

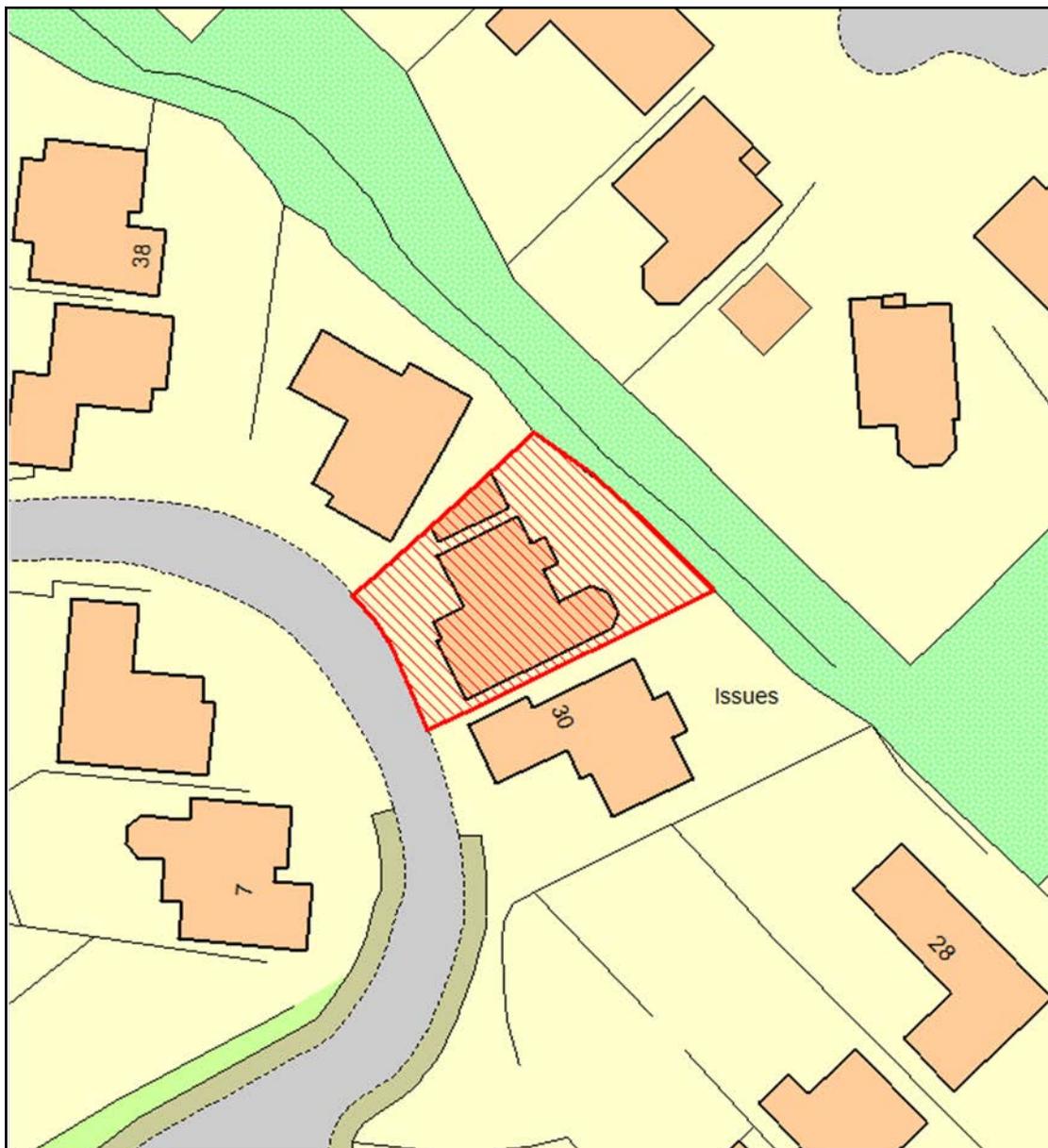
Proposed development: Discharge of planning condition for Discharge of Condition No.1 pursuant to planning application 10/19/1232

**Site address:
32 Eden Park
Blackburn
BB2 7HJ**

Applicant: Mr A Hussain

Ward: Billinge & Beardwood

Councillors: Cllr Julie Daley, Cllr Tasleem Fazal, Cllr Jackie Floyd



1.0 SUMMARY OF RECOMMENDATION

- 1.1 The proposed development is recommended to be granted planning permission for the reasons as stated in Paragraph 4.1.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 This application is presented to the Committee in accordance with the Scheme of Delegation. The condition the Committee is being asked to discharge was required by Members in approving a proposal at the Planning and Highways Committee meeting in February 2020, and their approval is required for the proposal to discharge that condition (see 2.2 and 2.3 below). The proposed development has been publicised through letters to residents of adjoining properties. One letter of objection has been received. A summary of the comments is provided at Paragraph 6.1 below.
- 2.2 The Planning and Highways Committee previously granted planning permission for a balcony to the rear of the property in August 2019 (application 10/19/0634). A subsequent application for the balcony was presented to the Committee in February of this year (10/19/1232), owing to the balcony not being built in accordance with the approved drawings. This was by way of increasing the size of the rear ground floor bay window and first floor balcony to rear.
- 2.3 In approving this second application, Members requested a condition to be added to the planning approval that they considered would secure the amenity of No. 21 The Pastures. The wording is as follows:
- *Within three months of the date of this planning permission a landscaping scheme for the area adjoining the rear boundary of the site shall be submitted to and approved in writing by the Local Planning Authority. Trees and shrubs shall be planted in accordance with the approved landscaping scheme during the first available planting season following the date of this planning permission, and thereafter retained. Trees and shrubs dying or becoming diseased, removed, or being seriously damaged within five years of planting shall be replaced by trees and shrubs of similar size and species to those originally required to be planted during the first available planting season after the loss of the trees and/or shrubs. The landscaping shall be maintained and retained thereafter to the satisfaction of the local planning authority.*
REASON: To ensure that there is a well laid scheme of healthy trees and shrubs in the interests of visual and residential amenity in accordance with Policies 8 and 9 of the Blackburn with Darwen Borough Local Plan Part 2.
- 2.4 The key issue to be addressed in determining this discharge of condition application is whether or not the proposed landscaping scheme provides sufficient mitigation against the loss of amenity previously approved by Members.

3.0 RATIONALE

3.1 Site and Surroundings

- 3.1.1 The site of the proposed development is located in a cul-de-sac on land between Preston New Road and Yew Tree Drive, within the urban boundary of Blackburn.
- 3.1.2 Eden Park is characterised by detached dwellings with front and rear gardens. Nos. 30, 32 and 34 form a grouping of three dwellings, with the application site being centrally positioned and the neighbouring dwelling either side splaying away slightly towards the rear.
- 3.1.3 The properties to the rear are located on The Pastures, within the Beardwood development. The application site on Eden Park and the dwellings to the rear on The Pastures are separated by a narrow watercourse and a band of deciduous trees. A fence of approximately 1.8 metres height marks the boundary between 32 Eden Park and 21 The Pastures.
- 3.1.4 Planting of some 40no. trees/shrubs along the rear fence is already in evidence, having been carried out prior to the erection of the balcony.

3.2 Proposed Development

- 3.2.1 The proposal is for the planting of 3no. Chamaecyparis Lawsoniana Ellwood and 3no. Ellwood Gold trees at three key points along the rear boundary to No. 32.



Extract from submitted proposed landscaping plan dated 26th March 2020.

3.3 Development Plan

3.1.4 Blackburn with Darwen Borough Local Plan Part 2 – Site Allocations and Development Management Policies (December 2015)

Policy 8: Development and People
Policy 9: Development and the Environment
Policy 11: Design

3.1.5 Residential Design Guide Supplementary Planning Document Revised Edition (September 2012)

RES E20: Balconies, Terraces and Raised Platforms
RES E3: Separation Distances
RES E7: Rear Extensions

3.1.6 Supplementary Planning Guide

Natural Environment 1: Landscaping & Wildlife Habitat Creation

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (NPPF) (July 2018):

Section 12: Achieving Well-Designed Places
Section 4: Decision-Making

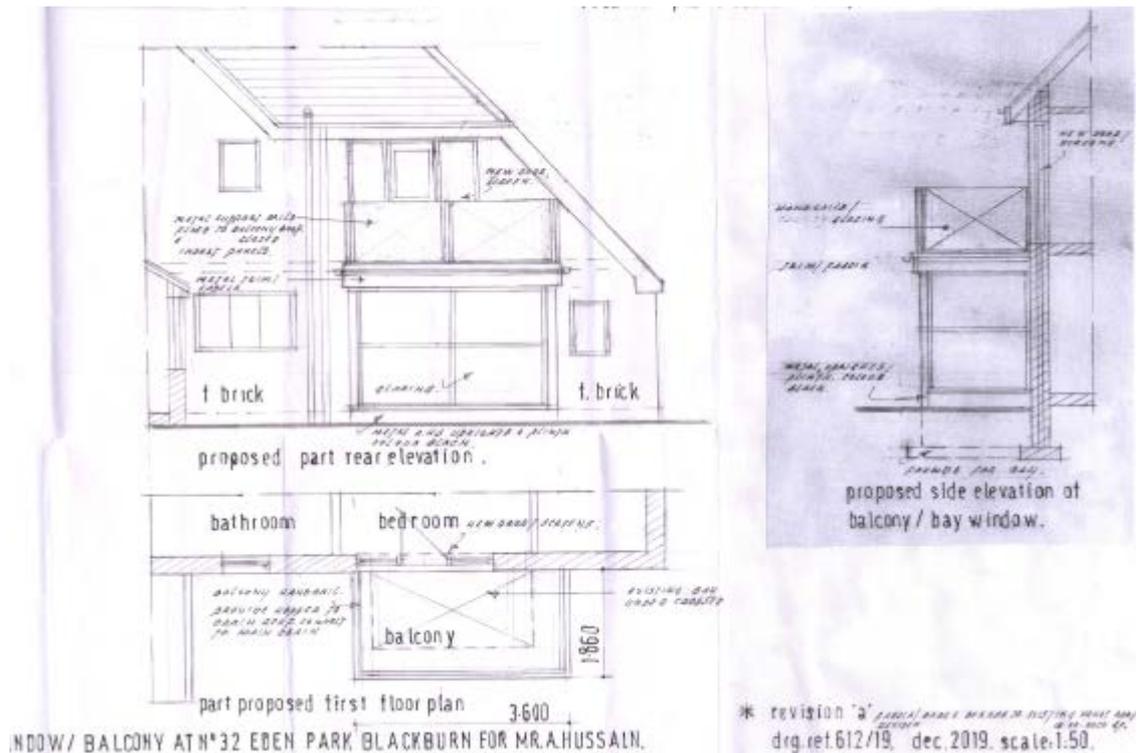
3.5 Assessment

3.5.1 *Review of the approved applications.* In the previous applications, Members considered the proposed development of the balcony and the ground floor bay window in relation to:

- Local Plan policy relating to development and its setting
- Local and National policy relating to design

3.5.2 Local Plan Part 2 Policy 11 requires development to “demonstrate an understanding of the wider context”, part of which relates to the level of impact development has on neighbouring uses. Policy 8 states that development must demonstrate that it will contribute positively to the overall physical and social character of the area in which it is set. A satisfactory level of amenity is therefore to be secured for neighbouring residential amenity.

3.5.3 The Residential Design Guide SPD explores in detail how these policies are worked out in the context of various household developments. In relation to balconies, the Guide states that balconies are often problematic and in most suburban areas will lead to an unacceptable level of overlooking on neighbouring properties. RES E20 states that balconies will only be permitted where the case is otherwise.



Extract from approved drawing pursuant to planning application 10/19/1232

3.5.6 Consideration of the current application. This application is before Committee following the attachment of a condition by the Members at the meeting in February, regarding the submission of a landscaping scheme to the permission granted under 10/19/1232. The unauthorised alteration of and addition to the development originally approved under 10/19/0634 provided the opportunity to reassess the balcony in the light of the actual impact the development was having on the residential amenities of the adjoining properties, in particular No.21 The Pastures.

3.5.7 In re-assessing the application under 10/19/1232 Members agreed that there would be no significant increase in the level of harm to neighbouring amenity caused by the alterations. However, it was considered that some additional landscaping would be required in the light of concerns expressed of the actual impact the development was having on the amenity to the dwellings on The Pastures.

3.5.8 Paragraph 55 of the NPPF 2019 permits the imposition of conditions where they are considered *necessary, relevant to planning and reasonable* in all respects. It was considered by the Committee following a debate with officers that some additional evergreen tree planting would help reduce the emission of light beyond the curtilage from the previously unassessed ground floor bay window and in time provide some measure of screening of views from the altered balcony. The condition could in respect of this consideration be viewed as reasonable.

3.5.9 However, it should also be noted that the Council's Supplementary Planning Guidance "Natural Environment – Landscaping" (1999), states that

landscaping conditions should not normally be used for the purpose of shielding development that has a negative impact within the setting. In the case of Eden Park, it has been determined through the planning process that the balcony development on its own merits would not cause undue negative impact within the setting, specifically with reference to overlooking and loss of privacy to No.21 The Pastures. The landscaping condition in respect of this consideration, would therefore be viewed as unusual but necessary in view of the fact that the balcony was not constructed in accordance with the approved plans, and there was an additional alteration in the form of the inclusion of an infill rear bay window below the balcony. There is, then, a contentious balance to be struck between agreeing that a development has no significant impact on residential amenity, but at the same time requires landscaping to protect that amenity.

3.5.10 It is also noted that the Supplementary Planning Guidance also states that the ultimate height and spread of plants should be carefully considered so that they do not cause unreasonable nuisance to buildings or their occupants. A useable garden area should be provided beyond the crown of existing or proposed trees.

3.5.11 It is considered that there is, therefore, a balance to be struck between the provision of mitigation for neighbouring properties and the protection of the curtilage of the application site. In assessing the proposed landscaping scheme submitted, officers have consulted with the Council's Arboricultural Officer for their advice and comments.



Photograph of existing rear boundary to No.32 Eden Park – April 2020



Photograph of existing rear boundary to No.32 Eden Park – April 2020

- 3.5.12 Six additional trees are proposed to the already existing landscaping against the boundary fence. The minimum ultimate height of the proposed trees can be anything between 2.5 and 8 metres, with the ultimate spread being up to 2.5 metres. The depth of the rear curtilage is approx. 7.1 metres. The spread of the trees as they mature is considered to retain sufficient useable curtilage.
- 3.5.13 Moreover, the characteristics of the trees includes much-branched sprays of small scale-like leaves that will give a density of covering that will supplement the existing deciduous trees – especially during the winter months when light emissions are likely to be more visible and for longer periods of time. The proposed trees are therefore considered to provide sufficient and adequate landscaping, particularly between the bay window and the rear boundary.
- 3.5.14 With the platform of the balcony standing at approx. 2.6 metres above ground level and the screen adding on a further height of 1.1 metres the landscaping is unlikely to restrict more than at present the level of overlooking of The Pastures. However, Members have previously granted approval to the balcony under application 10/19/0634 on the grounds that there was no undue level of overlooking or loss of privacy to neighbouring properties, and had not requested a condition necessary to mitigate such effects. This is an important consideration in the assessment of the proposed landscaping scheme.
- 3.5.15 The measure of additional planting will not meet the concerns of the residents at No. 21 The Pastures, since the planting will take a number of years to mature. Their request for a complete screening of mature trees along the boundary between the application site and their property will seem reasonable to the objectors given their concerns for loss of privacy. The view from the balcony through to their property will, at least in the months when the deciduous trees are out of leaf, retain some gaps.



Photograph of the summer view of The Pastures from No.32 Eden Park (pre balcony) – July 2019



Photograph of the winter view from No.21 The Pastures to No.32 Eden Park – January 2020



Photograph of the lights from the balcony and rear bay window of No.32 Eden Park when viewed from No.21 The Pastures – January 2020.

3.5.16 However, a complete screening of trees along the boundary is likely to be seen as unreasonable. It is acknowledged that the objectors have strong concerns and issues with regards to the balcony construction at No.32 Eden Park. However the applicant is within his rights to assume that, in being granted planning permission – originally unconditionally – his development had been assessed as acceptable by the local planning authority at the committee meeting in August 2019. The negotiated agreement to add six new trees to the boundary is considered to stretch the bounds of ‘reasonable’ as far as they can go, and even beyond it when taking into account the Council’s own Supplementary Planning Guidance on the use of landscaping in development. To refuse the current discharge of condition therefore would not be considered reasonable under the terms of Paragraph 55 of the NPPF and, as such, Members are recommended to approve the application before them.

4.0 RECOMMENDATION

4.1 The proposed landscaping condition attached to 10/19/1232 is therefore **recommended to be discharged, with the planting to be implemented during the first available planting season, and be thereafter retained to the satisfaction of the local planning authority.**

5.0 PLANNING HISTORY

- 5.1 10/19/1232: Full Planning Application (Retrospective) for Retention of increased size of ground floor bay window and first floor balcony to rear. Approved by Planning and Highways Committee 21st February 2020.
- 5.2 10/19/0634: Proposed Balcony to first floor rear bedroom window. Approved by Planning and Highways Committee 16th August 2019.
- 5.3 10/16/1329: Conversion of garage to habitable room and erection of front porch. Approved under delegated powers 20th January 2017.
- 5.4 10/02/0756: Proposed rear conservatory. Approved under delegated powers 27th November 2002.

6.0 CONSULTATIONS

- 6.1 Consultations are not normally carried out in respect of Discharge of Conditions applications and views are not normally taken into account. However, given the objections received from the owners/occupiers of No.21 The Pastures, a courtesy letter was sent informing the affected neighbour of the proposal, and as a result a letter of objection has been received. Section 9 of this report includes the full details of the objection.
- 6.2 The objections can be summarised as follows:
- The committee passed the application (Ref: 10/19/1232) on the understanding that 'substantial planting' would be required to maintain immediate privacy for 21 The Pasture.
 - The 'landscaping scheme' proposed is wholly inadequate and when planted will certainly not provide the screening required to provide the necessary privacy, either now or in the future.
 - The lack of trees means that privacy for No. 21 is severely compromised. This has had a serious impact on the ability to enjoy the peaceful environment of both home and garden.
 - This balcony is proving problematic and is not in accordance with the council's own policies.

7.0 CONTACT OFFICER: John Wilson, Planner Tel: 01254 585585

8.0 DATE PREPARED: 29th May 2020

9.0 SUMMARY OF REPRESENTATIONS

Objection – Anne & David Kirkplace, 21 The Pastures, Beardwood. Rec 16.04.2020

Dear Sir/Madam,

We would like to lodge our strong objection to the above application to discharge conditions imposed in granting the planning application 10/19/1232.

Please find attached the objection letter and site plan.

Your faithfully

David Kirkpatrick
21 The Pastures
Beardwood

Dear Sir/Madam,

We strongly object to the so called 'landscaping scheme' submitted by the applicant as it is totally unacceptable to us. It cannot be said to meet the conditions as it does not restore our privacy and amenity. This application is to discharge the planning conditions imposed when the planning application Ref: 10/19/1232 was granted.

We ask that Blackburn with Darwen Borough Council refuse this application.

At the planning meeting, the committee only passed the application (Ref: 10/19/1232) with conditions, on the understanding that 'substantial planting' would be required to maintain our immediate privacy. Straight after the meeting, we had a conversation with Gavin Prescott and Martin Kenny about the condition. It was our understanding that mature specimen evergreen trees along the entire boundary would be needed. We even said that a crane would be needed to get the trees into position.

The 'landscaping scheme' proposed is wholly inadequate and when planted will certainly not provide the screening required to provide the necessary privacy, either now or in the future.

The 'landscaping scheme' only has the provision of six saplings. These being two Chamacey Paris Ellwoods, two Chamacey Paris Ellwoodii Gold and two Chamacey Paris Blue Nantais.

Saplings, by definition, are young trees about one metre tall, and will take a number of years to reach maturity. These saplings do not give any immediate screening. In theory, the applicant will be able to remove them after five years without them ever being large enough to have provided any screening for us whatsoever.

According to the Royal Horticultural Society website (<https://www.rhs.org.uk/>), the sizes for the proposed trees are as follows:

Chamaecyparis lawsoniana 'Ellwood's Gold'

<https://www.rhs.org.uk/Plants/90200/i-Chamaecyparis-lawsoniana-i-Ellwood-s-Gold/Details>

Size

Ultimate height 2.5-4 metres

Ultimate spread 0.5-1 metres

Time to ultimate height 10-20 years

Chamaecyparis lawsoniana 'Ellwoodii'

<https://www.rhs.org.uk/Plants/92331/i-Chamaecyparis-lawsoniana-i-Ellwoodii/Details>

Size

Ultimate height 4-8 metres

Ultimate spread 1.5-2.5 metres

Time to ultimate height 20-50 years

According to the Ashwood Nurseries website (<https://www.ashwoodnurseries.com/>), the sizes for the proposed trees are as follows:

Chamaecyparis lawsoniana 'Bleu Nantais'

<https://www.ashwoodnurseries.com/shop/chamaecyparis-lawsoniana-bleu-nantais.html>

Height 1.2-1.5m x Spread 30-60cm (4-5ft x 12-24in) in 10 yrs.

You will see from the above that only the *Chamaecyparis lawsoniana* 'Ellwoodii' provides any coverage when it reaches maturity.

On the site plan below provided by the applicant, I have overlaid the field of vision they will have of our garden. As can be seen, it does NOT provide any privacy for us.

Privacy

As we emphasised previously, the lack of trees means that our privacy is severely compromised. This has had a serious impact on our ability to enjoy the peaceful environment of our home and garden. Every time we go out to enjoy our garden, we are aware that the applicant could be out on their balcony looking at us. We have recently witnessed their son on a number of occasions out on the balcony

unsupervised, using binoculars to view into ours and the neighbours' gardens. From the balcony, the applicant has a commanding outlook over our property.

This balcony is proving problematic and is not in accordance with the council's own policies.

Yours faithfully,

Anne Kirkpatrick

Dave Kirkpatrick

