

## PLANNING DEVELOPMENT CONTROL COMMITTEE 6<sup>TH</sup> MAY 2015

Enforcement case reference numbers: EN/14/0762, EN/14/0531 and EN/14/0533.

Site: Land at 4, 5 and 7 Hives Way, Lymington, SO41 8YE

### Development:

- Removal of boundary fences to the rear gardens
- Erection of 1.8 metre high close boarded fences to the rear.
- Enclosure of open space
- Change of use of land to residential garden.
- Removal of tree screen and hedgerow.

### 1. REASON FOR COMMITTEE CONSIDERATION

In view of conflict of opinion between Town Council and Member of Parliament

### 2. DEVELOPMENT PLAN AND OTHER CONSTRAINTS

Built up area

### 3. DEVELOPMENT PLAN, OBJECTIVES AND POLICIES

#### Core Strategy

Objectives

Policies

CS2: Design Quality

CS3: Protecting and enhancing our special environment

CS10: The Spatial Strategy

#### Local Plan Part 2 Sites and Development Management Development Plan Document

Policy DM8 : Protection of public open space, private recreation land and school playing fields.

### 4. RELEVANT LEGISLATION AND GOVERNMENT ADVICE

Section 38 Development Plan

Planning and Compulsory Purchase Act 2004

National Planning Policy Framework

National Planning Policy Guidance

**5. RELEVANT SUPPLEMENTARY PLANNING GUIDANCE AND DOCUMENTS**

Lymington Local Distinctiveness Document SPD

The New Forest District Council Local Enforcement Plan (December 2013).

**6. RELEVANT PLANNING HISTORY**

79/NFDC/13449 Erection of 52 houses and 6 flats on land south of railway line, off Southampton Road, Lymington. Construction of pedestrian/vehicular access, road and drainage. Granted Subject to Conditions 15/12/1980.

**7. PARISH / TOWN COUNCIL COMMENTS**

Lymington and Pennington Town Council: Object: The works result in a significant eyesore on an approach road into Lymington. A decision not to take action could set a terrible precedent for any property adjacent to public open space. The Town Council endorse the complainants' concerns and want steps to be taken to address the situation and restore the boundaries.

**8. COUNCILLOR COMMENTS**

None received

**9. MP COMMENTS**

Desmond Swayne TD MP, (Member of Parliament for New Forest West);

The owners of the properties have made it clear that they are prepared to go to some considerable length in terms of screening and planting. To require them to restore the status quo is an injustice.

**10. CONSULTEE COMMENTS**

NFDC Trees: The trees as a group provide a good level of public amenity especially as screening. However, the individual trees within the group are not in good structural condition and as such are unsuitable for long term retention by way of a Tree Preservation Order.

Hampshire County Council Highways: Raise no objection provided that any encroachment does not extend as far as the back of the adopted highway.

**11. REPRESENTATIONS RECEIVED**

One complainant:

Concerned and strongly object to the encroachment, cutting down of trees and shrubs and the erection of close boarded fencing on landscaped / open space land.

- This detracts from the approach to the town, is an eyesore and detracts from the visual outlook along Marsh Lane, a main road into Lymington.

- The works result in a breach of planning conditions the purpose of which is to screen the adjacent houses from the main road and to provide public amenity.
- Fencing is unsuitable at this location.
- The works will set a precedent resulting in a mass of fencing in various states of repair along one of the main routes into Lymington, a very prominent location.
- The works are contrary to the NFDC vision: “Conserving the environment of the New Forest District for the peaceful enjoyment of residents and visitors”.

Correspondence from owners:

Guidance was sought from the Council prior to the commencement of works.

They have confirmed that they are willing to plant evergreen hedging along the boundary line with the public highway, on land in their ownership, to act as screening for the fence.

## **12. CRIME & DISORDER IMPLICATIONS**

Not applicable

## **13. LOCAL FINANCE CONSIDERATIONS**

Local financial considerations are not material to the decision.

## **14. WORKING WITH THE APPLICANT/ AGENT**

These cases relate to an enforcement complaint. Attempts have been made to resolve the breach of planning control and assessment has now to be made on the expediency of taking formal enforcement action. It is not normal practice to seek a Committee determination but in view of the objections raised and other material consideration, it is appropriate in this case.

## **15. ASSESSMENT**

15.1 The sites are located in a prominent position adjacent to Marsh Lane – a classified road linked to Southampton Road - where there has historically been a verge to the highway and open landscaping features in the form of trees and shrubs. These works were undertaken to Nos 4, 5 and 7 Hives Way between August and November 2014. In these cases the residential curtilages of 3 properties on Hives Way have been extended towards Marsh Lane and enclosed with 1.8 m high close boarded fencing. A number of trees and shrubs have been removed. The combined impact of the removal of the planting and re-location of fencing has had an impact on visual amenity and the character of the area.

15.2 By way of context, conditions 7 and 12 of the original planning approval 79/NFDC/13449 are particularly relevant in this case;

Condition 7 states:

“The existing natural tree screen (or hedgerow) along the western boundary of the site shall be retained and reinforced where necessary to the satisfaction of the Local Planning Authority”

The reason for this condition was to maintain the appearance of the locality

Condition 12 states:

“The land annotated as Public Open Space and Play Areas on the approved plan shall be laid out and maintained to the satisfaction of the Local Planning Authority for these purposes in relation to the remainder of the site to be redeveloped.

The reason for this condition was to provide adequate amenities for the development.

15.3 It is accepted that the current development has resulted in a breach of conditions 7 and 12 outlined above. The conditions however were drafted in 1979 and have been reviewed accordance with NPPF guidance on conditions (Paragraph 206). This guidance requires conditions to be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In this policy context these conditions are not seen to be specific enough in their terms or requirements to enable the Council to confidently pursue enforcement action on a breach of condition.

15.4 As such the development that has been undertaken has been considered having had regard to the following matters:

1. Tree screen and hedgerow:

Condition 7 of the original planning approval requires the tree screen on the western boundary to be retained. The tree screen was not however protected by a Tree Preservation Order after the development was completed to preserve the visual character of the area. A condition alone is not the most appropriate way to secure protection of important trees in the longer term. Following consultation with the tree team it is not considered that the remaining trees on the site are worthy of protection

2. Public open space

The land has never fulfilled a function as public open space and is in the ownership of 4, 5 and 7 Hives Way.

If the land had been adopted as public open space then protection of the trees and hedgerow may have been more realistic however it was conveyed, along with other land, into private ownership.

Evidence indicates that prior to the unauthorised development taking place this was an overgrown area of scrub land which fulfilled no public function other than as a visual barrier. The evergreen planting offered by the property owners will restore a green edge to the site once it reaches maturity. However, while the owners have undertaken to carry out this planting, it is important to note that in the absence of a planning condition the long term retention (and the replanting of any plants that do not thrive) could not be guaranteed

### 3. Fencing

Close board fencing of 1.8 m in height now forms the boundary treatment of the rear gardens of these properties. The erection of a fence over 1 metre is not permitted if it is adjacent to a highway. It is not however considered that the fences as now present are erected adjacent to the highway as the setback allows for the planting of the area between the fence and highway as outlined above. The ability to plant this area in itself is considered evidence that the fence is not located adjacent to the highway.

For this reason formal planning permission is not required for the erection of these fences in the absence of the other matters outlined in this report.

### 4. Change of use

By incorporating this land into residential gardens a material change of use has occurred. However, as the land was not adopted as Public Open space or formally in use for any other purpose, it is not considered that this change of use, whilst technically a breach of planning control, is so harmful in its impact to justify enforcement action being taken in this instance.

### Conclusion

- 15.5 On the balance of the issues set out above, and subject to the satisfactory planting of an evergreen hedge as agreed by the owners of the sites, it is not considered that it would be expedient to pursue enforcement action. The proposed planting is considered to ameliorate any visual harm to the street scene that could be demonstrated to an acceptable level.
- 15.6 Notwithstanding conditions of the original planning consent, , once planting has been carried out, the development would not result in an obtrusive or overbearing feature that causes demonstrable visual or functional harm to the character of the area.
- 15.7 As each case is considered on its own individual merits the issues of precedent raised by the complainant are not relevant to this determination.
- 15.8 The need to maintain public confidence in the planning system and the proportionality of taking action underpins enforcement procedures and the decision on whether it is appropriate to serve an Enforcement Notice. Having had regard to Paragraph 207 of the National Planning Policy Framework (2012) it is considered that it would be unreasonable for the Local Planning Authority to issue an enforcement notice as there is felt to be no significant harm or planning objection.
- 15.9 While it is unsatisfactory for any person to carry out development without first obtaining permission, the local planning authority should not issue an enforcement notice solely to "regularise" the development, which can be considered acceptable on its individual planning merits.
- 15.10 In coming to this recommendation not to take enforcement action, consideration must be given to the rights set out in Article 8 (rights to privacy) and Article 1 of the First Protocol (right to a peaceful enjoyment of possessions) of the European Convention on

Human Rights. In this case, the outcome is considered proportionate to the legitimate aim and in the wider public interest.

15.11 Notwithstanding the above, it is important to note that the absence of the required planning permission for such works may present difficulties if the property owners wished to dispose of the property in the future.

## **16. RECOMMENDATION**

**HEAD OF PLANNING AND TRANSPORTATION be authorised to determine that it is NOT EXPEDIENT to take formal Enforcement Action SUBJECT TO the planting of suitable screening between the fences and Marsh Lane.**

**Further Information:**  
Enforcement Team  
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**Planning Development  
Control Committee**  
**May 2015**

**Item No: 4(a)**

Land at  
4, 5 & 7 Hives Way  
Lymington  
EN/14/0762, 0531 & 0533  
SZ3196

Scale 1:1250

N.B. If printing this plan from  
the internet, it will not be to  
scale.



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