

Planning and Rights of Way Panel 2nd August 2022
Planning Application Report of the Head of Green City and Infrastructure

Application address: 59 Burgess Road, Southampton			
Proposed development: Retention of "As Built" rear Retaining Wall and erection of additional fencing to the rear boundary treatment			
Application number:	22/00399/FUL	Application type:	FUL
Case officer:	Rob Sims	Public speaking time:	5 minutes
Last date for determination:	10.05.2022	Ward:	Bassett
Reason for Panel Referral:	Five or more letters of objection have been received and referral by Cllr Hannides	Ward Councillors:	Cllr L Harris Cllr R Blackman Cllr J Hannides
Referred to Panel by:	Cllr Hannides	Reason:	In light of the unsafe, unstable and unsightly wall already in situ, it is evident the concerns expressed to the Planning (and enforcement) Officers to date, have substance and I support their requests for this application to be rejected.
Applicant: Mr & Mrs Akbar		Agent: Toldfield Architects Ltd	

Recommendation Summary	Conditionally approve
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Community Infrastructure Levy Liable	Not applicable
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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 have been considered and are not judged to have sufficient weight to justify a refusal of the application, and 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. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in

a positive and proactive manner as required by paragraphs 39-42 and 46 of the National Planning Policy Framework (2019). Policy – CS13 and CS19 of the of the Local Development Framework Core Strategy Development Plan Document (Amended 2015). Policies – SDP1, SDP5, SDP7, SDP9, SDP21 and SDP23 of the City of Southampton Local Plan Review (Amended 2015). Policies – BAS1 and BAS4 of the Bassett Neighbourhood Development Plan (2016), as supported by the relevant guidance set out in the Residential Design Guide SPD (2006) and Parking Standards SPD (2011).

Appendix attached

1	Development Plan Policies	2	Relevant Planning History
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Recommendation in Full

Conditionally approve

1. The site and its context

1.1 The application site contains a semi-detached, two storey family dwelling house. The property is located in a residential area with predominantly detached and semi-detached dwelling houses and a suburban character that is located just north of the northern end of Southampton Common. A change of level occurs with neighbours to the north meaning that this land sits on lower ground.

2. Proposal

2.1 Extensions and alterations to the dwelling were considered at Planning Panel in November 2019 under application 19/01530/FUL, which approved the ‘Erection of a part single storey, part first floor rear extension and 2.4m high retaining wall.’ The extensions to the dwelling have not been implemented and amendments to those alterations are the subject of another application being considered by the Planning Panel under application 22/00531/FUL.

2.2 The retaining wall approved under 19/01530/FUL was varied under application 20/00631/FUL to revise the drainage strategy. As the wall has been built with the revised drainage scheme, this permission is considered to be extant. However, the wall has not been built in accordance with the approved plans for permission 20/00631/FUL and this has led to significant local anxiety and a live planning enforcement case. This application seeks approval for the retention of the ‘as built’ retaining wall, as well as the erection of additional 1.5m high fencing to the rear boundary.

2.3 Over recent months the retaining wall has been added to, and there is currently additional fencing that does not benefit from planning permission. The unauthorised fencing in situ is not part of this application, and the recommendation seeks to secure its removal leading to a possible breach of condition if this is not undertaken.

3. Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). Policies BAS1 and BAS4 of the Bassett Neighbourhood Development Plan (2016), as supported by the relevant guidance set out in the Residential Design Guide SPD (2006), are also material to this case. The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) was revised in 2021. Paragraph 219 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

4. Relevant Planning History

- 4.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report. The most relevant planning history is the previously mentioned full application (20/00631/FUL) approved on the 5th November 2020 by the Planning and Rights of Way Panel. The wall has not been constructed fully in accordance with the approved plans hence the need for this new application to assess the as built development.

5. Consultation Responses and Notification Representations

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners by erecting a site notice on 15/04/2022. At the time of writing the report **8 representations** have been received from surrounding residents. The following is a summary of the points raised:
- 5.2 The applicant has appropriated land belonging to someone else. It is clearly shown on Land Registry plans. The submission of the certificate confirms that the applicant acknowledges that they have built significantly beyond their boundary line with neither consent from us nor with planning consent for that.

Response

In order to clarify concerns with regards to encroachment, officers requested that a Land Registry Plan was overlayed on the ‘as built’ plans in order to ascertain whether the retaining wall was built within the confines of the applicants legal boundary. Whilst it is understood that there is disagreement on land ownership issues, the plans show that the wall encroaches over the land registry boundary. Having established encroachment, appropriate Notice was served under Article 13 of the Town and Country Planning (Development Management Procedure

Order) 2015 by the applicant on the owner of the land. The applicant has therefore discharged their duty in respect of the validation of this application. This does not mean that the Planning Department endorse the action of the applicant, but means that the application is valid and can be assessed.

- 5.3 The development have not been built in accordance with previously approved plans:
1. The foundations for the retaining wall are inadequate and not as instructed.
 2. There are no reinforcement bars. This seriously compromises the strength of the wall and therefore risks land slippage to the rear of the property. This would affect retaining walls to side of my house.
 3. Concrete infill was specified. This has not happened.
 4. There is no backfill in place. This has already caused flooding to neighbouring properties.
 5. The drainage holes aren't as described in plans.

Response

The above points are noted. It is the combination of the above points as well as the deviation from the approved plans that has necessitated the submission of this revised application. The current drawings reflect what has been built (with the exception of the additional unauthorised fencing).

- 5.4 The fence on the top of the very rough block wall is shown to you as 1.5 metres. It is a total eyesore, visible from my property and clearly much higher. Again this is misleading and inaccurate.

Response

The impact of the additional fence on neighbour and visual amenity will be considered below

- 5.5 Concerned looking at the plans there is mention of making the garden building bigger. Development was turned down for building in the garden, it was changed to a garden building which now is to be made bigger? I already have a view of a large orange sail type structure that spoils my view.

Response

The 'solar glass house' building shown on the proposed plans is not for consideration under this application. No elevational details of this building have been provided, however it is likely that permitted development rights for this building would be utilised and therefore no planning permission would be required.

- 5.6 Why has the Council allowed the receipt of a retrospective planning application? During construction of the wall, the applicant's failed to comply with amenable working hours and undertook noisy operations

Response

This application seeks to regularise the 'as built' retaining wall which

has not been built in accordance with the approved plans. Concerns regarding working hour breaches are noted, however the wall has now been built and no further building works would take place to the wall if this application is approved.

- 5.7 There does not appear to be any new engineering calculations submitted with the application to substantiate that the revised specification is in any way adequate for the task, and the empirical and photographic evidence would suggest that the wall was not even built to the reduced specification detailed in this retrospective application. We were greatly concerned that the required proprietary shoring system was never employed and consequently there was great risk to those working on the wall and to the stability of the garden at ASL.

Response

This application seeks to regularise the ‘as built’ retaining wall which has not been built in accordance with the approved plans. A retaining wall does not require Building Regulations approved and the stability of the wall is unlikely to be investigated by our Building Control team as a dangerous structure unless they represent a risk to the public. As the wall is located in the rear garden of a private residence, the risk to the public would be minimised. Issues with the strength of the wall and shoring up the rear boundary are therefore civil matters between the applicant and the neighbouring properties.

Consultation Responses

5.4

Consultee	Comments
Old Bassett Residents Association	<p>Summarised:</p> <p>The plans of the “as built” development submitted in this application are demonstrably false. In no way do they accurately represent the actual, “as built” development. In no way do they conform to the structural calculations referenced in the plans.</p> <p>The size of the built footings plate is not as claimed on the plans, and required by the structural calculations referenced in the plans, but, at best, half that size.</p> <p>The rebar reinforcement pattern is not as stated on the plans, or as required by the structural calculations referenced in the plans, there is no continuity between footings and upstand.</p> <p>The rebar reinforcement number / spacing is not as required by the structural calculations referenced in the plans. It is, at best, 2/3 the required amount (even if it was tied together, which it is not).</p>

The grade of concrete required by the structural calculations referenced in the plans has not been used.

The width of the concrete backfill on the stated plans and required by the structural calculations referenced in the plans has not been used.

The volume of the intended backfill area providing soakaway drainage is not as stated on the plans.

The compacted porous backfill stated on the plans, and required by the applicant's drainage consultant has not been used.

The number of weepholes installed in the wall is not as stated on the plans and required by the applicant's drainage consultant. The result of the above is appallingly-shoddy, cost-cutting construction that has resulted in a retaining wall which is vastly weaker than is required by the structural calculations referenced in the plans.

The failure to implement the drainage system approved under 20-00631-FUL has caused significant flooding issues on neighbouring properties with significant, ongoing adverse effects on resident amenity.

Beyond this:

The boundary claimed by the applicant on the submitted plans does not represent the actual boundary shown on Land Registry Title Plans (the arbiter of this matter), it extends beyond the curtilage.

The built development has been built beyond the boundary shown in the submitted plans, extending further beyond the curtilage

The quality of this boundary is utterly terrible

Concreting the entire front garden and diverting surface run off to a foul sewer is contrary to building regulations and the adopted residential design guide.

Throughout this development there has been a complete failure to comply with the site working conditions submitted by the applicant: frequent (sometimes daily) bonfires to dispose of concrete bags and pallets, working all hours, weekends and bank holidays (even in the middle of the night to erect fencing on a neighbour's land).

	<p>We note that certain pieces of text on the submitted plans have been redacted by council. We have the pre redaction version which we will not repeat here but will have no hesitation in informing Panel about (this application having already been called in) as it speaks volumes about the accuracy and honesty of the entire submitted documents</p>
Cllr John Hannides	<p>Residents, including The Old Bassett Residents Association, have raised serious concern about the nature of what has occurred in relation to the erection of a boundary wall at 59 Burgess Road.</p> <p>In light of the unsafe, unstable and unsightly wall already in situ, it is evident the concerns expressed to the Planning (and enforcement) Officers to date, have substance and I support their requests for this application to be rejected.</p> <p>In the event you are minded to approve this application, I request it is referred to the Planning Panel for determination.</p>
Sustainability (Flood Risk)	No comments from Flood Risk Management
Southern Water	<p>Southern Water have no objection to the above proposal.</p> <p>Please see the attached extract from Southern Water records showing the approximate position of our existing foul sewers within the development site.</p> <ul style="list-style-type: none"> - The gravity foul sewers requires a clearance of 3 metres on either side of the gravity sewer to protect it from construction works and to allow for future maintenance access. - No new development or tree planting should be carried out within 3 metres of the external edge of the public gravity sewer without consent from Southern Water. - No soakaways, swales, ponds, watercourses or any other surface water retaining or conveying features should be located within 5 metres of public or adoptable gravity sewers. - All existing infrastructure should be protected during the course of construction works. <p>Please refer to: southernwater.co.uk/media/3011/stand-off-distances.pdf</p> <p>It is possible that a sewer now deemed to be public could be crossing the development site. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site.</p>

Land Stability John Simpkins	I have reviewed the application as requested. I do not have any comments.

6.0 Planning Consideration Key Issues

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

1. Development on Neighbouring Land
2. Design and effect on character;
3. Residential amenity;
4. Other Matters

6.2 Development on Neighbouring Land

6.2.1 Following the approval of the original application 19/01530/FUL in 2019 for the retaining wall and extensions, the construction of the retaining wall has been a source of neighbour complaints and understandable anxiety.

6.2.2 In particular, concerns were raised that the wall had been constructed on third party land. It is understood that there is an ongoing boundary dispute between the applicants and their neighbours, which is a private matter to resolve using landowner rights. On the two previous applications, the applicant has maintained that the wall has been built on their own land therefore the correct planning procedures had been followed. Now that the wall has been built (incorrectly) this has resulted in the need for it to be regularised under this application.

6.2.3 The Council can determine whether the correct process under the Development Management Procedure Order (DMPO) 2015 has been followed. Officers requested the applicant provided an overlay of the land registry plan against the position of the as built wall. This has shown that the wall falls (partly) outside of the lines shown on the land registry plan. Whilst there can be inaccuracies with land registry plans, officers sought Legal advice to ascertain whether the applicant should 'serve notice' on the owners of the land which has been deemed to be encroached. The advice was that a notice should be served under Articles 13 and 14 of the DMPO 2015 and 21 days should be given for comment. This notice was served on 23rd June 2022 and one comment from the affected neighbour has been received and documented in this report. As such the Panel is being asked to consider a valid application and whether or not the wall sits on the applicant's land is a matter for the landowners to resolve, and the Panel are free to make a decision.

6.2.2 Land ownership is not a material planning consideration. The only requirement is that the applicant serve notice and sign the appropriate certificate as set out in articles 13 and 14 of the DMPO. Whilst it appears that part of the retaining wall has been built on third party land and has understandably been raised significant concern by neighbouring properties, this would not constitute a reason to refuse the planning application. Reasons for refusal must identify material harm; and encroachment on to neighbouring land would not constitute material planning harm in this instance. Therefore, the key considerations of this application are the impacts of the as built wall on the character and appearance of the area and neighbour amenity.

6.3 Design and effect on character

6.3.1 The retaining wall to the rear of the site is not visible from the public road, but is visible from neighbouring properties. The wall at 2.4m is constructed of blockwork with a course of coping stones to the top edge. The boundary wall is typical of the boundary treatments within the area and whilst being higher at 2.4m than the standard 2.0m high boundaries – permissible as ‘permitted development’ - would not result in a development out of keeping or harmful to the character of the area. The addition of 1.5m fencing on top of the north eastern boundary wall is proposed to replace an existing unauthorised orange screen (which is not supported). Whilst the fencing would be added to the existing 2.4m high wall and 1.8m high fence and create a high boundary screen on this boundary, this being located to the rear of the site and the rear of neighbouring gardens would not result in significant impacts on the visual amenity of the area. On this basis the retention of the retaining wall and additional fencing is considered to be acceptable in this instance.

6.4 Residential amenity

6.4.1 The retaining wall is positioned along the rear boundary of the application site and the rear boundaries of neighbouring properties at Burgess Gardens and Pointout Close. The retained wall measures 2.4m in height, which was approved under the previous applications. The north eastern corner of the wall would encroach over neighbouring land however it would not result in direct loss of light or outlook from this neighbouring land or from neighbouring properties due to 45m distance between the wall and the rear elevations of the Pointout Close properties. Whilst additional screening at 1.5m high is proposed on top of the 2.4m high wall and 1.8m fence along this boundary, the distance of this boundary from neighbouring properties would not result in any loss of light or outlook or overbearing impacts to neighbouring gardens. There is a shed located at the rear of No. 27 Pointout Close which would block views of the additional fencing. Therefore it is not considered that the retention of the wall and additional fencing would result in significant loss of neighbour amenity in terms of loss of light and outlook and overbearing impacts. Therefore, there is no significant loss of neighbour amenity resulting from the retention of the wall and the approval of replacement fencing in this location. The recommendation seeks to secure the removal of the unauthorised fence

as part of these works.

6.5 Other Matters

- 6.5.1 The Old Bassett Residents Association make reference to a number of other points which require a response as following:

Structural Stability of the Wall

Third parties and the Residents Association have been rightly vocal during the course of the build and the associated applications that the wall has not been built with the required rebars, toe and heel downstand and, therefore, suggest that it does not have the required structural support. When designing the wall, the applicants obtained recommendations from a structural engineer and this design was incorporated in the planning application to show the external dimensions and appearance of the wall. Planning considerations are primarily related to the external appearance of the wall as opposed to scrutinising the appropriateness of the structural calculations and structural integrity of the wall. Structural calculations would usually be subject to Building Regulations approval, however a retaining wall does not require such approval in this instance. Building Control colleagues do sometimes investigate 'dangerous structures' however in this instance there is no visible sign that the wall would collapse or represent a risk to the public. Therefore the liability for strength of the wall and associated risks lies with the applicant and any dispute in this regard is a civil matter between the applicant and third parties.

Drainage Strategy

Concerns have been raised by third parties that the drainage strategy for the wall has been undermined by the as built retaining wall, which doesn't comply with the previously agreed strategy. The drainage strategy for the wall is to use 'weep holes' which would combine with permeable material at the back of the wall to allow water to permeate and seep through the weep holes. This strategy has largely been implemented albeit the as built wall has weep holes at 1.3m apart as opposed to 1.0m originally recommended. Further clarification from the applicant's Drainage Consultant has been obtained, which has confirmed that this minor deviation would not affect the drainage strategy or affect surface water dispersal. On this basis this minor deviation is considered to be acceptable.

Porous Surfacing and Surface Water Drainage – front of property

Permeable block paving was originally approved on plan number 19062-TA-P-A-P08 Revision A Site Plan 26.09.2019 under application 19/01530/FUL. However this was not included on the list of approved plans carried forward in planning permission 20/00631/FUL, therefore the Council cannot insist on that block paving being provided. In any case the existing hardstanding is concrete and the proposed plans show a concrete surface to be retained. Therefore planning permission is not required to retain this existing concrete treatment

for the driveway.

7. Summary

7.1 Notwithstanding that the 'as built' retaining wall appears to have been partially constructed on third party land, the wall itself and additional boundary fencing does not cause harm to the amenity of neighbouring residents and the design of the extensions and retaining wall would not appear out of character with the host dwelling. On this basis there are no clear planning grounds to refuse this application as no significant harm can be identified in regards to its design or impact on neighbour amenity.

8. Conclusion

8.1 It is recommended that planning permission be granted subject to conditions set out below.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (c) (d) (e) (f) (g) 4.(f) (g) (vv) 6. (a) (b) 7. (a)

Case Officer **Rob Sims** PROW Panel 02.08.2022

PLANNING CONDITIONS to include:

01. Approved Plans

The development hereby shall be maintained in accordance with the approved plans listed in the schedule attached below.

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

02. Unauthorised fencing

Within one month from the date of this decision, the unauthorised orange screen located on the northern boundary with No. 27 Pointout Close shall be taken down and removed from the site.

Reason: In the interests of neighbour and visual amenity.

Note to Applicant:

This planning permission does not convey the right for the development to encroach over, under or on land, which is not within your ownership, without the consent of the landowner.

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS13 Fundamentals of Design

City of Southampton Local Plan Review – (as amended 2015)

SDP1 Quality of Development

SDP5 Parking

SDP7 Urban Design Context

SDP9 Scale, Massing & Appearance

Bassett Neighbourhood Development Plan – (Adopted 2016)

BAS1 New Development

BAS4 Character and Design

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)

Planning Obligations (Adopted - September 2013)

Parking Standards SPD (September 2011)

Bassett Neighbourhood Plan (July 2016)

Other Relevant Guidance

The National Planning Policy Framework (2021)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

Relevant Planning History

Case Ref	Proposal	Decision	Date
M19/1661	ERECTION OF A TWO STOREY SIDE EXTENSION	Conditionally Approved	14.05.1985
18/00749/FUL	Erection of a two-bedroom bungalow with associated bin and refuse storage. Alterations to existing dwelling and narrowing of its width to facilitate vehicular access to rear.	Application Refused	20.08.2018
19/01530/FUL	Erection of a part single storey, part first floor rear extension and 2.4m high retaining wall	Conditionally Approved	14.11.2019
20/00206/DIS	Application for approval of details reserved by conditions, 4 (construction method statement), 5 (materials - retaining wall), 6 (replacement planting scheme) and 8 (implementation timetable - retaining wall) of planning permission ref 19/01530/FUL for a rear extension and retaining wall	No Objection	02.11.2020
20/00631/FUL	Application for variation of condition 3 (Drainage - retaining wall) of planning permission ref 19/01530/FUL to alter the proposed drainage system.	Conditionally Approved	05.11.2020
22/00531/FUL	Erection of a part single storey, part first floor rear extension with roof alterations to facilitate loft conversion (amendments to LPA ref: 19/01530/FUL)		