

Name of Applicant Type of Certificate	Proposal	Map/Plan Policy	Plan Ref. Expiry Date
Mr. and Mrs. R. Distefano 'A'	Removal of Condition 3 in relation to B/2001/0835 - 2 Ingeva drive (formerly known as 42 Mearse Lane), Barnt Green, B45 8FD□	RES	10/1179-SG 21.03.2011

Councillor C. B. Taylor has requested that this application be considered by the Committee, rather than being determined under delegated powers.

RECOMMENDATION: that permission be **GRANTED**.

Consultations

Lickey and Blackwell PC	<p>Consulted - views received 18.02.2011:</p> <p>Lickey and Blackwell PC objects to this application. The reasons why Condition 3 was imposed, when the original application was granted, have not changed. Therefore Condition 3 should be retained.</p>
Publicity	<p>5 letters sent 04.02.2011 expires 25.02.2011. 2 objections received:</p> <ul style="list-style-type: none"> ▪ Inaccuracies on the block plan and location plan are misleading representations. ▪ The mature conifers along the boundary between 1 Ingeva Drive and 2 Ingeva Drive do not cover the area noted on the diagram. Where they exist, they are not all "mature", with many having been planted during the week commencing 14 February 2011. There are far fewer in number and not all in the positions identified on the plan. ▪ The outlook of the two windows is directly across the rear of our property and across the full extent of our back garden. Removal of the condition would remove a substantial element of the privacy afforded to us, an our family, to the rear of our property - something that we greatly value. ▪ The window looks directly over our patio and hot tub area. ▪ This situation is exacerbated as a result of the elevation of the land whereby No. 42 is built some five or six feet above the level of our property. ▪ There have been no alterations to the external art of the front of 2 Ingeva Drive since the work done in response to the 2001 planning application. The trees in the line of sight from 2 Ingeva Drive into our garden remains in situ. Once again the only thing that has changed is the ownership of the property. ▪ The applicant has recently planted a number of leylandii against our fence to the rear of our garden. These trees are set about half a metre apart and, based on the height of our fence, are approximately 2 to 3 metres in height. As easily as the applicant can plant trees they can cut them down. Similarly, any future new owner could also remove the trees. In these circumstances, if the application is granted, then there would again be full line of sight across our garden and we would have no redress whatsoever. In essence the trees can only be regarded as temporary.

- There was a condition of a previous planning application that it would now appear the current occupants are attempting to change, what is the point of having conditions if they are not enforced and are subject to change.

The site and its surroundings

The application site relates to a large detached house located at the eastern end of Ingeva Drive, Barnt Green. The property is mainly two storey with a single storey garage extension on the south side. The road has a fairly steep incline which slopes upwards away from Mearse Lane. As such, the application site occupies an elevated position on higher ground than the adjoining property to the west (No. 1 Ingeva Drive). The site is designated in an established residential area.

Proposal

This application is seeking to remove Condition 3 attached to B/2001/0835 relating to the first floor windows of the extension on the front elevation and rear elevation of the property to be obscure glazed.

Condition 3 on B/2001/0835 states:

The property first floor windows of the extension hereby approved on the front elevation of the property and rear elevation shall be obscure glazed and shall be retained as such. Details of the glazing shall be submitted to and approved in writing by the Local Planning Authority before any work on site commences.

The reason for the Condition is stated as:

To protect the privacy of adjoining occupiers.

For the reference of Members, the property was previously known as 42 Mearse Lane.

Relevant Policies

WMSS	QE3
WCSP	CTC.1
BDLP	DS13, S10
DCS2	CP3
Others	PPS1, SPG1

Relevant Planning History

10/0824	Proposed entry gates and railings. Approved 26.10.2010.
10/0825	Proposed orangery. Approved 26.10.2010.
10/0826	Proposed roof terrace. Refused 26.10.2010.

Relevant Planning History (cont'd)

B/2001/0835 Extension and alterations to form additional bedroom and guest suite (as amended by plans received 24.08.2001, and letter dated 24.08.2001).
Approved 03.09.2001.

Notes

The main issue relating to this application relates to whether the deletion of Condition 3 on B/2001/0835 is acceptable given the implications for privacy of adjoining occupiers.

Circular 11/95 sets out a number of 'tests' which Conditions are required to comply with as part of their use in planning legislation. These are that Conditions must be:

1. Necessary;
2. Relevant to planning;
3. Relevant to the development permitted;
4. Enforceable;
5. Precise; and
6. Reasonable in all other aspects.

With respect to the current application, paragraph 15 of this Circular states that in dealing with an application to remove a condition, that a condition should not be retained, unless there are sound and clear cut reasons for doing so.

Residential amenity is detailed in policy S10 of the Bromsgrove District Local Plan. This policy requires that all extensions should not adversely affect the existing amenities of adjoining occupiers.

The Committee Report from the 2001 application states that 'there is a significant difference in levels between the application site and the curtilage of No. 1 Ingeva Drive'. I agree with this statement and do not consider there to have been any changes to the ground levels since the 2001 application.

Members will note that the report to the Committee in 2001 did not refer to the context of the site with regard to the boundary treatment between the application site and No. 1 Ingeva Drive. In the absence of this detail, and without any supporting photographs, it is difficult to ascertain the level of screening across the common boundary that was present at the site in 2001. I note the comments from the occupiers of No. 1 Ingeva Drive dated 12th August 2001 with regard to the original 2001 application. This states that "we are currently in the process of screening this off, to give greater privacy by means of landscaping work being performed on our behalf." This assertion would suggest that there has been a degree of change in the surroundings of the site since the 2001 application.

In light of the above, however, I do not consider it possible to determine whether the levels of landscaping along the neighbouring boundaries have changed significantly since the original 2001 application. On this basis, I consider the most practical approach for determining the application is to consider the level and mass of landscaping along the adjoining boundaries in their current form.

Members will note the views of third parties relating to screening. I note there to be substantial landscaping adjacent to the front windows of the extension along the western boundary with property No. 1. The landscaping consists of a row of recently planted leylandii in addition to other large coniferous trees and shrubs. I note the applicant's admission that the leylandii and three additional shrubs had been planted along the boundary during the week commencing 14th February 2011. I am mindful of the fact that the planting of these trees/shrubs, in addition to the landscaping works carried out by the occupiers of No. 1 (as detailed in the letter of objection in 2001) would amount to a material change to the context of the site.

By virtue of their scale, siting, and the type of landscaping currently *in situ*, I consider the landscaping to be adequate for the purposes of protecting residential amenity from the first floor windows that serve the bedroom extension on the front elevation.

With regards to the first floor window on the rear elevation, I note there to be a substantial conifer hedge and shrubs along the boundary adjoining No. 7 Merriemont Drive. I am of the view that the landscaping adequately screens views from the first floor bedroom window into the neighbours rear garden.

Members will note that SPG1: Residential Design Guide was adopted in January 2004 subsequent to the determination of the original 2001 application. As such, I consider more weight can be attached to this document as a material planning consideration. I refer to paragraph 8.5 of SPG1 that states "As a general guide new development with main windows overlooking existing private spaces should be set back by a distance of 5 metres per storey from the site boundary where it adjoins a private garden area." Whilst I appreciate that SPG1 provides guidance only and can be used flexibly with consideration to the site specifics, it is noteworthy that the windows in the extension are positioned some 12.5 meters from the common boundary thereby meeting this criterion.

Taking all matters into account, on balance, I consider there to be sufficient landscaping along the boundaries with No. 1 Ingeva Drive and No. 7 Merriemont Drive to protect the privacy of adjoining occupiers.

For this reason, and with regard to the contents of paragraph 15 attached to Circular 11/95a, I consider the deletion of Condition 3 attached to B/2001/0835 to be reasonable.

RECOMMENDATION: that permission be **GRANTED**.

No Conditions required.

Notes

This decision has been taken having regard to the policies within the West Midlands Spatial Strategy (WMSS) June 2004, the Worcestershire County Structure Plan (WCSP) June 2001 and the Bromsgrove District Local Plan (BDLP) January 2004 and other material considerations as summarised below:

WMSS	QE3
WCSP	CTC.1
BDLP	DS13, S10

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DCS2 CP3
Others PPS1, SPG1

It is the Council's view that the proposed development complies with the provisions of the development plan and that, on balance, there are no justifiable reasons to refuse planning permission.