

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

25 April 2006

Supplementary Report of the Director of Planning and Transportation

**PLANNING APPLICATION TM/05/00848/FL – LAND REAR OF 145-149
HIGH STREET, TONBRIDGE**

The applicant has submitted additional documentation to demonstrate that the residents of Church Lane relinquished any rights of light across his land when they bought their homes. (The documentation, a copy of the Land Registry Transfer states:

' The transferee shall not by virtue of this Transfer acquire or be entitled to any easement or right of light which would prejudice the free use or enjoyment of any adjoining or neighbouring land of the Transferor for building or other purposes and that any enjoyment of light and air had by the Transferee from or over any adjoining or neighbouring land of the Transferor shall be deemed to be had by the consent of the Transferor.')

He has also submitted a copy of correspondence which, I understand, he has sent to all Councillors. This is a lengthy submission, but the main points may be summarised as follows:

The applicant is concerned that the principal reason that Area 1 Committee wished to refuse the scheme was because adjoining residents submitted a report on the impact of his scheme on daylight for neighbours, which he did not know about until the Committee meeting and which concluded that the proposed design does not meet BRE light requirements. He considers the report to be flawed and illogical. It confirms that the 'bay' has no effect on the Church Lane residents but the objectors claim it will have an effect on light into their homes.

He has submitted a detailed analysis in which he argues that the daylight report is based on a false interpretation of the height of the roof of the proposed house, at critical points. He disagrees with the reference point taken in the report as it does not comply with BRE advice which says a point 2m off the ground on the centre line of any floor to ceiling window (or patio door) should be taken.

This would have a significant impact on the results which would lift the scores to well above the 0,8 BRE benchmark. The report also says that the loss of light to the Church Lane properties is primarily caused by the listed wall and not the house. He also points out that the claim by the other objector that the garage would reduce the light to his garden by 25% cannot be substantiated. He summarises:

- Proposal does not contravene any local plan policy or plan.
- Consistently judged by professionals to be a notable contribution to the town's architecture.
- Does not affect the Church Lane properties any more than the approved scheme.
- Has a developed mass which is neither ostentatious nor overbearing having a flat roof and a low profile.
- Has a significantly lighter countenance than the approved scheme.
- Though of a modern design the bays to the north and south elevation provide an opportunity for the use of local building materials.
- No loss of daylight to existing properties.

He considers that there are no objective factual grounds for refusal.

Private Representations: 1 further letter received from adjoining owners in response to (and commenting on) the applicants letter to Councillors which, I understand, has also been circulated to all Councillors. The main points raised are:

- House is not modified version of the approved development; it's a new design by different architect.
- The overshadowing analysis was handed to the planning officer on 22 March and regrets that the applicant was not made aware of it.
- The comparison with existing permission is irrelevant.
- Objection to the bay is not to do with its impact in daylight terms, but rather that the flank to flank separation with nos 6 – 8 Church Lane is reduced from the 8.5m the Inspector found unacceptable on appeal.
- The daylight analysis was based on 6.05m height dwelling.
- BRE does not refer to French Doors and considers that the 1.1m height for a reference point was reasonable and 2m unreasonable.

- The effect of the boundary wall is taken into consideration – issue is not the loss of sunlight to the living areas and gardens caused by overshadowing but the scheme will block daylight into living rooms.
- Have been advised that any issue relating to the legal transfer is irrelevant.

The adjoining owners have also submitted a letter sent to all Councillors. This letter confirms that all previous comments still stand. It considers that their views are supported by the overshadowing analysis that they commissioned. The letter comments on the supplementary report where the DPT casts doubt on the validity of the results. It suggests the 2m point of reference for French doors is not correct as they are not floor to ceiling windows and suggests the mid point of the door, 1.1m is the correct point. The 1.8m boundary wall is not seen as relevant because the wall is already taken into account. The consultant comments that whether or not the results are marginal, the calculation clearly shows the daylight test has failed – there are no degrees of failure.

The resident concludes by suggesting that the BRE tests were not carried out on the proposal and not considered until their report was presented. The view is presented that the restricted light received to the front of their properties should be taken into account and that the proposal is contrary to TMBLP policy P4/11 as the scheme will adversely affect the light reaching their property.

DPT Comments: Members will note that much of what is said in the latest submissions by the applicant and the objectors is to do with the impact of the proposal on the properties in Church Lane with regard to exclusion of daylight. I would remind Members that an extant planning permission, capable of implementation, exists on this site for a building that would have an almost identical impact as the current proposal in terms of daylight. Although the difference is marginal, the current proposal would cut out slightly less daylight than the approved scheme. The extant permission is a very clear material consideration for the Council in assessing the current application.

With regard to the BRE standards, a full daylight and sunlight exercise was carried out in respect of the very first application received for this site, TM/01/03001/FL, which concluded that that proposed dwelling complied with the criteria. That application was subsequently refused and at appeal the Inspector acknowledged that the BRE standards had been met but was concerned that the proximity of the dwelling to the boundary (some 3.5m in that case) would render the courtyards dismal and they would experience reduced levels of sunlight during winter. The subsequently approved scheme, TM/03/01644/FL located the building further away from the boundary (an additional 2.5m increase over the earlier scheme) thus it would have not been necessary to carry out the full BRE exercise given the previous results. The

current proposal does not significantly differ from the approved scheme with regard to height and distance from the Church Lane dwellings. However following the submission of the residents' consultant's report a further BRE test was conducted prior to the Committee of 30 March. This latest test also concluded that the scheme would comply with the BRE standards and there would not be an unacceptable loss of daylight to living room windows of 6 and 8 Church Lane.

I should also point out that whatever may have been agreed by way of covenants or similar matters relating to the purchase of land, this has no relevance to the exercise of planning judgements.

Taking all this into account, and especially the extant permission, I remain of the view that there are no sustainable grounds for refusing planning permission because of the effect on the neighbouring properties though a loss of daylight.

The resident has also suggested that the recommendation does not include the latest plan. An amended plan was submitted on the 21.3.06 but in fact this clarified details that were set out in an email of 07.03.2006 which was included in my recommendation. For the sake of clarity I will also include this plan in my recommendation.

As the level of the proposed dwelling has been a matter of concern, I intend to suggest a further condition requiring the dwelling to be built at the level shown on the approved plan.

AMENDED RECOMMENDATION

Recommendation for Approval remains unchanged but Members to note that conditions 1 -11 and Informatives 1-7 on pink pages 19 – 23 should be imposed on this permission. In addition after email dated 07.03.2006 add "as clarified by plan no. 05 date stamped 21.03.2006".

Additional condition:

12. The development shall be constructed at the level indicated on the approved drawing. (B005)

Reason: In the interests of amenity and privacy.