

**7. 18/0239/RSP – Retrospective: Change of use of land from public open space to residential curtilage at LAND AT THE REAR OF MOORE ROAD, ABBOTS LANGLEY, HERTFORDSHIRE, WD25 0BE for Mr Staunton-Jameson.**

Parish: Abbots Langley

Ward: Leavesden

Expiry of Statutory Period: 12 April 2018

Case Officer: Matthew Roberts

Recommendation: That Planning Permission is granted.

Reason for consideration by the Committee: Called in by Abbots Langley Parish Council.

**1. Relevant Planning and Enforcement History**

- 1.1 15/1026/FUL - Construction of 95 houses and flats and associated works to include provision of access and access to adjoining land to facilitate erection of a primary school; provision of associated infrastructure including a foul water pumping station and substation; and provision of open space including an equipped play area. Permitted and currently being implemented.
- 1.2 16/1082/NMA – Non Material Amendment to planning permission 15/1026/FUL: Construction of 95 houses and flats and associated works to include provision of access and access to adjoining land to facilitate erection of a primary school; provision of associated infrastructure including a foul water pumping station and substation; and provision of open space including an equipped play area, to include alterations to garden and parking layout to some plots and curved boundary walls made straight. Permitted.
- 1.3 17/0070/COMP - Enforcement Enquiry: Works not in accordance with planning permission 15/1026/FUL: Plot arrangements, boundary treatment alterations. Investigation pending.

**2. Description of Application Site**

- 2.1 The application site is a parcel of land laid to lawn which forms part of a domestic garden serving No.2 Moore Road, an end of terrace two storey dwelling located within the south western corner of a new residential development abutting the boundary with No.2 Meadowside in Abbots Langley.
- 2.2 No.2 Moore Road fronts an area of open space, with Woodside Road beyond to the west and has two allocated parking spaces located within a parking court at the rear.
- 2.3 The application site is enclosed by fencing to the north, east and southern boundary. Within the enclosed parcel of land there are two protected Sycamore trees which lie close to the common boundary with No.2 Meadowside.
- 2.4 The adjoining neighbour to the south, No.2 Meadowside is a detached dwelling with a pitched roof form located within a cul-de-sac with amenity space provided to the front and side (north).

**3. Description of Proposed Development**

- 3.1 This application seeks retrospective planning permission for the change of use of land from public open space to residential curtilage.
- 3.2 Prior to the application site being incorporated within the domestic garden of No.2 Moore Road it was approved under planning permission 15/1026/FUL as an open amenity area and was presumed to be maintained as such in perpetuity. During the construction of the residential development the open amenity area was built in accordance with the approved

plans and was laid to lawn and physically and functionally separate from the domestic curtilage serving No.2 Moore Road.

- 3.3 However, the parcel of land has since been incorporated into the garden of No.2 Moore Road by enclosing the space with close boarded fencing at approximately 2m in height. The land is therefore no longer available for use by the public.
- 3.4 Whilst the description of development refers to the land as public open space, it would be best described as “open amenity land”. Such spaces are commonly found adjacent to parking areas and on corner plots within certain areas of the district. The subject parcel of land is not marked within the signed Section 106 as “public open space” which is accommodated elsewhere within the development including on land between the residential development and Woodside Road and along the northern boundary which is currently still under construction.
- 3.5 The application has been accompanied by a plan which shows the approved soft landscaping as secured by Condition 11 under planning permission 15/1026/FUL which required all soft landscaping to be undertaken in accordance with drawing number CSa/2407/105 Rev D (submitted under the original planning consent). The approved soft landscaping within the application site includes planting of a Field Maple (*Acer campestre*) and hedging along the entire length of the southern boundary. Further planting was also required within the domestic garden of No.2 Moore Lane which has not been undertaken and includes the planting of 2 Callery Pear trees (*Pyrus calleryana*) and hedging along an element of the southern boundary.
- 3.6 The application has been supported further by a Biodiversity Checklist and a CIL Information Requirement Form.

## **4. Consultation**

### **4.1 Statutory Consultation**

#### **4.1.1 Abbots Langley Parish Council: [Objects]**

*“Members strongly object to the variation of the approved plans and the loss of this valuable public open space in an area which was once all open space and has already been sacrificed to make way for a very large housing estate. If officers are minded to approve this application then Members request that it is referred to Three Rivers Planning Committee for consideration.”*

#### **4.1.2 National Grid: No comments received. Any comments received will be verbally updated at Committee.**

### **4.2 Public/Neighbour Consultation**

4.2.1 Number consulted: 7                      No responses received: 0

4.2.2 Site Notice expired 15 March 2018

4.2.3 Summary of Responses:

4.2.4 None.

## **5. Reason for Delay**

5.1 Committee Cycle.

## **6. Relevant Planning Policy, Guidance and Legislation**

### **6.1 National Planning Policy Framework and National Planning Practice Guidance**

On 27 March 2012, the framework of government guidance in the form of Planning Policy Statements and Planning Policy Guidance Notes was replaced by the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG). The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The NPPF states that 'good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

### **6.2 The Three Rivers Local Plan**

The application has been considered against the policies of the Local Plan, including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development Document (adopted November 2014) as well as government guidance. The policies of Three Rivers District Council reflect the content of the NPPF.

The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include Policies CP1, CP9, CP10 and CP12.

The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013 after the Inspector concluded that it was sound following Examination in Public which took place in March 2013. Relevant policies include DM1, DM6 and DM13 and Appendices 2 and 5.

### **6.3 Other**

The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

The Localism Act received Royal Assent on 15 November 2011. The growth and Infrastructure Act achieved Royal Assent on 25 April 2013.

The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 and the Habitat Regulations 1994 may also be relevant.

## **7. Planning Analysis**

### **7.1 Impact on Character and Street Scene**

7.1.1 Policy CP12 of the Core Strategy expects all development proposals to 'have regard to the local context and conserve or enhance the character, amenities and quality of an area' and 'incorporate visually attractive frontages to adjoining streets and public spaces'.

7.1.2 The application site was initially approved to be used as an area of open amenity space although by virtue of its location, sited immediately adjacent to a parking court, its primary

purpose was to soften the visible extent of hard surfacing. Whilst the land could have been used by members of the public it was unlikely to have been used regularly for amenity purposes due to its scale and the fact it was largely hidden from the main public routes within the development with the larger more accessible public open space designated towards Woodside Road where a natural play area is to be built.

- 7.1.3 As highlighted above, the application site is not readily visible from the roads which serve the residential development as it is set back in excess of 50m. Whilst the parking court is no longer served by elements of soft landscaping including the two protected Sycamore trees, it is not considered that the movement of fencing and the use of land as part of the residential curtilage for No.2 Moore Road has had a detrimental impact on the character of the development and its appearance.
- 7.1.4 As the land is still laid to lawn and appears open in the sense that there is an absence of built development, the views from neighbouring vantage points are not materially altered with the only change relating to the siting of close boarded fencing which is a common feature within the immediate context.
- 7.1.5 It is therefore considered that the development is acceptable and accords with Policy CP12 of the Core Strategy.

## 7.2 Impact on Amenity of Neighbours

- 7.2.1 Policy CP12 of the Core Strategy states that development should 'protect residential amenities by taking into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space'.
- 7.2.2 Due to the nature of the development, it is not considered that the use of the application site by the occupiers of No.2 Moore Road as part of their garden has resulted in material harm through noise and disturbance.
- 7.2.3 It is acknowledged that the neighbouring dwelling, No.2 Meadowside, has windows within the ground and first floor which are in close proximity to the application site. These particular windows could be adversely affected by future ancillary buildings. Whilst the existence of two protected trees within the application site would to some extent prevent pressure for buildings it is considered reasonable to remove permitted development rights in respect of the provision of any building or enclosure. This is also in keeping with the original planning permission 15/1026/FUL which removed permitted development rights for all plots.
- 7.2.4 As such, subject to the suggested condition, the change of use does not have a detrimental impact on neighbouring amenity, in accordance with Policy CP12 of the Core Strategy.

## 7.3 Highways, Access and Parking

- 7.3.1 Policy CP12 of the Core Strategy states that development should take into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space.
- 7.3.2 The development has not altered the number of parking spaces within the control of the applicant. The house is therefore still served by two parking spaces as originally approved under reference 15/1026/FUL.
- 7.3.3 The development has led to the re-positioning of the fence line which now stands on the boundary with the parking court and therefore is immediately adjacent to both allocated spaces which are in tandem (one to front of the other). Whilst this close relationship may prove problematic when opening car doors the development has not resulted in the loss of

any parking spaces which are still laid out as approved and measure 2.4m by 4.8m in depth.

#### 7.4 Trees and Landscaping

7.4.1 Policy CP12 of the Core Strategy expects development proposals to 'have regard to the character, amenities and quality of an area', to 'conserve and enhance natural and heritage assets' and to 'ensure the development is adequately landscaped and is designed to retain, enhance or improve important existing natural features'.

7.4.2 The application site includes two protected Sycamore trees which have been retained and now form part of the domestic garden for No.2 Moore Road. The re-positioning of the fence has acted to partially obscure the lower parts of the trees from public views, however the majority of the trees remain visible.

7.4.3 As the planting approved by the original planning permission has not been undertaken, a condition has been imposed which seeks that the soft landscaping proposal for the application site is undertaken including planting within the original garden (land enclosed in blue on the submitted plans).

#### 7.5 Amenity Space Provision

7.5.1 The development has increased the amount of amenity provision for the occupiers of No.2 Moore Road in excess of the indicative level of 84sqm as required by Appendix 2 of the Development Management Policies LDD for a three bed dwelling.

#### 7.6 Wildlife and Biodiversity

7.6.1 Section 40 of the Natural Environment and Rural Communities Act 2006 requires Local Planning Authorities to have regard to the purpose of conserving biodiversity. This is further emphasised by regulation 3(4) of the Habitat Regulations 1994 which state that Councils must have regard to the strict protection for certain species required by the EC Habitats Directive.

7.6.2 The protection of biodiversity and protected species is a material planning consideration in the assessment of applications in accordance with Policy CP9 of the Core Strategy (adopted October 2011) and Policy DM6 of the DMLDD. National Planning Policy requires Local Authorities to ensure that a protected species survey is undertaken for applications that may be affected prior to determination of a planning application.

7.6.3 A Local Biodiversity Checklist has been completed by the applicant and submitted with the application. The Checklist concludes that no biodiversity survey or assessment is required in this instance, and the Local Planning Authority is not aware of any protected species on this site.

7.6.4 Given the nature of the development, it is not considered that there is any significant impact on any protected species or wildlife, nor does the development compromise the integrity of the Green Infrastructure, therefore complying with Policies CP1 and CP9 of the Core Strategy and Policy DM6 of the Development Management Policies LDD.

#### 7.7 Conclusion

7.7.1 The change of use of open amenity space to residential curtilage has not had an adverse impact on the character and appearance of the development and wider area given its location. Whilst the re-positioning of fencing has urbanised the parking court and has restricted public views of two protected trees, it is not considered that the harm is significant to warrant refusal of the application. Nevertheless, subject to conditions

controlling future development and the planting of those trees and hedging required by the original planning permission the development is acceptable and complies with Policies CP1, CP9, CP10 and CP12 of the Core Strategy, Policies DM1, DM6 and DM13 and Appendices 2 and 5 of the Development Management Policies LDD.

## **8. Recommendation**

8.1 That RETROSPECTIVE PLANNING PERMISSION BE GRANTED and has effect from the date on which the development is carried out and is subject to the following conditions:

C1 The development hereby permitted shall be maintained in accordance with the following approved plans: 21174/A/5000 Rev C6 (Location Plan); 95843000 (Block Plan) & TRDC 001 (Soft Landscaping Plan).

Reason: For the avoidance of doubt and in the proper interests of planning, in accordance with Policies CP1, CP9, CP10 and CP12 of the Core Strategy (adopted October 2011), Policies DM1, DM6 and DM13 and Appendices 2 and 5 of the Development Management Policies LDD (adopted July 2013).

C2 All soft landscaping works hereby permitted shall be carried out in the next planting season in accordance with plan number CSa/2407/105 Rev D as approved under planning permission 15/1026/FUL and also shown on approved drawing number TRDC 001. The soft landscaping works hereby permitted shall be maintained including the replacement of any trees or plants which die are removed or become seriously damaged or diseased in the next planting season with others of a similar size or species, for a period for five years from the date of the approved scheme was completed.

Reason: In the interests of visual amenity of the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

C3 Immediately following the implementation of this permission, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any other revoking and re-enacting that order with or without modification) no development within the following Classes of Schedule 2 of the Order shall take place.

### Part 1

Class E - provision of any building or enclosure

No development of any of the above classes shall be constructed or placed on any part of the land subject of this permission.

Reason: To ensure adequate planning control over further development having regard to the limitations of the site and neighbouring properties and in the interests of the visual amenities of the site and the area in general, in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM1 and Appendix 2 of the Development Management Policies LDD (adopted July 2013).

## 8.2 Informatives

I1 With regard to implementing this permission, the applicant is advised as follows:

All relevant planning conditions must be discharged prior to the commencement of work. Requests to discharge conditions must be made by formal application. Fees are £116 per request (or £34 where the related permission is for extending or altering a

dwellinghouse or other development in the curtilage of a dwellinghouse). Please note that requests made without the appropriate fee will be returned unanswered.

There may be a requirement for the approved development to comply with the Building Regulations. Please contact Hertfordshire Building Control (HBC) on 0208 207 7456 or at [buildingcontrol@hertfordshirebc.co.uk](mailto:buildingcontrol@hertfordshirebc.co.uk) who will be happy to advise you on building control matters and will protect your interests throughout your build project by leading the compliance process. Further information is available at [www.hertfordshirebc.co.uk](http://www.hertfordshirebc.co.uk).

Community Infrastructure Levy (CIL) - If your development is liable for CIL payments, it is a requirement under Regulation 67 (1) of The Community Infrastructure Levy Regulations 2010 (As Amended) that a Commencement Notice (Form 6) is submitted to Three Rivers District Council as the Collecting Authority no later than the day before the day on which the chargeable development is to be commenced. DO NOT start your development until the Council has acknowledged receipt of the Commencement Notice. Failure to do so will mean you will lose the right to payment by instalments (where applicable), lose any exemptions already granted, and a surcharge will be imposed.

Care should be taken during the building works hereby approved to ensure no damage occurs to the verge or footpaths during construction. Vehicles delivering materials to this development shall not override or cause damage to the public footway. Any damage will require to be made good to the satisfaction of the Council and at the applicant's expense.

Where possible, energy saving and water harvesting measures should be incorporated. Any external changes to the building which may be subsequently required should be discussed with the Council's Development Management Section prior to the commencement of work.

- 12 The Local Planning Authority has been positive and proactive in its consideration of this planning application, in line with the requirements of the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The development maintains/improves the economic, social and environmental conditions of the District.