South Tyneside Council

Reference:	250280
Location:	15 Long Row South Shields NE33 1JA
Ward:	Beacon and Bents
Description:	First floor external balcony with galvanised steel guardrail and galvanised steel support posts [Application under Section 73 of the Town & Country Planning Act 1990 to vary conditions 2 and 4 of ST/0695/24/FUL to reduce length of side privacy screens]
Recommendation:	Grant Permission with Conditions
Case Officer:	Nick Graham
Case Officer Contact No.:	0191 4247427 or 07741108995

Summary of Consultation Responses

N/A

Summary of Representations

No responses received

Relevant planning policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permission must be determined in accordance with the adopted development plan, unless material considerations indicate otherwise.

The statutory development plan comprises the Council's adopted Local Development Framework (LDF) development plan documents. Those LDF documents of relevance to this application comprise of the Development Management Policies Development Plan Document (DPD) 2011.

The following policies and guidance are also relevant to this planning application:

- LDF DM1 (A and B) – Management of Development
- Supplementary Planning Document 9 (Householder Development)

On 4 March 2025, the Council was directed by the Secretary of State for the Ministry of Housing, Communities & Local Government to submit the South Tyneside Local Plan for

examination by 12 March 2025 in accordance with Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The Plan has now been submitted and is at the examination stage. Paragraph 49 of the National Planning Policy Framework (2024) states that local planning authorities may give weight to relevant policies in emerging plans according to:

1. the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
2. the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and,
3. the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

Whilst the draft Local Plan is now at a more advanced stage of preparation, the weight that can be given to individual Policies in the Plan varies dependent upon the extent and nature of objections to those Policies. In this regard, it is considered that certain Policies can only be afforded very limited or limited weight whilst others can be afforded significant weight in assessing this planning application. Relevant Policies are as listed below (with text provided after each Policy regarding the weight that officers consider can be afforded to that Policy):

- Policy SP1: Presumption in favour of Sustainable Development (limited)
- Policy 1: Promoting Healthy Communities (limited)
- Policy 47 Design Principles (very limited)

Given the weighting of the above emerging local plan policies, they are not expressly cited in the planning assessment.

National planning policy is also a material consideration in determining this planning application. Relevant national policy comprises the National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG), the National Design Guide and the National Model Design Code.

Assessment

S.73 of the Town and Country Planning Act 1990 relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

Although there is no statutory definition of a minor material amendment, Government Guidance set out in “Flexible Options for Planning Permissions” (March 2014) states that a minor material amendment “is one whose scale and nature results in a development which is not substantially different from the one which has been approved.” The development which the application under S.73 seeks to amend has, by definition, already been judged to be acceptable in principle by the grant of the previous permission.

Additionally and importantly, in relation to applications made under S.73 (of the 1990 Act), that section of the Act states:

“… the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and— (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and (b) if they decide that planning permission should be

granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application. ….".

The sole issue to be considered as part of this application is whether the proposed amendment (the reduction in the depth of the previously approved privacy screens from full depth 1800mm to 600mm) is considered to be acceptable in terms of design and residential amenity, and to amend conditions 2 (approved plans) and 4 (privacy screen) of the original approval.

The difference in the overall appearance of the balcony relative to the previously approval is considered minimal and would be acceptable in accordance with LDF Policy DM1 (limb A).

In terms of residential amenity, although the reduction in the depth of the privacy screen facing towards nos. 18 and 19 may allow greater intervisibility between properties' balconies should the other two properties where balconies have been approved undertake similar proposals (nos. 18 and 19 Long Row), the initial 600mm privacy screen from the wall would prevent overlooking from and between the properties for their entirety, and would limit the extent to which intervisibility may occur. This would also be similar in nature to the properties located above at second floor level where these balconies have a wall protruding at the first part of the balcony with balustrades beyond.

The proposal may allow for overlooking back into the closest habitable room windows of the adjacent dwellings to the east and west at first floor level, however it is considered such overlooking would be limited given the positioning required on the balcony and angles by which the internals of each respective room would be viewed, with an approximate 30 to 35 degree angle when looking west and a 35 and 45 degree angle when looking east, and distances to these closest habitable room windows of approximately five metres looking west and six metres looking east. On this basis it is considered any visibility of the internals of these closest habitable rooms would likely be limited in nature.

It is also acknowledged there may be intervisibility between this balcony and the balcony at the adjacent property to the east due to the reduction in the depth of the privacy screen, however it is noted that this neighbour's balcony has no form of privacy screening and is also not an original feature of the building, and would again require someone on the balcony of the application property to look back towards the building, when the primary outlook is southwards towards the river. It is also noted no comments or objections have been received to the proposal from neighbouring properties.

On the basis of the above, the reduced privacy screen depth is considered acceptable in this instance in residential amenity terms and would accord with LDF Policy DM1 (limb B).

Conclusion

For the reasons outlined above the development is considered to be acceptable.

Previous condition 1 has been updated to reflect the original permission's three year expiry date (and as this application has been made under s.73 it cannot be used to extend that). Condition 2 has been updated to reflect the plan on which the decision would be based. Condition 3 has been updated to reflect the materials as shown on that plan and Condition 4 has been updated to reflect the 600mm privacy screens it includes.

In deciding whether to grant planning permission the Council must have due regard to the 3 equality aims contained in Section 149 of the Equality Act 2010 (the public sector equality duty). A preliminary assessment of the potential equality impacts of any grant of planning permission in this case has been undertaken. There are no apparent equality impacts of the

proposed development which give rise to the need to undertake a more detailed equality impact assessment.

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Recommendation

Grant Permission with Conditions

Conditions

1 The development to which this permission relates must be commenced not later than 13 February 2028.

As required by Section 91 of the Town and Country Planning Act 1990 and to ensure that the development is carried out within a reasonable time, having regard to the fact that this application was made under Section 73 of that Act.

2 The development shall be carried out in accordance with the approved plan(s) as detailed below

Existing and Proposed Plans, Elevations and Site Layout Plans Drg. No. A-3734-15-1B received 17/04/2025

Any minor material changes to the approved plans will require a formal planning application under S73 of the Town and Country Planning Act 1990 to vary this condition and substitute alternative plans.

In order to provide a procedure to seek approval of proposed minor material change which is not substantially different from that which has been approved.

3 The external surfaces of the development hereby permitted shall be as detailed on the approved plans below.

Existing and Proposed Plans, Elevations and Site Layout Plans Drg. No. A-3734-15-1B received 17/04/2025

To ensure a satisfactory standard of development and in the interests of visual amenity, in accordance with adopted South Tyneside LDF Development Management Policy DM1.

4 Prior to the first use of the balcony hereby approved, the 600mm privacy screens shown on the approved plans listed in condition 2 above shall be installed in full accordance with those approved plans. Thereafter the screens shall remain in place at all times.

In the interests of residential amenity, in accordance with South Tyneside LDF Development Management Policy DM1.

Informatives

1 UNIQUE NOTE TO APPLICANT

Your attention is drawn to the Party Wall Etc. Act 1996, which provides a framework for preventing and resolving disputes in relation to party walls, boundary walls and excavations near neighbouring buildings.

A building owner proposing to start work covered by the Act must give adjoining owners notice of their intentions in the way set down in the Act. Adjoining owners can agree or disagree with what is proposed. Where they disagree, the Act provides a mechanism for resolving disputes.

The Act is separate from obtaining planning permission or building regulations approval and you can find out more about it at:
https://www.gov.uk/party-wall-etc-act-1996-guidance

2 Approval of a Biodiversity Gain Plan NOT REQUIRED before development commences

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition "(the biodiversity gain condition") that development may not begin unless:

(a) a Biodiversity Gain Plan has been submitted to the planning authority, and
(b) the planning authority has approved the plan.

However, based on the information available, this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements are considered to apply - please refer to Biodiversity net gain: exempt developments - GOV.UK (www.gov.uk).

3 The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Mining Remediation Authority on 0345 762 6846 or if a hazard is encountered on site call the emergency line 0800 288 4242.

Further information is also available on the Mining Remediation Authority website at: Mining Remediation Authority - GOV.UK

Case officer: Nick Graham
Signed: N. Graham
Date: 11/06/2025

Authorised Signatory: *G. Simmonette*
Date: 12/06/2025