
APPLICATION DETAILS

Application No:	22/0240/FUL
Location:	Grey Towers Village, Nunthorpe, Middlesbrough
Proposal:	Retrospective alterations to retaining wall increasing the height/face of the wall and approval of facing materials.
Applicant:	Barratt David Wilson Homes - North East
Ward:	Marston West,
Recommendation:	Approve with Conditions

SUMMARY

The site is located with the Grey Towers Development site which is currently under construction. The site is along the northern edge of the wider Grey Towers site to the south of Brass Castle Lane and the existing hedgerow that separates the site from the road.

Retrospective permission is sought to make changes to an approved retaining wall and to agree the finishing materials used in the construction of the wall. The height of the wall appears greater than approved due to changes to the ground level at the base of the wall to the north. The ground levels at the top of the wall are in accordance with the approved plans.

Objections have been received from a Ward Councillor, a Community Council and a Parish Council. Objections have also been received from 19 residential properties. A number of the objections are not material to this planning application as they do not specifically relate to the proposed works.

The proposed development has been assessed in relation to material planning considerations. It is the planning view that the changes that have been made do not alter the impact of the housing development on the amenity of residents and do not result in increased flood risk to Eagle Park and Brass Castle Lane. Concerns regarding the safety of pedestrians and vehicles due to the height of the road can be mitigated against as part of the highways adoption process however a condition on this application will ensure the safety assessment is carried out in a reasonable timeframe. The visual appearance of the finishing materials of the wall can be mitigated against through the implementation of the proposed landscape scheme.

The recommendation is for approval subject to relevant conditions.

SITE AND SURROUNDINGS AND PROPOSED WORKS

The site is located with the Grey Towers Development site which is currently under construction, accessed from Dixons Bank. The site is to the north of the wider Grey Towers site to the south of Brass Castle Lane and the existing hedgerow that separates the site from the road. To the east, south and west is the housing development site. To the north is an existing residential estate.

Retrospective permission is sought to make changes to a retaining wall approved under application 18/0060/FUL and to agree the finishing materials used in the construction of the wall.

The height of the wall appears greater than approved due to changes to the ground level at the base of the wall to the north not due to an increase in the ground levels at the top of the wall which are in accordance with the approved plans. Railings are also proposed along the top of the retaining wall.

RELEVANT PLANNING HISTORY

18/0060/FUL

Residential development comprising 238 dwellinghouses with associated access and landscaping

Approve subject to 106 Agreement

27th June 2018

PLANNING POLICY

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Local Planning Authorities must determine applications for planning permission in accordance with the Development Plan for the area, unless material considerations indicate otherwise. Section 143 of the Localism Act requires the Local Planning Authority to take local finance considerations into account. Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authorities, in dealing with an application for planning permission, to have regard to:

- The provisions of the Development Plan, so far as material to the application
- Any local finance considerations, so far as material to the application, and
- Any other material considerations.

Middlesbrough Local Plan

The following documents comprise the *Middlesbrough Local Plan*, which is the Development Plan for Middlesbrough:

- Housing Local Plan (2014)
- Core Strategy DPD (2008, policies which have not been superseded/deleted only)
- Regeneration DPD (2009, policies which have not been superseded/deleted only)
- Tees Valley Joint Minerals and Waste Core Strategy DPD (2011)
- Tees Valley Joint Minerals and Waste Policies & Sites DPD (2011)
- Middlesbrough Local Plan (1999, Saved Policies only) and
- Marton West Neighbourhood Plan (2016, applicable in Marton West Ward only).

National Planning Policy Framework

National planning guidance, which is a material planning consideration, is largely detailed within the *National Planning Policy Framework* (NPPF). At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The NPPF defines the role of planning in achieving economically, socially and environmentally sustainable development although recognises that they are not criteria against which every application can or should be judged and highlights the need for local circumstances to be taken into account to reflect the character, needs and opportunities of each area.

For decision making, the NPPF advises that local planning authorities should approach decisions on proposed development in a positive and creative way, working pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that at every level should seek to approve applications for sustainable development (paragraph 38). The NPPF gives further overarching guidance in relation to:

- The delivery of housing,
- Supporting economic growth,
- Ensuring the vitality of town centres,
- Promoting healthy and safe communities,
- Promoting sustainable transport,
- Supporting the expansion of electronic communications networks,
- Making effective use of land,
- Achieving well designed buildings and places,
- Protecting the essential characteristics of Green Belt land
- Dealing with climate change and flooding, and supporting the transition to a low carbon future,
- Conserving and enhancing the natural and historic environment, and
- Facilitating the sustainable use of minerals.

The planning policies and key areas of guidance that are relevant to the consideration of the application are:

DC1 - General Development, CS5 - Design, CS4 - Sustainable Development

The detailed policy context and guidance for each policy is viewable within the relevant Local Plan documents, which can be accessed at the following web address.
<https://www.middlesbrough.gov.uk/planning-and-housing/planning/planning-policy>

CONSULTATION AND PUBLICITY RESPONSES

Following a consultation exercise objections were received from residents at 19 properties. The objections are summarised below.

- a. Increased flood risk and drainage issues;
- b. Highway safety on Brass Castle Lane for pedestrians, cyclists and vehicular traffic due to a lack of visual sight line awareness impeded by the height of the wall;
- c. What will prevent cars rolling onto Brass Castle Lane in ice conditions;

- d. Noise and disturbance from houses;
- e. Inappropriate materials not in keeping with the area;
- f. Eyesore/unsightly;
- g. Impact on air quality;
- h. Loss of natural light;
- i. Overlooking;
- j. Loss of views;
- k. Not previously proposed in the development;
- l. Impact from ongoing construction works/not told road would be dug up;
- m. Works to road are not to a high standard;
- n. Scope to build the wall even higher as the road can be seen above the wall;
- o. Safety rail should be required;
- p. Wall has no footings, we are concerned about erosion and the wall being unstable;
- q. Developer has carried on working even when told the wall was not in accordance with their approval;
- r. Unauthorised earthworks
- s. The houses will now be higher than approved. The land level must be reduced to the approved level;
- t. Impact on ecology;
- u. Works have damaged the existing hedge;

Received from:

- 1. 3 Brass Castle Lane
- 2. 5 Brass Castle Lane
- 3. 9 Brass Castle Lane
- 4. 11 Chesterfield Drive
- 5. 2 Eagle Park
- 6. 6 Eagle Park
- 7. 16 Eagle Park
- 8. 20 Eagle Park
- 9. 30 Eagle Park
- 10. 34 Eagle Park
- 11. 37 Eagle Park
- 12. 43 Eagle Park
- 13. 66 Eagle Park
- 14. 72 Eagle Park
- 15. 88 Eagle Park
- 16. 92 Eagle Park
- 17. 112 Eagle Park
- 18. 297 Eagle Park
- 19. 329 Eagle Park

Highways – MBC

No objections subject to a condition relating to a highway restraint scheme.

Lead Local Flood Authority - MBC

Having consider all the information provided as part of the original development application and the wall application it is noted that the drainage on the site has been designed with the use of SUDS and a restricted discharge rate to ensure that the Flood Risk from the site is not increased.

It is my view that the amount of water which may fall on the area between the wall and the hedge would be minimal and if any surface water that fell on this area did flow onto the road it would be significantly less than the amount that probably ran onto the roads from the fields before the development was built as such in my view the flood risk has not been increased

Nunthorpe Parish Council

Councillors from Nunthorpe Parish Council expressed concerns and object to this retrospective application, this will be discussed further at the Parish Council meeting on Thursday 19th May to enquire if there are any additional residents comments. The proposed area of the retaining wall is situated on the boundary of Nunthorpe and Marton West Ward areas, with the adjacent Grey Towers Village being in Nunthorpe.

During the consultation period for this phase of Grey Towers Village, Nunthorpe residents raised particular concerns regarding the pavement deficiency along Brass Castle Lane at this location. This high wall appears to exacerbate this problem, making it difficult to walk along Brass Castle Lane, either side of the retaining wall.

The photographs are unclear if a pavement is in existence at all.

The information from the applicant is unclear. The proposal description identifies two matters.

1. The wall length on 150 metres, graduating in height to 2 metre at its highest point.
2. Approval of facing materials on the 2 metre high wall. However the Design and Access Statement assumes the only issue is the facing material. It states that the applicant "seeks retrospective approval of a facing materials used to construct a retaining wall".

From a site visit this wall and facing material described is already in the process of construction. The facing material does not appear to be in line with design, appearance and materials used in construction of properties on the site.

The appearance of the wall appears overbearing in its proximity to neighbouring properties, highway and walkways.

Councillor Chris Hobson

This wall is not shown in the planning application at this height. It has to be reduced in height we will not in Marton West accept anything else.

The wall is way above the legal height and therefore needs to come down no ifs no buts.

Nunthorpe Ward Councillors

No response

Marton West Community Council

I have received several requests from Marton West residents for the Community Council to send an objection concerning a recent Planning Application.

This application is for Barratt Homes to build an eight foot wall on their new development at the corner of Brass Castle Lane and Dixons Bank.

To date, we understand that the residents' objections have resulted in a Planning Application being submitted by Barratt Homes, in order to extend the legal two metre height, although we are unable to find any reference to this on the Council Planning Department website.

We think this height is excessive and wish to submit a formal objection.

PLANNING CONSIDERATION AND ASSESSMENT

1. This application relates to the materials that have been used to construct the retaining wall and the height/face of the retaining wall as a result of the groundworks to the base of the wall on the north side. The wall has been constructed in the approved location (part of the housing development) and the ground level on the south/top of the wall is in accordance with the approved plans and is not part of the consideration of this application.
2. The wall height is relatively flat at the top of the wall with only small variations of approximately 0.3m. Due to changes in the gradient of the slope of the bank at the bottom of the wall the change in the height/face of the wall varies between a maximum of 2.4m and a minimum of 1.2m. 1.35m high railings are proposed to run along the top of the wall.
3. Any comments received in relation to the height at the top of the wall, or in relation to the overall housing development, are not material considerations in relation to this application in the sense that these have been established by earlier approvals. Those comments which are not material include, but are not limited to, overlooking/loss of privacy, loss of views, impacts on air quality, noise, impacts of construction, works to nearby roads.
4. A number of comments have also been received about the developer seeking retrospective permission because the works are not in accordance with the plans, and therefore they should be refused. Legislation allows for permission to be sought retrospectively. The fact that the developer has continued work whilst this application is being considered, is not a reason for refusal.

Amenity

5. As stated above, the wall is built in the previously approved location and the ground level at the top of the wall is as approved. The impact on the amenity of residents as a result of the raised ground level in this location was considered as part of the housing development and the principle of that height of wall / structure has therefore been established.
6. Due to its location and the presence of an intervening hedge, landscaped area and road, the wall has no impact on light to any of the existing residential properties. Comments from residents in relation to privacy relate to the height of the ground level and houses to the south of the wall which have been approved and do not form part of this application. The wall itself and ground levels to the north of the wall will not have any impact on the privacy of residents.
7. Whilst the wall has not been constructed as approved, as a result of changes to the gradient of the slope on the north side, at the foot of the wall between the wall and the hedge running along Brass Castle Lane. The changes do not result in any more impact on the amenity of existing or new properties in the area, above what has already been approved, in relation to light, overshadowing or privacy.

8. The development is considered to be in accordance with the requirements of policy DC1 and CS5.

Design/Streetscene

9. The retaining wall is located behind the existing hedgerow which runs adjacent to Brass Castle Lane. It has been constructed using black/grey stones. During the summer months the wall is not overly visible due to its location behind the hedge which is deciduous. During the winter months when the hedge loses its leaves the wall is more visible.
10. Currently there is a section of the hedgerow which has been removed opposite the junction with Eagle Park, which allows views of the wall. There is also a smaller section further to the east where there is a gap in the hedge which has been there historically to allow pedestrian access. The housing development includes a footpath link in this location which also allows views of the wall.
11. The road can currently be seen above the wall as there is a small grass slope between the top of the wall and the channel of the constructed road. This is in accordance with the approved plans in this location. This does not mean that the wall will be increased in height as suggested by some of the residents.
12. Above the retaining wall it is proposed to erect railings which are in keeping with those approved on the wider housing development. The railings provide a physical barrier to the wall to ensure the safety of residents.
13. A number of comments relate specifically to the appearance of the wall due to the materials that have been used, namely the black/grey stones. Whilst the wall is currently visible in a couple of locations the proposed landscape scheme seeks to significantly reduce and soften the appearance of the wall and the stones used in its construction. Ivy climbers which are evergreen are proposed, these will climb the wall to mask it. In addition, the ivy will be supported by a 50/50 Holly (also evergreen) and Birch hedgerow to be planted in front of the wall.
14. As a result of the landscape scheme the materials used in the construction of the wall will become screened at differing times of the year and as landscaping becomes more established. The colour of the stones used in the wall is therefore considered will have limited impact visually within the area, over time. The additional planting also has added benefits for biodiversity at the site and will provide further habitat for wildlife.
15. The proposed development is considered to be in accordance with the requirements of policies DC1, CS4 and CS5.

Highways

16. The retaining wall is a structure which already has consent and as such all that is being considered is the change from that previously approved.
17. A number of comments have been received regarding safety of users with some residents stating that cars could come off the road and end up on Brass Castle Lane

in slippery conditions. The proposed plans show a 100mm check on the road channel and railings along the top of the wall.

18. In order to determine the most appropriate form of features to prevent errant vehicles, pedestrians, cyclists etc falling from areas of higher land a simple risk assessment is normally undertaken which considers a number of factors/issues such as the alignment of the adjacent carriageway, height difference, risk of injury, vehicle speed etc. This process sits outside of planning and will be picked up as part of the technical approval process in order to satisfy the Highway Authority (as adopting authority) that the highway is safe for the public to use.
19. An Adoption Agreement is not yet in place for this phase of Grey Towers but the Local Highway Authority are actively working with the developer to get such an agreement in place.
20. Due to the alignment of the retaining structure, distance from Brass Castle Lane and off-set from the internal estate road it is considered that a suitable restraint system could be installed and that the risk of anyone falling from the higher land can be mitigated appropriately.
21. Although the risk assessment is part of the highway works, due to the height of the retaining wall it is considered to be reasonable to attach a planning condition to this development which requires the risk assessment to be carried out within six months of the decision date, should this application be approved.
22. The wall runs parallel to Brass Castle Lane and is located outside the adopted highway. Due to the location of the wall outside the adopted highway, set back from Brass Castle Lane and separated by an existing hedge and a landscaped bank, the wall has no impact on visibility along Brass Castle Lane.
23. The wall has no impact on any existing footpaths on Brass Castle Lane. Within the Grey Towers housing development footpaths run along the south side of the road which is located to the south of the retaining wall. The footpath then breaks through the hedgerow to the north giving access to Brass Castle Lane. The footpath links are approved as part of the housing development plans.
24. The development is considered to be in accordance with the requirements of Policies DC1 and CS5.

Flood Risk

25. The Local Flood Authority have considered all the information provided as part of the original development application and this application it is noted that the drainage on the site has been designed with the use of sustainable drainage system and a restricted discharge rate to ensure that the Flood Risk from the site is not increased.
26. The ground level on the housing development were approved as part of the housing application and as part of the sustainable drainage strategy with levels governed by the surface water routing and sustainable drainage features. The drainage scheme results in redirected flows through the surface water network to the detention basins within the housing development and thereafter into the surface water outfall as agreed with Northumbrian Water.

27. The road at the top of the retaining wall will have a kerb face whereby all surface flows from the road will be collected by the nearby gullies. This leaves overland flows (surface flow that is outside the confines of a stream channel) from vegetated areas above and below the wall. There are land drains installed as a result of the wall which will collect some flows and some flow will be naturally collected and mitigated by the soft landscaping scheme and would have naturally fallen to Brass Castle Lane prior to development as well.
28. There have been issues of flooding on Brass Castle Lane previously as a result of the drains along the road (which are not the responsibility of the developer) being blocked. The drains have now been cleared.
29. It is the view of the Local Flood Authority that the amount of water which may fall on the area between the wall and the hedge would be minimal and if any surface water that fell on this area did flow onto the road it would be significantly less than the amount that ran onto the roads from the fields before the development was built. As a result the housing development provides a betterment on overland flow risks compared to the pre-existing topography and therefore the flood risk has not been increased. The retrospective changes being sought by this application do not result in an increased risk of flooding on Brass Castle Lane and Eagle Park.
30. The development is considered to be in accordance with the requirements of policy CS4.

Conclusion

31. The changes that have been made do not alter the impact of the housing development on the amenity of residents and do not result in increased flood risk to Eagle Park and Brass Castle Lane. Concerns regarding the safety of pedestrians and vehicles due to the height of the road can be mitigated against as part of the Highways Adoption process however a condition on this application will ensure the safety assessment is carried out in a reasonable timeframe. The visual appearance of the finishing materials of the wall can be mitigated against through the implementation of the proposed landscape scheme.
32. It should also be noted that refusal of this application would not result in the developer being required to reduce the height of the wall by reducing the ground level at the top of the wall. It would simply require them to increase the gradient of the slope at the bottom of the wall which will not be visible due to its location behind the existing hedgerow, thereby reducing the height/face of the wall.
33. The proposed development is considered to be acceptable and in accordance with relevant planning policies. It is recommended that the application be approved subject to conditions.

RECOMMENDATIONS AND CONDITIONS

Approve with Conditions

1. Approved Plans
The development hereby approved shall be carried out in complete accordance with

the plans and specifications detailed below and shall relate to no other plans:
Location Plan, received on 1st April 2022;

- a) Retaining Wall Location Plan on North-western Boundary of Phase 8 Adjacent to Brass Castle Lane, drawing no. GT8 LP 001;
- b) Retaining Wall Elevations Based on Surveyed Heights, drawing no. GT8 RTW 001;
- c) Georoc Section A-A, drawing no. H6520-GS-1001; and,
- d) Detailed Landscape Proposals, Sheet 1 of 4, drawing no. c-1559-21.

Reason: For the avoidance of doubt and to ensure that the development is carried out as approved.

2. Road Safety Risk Assessment

A safety risk assessment shall be undertaken to determine the most appropriate highway restraint scheme to be provided along the top of the retaining structure. Details of the proposed highway restraint scheme shall be submitted to an approved in writing by the Local Planning Authority. The aforementioned approved highway restraint scheme shall be installed within 6 months of the date of approval of the scheme unless agreed otherwise in writing by the Local Planning Authority.

Reason: To ensure a satisfactory form of development and in the interests of highway safety having regard for policies CS5 and DC1 of the Local Plan and sections 9 and 12 of the NPPF.

3. The landscaping scheme must be implemented in the first planting season after the date of this approval, or in accordance with a timeframe to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory form of development in the interest of visual amenity and the character of the area having regard for policies CS4, CS5 and DC1 of the Local Plan and sections 12 and 15 of the NPPF.

4. Replacement Tree Planting

If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

Reason: To ensure a satisfactory form of development in the interest of visual amenity and the character of the area having regard for policies CS4, CS5 and DC1 of the Local Plan and sections 12 and 15 of the NPPF.

5. Retained Trees

In this condition retained tree means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of five years from the date of the occupation of the final building on site for its permitted use.

- a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any

topping or lopping approved shall be carried out in accordance with British Standard 3998:1989 (with subsequent amendments)(British Standard recommendations for Tree Work).

- b) If any retained tree is removed, uprooted or destroyed or dies during the period of construction another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time as may be specified in writing by the local planning authority. Similarly, if a retained tree dies or needs to be removed within five years of completion, and this is found to have been the result of damage sustained during development, this replanting condition will remain in force
- c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority. Retained trees shall be protected fully in accordance with British Standard 5837:1991 (Guide for Trees in Relation to Construction). In particular, fencing must not be dismantled at any time without the prior consent of the local planning authority.

Reason: To prevent the loss of or damage to trees and natural features during the development and to ensure so far as is practical that development progresses in accordance with current best practice having regard for policy CS4 and CS5 of the Local Plan and section 9 of the NPPF.

6. Hedges and Hedgerows

All hedges or hedgerows on the site unless indicated as being removed shall be retained and protected on land within each phase in accordance with details submitted to and approved in writing by the local planning authority for the duration of works on land within each phase unless otherwise agreeing in writing by the local planning authority. In the event that hedges or hedgerows become damaged or otherwise defective during such period the local planning authority shall be notified in writing as soon as reasonably practicable. Within one month a scheme of remedial action, including timetable for implementation shall be submitted to the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable. Any trees or plants which within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To prevent the loss of or damage to existing hedgerows and natural features so far as is practical that development progresses in accordance with current best practice having regard for policy CS4 and CS5 of the Local Plan and section 9 of the NPPF.

Reason for Approval

The retrospective changes to the retaining wall and the facing materials at Grey Towers is considered to be appropriate for both the application site itself and within the surrounding area, in that the proposal is in accordance with national and local planning policy.

The relevant policies and guidance is contained within the following documents: - National

Planning Policy Framework 2012 - Middlesbrough Local Development Framework (LDF) - Core Strategy (2008); Regeneration DPD and Proposal Map (2009) - Middlesbrough Housing Local Plan, Housing Core Strategy and Housing Development Plan Document (2014)

In particular the increased face of the retaining wall, facing materials and landscaping scheme is complementary to the surrounding area and will not have a detrimental impact on the amenity of any adjoining or nearby resident, will not prejudice the character and appearance of the area and will not significantly affect any landscaping nor prevent adequate and safe access to the site.

Issues set out in the representations made by nearby residents are not considered, on balance, to give rise to any inappropriate or undue affects. Accordingly, the Local Planning Authority considers that there are no material planning considerations that would override the general assumption that development be approved unless other material factors determine otherwise.

INFORMATIVES

- A condition setting the timescale for the commencement of the development si not required because the application is retrospective as works have already begun on site.
- Discharge of Condition Fee
Under the Town & Country Planning (Fees for Applications and Deemed Applications)(Amendment)(England) Regulations 2018, the Council must charge a fee for the discharge of conditions. Information relating to current fees is available on the Planning Portal website
<https://1app.planningportal.co.uk/FeeCalculator/Standalone?region=1>. Please be aware that where there is more than one condition multiple fees will be required if you apply to discharge them separately.
- Deliveries to Site
It should be ensured that, during construction, deliveries to the site do not obstruct the highway. If deliveries are to be made which may cause an obstruction then early discussion should be had with the Highway Authority on the timing of these deliveries and measures that may be required so as to mitigate the effect of the obstruction to the general public.
- Cleaning of Highway
The applicant is reminded that it is the responsibility of anybody carrying out building work to ensure that mud, debris or other deleterious material is not deposited from the site onto the highway and, if it is, it shall be cleared by that person. In the case of mud being deposited on the highway wheel washing facilities should be installed at the exit of the development.

Case Officer: Shelly Pearman

Committee Date: 2nd September 2022

Appendix 1 – Location Plan



Appendix 2 – Elevations and Section

