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## Appeal Decision

Site visit made on 24 August 2020

**by Alexander Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 September 2020**

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### **Appeal A Ref: APP/P1940/C/3248078**

#### **Land adjacent to 17 South Cottage Drive, Chorleywood, Rickmansworth WD3 5EB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Lisa Bunclark against an enforcement notice issued by Three Rivers District Council.
- The enforcement notice was issued on 29 January 2020.
- The breach of planning control as alleged in the notice is the material change of use of amenity land to its use for residential purposes.
- The requirements of the notice are:
  1. Cease the use of the land for residential purposes.
  2. Permanently remove from the Land the hard-surfaced driveway to the side of the Dwellinghouse (the approximate position is cross hatched in red on the attached Site Map).
  3. Permanently remove from the Land the low level brick wall and ornamental planting along the front and side boundary of the Land (the approximate position is shown as between X-X on the attached Site Map).
  4. Permanently remove from the Land all fencing and means of enclosures (excluding the established close boarded timber fencing marked between Y-Y on the attached Site Map).
  5. Following compliance with steps 2, 3 and 4 above, return the Land to its original level before the breach occurred.
  6. Following compliance with steps 2, 3, 4 and 5, remove from the Land all debris and waste materials resulting from the above steps.
  7. Following compliance with step 6 above, re-seed the Land with a native grass seed mix.
  8. Following compliance with step 7 above re-seed any part of the Land where the native grass seed mix dies or is dying within 5 years from the date this Notice takes effect.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.**

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### **Appeal B Ref: APP/P1940/C/3248078**

#### **Land adjacent to 17 South Cottage Drive, Chorleywood, Rickmansworth WD3 5EB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mervyn Bunclark against an enforcement notice issued by Three Rivers District Council.

- The enforcement notice was issued on 29 January 2020.
- The breach of planning control as alleged in the notice is the material change of use of amenity land to its use for residential purposes.
- The requirements of the notice are:
  1. Cease the use of the land for residential purposes.
  2. Permanently remove from the Land the hard-surfaced driveway to the side of the Dwellinghouse (the approximate position is cross hatched in red on the attached Site Map).
  3. Permanently remove from the Land the low level brick wall and ornamental planting along the front and side boundary of the Land (the approximate position is shown as between X-X on the attached Site Map).
  4. Permanently remove from the Land all fencing and means of enclosures (excluding the established close boarded timber fencing marked between Y-Y on the attached Site Map).
  5. Following compliance with steps 2, 3 and 4 above, return the Land to its original level before the breach occurred.
  6. Following compliance with steps 2, 3, 4 and 5, remove from the Land all debris and waste materials resulting from the above steps.
  7. Following compliance with step 6 above, re-seed the Land with a native grass seed mix.
  8. Following compliance with step 7 above re-seed any part of the Land where the native grass seed mix dies or is dying within 5 years from the date this Notice takes effect.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) of the Town and Country Planning Act 1990 as amended.

**The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.**

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### **Ground (b)**

1. The appeals on this ground are whether the matters alleged in the Notice do not constitute a breach of planning control. The onus of proof is on the appellants.
2. The Land Registry Title Plan encompasses both the appeal site and No.17 within a single red boundary. However, the Land Registry Title Plan indicates land ownership. It does not denote land use. The fact that both plots of land fall within the same title deed does not equate with them both falling within the same planning use or planning unit.
3. The appeal site is a strip of land that lies between 17 South Cottage Drive and the footway running alongside South Cottage Gardens. A close boarded timber fence; the side wall of the garage attached to No.17; and, its driveway form a physical boundary with the site, clearly distinguishing the site and No.17 as separate parcels of land. I note the appellants' argument that these features are not sufficient to subdivide the two parcels of land. However, I do not agree, indeed there are clear examples within the vicinity where, due to the open plan nature of the residential development, driveways form distinct boundaries between neighbouring properties.
4. The site is clearly read as and functions as amenity land, similar to other corner plots within the vicinity, notably the land on the corner of 14 South Cottage Gardens, which is interlinked with the appeal land, and the parcels of land adjacent to 2 and 8 South Cottage Gardens. These parcels of land, including the appeal site, are an integral part of the open plan design of the residential

- development and were clearly intended to be amenity land rather than form part of the gardens associated with their neighbouring properties.
5. The appellants argue that the layouts of 22 South Cottage Drive and 55 South Cottage Gardens support their case that the appeal site is residential land as the land to the side of these properties is fenced off, forming part of the gardens of these properties. However, the Ordnance Survey Map only identifies parts of the front of these properties as potentially being separate from the garden area. I note that some land is coloured green; however, the Ordnance Survey Map does not identify land uses for the purposes of planning.
  6. The land fenced off at No.22 appears to form part of the rear garden on the Ordnance Survey Map and not amenity land. Similarly, land fenced off at No.55 is also suggested to be part of the rear garden on the Ordnance Survey Map. Whilst there is a chain link fence to the front part of the property, it is not clear either way whether this forms amenity land or residential; however, as it does not form part of the appeal site before me I need not conclude on this matter.
  7. I have also had regard to the plans relating to the approved planning application for the estate<sup>1</sup>. The boundaries of a number of properties identified on these plans, as identified by the appellants, do not correlate with what is currently on the ground as fences appear to have been erected in different positions. Most notably 22 South Cottage Drive and 55 South Cottage Gardens clearly have amenity land to their sides, contrary to the Ordnance Survey Map. However, there is no indication of when these works took place or indeed whether the development was constructed in accordance with these approved plans. Notwithstanding this, the plans clearly indicate the appeal site as amenity land.
  8. I note that the location plan submitted with the application for an extension at 17 South Cottage Drive<sup>2</sup> included the appeal site within the red edged area. However, such plans neither confirm the planning use of the land or the planning unit. They merely identify the application site.
  9. I acknowledge that the previous owners confirm that the appeal site was always part of the residential land attached to No.17 and he always treated it as such by gardening it, keeping it tidy and ensuring people do not trespass upon it. However, with the exception of the recently planted vegetation the land has very little landscaping other than mown grass. There is no evidence that it was used for any activities one would normally expect residential land, i.e. a garden, to be used for. Accordingly, based on the evidence before me, I do not consider that a material change in the use of the land from amenity land to residential land took place during the time the previous owner lived at No.17.
  10. Accordingly, I consider that the lawful use of the appeal site is amenity land and not residential land, despite it being in the same ownership as 17 South Cottage Drive. Furthermore, due to its physical separation and it having a separate primary land use, i.e. amenity land, the appeal site forms part of a separate planning unit to that of No.17 that also includes the land adjacent to 14 South Garden Cottage, which it has an interlinked relationship with.

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<sup>1</sup> LPA Ref: W/500/66/D30475

<sup>2</sup> LPA Ref: 19/1217/FUL

11. The Council also considers that the amenity land adjacent to 22 South Cottage Drive also falls within the same planning unit as the appeal site and has provided a hatched plan indicating as such. However, the plan is rather crude and should not be relied upon as anything other than indicative only.
12. I find therefore that as the lawful use of the appeal site is amenity land, its material change of use to residential land constitutes a breach of planning control. The ground (b) appeals therefore fail.

### **Ground (a) and the deemed planning application**

#### *Preliminary Matter*

13. The appellants seek planning permission for the ornamental planting and a grasscrete car parking space. Section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) only allows the grant of planning permission in respect of matters stated in the Notice as constituting a breach of planning control "whether in relation to the whole or any part of those matters". The ornamental planting is clearly identified in the Notice and I am satisfied that it can be considered as part of the deemed planning application. However, the grasscrete parking is not. The Notice refers to "hard-surfaced driveway". The photographic evidence submitted by the Council clearly identify this as comprising decorative stone, not grasscrete. Therefore, whilst the parking space would be significantly smaller in size than the hard-surfaced area identified in the Notice, I consider that it is a materially different form of development to the matters alleged in the Notice. Accordingly, I cannot consider this development as part of the deemed planning application as to do so would go beyond the provisions of s177(1)(a).

#### *Main Issue*

14. The main issue is the effect of the development on the character and appearance of the area.

#### *Reasons*

15. South Cottage Drive and South Cottage Gardens form a residential development comprising two-story, detached dwellings. The setback position of properties from the road; the generous spacing between the buildings; the open frontages; and, the wide footways and grass verges make a positive contribution to the openness and spaciousness of the area.
16. The appeal site is a strip of land that lies between 17 South Cottage Drive and the footway running alongside South Cottage Gardens. The site is a well-maintained grassed area that forms part of a larger parcel of amenity land that extends further to the north, adjacent to 14 South Cottage Gardens. Its open appearance makes an important contribution to the overall openness and spaciousness of the area.
17. The change of use of the land to residential land, including the erection of a close boarded timber fence around its perimeter, would create a sense of enclosure that would significantly diminish the openness and spaciousness of the area. This harm would be exacerbated by the site's prominent corner plot location resulting in the fence dominating the streetscene.

18. Even if the site was not enclosed by the fence, its use as residential land could result in it being used for various domestic activities including the storage of domestic paraphernalia on the land, such as outdoor seating, play equipment, general domestic items and the parking of vehicles. Such activity would significantly diminish the openness and spaciousness of the site.
19. Although the hard-surfaced area would have a low profile, it would facilitate the parking of vehicles, which themselves would detract from the openness and spaciousness of the area.
20. In terms of the ornamental planting, this is on a small scale and would not harm the openness and spaciousness of the area or the visual amenity value the land provides. As such, it does not harm the character and appearance of the area. However, the deemed planning application seeks permission for what is alleged in the notice, in this case the material change of amenity land to its use for residential purposes. Therefore, I cannot consider the ornamental planting in isolation. Were I to allow the deemed planning application, it would also grant permission for the material change of use of the land from amenity land to its use for residential purposes, which would be unacceptably harmful to the character and appearance of the area.
21. I find therefore that the development would have a significantly harmful effect on the character and appearance of the area. As such it would be contrary to Policies CP1 and CP12 of the Three Rivers District Council Core Strategy 2011, which, amongst other things, seek to ensure that the natural and built environment is protected from inappropriate development and conserves or enhances the character, amenities and quality of an area. It would also be contrary to Policy DM1 and Appendix 2 of the Three Rivers District Council Development Management Policies Local Development Document 2013, which seek to prevent the gradual deterioration in the quality of the built environment.

### **Ground (f)**

22. For the appeal to succeed on this ground, I need to be satisfied that that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
23. Section 173 (3) of the Town and Country Planning Act 1990 as amended (the Act) states that 'An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes...'. Purpose (a) under Section 173 (4) is 'remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.'
24. The requirements of the Notice have largely been carried out. All that remains in situ is the ornamental planting, which the appellants seek to retain.
25. The alleged breach of planning control is the material change of use of amenity land to its use for residential purposes. The fencing, hard-surfaced driveway and ornamental planting facilitate this change of use. Consequently, I do not

consider that the requirement seeking the removal of the ornamental planting is excessive and there are no lesser steps that could overcome the breach of planning control or the injury to amenity. Whilst I note that the Council raise no objection regarding the effect of the ornamental planting on the character and appearance of the area, it nevertheless facilitates the change of use.

26. The ground (f) appeal therefore fails.

### **Other Matters**

27. The appellants contend that the designation of the appeal site as amenity land removes the benefit of ownership and amounts to the revocation of ownership. However, based on the evidence before me, the land has always been in such use and therefore would have been when the current owner purchased it, regardless of whether they bought it in good faith as part of the residential land associated with 17 South Cottage Drive. There is no evidence before me that the land has not been well-maintained over the years, despite it being amenity land, and there is no reason why it would not continue to be going forward. The Notice in no way revokes or interferes with the ownership of the land and therefore does not breach Article 1 of the First Protocol of the European Convention on Human Rights.

28. I also acknowledge the appellants' frustration regarding the potential for the Notice to devalue No.17. However, houses prices are not a material planning matter and has not had any bearing on my consideration of the appeal.

29. Furthermore, the fact that the requirements of the Notice have largely been complied with is not sufficient justification for me to quash the Notice. Even if they had been fully complied with, the breach of planning control alleged in the Notice took place and the Council were correct to issue it. Were I to quash the notice, there would be nothing to prevent the same breach occurring again and the Council would likely take the same action.

### **Formal Decision**

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

*Alexander Walker*

INSPECTOR