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**East Area Planning Committee**

8th May 2014

**Application Number:** 13/02629/FUL

**Decision Due by:** 17th March 2014

**Proposal:** Erection of boundary fence and change of use of amenity land to private garden land (retrospective).

**Site Address:** 157 Green Ridges Oxford Oxfordshire OX3 8LX

**Ward:** Barton And Sandhills

**Agent:** N/A

**Applicant:** Mr David Moore

**Application Called in –** Called in by Councillors Coulter, Rowley, Kennedy and Fry for the following reasons – substantial objections and impact on cycle/pedestrian path and public amenity land.

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## **Recommendation:**

APPLICATION BE APPROVED

For the following reasons:

- 1 The Council considers that the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity. Any material harm that the development would otherwise give rise to can be offset by the conditions imposed.
- 2 The change of use of the small amount of land and the relocation of the boundary fence are acceptable in terms of visual appearance and the height, design and siting of the fence. It is considered that the existing planting adjacent to the boundary has softened the appearance of the fence to a certain degree and ensures that the quality of the amenity of the adjacent cycle path has been retained. A condition has been included that will allow for additional planting that will further reduce the impact of the fence and ensure that the design of the development is acceptable. The loss of the amenity land and incorporation of the amenity land into the private amenity space of 157 Green Ridges is acceptable; the small area lost was not useable public space and its loss has not had a materially detrimental impact on the public realm. In the determination of this application officers have been mindful of the objections and comments made by nearby residential occupiers. In addition to this officers have considered the justification put forward by the applicant that the development was carried out to improve their security and protect their

property. On the basis of the assessment of the application it is considered that the development is acceptable in the context of Policies CP1, CP8 and CP10 of the Oxford Local Plan 2001-2016 and Policy CS18 of the Core Strategy (2011); the development is acceptable in its existing form and can be approved.

subject to the following conditions, which have been imposed for the reasons stated:-

1. Landscaping by end of next planting season

### **Main Local Plan Policies:**

#### **Oxford Local Plan 2001-2016**

**CP1** - Development Proposals

**CP6** - Efficient Use of Land & Density

**CP8** - Design Development to Relate to its Context

#### **Core Strategy**

**CS18\_** - Urban design, town character, historic environment

#### **Sites and Housing Plan**

**HP13\_** - Outdoor Space

**HP14\_** - Privacy and Daylight

### **Other Material Considerations:**

National Planning Policy Framework

### **Relevant Site History:**

12/02549/FUL - Erection of a 1.8 metre high timber fence to the side elevation, facing the cycle path – Application Returned

### **Representations Received:**

#### **Objections**

Green Ridges Freehold Company (c/o Breckon and Breckon), Mrs Mainstone (93 Green Ridges), Mr Pozzi (8 Lesparre Close, Drayton), Mr Bajowski (15 Green Ridges), Green Ridges Management Company (c/o Breckon and Breckon), Mr Jones (57 Green Ridges), Mrs Sly (129 Green Ridges), 166 Green Ridges (Mrs Carter), Mr Carter (81 Ravenscroft), Mrs Skinner (43 Green Ridges), Dr Lewis (169 Green Ridges), Mr Welch (77 Green Ridges), Mrs Everett (55 Green Ridges):

In summary the objections raised concerns about:

- Negative effect on the character of the area,
- Negative effect on adjoining properties,
- The land should be available to all as it is amenity land,
- Fencing used has a negative aesthetic impact on the area,
- Supposed to be an open space area,
- Removal of trees and shrubbery without permission
- Design concerns about fence
- Poor quality landscaping
- Sets a dangerous precedent

### **Comments in Support**

It should be noted that some of the comments received in support of the application were submitted after the statutory consultation period.

Mr Samuel (Bayswater Farm Road), Mr Boman, Mr Treble (119 Green Ridges), Mr Corrick (163 Green Ridges), Mrs Colwell (151 Green Ridges), Justyna (44 Green Ridges), Mrs Green (4 Burdell Avenue), Mr Rodrigues (129 Green Ridges), Mrs Cork, Ms Fallahi (59 Waynflete Road), Dr Fisher (121 Green Ridges), Mr Head (135 Green Ridges), Mr Shott (165 Green Ridges), Mrs Smith, Mr Koshinski (77 Green Ridges), Mr Mwangangi (133 Green Ridges), Mr Charlton (93 Green Ridges):

- Design of fence is acceptable
- Development is an improvement
- Improved security
- Decrease in dog fouling and litter because of development
- Pathway is less overgrown

### **Statutory and Internal Consultees:**

Risinghurst & Sandhills Parish Council: No comment received

### **Issues:**

Design

Impact on public amenity area

Highway impact (cycle/pedestrian)

Security/public safety

Landscaping/vegetation

### **Officers Assessment:**

#### **Site Description**

1. 157 Green Ridges is an end of terrace property in the Barton area. The property is sited at the end of a cul-de-sac where the road narrows to form a cycle and pedestrian path that joins Green Ridges with the A40 (London Road). As a result the property would be best described as occupying a corner plot with a slightly wider rear garden than neighbouring properties and the rear garden borders the cycle and pedestrian path. Between the cycle

and pedestrian path and fence enclosing the rear garden of 157 Green Ridges is a narrow strip of amenity land; this is within the ownership of the applicant but does not form part of their residential curtilage.

### **Planning History**

2. In 2012 a planning application was submitted (reference 12/02549/FUL) for a replacement fence of approximately 1.8m in height. The fence was proposed to be constructed of close boarded timber. The previous fence was 1.8m in height and stained dark brown. Importantly the amenity land between the original fence and the cycle and pedestrian path contained a substantial amount of mature vegetation that meant the original fence was not visible.
3. The 2012 planning application proposed that the fence be sited closer to the cycle and pedestrian path. The plans submitted with the 2012 planning application set out that the original fence was approximately 1m from the cycle and pedestrian path; the proposed fence would be sited approximately 370cm from the pedestrian and cycle path.
4. The 2012 planning application was submitted as a householder planning application; this means that a householder application form was used and the relevant process was followed. Subsequent to the submission of the application it was realised that in fact the proposals would result in a change of use of the land (from amenity land to garden land forming part of the residential curtilage of 157 Green Ridges); this meant that the application should have been submitted as a full planning application. Because the incorrect application form was used the application was made invalid. The 2012 application was returned to the applicant and not determined.
5. Subsequent to the application being returned to the applicant the development proposed in the 2012 planning application was carried out and this led to a planning enforcement investigation. The development carried out was unauthorised and it is this development that is the subject of this planning application (reference 13/02629/FUL).

### **Proposals**

6. As set out above, planning permission is sought for the retention of an existing fence and a change of use of former amenity land that now forms part of the residential curtilage of 157 Green Ridges. To clarify, this application is retrospective.
7. The plans submitted with this application differ from those submitted in 2012 but it is the view of Officers that planning permission is sought to retain the existing development; the plans submitted with this application have been corroborated with the observations made on site and the photographic record of the site before the development was carried out to provide an accurate description of the development for which permission is sought.

8. The fence erected is 1.8m in height (and 2.2m in height to the top of the trellis which is atop the fence). The siting of the fence is a particularly important consideration for this application because it encloses amenity land as previously mentioned. The siting of the new fence differs from the original fence in two respects. Firstly, the new fence is sited closer to the cycle and pedestrian path; the original fence had been 1m from the edge of the cycle and pedestrian path whereas the new fence is approximately 370cm from the edge of the cycle and pedestrian path. Secondly, an area to the side of 157 Green Ridges has been enclosed near to the door on the side of the property which has created an additional section of side garden approximately 3.5m<sup>2</sup>. To clarify this point, whereas the fence had been set in at the corner it now extends towards the cycle and pedestrian path creating a prominent junction of the two sections of fence.
9. When the work was carried out to erect the fence and enclose the amenity land it involved the clearance of the mature vegetation that had originally been on the strip of land between the original fence and the cycle and pedestrian path. There are Tree Preservation Orders (TPOs) in close proximity to the application site but none of the vegetation lost was protected and therefore the loss of this vegetation in itself did not require the prior consent of the Local Planning Authority. When the work was carried out to erect the new fence, planting was provided in the remaining strip of amenity land between the fence and the cycle and pedestrian path. The planting that has been provided is not as dense or mature as the original vegetation. The application does include details about more planting being proposed which is described fully in this report.

## **Design**

10. The fence that has been erected is acceptable in terms of its design. Although it is higher than the previous fence it is considered that the height itself is not unacceptable; fences of this height are a common boundary treatment in residential areas.
11. Concerns have been raised by local residents about the design of the fence; specifically that it has a stark and obtrusive appearance. It is the view of officers that the fence appears particularly bright in colour because it is newer but this will soften in time. It is considered particularly important to consider the acceptability of the current fence in the context of the original fence which was less obtrusively sited as it was further from the cycle and pedestrian path and was not visible because of the dense vegetation. In fact the current fence is not significantly higher than the original fence and although it is sited closer to the pedestrian and cycle path, a condition requiring extra planting could be included that reduces its prominence and enables its impact to be reduced. This is expanded upon in the next section of this report and specifically in Paragraph 5.5.
12. Some residents have objected to the design of the fence because the rails were originally on the outside of the fence and were visible from the cycle and

pedestrian path. It is customary for fences erected as boundary treatments for the rails to be on the inside of the fence so that the external appearance is tidier when viewed from the public realm and to increase security as the rails can be used to climb over. Immediately prior to the submission of this application the fence was 'double-sided' so that boards were installed to the outside of the fence. This work was carried out to improve the appearance of the fence and it is suggested that this work has substantially improved its design by ensuring it is tidier when viewed from the cycle and pedestrian path.

13. On the basis of the above officers consider that the design of the fence as approved in the application is acceptable in the context of adopted planning policies and specifically policies CP1 and CP8 of the Oxford Local Plan 2001-2016.

### **Vegetation and Loss of Amenity Land**

14. As previously set out the development resulted in the loss of some of the amenity land that bordered the cycle and pedestrian path. The quantity of the amenity land that has been lost as a result of this development is fully described in Paragraph 3.3 of this report. In addition to the loss of the amenity land the development also resulted in the loss of mature vegetation that occupied the amenity land. Prior to assessing the impact of this development it is important to consider the value and quality of the amenity land that is affected by this application. It is suggested that the main function of the amenity land in this area serves to provide a pleasant border along the cycle and pedestrian path. The contribution the amenity land makes is achieved by providing separation between the private gardens and fences to the gardens and the pathway itself; creating a more open aspect and reinforcing the separation between the public and private realm. In addition to this the amenity land has a positive impact on the cycle and pedestrian path by providing space for planting which enables the path to have a verdant and semi-rural character.
15. Officers consider that the loss of both the strip of amenity land adjacent to the cycle and pedestrian path as well as the additional portion of land that has been enclosed into the garden nearer to the front of the house at 157 Green Ridges is not sufficiently harmful to warrant a recommendation to refuse the application. The justification for this is threefold and is set out in detail below. It should be noted that in the determination of the acceptability of the loss of amenity land officers have been mindful of the objections made by residents and these have been responded to in the justifications set out below.
16. Firstly, the actual quantity of amenity land that has been lost is a relatively small amount of land; the strip of amenity land along the cycle and pedestrian path that has been lost is approximately 0.7m. It is suggested that the loss of this amount of amenity land is not sufficiently harmful to warrant a recommendation for refusal in itself. Concerns have been raised by local residents about the loss of amenity land and the encroachment of the fence

(and widened garden) on the public realm. There have also been concerns about precedent that would result from allowing for the loss of the amenity land. In response to these concerns it is suggested that each application is looked at on its merits and the enclosing of any amenity land into residential curtilage of a dwelling requires planning permission and the Council is therefore in a position as Local Planning Authority to assess the merits of each application of this kind. In this instance, on balance the loss of a very small section of amenity land does not warrant a recommendation for refusal.

17. The second justification for the acceptability of loss of the amenity land is that the development has not resulted in the remaining amenity land not being able to fulfil its function as previously described in Paragraph 5.1. Specifically the retained portion of amenity land creates a pleasant border to the cycle and pedestrian path and contributes positively to its open aspect. It is the view of officers that the development has not resulted in the amenity land being sufficiently eroded in quality to the extent that the application should be refused.
18. Lastly, it is important to consider the loss of the vegetation that was brought about by the development as the opportunity to include conditions with an approval would arguably present a significant opportunity to remedy any perceived harm that has resulted in the erection of the fence and enclosing of amenity land. Significant concerns have been raised in objections to the application about the loss of the mature vegetation that bordered the cycle and pedestrian path. As this vegetation was not protected and no prior consent of the Local Planning Authority was required for its removal it could not form a reason for refusing the application. However, in order to remedy the limited harm that has arisen from the loss of amenity land and higher and more prominent fence, a condition has been recommended by officers that would require further planting along the retained amenity land which would be to the benefit of the public realm. This condition would serve to remedy any visual harm caused by the relocation of the fence and to some extent the loss of the original planting.

### **Pedestrian and Cycle Access**

19. The impact of the development on the cycle and pedestrian path has already been discussed in some detail above. However, it is important to specifically point out that it is the view of officers that the development has not had a detrimental impact on the accessibility of the cycle and pedestrian path and the loss of the amenity land has not damaged the functionality of the highway.

### **Security, Crime and Safety**

20. The applicant has partially justified the work that was carried out on the basis that it has improved the security of his property and specifically that the additional land enclosed nearer to the front of the house at 157 Green Ridges was carried out following the advice of the police. The applicant has provided information about a number of attempts by intruders to enter his property or

garden; the fence was installed to improve security by providing a more robust and higher fence.

21. Following on from the above, it should be noted that a number of residents have made comments that relate to the improvement to security and safety that has been brought about because of the erection of the new fence. It is suggested that the clearance of the vegetation has meant that the cycle and pedestrian path is more open and this reduces the risk or perceived risk of crime. In addition to this some local residents have commented that as a result of the reduced amount of vegetation there are less instances of dog fouling and litter.
22. Officers have been mindful of the justification for the development made by the applicant on the grounds that the fence has improved security. Officers have also considered the positive comments made by some residents in relation to the perceived improvement of the public realm that has been facilitated by the development.

### **Conclusion:**

23. On the basis of the above officers recommend that the application be approved as the design of the fence and the change of use of the amenity land accord with all the relevant planning policies and specifically Policies CP1, CP8 and CP10 of the Oxford Local Plan 2001-2016 and Policy CS18 of the Core Strategy. One condition is recommended to provide landscaping within an appropriate timeframe that will counter the intrusion of the fence on the cycle and pedestrian path and the loss of some of the amenity land. In reaching the conclusion to recommend approval of the planning application officers have been mindful of the objections and comments made by residents and specifically the impact of the development on the cycle and pedestrian path and the public realm.

### **Human Rights Act 1998**

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.



## Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to grant planning permission subject to a condition officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

### **Background Papers:**

12/02549/FUL

13/02629/FUL

**Contact Officer:** Robert Fowler

**Extension:** 2104

**Date:** 24th April 2014

157 Green Ridges

