

**Proposed development: Full Planning Application (Retrospective) for Retention of increased size of ground floor bay window and first floor balcony to rear**

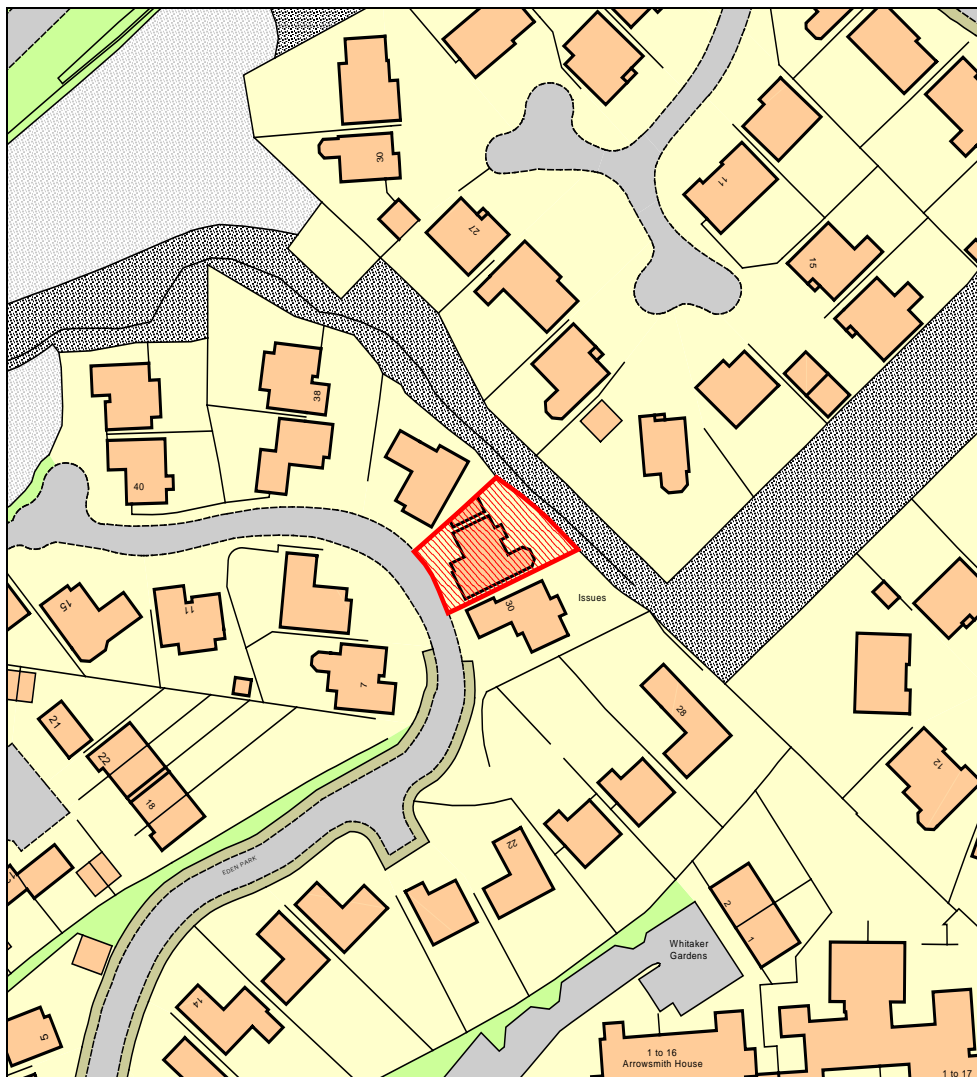
**Site address:  
32 Eden Park  
Blackburn  
BB2 7HJ**

**Applicant: Mr A Hussain**

**Ward: Billinge & Beardwood**

**Councillor: Julie Daley  
Councillor: Tasleem Fazal  
Councillor: Jackie Floyd**

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## **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 through the Chair Referral process in accordance with the Scheme of Delegation. 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 Members will be aware that the Committee granted planning permission for a first floor balcony at the rear of the property at their meeting in August 2019. The key issues to be addressed with regards the current submission are as follows:
- Whether or not the impact of the amended balcony on the amenity of neighbouring properties and setting is any greater than the impact of the balcony as previously approved by Members.
  - The altered design of the balcony and additional ground floor bay window/extension – what impact does this have on the host property and the immediate surroundings?

## **3.0 RATIONALE**

### **3.1 Site and Surroundings**

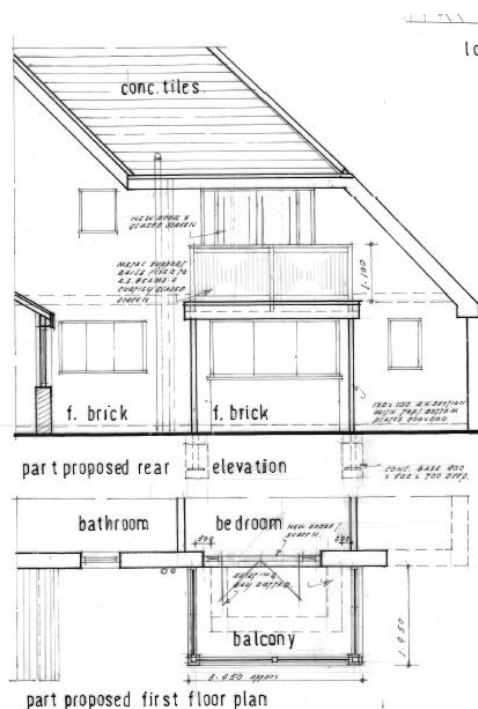
- 3.1.1 The application site of the proposed development is located in a cul-de-sac on land between Preston New Road and Yew Tree Drive, within the urban boundary of Blackburn.
- 3.1.2 Eden Park is characterised by detached dwellings with front and rear gardens. Nos. 30, 32 and 34 form a grouping of 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. Eden Park and The Pastures are separated by a narrow watercourse and a band of deciduous trees.

### **3.2 Proposed Development**

- 3.2.1 The proposal is for the retention of unauthorised alterations to a previously approved balcony to the rear of the property, including the enclosure of the supporting pillars to form a bay window/extension to the ground floor.

3.2.2 The original planning application for the balcony (10/19/0634) was referred to the meeting of the Planning and Highways Committee on 15<sup>th</sup> August 2019 with a recommendation for refusal on two grounds:

- *The proposed development, by virtue of its scale and position in relation to the adjacent neighbouring dwellings, has failed to adequately address the connection between the development and its setting, causing harm to neighbour amenity through overlooking and loss of privacy, contrary to Policy 8 of the Local Plan Part 2 and the Residential Design Guide Supplementary Planning Document.*
- *The proposed development fails to meet the criteria set out in the NPPF and the Local Plan Part 2 in undermining the overall quality of the host dwelling and the area by virtue of a structure that fails to integrate acceptably into the host dwelling, contrary to the NPPF and Policy 11 of the Blackburn with Darwen Borough Local Plan Part 2.*



extract from approved drawing – 10/19/0634

3.2.3 The minutes of the meeting noted that, after discussions had taken place, seven Members were minded to approve the application against Officer recommendation, finding that the proposal was of appropriate design and appearance and would not be severely detrimental for occupiers of the dwelling or neighbouring dwellings in terms of loss of privacy/overlooking in accordance with the relevant local plan policies.

3.2.4 The height of the balcony is not altered, standing approximately 2.6 metres above ground level supported by pillars and accessed from a first floor bedroom via French windows. Glazed screening has been installed around the balcony to an additional height of 1.1 metres (as previously approved). The projection is approximately 1.86 metres (1.95 metres was previously approved) and the width approximately 3.6 metres (3.4 metres was previously approved). The balcony is thus slightly wider than approved, but with a

reduced depth, resulting in an increase of floor space to the balcony from 6.63 square metres as approved to 6.696 square metres as constructed.

### **3.3 Development Plan**

#### **3.3.1 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

#### **3.3.2 Residential Design Guide Supplementary Planning Document Revised Edition (September 2012)**

RES E20: Balconies, Terraces and Raised Platforms  
RES E3: “Separation Distances”  
RES E2: “45 Degree Rule”

### **3.4 Other Material Planning Considerations**

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

Section 12: Achieving Well-Designed Places

### **3.5 Assessment**

#### **3.5.1 Review of the approved application.** Members previously considered the proposed development 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 how development relates to 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 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.

3.5.4 The relationship between the proposed balcony and its neighbours differs with each of the four adjoining properties.

3.5.5 Members were previously advised that with regard to No. 21 The Pastures, the use of the balcony and the neighbouring garden for outdoor activities would reduce the separation distance between the properties to about 11 metres; and gaps in the tree cover between the application site and the garden of No. 21 may compromise the sense of privacy. Additionally, the boundary fence that would give some acoustic screening was not considered to adequately deal with disturbance from the balcony.



*Top: Views from 21 The Pastures July 2019 (left) and January 2020 (right)*

3.5.6 Members were also advised that No. 23 The Pastures is a little closer. The tree cover between the two properties is somewhat thicker in the high summer, though more open at other times of the years, the trees being deciduous.



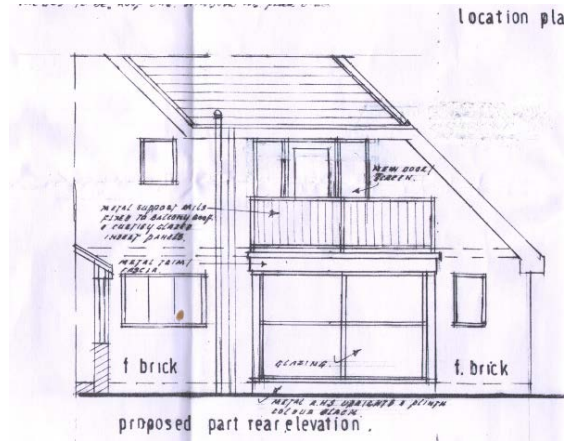
*Above: Views from 23 The Pastures July 2019 (left) and January 2020 (right)*

3.5.7 Members were advised that, in relation to No. 30 Eden Park the balcony would project from the rear elevation at a distance from the neighbouring garden of about 11.5 metres. Whilst there were no direct views into any windows, the privacy of the garden was considered to be compromised to the detriment of amenity through uninterrupted views over the application site conservatory into the adjoining garden area.

3.5.8 No. 34 Eden Park has a conservatory close to the boundary with the application site. The conservatory was believed to have a false ceiling that would block views from the proposed balcony. However, the property was

visited by the Case Officer during the course of the original assessment, who confirmed that there was no false ceiling and that the roof was of clear glass providing a view up towards the position of the proposed balcony.

- 3.5.9 The report presented to the Planning and Highways Committee in August 2019 considered that the proposed balcony failed to secure neighbour amenity, contrary to Policy 8 of the Local Plan Part 2 and the Residential Design Guide SPD and recommended its refusal.
- 3.5.10 Members determination of the original application. After discussions had taken place, 7 Members were minded to approve the application against Officer recommendation, and the application was duly granted planning permission. Members determined that the proposal was of appropriate design and appearance. In addition, it was recognised that there would be some element of overlooking from the occupants standing or sitting on the balcony towards the adjoining properties. However, this element of overlooking towards the residential amenities of the occupiers of the adjoining dwellings to the rear was not considered to be severely detrimental by virtue of the fact that the tree cover would only reduce through the winter months, and the remaining part of the year the tree cover would be more substantial. This is evident with the photographs referred to in paragraphs 3.5.5 and 3.5.6 above.
- 3.5.11 Consideration of the current application. This application is before the Committee following the implementation of planning permission 10/19/0634 not being in accordance with the approved plans. The dimensions of the balcony were altered to those set out in Paragraph 3.2.4 above, whilst the bay window/extension was formed by enclosing the ground floor supports with glazing.
- 3.5.12 The issues for Members to consider relating to the development as carried out are considered to be as follows:
- Does the departure from the approved balcony plans have a detrimental impact on neighbouring properties over and above the level of impact previously deemed acceptable?
  - Is the design and appearance of the ground floor bay window/extension in accordance with development plan policies?
  - Other environmental/setting considerations.
- 3.5.13 Balcony Impact Level. Policy RES E20 of the Residential Design Guide states that balconies “*will only be permitted where they do not create an unacceptable level of overlooking on surrounding properties*”. In assessing and determining the level of impact the balcony would have on adjacent dwellings, Members previously found that the impact would not be severely detrimental. The increase in floor space to the balcony from 6.63 square metres as approved to 6.696 square metres as constructed is considered to be so minimal as to make very little difference in the level of overlooking and loss of privacy.
- 3.5.14 The perception that the balcony is a lot bigger than approved may be the result of the original plans submitted as part of this current application being incorrectly drawn.



The top of the balcony sits under the eaves rather than being set in from the eaves. However, the Case Officer has measured the dimensions of the balcony and extension and confirms that the measurements shown on the drawings are correct and that the discrepancy is in the drawing of the elevation behind it. The balcony size is as stated in the measurements given in the drawing. The Case Officer has requested an amended drawing to reflect this assessment and this will be reported in the Update Report.

3.5.15 Design and Impact of the Ground Floor Bay/Extension. National Planning Policy Framework (NPPF) requires development to add to the overall quality of the area and that it should be visually attractive as a result of good architecture (Paragraph 127a and b). Local Plan 2 requires development to make a positive contribution to the local area and enhance the character of the building.

3.5.6 Members are advised that when planning permission was granted for the 15 dwellings on Eden Park under planning application 10/00/0818 in May 2001, Condition No.7 was imposed which removed the permitted development rights relating to rear extensions from a number of plots. One of these plots was Plot 14, which is No.32 Eden Park. This condition was imposed due to the restricted nature of the site, whilst the dwellings approved were acceptable, any further extensions or alterations normally permitted under the above provisions may in this case conflict with the safety and amenity value of the surrounding trees, and the area in general. What has been constructed amounts to a rear extension with raised platform above. As such, planning permission is required for this.

3.5.7 One of the features of the unauthorised balcony is a bay window that facilitates the use of the space created in the manner of a small conservatory/extension. The bay has been created through enclosing the supporting pillars with glazing. At a height of 2.8 metres, and to a projection of 1.86 metres the bay window/extension would not be considered as a dominant feature against the rear elevation, and its design as a simple, rectangular conservatory is considered acceptable.



- 3.5.8 Policy 8 of the Local Plan 2 requires development to secure a satisfactory level of amenity for neighbouring properties, with the Residential Design Guide alluding to separation distances and the 45-degree rule to ensure no undue harm is caused to neighbouring dwellings.
- 3.5.9 The limited projection and height enables the extension to meet the 45 degree requirement in relation to neighbouring windows, whilst in relation to the properties on The Pastures to the rear the 21 metre separation distance is comfortably met.
- 3.5.10 It is considered that the ground floor bay window/extension is acceptable in terms of design and its relationship to adjacent dwellings.
- 3.5.11 Other environmental/setting considerations. Policy 8 of Local Plan Part 2 includes securing neighbour amenity with reference to lighting. Neither the external lighting provided for the balcony nor the security lighting fixed to the rear elevation wall requires planning permission. Nevertheless it is considered that the additional lighting can be intrusive on neighbouring properties. Whilst the matter cannot therefore be subject to a planning condition, nuisance lighting can be dealt with through other legislation. It is therefore recommended that an informative note be attached to the planning permission drawing the developer's attention to "Guidance Notes for the Reduction of Obtrusive Lighting" published by the Institute of Lighting Professionals and available on the website.
- 3.5.12 Policy 9 of Local Plan Part 2 also requires the amenity of protected species and their habitats to be secured. It is understood that bats may be active within the neighbourhood. The Council's ecological advisors have said that, since there is normally no control over the types of light erected at the property, the legal responsibility to ensure there is no harm to bats or their roosts lies with the householder. Bats foraging along the ditch along the rear boundary are unlikely to be negatively impacted providing the lights are not on permanently throughout the year. In the winter bats would not be active. So no harm would be caused when nights are longer and the lights more likely to be on. Moreover the ditch at this time of year would be less obscured by trees. Ecology also comments that in the summer the ditch is obscured by trees which provide some screening from lighting. Bats will, anyway, not be active to later at night when the lights are less likely to be on. Any disturbance, then, will be temporary and minor. In addition the bats most commonly found in suburban areas are not generally negatively impacted upon by lighting. It is therefore recommended that an Informative be added to the planning permission drawing the developer's attention to his responsibility for securing the amenity of bat roosts should they exist in the façade of the building behind the lights.



## **4.0 RECOMMENDATION**

4.1 The proposed development is therefore **recommended to be granted planning permission** for the following reason:

- Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise. The proposal is of appropriate design and appearance and would not be detrimental to the residential amenity for occupiers of the dwelling or neighbouring dwellings or compromise highway safety or protected species and their habitats in accordance with Policies 8, 9, 10 and 11 of the Blackburn with Darwen Local Plan Part 2 (December 2015) and Residential Design Guide Supplementary Planning Document (as amended September 2012).

## **5.0 PLANNING HISTORY**

5.1 10/19/0634: Proposed Balcony to first floor rear bedroom window. Approved by Planning and Highways Committee 16<sup>th</sup> August 2019.

5.2 10/16/1329: Conversion of garage to habitable room and erection of front porch. Approved under delegated powers 20<sup>th</sup> January 2017.

5.3 10/02/0756: Proposed rear conservatory. Approved under delegated powers 27<sup>th</sup> November 2002.

## **6.0 CONSULTATIONS**

6.1 4 neighbouring properties were consulted. 1 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 proposed balcony will directly overlook properties leading to loss of privacy and peaceful environment of garden.
- Glass structure at ground floor further exacerbates the intrusion.
- Internal and external lighting intrusive and inconsiderate of privacy.
- Balcony and the addition of the glass structure below looks unsightly and not in keeping with the architecture of the house.
- Although the overall square meterage has been reduced, the frontage has increased. The subsequent visual impact is far greater than the increase in dimension would suggest.

**7.0 CONTACT OFFICER: John Wilson, Planner. 01254 585585.**

**8.0 DATE PREPARED: 7<sup>th</sup> February 2020**

## 9.0 SUMMARY OF REPRESENTATIONS

### Objection – Dave & Anne Kirkpatrick, 21 The Pastures Beardwood. Rec 13.01.2020

Dear Sir/Madam,

We strongly object to the retrospective planning application Ref: 10/19/1232. We live adjacent to the completed development and are writing to ask that Blackburn with Darwen Borough Council refuse this application.

The original planning application, Ref: 10/19/0634, was rightfully recommended for refusal by the council's planning officer Mr Wilson as the development did not meet the criteria set out in the council's own policy documents. Those reasons still apply and have been exacerbated by the significant changes that the applicant has made.

For these reasons we request the original planning approval be revoked, on the grounds that the permitted development rights have been removed due to the applicant's non-compliance to the original plan. We, therefore, request the applicant to return the property to its original state.

The objections that we raised originally i.e. the lack of privacy and appearance apply now even more than before.

#### Privacy

As we emphasised previously, the lack of foliage in winter now 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. Now that the applicant has completed the development, it can be clearly seen that the balcony has a commanding outlook over our property. The only reason I can think of for a balcony is to take in the view. The only view they have is of our property and the neighbours' properties due to the balcony's elevation. Furthermore, the addition of the glass structure beneath the balcony has led to further intrusion. We can see directly into the room that is being used as a dining room so this shows that we can also be seen. Normally, a two metre fence would be used to maintain the privacy of someone's back garden, however, with the balcony having a commanding view and with the topology of the land, this privacy has been lost. This is illustrated by the attached diagram and photographs.

During the initial visit by the Planning Committee at the height of summer they saw that there was some foliage providing some privacy. These trees are immature self-seeded trees. They are growing from the side of an old field ditch so as they mature, they are very likely to fall. A number of these self-seeded trees have already fallen into the ditch. I would like the council's arborist to assess them for their viability and also proximity to the applicant's development.

The addition of garish lighting both inside the room and outside also shows a total lack of consideration for our privacy: it is extremely intrusive.

This balcony is proving problematic and in accordance with the council's own policies should be refused.

## Appearance

The balcony and the addition of the glass structure below looks unsightly and it is clearly not in keeping with the architecture of the house.

The applicant has made another significant amendment to the original design which he has not even mentioned. The original plans show a French patio door, whereas the door in place is a basic kitchen door. Also, the original plans and amended plans show courtesy glass being installed for the balcony. This has not been done.

The visual detrimental impact is a lot greater than that of the original plans. These plans were recommended for refusal in the original application as they failed to meet the design policy laid down by the council. The new structure has deviated further from this.

## Technical issues

The applicant has cited a number of technical issues which necessitated the change in design.

Instead of the applicant seeking clarification and adjusting the plans before requesting permission for the change, he carried on regardless. When it came to the attention of Planning Control, Planning Control issued a notice removing the permitted development rights for the property.

In a repeated act of defiance, work on the development continued. This even led to noisy work being carried out on Christmas Day, disrupting our Christmas lunch and again showing a blatant and complete disregard for the neighbours.

It is only now that the development has been have totally finished that this retrospective planning application has been submitted, in the belief that as it is finished, the council will not make the applicant comply with the original plans.

The applicant has made a number of changes to the original which I believe are all major changes that do affect the overall amenity of the development.

The first two are cited by the applicant as minor by the applicant. These however, along with his other changes, are major.

## Dimensions of the balcony

There are no technical reasons for the balcony to have changed. Both the location and size has been changed. Although the overall square meterage has been reduced, the frontage has increased. The subsequent visual impact is far greater than the increase in dimension would suggest. I noticed the change immediately.

## Rebuilding of the bay window

As a result of a technical issue with the original bay window, the applicant changed the whole aspect of the bay window. Instead of trying to solve the issue of stability, he demolished the whole bay. This I note necessitated on the plans a change in footings, which I find very strange.

The change is a detriment to us as the applicant has changed the amount of glass frontage from an original 2.5 m<sup>2</sup> to a whopping 7 m<sup>2</sup> approximately. It now has edge to edge, floor to ceiling glazing.

The applicant has also installed some garish lighting which is extremely intrusive. The applicant is now using the increases area as a new dining area which would not have been possible in the original footprint. (original 3.88m<sup>2</sup> now 6.69m<sup>2</sup>)

In summary, whatever the cost, the overall look of the development looks cheaply done and unsightly. Other solutions would have been possible, but were clearly not explored. No technical explanations are given to the selection of the solution implemented, e.g. the change in dimensions of the balcony or access to the balcony.

The intention seems to have been to complete the build as quickly as possible, in the hope that the council would not take action to have it demolished.

Overall, the applicant has shown a lack of consideration for the neighbours and a disregard for planning regulations. The fact that he continued work to completion, even after receiving a notice that his permitted development right had been removed, and the fact that he did not submit a new application within the 21 days deadline is further evidence of this.

To reiterate the development is unacceptable as it is detrimental to the amenity of the neighbourhood.

I presume that the application will go directly to the Planning Committee under the chair referral.

I invite ALL planning committee member to view the site, not only during daylight hours, but also in the early evening when it is just going dark so that the intrusive nature of the lighting can be observed.

We would also request that the committee keep us informed as to the date and time of the review as we would like to attend to give our evidence in person.

We invite you to visit our home to verify that these objections are valid.

Yours faithfully,

Anne Kirkpatrick

Dave Kirkpatrick

### Topology between properties 32 Eden Park and 21 The Pastures



The diagram below depicts the sight lines both the applicant and I will have of each other's property through the section shown on the right.  
As can be seen, the applicant will have a view of a large part of our garden and beyond to our garden room.  
**We have no privacy.**

