

**PLANNING
COMMITTEE**

20th July 2010

PLANNING APPLICATION 2010/103/COU

**CHANGE OF USE OF VACANT LAND TO RESIDENTIAL GARDENS
(PART RETROSPECTIVE)**

REAR OF 23 - 28 ETTINGLEY CLOSE & 1, 2, 11 & 12 FERNWOOD CLOSE

APPLICANT: MRS J RANDALL

EXPIRY DATE: 1ST JULY 2010

WARD: GREENLANDS

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(See additional papers for Site Plan)

Site Description

1990s residential development accessed from Nine Days Lane and lying west of the Alexandra Hospital. This particular part of the estate lies to the south west, almost adjacent to the borough boundary. There is a run of detached properties with front driveways, and rear gardens that lead to a buffer strip, beyond which is the ditch that marks the County and Borough boundary, and beyond which is an area designated as SSSI and known as Rough Hill Woods. Through the woods are informal routes used by locals for recreational purposes.

The application has three separate parcels of land involved, all within the buffer strip area to the rear of the residential curtilages. The buffer strip is designated as Primarily Open Space – Amenity Open Space in the Local Plan and appears never to have been developed, having been in agricultural use until the 1980s.

This application is part retrospective, because some of these rear areas have already been enclosed by various means and to various heights (none more than 2m) and some of them have also had associated structures installed.

Proposal Description

This application is partially retrospective, in that some elements of the proposal have already begun.

The intention of the residents concerned is to extend the length of their rear gardens into the buffer strip a distance of between 5m & 8m, leaving a buffer strip of at least 10m in width to be retained.

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The application is supported by a Planning Statement, which gives information to support the development proposed. It details that the original outline consent for the residential development included a condition requiring a 10m buffer strip to be retained along the boundary in question, with a 2m fence along the bottom of the rear gardens and precluding the insertion of rear gates to prevent access to the buffer strip from the gardens.

Relevant Key Policies:

All planning applications must be considered in terms of the planning policy framework and all other relevant material considerations (as set out in the legislative framework). The planning policies noted below can be found on the following websites:

www.communities.gov.uk

www.wmra.gov.uk

www.worcestershire.gov.uk

www.redditchbc.gov.uk

National Planning Policy

PPS1 (& accompanying documents) Delivering sustainable development
PPG17 Planning for open space, sport and recreation

Worcestershire County Structure Plan

SD2 Care for the environment

CTC6 Green open spaces and corridors

Borough of Redditch Local Plan No.3

CS2 Care for the environment

R1 Primarily open space

B(NE)10a Sites of national wildlife importance

Supplementary Planning Guidance / Supplementary Planning Documents and other relevant documents

Open space provision & emerging evidence base such as the open space needs assessment

Relevant Site Planning History

A recent retrospective application for the change of use of land to the rear of 5 Fernwood Close, which included the erection of decking and fencing, was refused and subsequently dismissed at appeal on the basis of the visual intrusion resulting from the height and bulk of the decking structure.

Authority was issued to serve an enforcement notice following the appeal outcome, but the unauthorised structure was removed speedily and therefore there was no need to serve the notice.

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There is no other relevant planning history relating to the land included in this application, and the site to the rear of 5 Fernwood Close is excluded.

Public Consultation Responses

Responses against

Eight comments received raising the following points:

- Loss of integrity of buffer strip
- Loss of buffer strip habitat
- Potential for garden waste to be thrown over rear fences into the SSSI if boundaries extended
- Buffer strip should preclude public access
- No access to buffer strip should be allowed to residents
- Precedent set if this is allowed, for others to do the same
- Proposed development likely to damage the SSSI over the County boundary
- Seek to protect the important open space buffer (no width measurement given)
- Original planning permission for residential development included a buffer strip with no public access
- Insufficient ecological information provided
- Value as woodland buffer outweighs benefits of proposed change of use
- Keen to see open space protected at all costs, and are concerned about wildlife protection etc under various local and national planning policies.
- Loss of buffer between residential properties and SSS1 ancient woodland
- Potential for fly tipping at woodland edge
- Strip should be managed not enclosed
- 10m buffer strip incorrectly measured by applicants
- Claim that unkempt appearance of land is a result of minimal intervention to encourage natural habitats
- Insufficient supporting information
- Loss of biodiversity
- Seek re-instatement of buffer strip
- Should not be allowed as land owned by Wildlife Trust
- Land ownership raised

The last two issues raised are not material planning considerations and are therefore reported for information only and should not be taken into consideration when determining the application.

For information only, the application clarifies that the land in question is owned by the residential property owners to which it relates. This has been backed up by research carried out by the planning team on a separate but related matter.

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Consultee Responses

Development Plans Team

Concern raised regarding the potential loss of Primarily Open Space and its visual amenity and the potential erosion of the buffer strip. Queried the need to consult an ecologist.

Procedural Matters

The legislation sets out that retrospective applications should be determined as they would be if the work had not commenced, and that if they are not acceptable, there are enforcement options available to the local planning authority to deal with any development that becomes unauthorised in this way. Therefore, Members are reminded to determine this application in terms of the policy compliance and any harm that it is perceived likely to cause.

Whilst precedent is not a material planning consideration, decisions should be taken in line with the development plan at the time, and therefore it is likely that if similar applications are made during the same policy period, then similar decisions should result. Other decisions that are similar are material considerations of limited weight. Therefore, if there are future applications at other sites, this decision may be a material consideration of limited weight, however the policy framework at the time should be taken into full account.

Assessment of Proposal

The key issues for consideration in this case are the principle of the development and its impact on visual and residential amenity.

Principle

Due to the designation of the land, Policy R1 of Local Plan 3 applies. This seeks to protect the visual openness of identified land of amenity value, regardless of ownership, access and control. It does not require that there be any public access to such land, it simply recognises the visual amenity benefits to residents and the general public of such areas. However, the policy also provides various criteria which detail circumstances when the overall benefit of an alternative is considered to outweigh the merit of retaining open space for visual amenity purposes.

Policy R1 seeks to protect the amenity value of the area and any buffer strips, retain its open and existing use, acknowledges its relationship to other open space areas, and only accommodates its loss for the greater good of the Borough or where there is surplus or where alternative provision can be made. Ancillary developments are also accommodated within the policy, e.g. the provision of a shed for a mower on a playing pitch.

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Visual and Residential Amenity

It is considered that providing these additional areas proposed here could continue to have a positive contribution to the visual amenity of the strip of land to the rear of the dwellings, then this application might be considered favourably. It is therefore recommended that conditions could be imposed, if the application were considered favourably, to restrict the height of any boundary fences to 1m or less, and prevent the placement of structures of any kind, such as sheds, trampolines etc, within the application site area, in order to protect visual openness and amenity. Such structures, and fencing up to 2m in height, would continue to be permitted development within the original garden areas. These areas are at the greatest distance from the residential properties and the original rear gardens would remain available for other residentially ancillary purposes and these restrictions are therefore considered to be reasonable in the interests of protecting the openness that provides visual amenity.

The original outline planning consent for the residential development sought to preclude rear access gates being inserted into garden boundaries in order to protect the buffer strip, and it is recommended that in order to continue such protection, a further condition be imposed here to this effect. There would remain a buffer strip of a minimum of 10m in width and greater for the most part, and therefore the objectives of the original planning permission to protect a 10m buffer strip would still remain on site.

Sustainability

There are not considered to be any specific sustainability issues related to this proposal, and restrictions on structures and fencing would further reduce the potential for using natural and other resources on these sites.

Other Issues

There is no statutory requirement to consult an ecologist in a matter such as this, and given the extent to which the change of use has already occurred, it is not considered necessary to seek specialist advice regarding any loss of habitat etc as any damage will have largely occurred already.

As the site is not designed for wildlife reasons, it is not considered that as much weight should be given to these arguments as to those that do relate to its designation within the local plan. Due to it not being designated, or the application site abutting a designated site, it is not considered reasonable to require substantial supporting information and/or surveys relating to wildlife on the site. Further, the original buffer strip proposed (of 10m in width) would remain, even if the proposal were allowed, and it would not have any public access.

Whilst it is acknowledged that some of the representations received have come from recognised specialist bodies, it seems that there is some

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misunderstanding over the precise location and nature of this proposal, and its retrospective nature. It is noted that the land that would be enclosed if permission were granted does not have a national designation (is not a SSSI), nor does it abut one. There are no trees within the areas to be enclosed.

Conclusion

It is considered that on balance, subject to the various restrictions proposed, that the visual amenity openness afforded by these areas of land and protected through the local plan policies would be retained, and therefore the proposal is considered both to comply with the spirit and objectives of the policy protection and unlikely to cause harm to visual or residential amenity. It is further considered that this outweighs any potential harm to the nearby SSSI that the proposal could cause.

Recommendation

That having regard to the development plan and to all other material considerations, planning permission be GRANTED subject to conditions and informatives as summarised below:

1. Those elements where change of use has not yet occurred to be implemented within three years
2. No fencing or other means of enclosure greater than 1m in height to be installed around the extended garden areas defined in this application
3. Planning Development Rights to be removed in these extended garden areas to prevent structures of any kind
4. No rear gates to be installed in the southern boundaries in order to prevent access into buffer strip from private gardens
5. Land to be used only for purposes ancillary to the residential occupation to which it is attached
6. Existing structures and fencing in place above the limits set out in conditions 2 & 3 above to be removed within three months of the date of consent
7. Approved plans specified

Informatives

1. Explanation that the removal of Planning Development Rights means that no play equipment, animal shelters etc can be used on the extended garden areas.