfully damages it in a way that is likely to destroy it, commits an offence, the penalty for which is a fine of up to £20,000 in the Magistrates Court. In the most serious cases a person may be committed for trial in the Crown Court and, if convicted, is liable to an unlimited fine.

There is also a lesser penalty for “other” breaches of a TPO – this would cover the situation where someone has not actually cut down the tree themselves, but has caused or permitted it to be cut down. In this instance the person/organisation that has given permission for the trees to be felled can be liable for a fine of up to £2,500. A prosecution for that offence needs to be commenced within 6 months from the date of the offence.

Impact upon Ecology

The potential impact of proposed development upon wildlife species protected by law is of paramount importance in making any planning decision. It is a material planning consideration which, if not properly addressed, could place the Local Planning Authority vulnerable to legal challenge on a decision to grant planning permission without taking into account all relevant planning considerations. Subsequent injury to, or loss of protected wildlife species or associated habitat could also leave the authority, including its officers and Members, at risk of criminal prosecution.

Circular 06/2005 ‘Biodiversity and Geological Conservation Statutory Obligations and Their Impact Within The Planning System’ that accompanies Planning Policy Statement 9 ‘Biodiversity and Geological Conservation’ states that *‘the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat’* (Para 98).

Circular 06/2005 also advises that ‘it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted’. In this case no information has been provided to demonstrate whether or not the development would have an adverse effect on species especially protected by law.

Conclusion

The proposed scheme has been considered against Policies E15 (safeguarding Woodlands), E14 (Safeguarding Plant and Animal Species Protected by Law) and D1 (General Principles) of the Sedgefield Local Plan and National Planning Policy Statement 9 (Biodiversity and Geological Conservation), it is considered that the development conflicts with the principles of these policies as the scheme involves the removal of protected woodland which contributes to the character of Old Eldon and surrounding area. In addition no information has been supplied on the impact of protected species.

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Recommendation

It is recommended that the application is refused for the following reasons:-

1. That in the opinion of the Local Planning Authority the development has resulted in the significant loss of mature trees protected by a Tree Preservation Order and potentially jeopardises the future life expectancy of adjacent trees which form an important landscape feature and enhances the appearance of the area. The development is therefore contrary to policy E15 (safeguarding Woodlands) and D1 (General Principles) of the adopted Sedgefield Borough Local Plan.

2. The application provides insufficient information regarding the impact of the development on protected species and as such is contrary to Planning Policy Statement 9 (Biodiversity and Geological Conservation) and planning Circular 06/2005 (Biodiversity and Geological Conservation)

Should the application be refused it is also RECOMMENDED that:-

1. The Director of Neighbourhood Services is authorised, in consultation with the Borough Solicitor, to issue an Enforcement Notice requiring the removal of the building and the planting of replacement trees.

2. The Director of Neighbourhood Services be authorised in consultation with the Borough Solicitor, to commence proceedings for prosecution in respect of any failure to comply with the terms of the enforcement notice.

Furthermore, it is also recommended that:

3. The Director of Neighbourhood Services be authorised in consultation with the Borough Solicitor, to commence proceedings for prosecution in respect the unauthorised felling of trees protected by a Tree preservation Order

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2

PROPOSAL: ERECTION OF CONSERVATORY TO REAR

LOCATION: 29 PRIMROSE DRIVE SHILDON CO DURHAM

APPLICATION TYPE: Detailed Application

APPLICANT: Barry Blewitt
29 Primrose Drive, Shildon, Co Durham

CONSULTATIONS

1. SHILDON T.C.
2. Cllr. J.G. Huntington
3. Cllr. G M Howe

NEIGHBOUR/INDUSTRIAL

Primrose Drive:17,19,21,23,25,27,31,33

BOROUGH PLANNING POLICIES

H15 Extensions to Dwellings

This application would normally be determined under the approved scheme of delegation. However the applicant is an employee within Neighbourhood Services and as such the application is presented to Development Control Committee for consideration and determination.

THE PROPOSAL

Planning permission is sought for the erection of a conservatory to the rear of 29 Primrose Drive, Shildon. The conservatory is to be constructed from white UPVC frames on a brick plinth, with a polycarbonate roof and clear glazing.

The proposed conservatory will have a projection of 2.3m, a width of 3.7m and a maximum height of 3.25m. The conservatory consists of a dwarf brick wall and Upvc frames with polycarbonate sheets. It will be positioned on the rear of the property within a relatively large garden.

CONSULTATION AND PUBLICITY

External Consultees

Shildon Town Council has no comment on this proposal.

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Publicity Responses

Letters of consultation were sent to the neighbouring properties. One letter of objection was received from the resident of 21 Primrose Drive. The objector states that the conservatory will lead to a loss of privacy due to the fact that the application site is raised at a higher level which could lead to overlooking into his bedroom window at the front of his property.

PLANNING CONSIDERATIONS

The proposal needs to be viewed against the requirements set out in the Council's Residential Extensions Supplementary Planning Document (SPD) which was adopted in February 2006. The SPD stipulates that applications for conservatories should conform to the principles of the 45-degree code or that its length does not exceed 4 metres – whichever is the greater. Because of the limited projection, this proposal satisfies the criterion of the SPD and will not have an overbearing impact on the neighbouring properties.

The SPD also seeks to safeguard the privacy of neighbouring properties by requiring the provision obscure glazing or a 1.8 metre high means of enclosure where conservatories are proposed within 3 metres of a common boundary with another property. On this occasion the conservatory is over 3m from the boundary with 27 Primrose Drive and as such accords with the policies within the SPD. However, the conservatory would only be 1.1 metres away from the common boundary with 31 Primrose Drive. As this boundary is relatively open the imposition of condition requiring the erection of a 1.8m high closed boarded fence along the length of the conservatory or the installation of obscure glazing in those windows along the common boundary of No. 31 Primrose Drive is recommended in order to protect the privacy of the adjoining residents.

As stated above, one objection has been received with regards to the development. This objection was received from the residents of 21 Primrose Drive. Whilst the application site is situated at a level substantially higher than that of the objector's property the conservatory would be approximately 22 metres from the objector's property which is in excess of the Council's normal privacy and amenity standards. The application site also benefits from a 1.8m high fence which provides screening to the rear of the property. Taking these factors into account, it is not considered that the conservatory would not lead to a substantial loss of privacy.

CONCLUSION

It is considered that the proposal is of an appropriate scale and design whilst privacy can be safeguarded via the imposition of the above mentioned planning condition; the rear garden continues to provide adequate private amenity space. The application is considered to accord with Policy H15 of the adopted Local Plan and the SPD (Residential Extensions) and is therefore recommended for approval with conditions.

HUMAN RIGHTS IMPLICATIONS

It is considered that in general terms the provisions of the Human Rights Act 1998 have been taken into account in dealing with the above application.

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SECTION 17 OF THE CRIME AND DISORDER ACT 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with Section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to approve planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

RECOMMENDATION

It is recommended that planning permission be granted subject to the conditions outlined below.

1. The development hereby approved shall be begun not later than the expiration of 3 years from the date of this permission.

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990.

2. The external surfaces of the development hereby approved shall be only of materials closely matching in colour, size, shape and texture of those of the existing building of which the development will form a part.

Reason: In the interests of visual amenity, and to comply with Policy D1 (General Principles for the Layout and Design of New Developments) of the Sedgefield Borough Local Plan.

3. Prior to the first occupation of the conservatory hereby approved a 1.8m high closed boarded fence (or other alternative style is to be submitted to and agreed in writing by the Local Planning Authority) shall be erected on the common boundary with 31 Primrose Drive for the length of the conservatory OR the windows in the side elevations facing the common boundary with number 31 Primrose Drive shall be glazed with obscure glass to a level sufficient to protect the privacy of neighbouring occupiers. The glazing or fence shall be maintained and retained thereafter to the satisfaction of the Local Planning Authority.

Reason: To safeguard the amenity of neighbouring occupiers.

INFORMATIVE: REASON FOR GRANT OF PLANNING PERMISSION

In the opinion of the Local Planning Authority the proposal is acceptable in terms of its scale, design and its impact upon privacy, amenity, highway safety and the general character of the area.

INFORMATIVE: LOCAL PLAN POLICIES RELEVANT TO THIS DECISION

The decision to grant planning permission has been taken having regard to the key policies in the Sedgefield Borough Local Plan set out below, and to all relevant material considerations, including Supplementary Planning Guidance:H15 Extensions to dwellings.Supplementary Planning Guidance Note 4: The Design of Extensions to Dwellings.