



# Planning Committee

Greenlands Ward

19 May 2009

## ENFORCEMENT REPORTS: 2008/183/ENF TO 2008/188/ENF AND 2009/088/ENF TO 2009/090/ENF

### Enclosure of various plots of land and their incorporation into curtilage of garden area Ettingley Close/Fernwood Close, Wire Hill, Redditch

(Greenlands Ward)

#### 1. Background / Key Issues

- 1.1 This matter comes before the Committee with regard to open land which separates properties in both Ettingley Close and Fernwood Close from Rough Hill Wood which falls within Stratford-upon-Avon district. Rough Hill Wood is a site of special scientific interest (SSSI) managed by the Warwickshire Nature Conservation Trust Ltd, and that part falling within the Borough boundary forms part of a larger area designated as primarily open space.
- 1.2 When permission was granted for the development of these properties in September 1993, there was a requirement that there must be a 10 metre buffer strip between the houses and the wood. That buffer strip remains in the ownership of the Trust. On completion of the houses, the strip of land created between the houses and the wood actually extended out a further 10 metres at its widest point beyond the 10 metre buffer strip owned by the Trust. This occurred as the construction company had gone into administration and the original planned garden size for the dwellings had been significantly reduced. As a result, the strip of undeveloped land was integrated into the buffer strip and there was no distinguishable barrier between the two.
- 1.3 Some time in the past, the undeveloped strip of land adjacent to the buffer strip was sold off to residents by a building company which had acquired ownership of the land. A number of residents gained ownership of the additional land and began extending their gardens outwards to incorporate the land in to the curtilage of their garden areas without the knowledge of the Council. Following a complaint about another matter, which also included the extending of the garden area, the Enforcement Officer discovered these further breaches of planning control.
- 1.4 This other matter resulted in a planning application, which was refused, and then taken to an appeal to the Secretary of State. Given that the opinion of the appeal inspector had a bearing on any view the Council might take on the matter, action was delayed pending the result of the appeal.

- 1.5 In March 2009, the appeal inspector upheld the Council decision to refuse planning permission. The Enforcement Officer subsequently carried out a full survey of the land and established that there were in total ten separate properties where this land had been incorporated within the curtilage of the dwelling. The extent ranged from just grassing over and maintaining the land or very lightweight planting to define the boundary, right up to close boarded fencing and brick walls and pillars. (For the appeal decision, see the separate item on this agenda.)

## 2. Conclusion

- 2.1 Officers consider that the passage of time with no subdivision of the buffer strip and adjacent open space has resulted in the whole area becoming buffer strip, as well as it being designated as primarily open space in Local Plan No.3. The land purchased by occupiers to the rear of their properties in the buffer strip therefore falls within the area of designated open space. In such circumstances, irrespective of ownership, the subsequent incorporation of the land into a garden area constitutes development which requires planning permission. This view was upheld by the planning inspector in the appeal decision referred to in paragraphs 1.4 and 1.5.
- 2.2 Officers consider that the cumulative effect of extending these gardens out would, by way of the eroding of the buffer strip and the resultant negative impact on visual amenity, have an unacceptable impact on the adjacent site of special scientific interest (SSSI). This is contrary to Policies R.1 and R.3 of the Borough of Redditch Local Plan No. 3
- 2.3 Officers consider that enforcement action may be necessary to return this land to its original condition. However, dependent on when the development was carried out, the possibility exists that the Council may be out of time to take action. If residents can prove that this change of use occurred more than ten years ago, it will be immune from enforcement action. Officers consider this unlikely, however, as it appears initially that these developments are more recent than that.

## 3. Recommendation

**The Committee is asked to RESOLVE that**

**in relation to breaches of Planning Control, namely, the making of a material change of use of land from public open space to curtilage of garden, authority be delegated to the Head of Legal, Democratic & Property Services, in consultation with the Acting Head of Planning and Building Control, to take enforcement action by way of:**

# Planning

## Committee

19 May 2009

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- a) **the issuing of Planning Contravention Notices to establish ownership of various plots of land, names of interested persons and dates works were carried out;**
- b) **the service of Enforcement Notices alleging material changes of use of that land, if required; and**
- c) **the institution of legal proceedings in the event of non-compliance with such Notices.**