

**Southampton City Planning & Sustainability
 Planning and Rights of Way Panel meeting 17 January 2012
 Planning Application Report of the Planning and Development Manager**

Application address: 45 The Parkway, SO16 3PD			
Proposed development: Retention of engineering operations to terrace rear garden with associated landscaping to lower retaining wall			
Application number	11/01855/FUL	Application type	FUL
Case officer	Steve Lawrence	Public speaking time	5 minutes
Last date for determination:	1.2.2012	Ward	Bassett
Reason for Panel Referral:	Complex planning enforcement matter	Ward Councillors	Councillor B Harris Councillor L Harris Councillor Hannides

Applicant: Mrs N Kaur	Agent: Paris Smith Solicitors (Mr A Sayle)
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Recommendation Summary	Conditionally approve
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations including a recent Appeal decision dated 25 July 2011, impact on the character and appearance of the area and neighbouring residential amenities have been considered and are not judged to have sufficient weight to justify a refusal of the application. Where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted.

Policies - SDP1, SDP7 and SDP9 of the City of Southampton Local Plan Review (March 2006) and CS13 of the Local Development Framework Core Strategy Development Plan Document (January 2010).

Appendix attached			
1	Planning Appeal decision dated 25 July 2011	2	Development Plan Policies

Recommendation in Full

Conditionally approve

1.0 The site and its context

1.1 The site comprises a two-storey detached property located on the south-western side of The Parkway between the junctions with Grendon Close and Courtland Gardens. The property has a 22 m long rear garden. Ground levels rise some 5.2

metres north to south along the plot from the vehicular carriageway to the rear boundary shared with 31 and 33 The Parkway.

- 1.2 The application property is flanked at its sides by two further, two storey, detached houses, No. 47 to the west being set back from 45's rear build line by about 5.5 metres. Whilst the garden to 43 gently slopes downwards, No. 47's has been terraced.

2.0 Proposal

- 2.1 The application proposes retention of engineering works which have taken place to terrace the rear garden into three levels, including brick retaining walls and steps between each level. From the rear wall of the property to the common rear boundary with 31 and 33 The Parkway, ground levels rise by some 3.5 m. In terms of the terracing that has taken place, the first retaining wall which is 1.65 m high, is set about 10m away from the back wall of the house. The mid terrace is some 6m deep before the second retaining wall of 1.7 m height, which then leads to the upper terrace area which tapers between 3 and 4.5 m abutting the rear boundary, which is marked by some mature trees (not covered by a Tree Preservation Order). The lower and mid terraces have been laid to turf. Each terrace is linked by a set of steps, set just off the common boundary with 47 The Parkway.
- 2.2 A planting scheme has been put forward for the lowest retaining wall to soften its appearance. This is to be amended following comments by the City Council's Landscape Architect so as to improve the density of planting, appropriateness of species chosen. The agent has agreed to submit this and an update will be given at the meeting.
- 2.3 The agent has submitted a supporting statement which asserts that the applicant has complied with the Enforcement Notice and concludes that retention of the lower level retaining wall is justified on the grounds that:-
 - It is no higher than the adjacent boundary treatment along the side boundaries of the garden and in keeping with the scale and appearance of the boundary walls;
 - It is similar in character to the original garden and causes no harm;
 - It is in keeping with other gardens in the surrounding area and is a consequence of the changes in ground levels across the site and within the surrounding area;
 - It does not result in any significant overlooking of neighbouring houses;
 - Planning conditions requiring landscape treatment could be imposed if considered necessary; and,
 - A brick wall up to 2 m in height could be built in the garden without the need for planning permission.

3.0 Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (March 2006) and the City of Southampton Core Strategy (January 2010). The most relevant policies to these proposals are set out at **Appendix 2**.
- 3.2 The policies of the South East Plan, Southampton's Core Strategy and Local Plan Review have been taken into account in the consideration of this application. The Core Strategy is in general conformity with the South East Plan, and it is not

considered that the policies in the South East Plan either conflict with or add particular weight to the policies in the Core Strategy for this application. Consequently only the local statutory development plan policies (Core Strategy and Local Plan Review) have been cited in this report.

- 3.3 There are no particular provisions of the Residential Design Guide which offer guidance on the design of engineering works to garden levels, but considerations of outlook under paragraph 2.2.1 and the influence of topography on built form separations under paragraph 2.2.6-2.2.7 have general relevance in this case.

4.0 Relevant Planning History

4.1 The Planning Enforcement Team received a complaint (23.11.2010 - 11/00142/ENUDEV) concerning works which were taking place in the rear garden of 45 The Parkway. These included substantial terracing and the construction of a brick outbuilding on the western side of the middle terrace, whose roofline was broadly contiguous with the level of the upper terrace and whose southern face was flush with the face of the retaining wall between the lower and upper terraces.

4.2 The owner (advised by a different agent to the current agent) asserted that the works being undertaken were permitted development. Enforcement action was taken and a Stop and Enforcement Notice were served 25.1.2011. The breach of planning control alleged in the notice is without planning permission (1) the construction of a brick built, single storey outbuilding and (2) associated engineering operations including importation of fill and land raising to enable the construction of steps and 2 terraces to facilitate access to and support of the outbuilding. The Enforcement Notice became effective 56 days after its service and required:-

- (i) remove the part built single storey outbuilding and associated steps and terraces; and,
- (ii) remove from the land all building materials and rubble arising from compliance with requirement (i) and restore the land to its previous levels and condition.

An Appeal against this Notice was lodged. The Appeal was only lodged on Ground 'C', which is to say the appellant considered the works did not require planning permission and were permitted development. Ground 'A', was not for consideration by the Inspector, whose decision dated 25 July 2011 is reproduced as **Appendix 2**. The 56 day period for compliance therefore ran from the date of the Inspector's decision.

4.3 Subject to a minor adjustment to the Enforcement Notice, the Inspector ruled that the works – including the brick shed, which formed an integral part of a retaining wall – represented engineering operations that required planning permission. In terms of the Appeal lodged on Ground 'C', the Inspector concluded the Appeal should be dismissed and upheld the (adjusted) Enforcement Notice, requiring that by 19 September 2011, the works specified in 4.2 above should be undertaken.

4.4 On 1.9.2011 a site meeting was held with the current agent. The agent proposed that the brick outbuilding be removed and the height of the retaining wall to the upper terrace be reduced in height by 0.5m and asked the local planning authority to confirm that these works would result in compliance with the upheld Enforcement Notice. The agent was later advised 5.9.2011 that these works would not meet the full requirements of the Notice, which essentially required the garden levels to be

returned to their previous levels. It was acknowledged however that the only indication of what those levels may have been was an estate agent's photograph of the rear garden prior to the works having taken place. This photograph will be shown to the Panel during the officer presentation, along with aerial photography. The photograph is available on the file.

- 4.5 On 16.9.2011 a further e-mail of concern was received from the original complainant, on the basis that the full requirements of the Notice had not been undertaken. A letter expressed further concern that the depth of the middle terrace could later allow for the installation of a large permitted development outbuilding, which would then seriously impact the amenities of adjoining occupiers, whether visually and/or by adverse impact to their privacy. This letter is available on the file.
- 4.6 The current application has now been submitted to seek to address those concerns, where it is asserted that the requirements of the Notice were too vague and that subject to softening the appearance of the lower retaining wall, the terracing works are considered to be acceptable and should be granted planning permission, remembering that the Inspector was not considering the merits of the works that had been undertaken, merely the reasonableness of the Notice's requirements.

5.0 Consultation Responses and Notification Representations

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was also undertaken which included notifying adjoining and nearby landowners. At the time of writing the report **no** representations have been received. Any that are received will be reported at the meeting.

6.0 Planning Consideration Key Issues

- 6.1 The key issues for consideration in the determination of this planning application are:

6.2 Impact on the character and appearance of the area

- 6.2.1 Being in the back garden, there are only very limited public realm views of that part of the site through the gap between 45 and 47 The Parkway, where only the upper terraced level of 45's back garden is visible. A public footway flanks No. 47, but views of the application site's rear garden are prevented by 1.8m high boundary fencing.
- 6.2.2 From the available information prior to the works taking place, it is clear that the rear garden comprised a number of levels, which were softened by mature planting. As the presentation will show, the garden at 47 also comprises a number of terraced levels. Whereas tree planting on the common boundary with No 47 has been removed, which previously afforded some degree of privacy between the gardens and from the upper levels of No. 45's garden and windows to habitable rooms in the rear elevation of No. 47, particularly bedroom windows at first floor level, bearing in mind that the rear build line of No 47, sits behind that of No. 45. This has been mitigated to a degree by the erection of new close boarded fencing, which steps down the common boundary, generally around 1.8m in height.
- 6.2.3 Whereas the current appearance of the brick retaining walls is rather stark in the context of otherwise verdant and mature domestic gardens the character of the surrounding area has not been adversely affected and the appearance of the lower

retaining wall will be softened by the proposed planting scheme. There is no objection to the quality and appearance of the brick that has been used for the retaining walls, merely the stark appearance of such a mass of brickwork that has been undertaken.

6.3 Impact on Residential Amenity

- 6.3.1 It is important to note that the Inspector was not being asked about the acceptability of the works that were the subject of the Enforcement Notice.
- 6.3.2 It is also important to note that even if the works had not been undertaken, the owner could have still erected a substantial outbuilding, cut into the slope of the rear garden, under the General Permitted Development Order 1995 (as amended). Here, the local planning authority would have had no control over the location of such a structure, whose upper permitted height would have been measured from the point where the base of the external wall, would be from the top of the roof slope. That is to say, the height of the external wall at the bottom of the garden slope could greatly exceed an average storey height of 2.7 metres and pose a far more imposing structure than the brick outbuilding that has recently been removed. Such a structure could have been closer to the common boundary with 47 The Parkway and had a far more deleterious effect on occupiers of that property than the brick outbuilding that has recently been demolished in accordance with the Enforcement Notice. Furthermore, if a flat roof was to be employed for such a permitted structure, there would be no control over its use as an unenclosed sun terrace/recreational space, which could have resulted in very intrusive overlooking of neighbours.
- 6.3.3 The extent and massing of the brickwork to the lower retaining wall does still pose a very stark feature and is considered to harm the outlook of occupiers of adjoining properties. As such, the (amended) planting scheme offered by the applicant is welcomed and will considerably soften the outlook to neighbours.
- 6.3.4 Having regard to the considerations in paragraph 6.3.2 above, it is considered prudent and reasonable to remove permitted development rights related to outbuildings if the current terracing is to be retained. In this way, the merits and design of any outbuilding (if desired in the future by the owner) can be carefully considered and controlled to protect the amenities and privacy of occupiers of adjoining properties.

7.0 Conclusion

- 7.1 The proposed planting scheme will soften the terracing works so as to not cause harm to neighbouring outlook and the character or appearance of the local area. Removal of permitted rights for new outbuildings will also safeguard/control the future privacy and outlook of neighbours.
- 7.2 If conditions relating to planting are complied with, it is considered that no further enforcement action need be taken in respect of this matter.

Local Government (Access to Information) Act 1985 Documents used in the preparation of this report Background Papers

1(a), 1(b), 1(d), 2(b), 2(d), 4(f), 6(c), 7(a), 7(e), and 10 (a) & (b)

PLANNING CONDITIONS

1. APPROVAL CONDITION - Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason:

For the avoidance of doubt and in the interests of proper planning.

2. APPROVAL CONDITION - Permitted development restriction [Performance Condition]

No outbuildings otherwise permitted under Class E to Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (As amended), shall be erected without the prior written consent of the Local Planning Authority.

Reason:

To protect the amenities of the adjoining residential properties.

3. APPROVAL CONDITION – Implementation/maintenance of soft planting [Performance Condition]

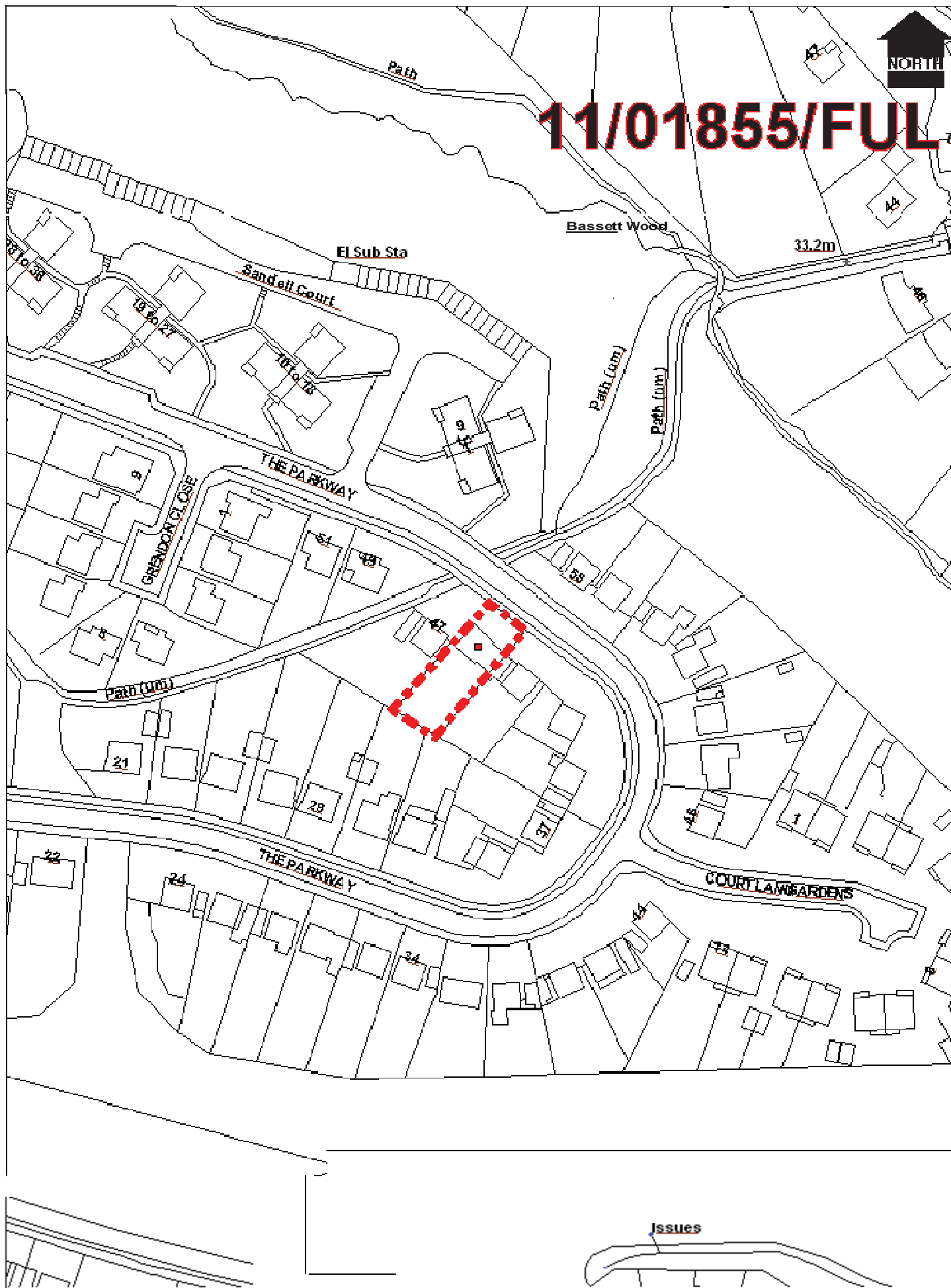
The amended soft planting scheme received (***date to be inserted and reported verbally at the meeting***) shall be fully implemented by 28 February 2012. Once implemented the planting shall be maintained. Any shrubs, seeded or turfed areas which die, fail to establish, are removed or become damaged or diseased, within a period of 5 years from the date of planting shall be replaced by the site owner in the next planting season with others of a similar size and species unless the Local Planning Authority gives written consent to any variation. The site owner shall be responsible for any replacements for a period of 5 years from the date of planting.

Reason:

To soften the appearance of the lower retaining wall, in the interests of improving the outlook of neighbours and having regard to the character of otherwise mature planted domestic gardens abutting the site.



11/01855/FUL



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Date:04 January 2012

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