

27 JUNE 2023 PLANNING COMMITTEE

6e PLAN/2023/0404

WARD: KNA

LOCATION: 1 Randolph Close, Woking, Surrey, GU21 2NF

PROPOSAL: Retrospective application for new 1.8m tall boundary fencing and change of use from amenity land to private residential.

APPLICANT: C. Sherred, C. Walton

OFFICER: Benjamin Bailey

REASON FOR REFERRAL TO COMMITTEE

The recommendation includes enforcement action and the decision on whether to issue an Enforcement Notice falls outside the Scheme of Delegations.

SUMMARY OF PROPOSED DEVELOPMENT

Retrospective application for new 1.8m tall boundary fencing and change of use from amenity land to private residential.

PLANNING STATUS

- Urban Area

RECOMMENDATION

Refuse planning permission and authorise enforcement action.

SITE DESCRIPTION

No.1 Randolph Close is a two storey end-of-terrace, dual-pitched house located within the Goldsworth Park estate, close to the 'boundary' of the estate with Robin Hood Road. The house presents its side elevation and boundary to Creston Avenue and is externally finished in red facing brickwork, albeit with cladding at first floor level to the front elevation, and with white window frames below a tiled roof. The rear garden is laid to lawn with the exception of a small patio area close to the rear of the house, a small shed is located close to the rear boundary. The frontage is laid to planting and hard landscaping. No on-site parking is provided.

RELEVANT PLANNING HISTORY

87/0261 - Relocation of close boarded fence to perimeter of side and rear garden. Refused (02.06.1987) for the following reason:

- 01. The proposed development would result in the enclosure of a prominent piece of open space, which contributes to the visual amenities and spaciousness of this part of the estate.*

80/1096 - The execution of site works and the carrying out of landscaping works on areas of land not to be adopted at Goldsworth Park, Phase 2, Woking (land off Lockfield Drive, south of site A2). Permitted subject to condition (28.01.1981)

32661 - The demolition of any existing buildings, the execution of site works, the

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erection of 63 (sixty three) bungalows, 125 (one hundred and twenty five) houses, three electricity sub stations, and provision of three play areas and parking areas, 172 garages, on land at Phase II, Goldsworth Park, Woking (Approval of reserved matters following the grant of outline permission No.28268).
Permitted subject to conditions (31.05.1974)

CONSULTATIONS

None undertaken

REPRESENTATIONS

x2 letters of representation have been received in support of the application raising the following points:

- Fully support my neighbours retrospective application [letter received from No.4 Randolph Close]
- I think I have the only property affected by the fencing [letter received from No.5 Creston Avenue] and I have no objections
- The fencing makes the area much tidier now that people are unable to throw their rubbish on the verge or let their dogs foul it

RELEVANT PLANNING POLICIES

National Planning Policy Framework (NPPF) (2021)

Section 2 - Achieving sustainable development

Section 4 - Decision-making

Section 12 - Achieving well-designed places

Woking Core Strategy (2012)

CS17 - Open space, green infrastructure, sport and recreation

CS21 - Design

CS24 - Woking's landscape and townscape

CS25 - Presumption in favour of sustainable development

Development Management Policies Development Plan Document (DM Policies DPD) (2016)

DM2 - Trees and landscaping

Supplementary Planning Documents (SPDs)

Design (2015)

Outlook, Amenity, Privacy and Daylight (2022)

Other Material Considerations

Planning Practice Guidance (PPG) (online resource)

Community Infrastructure Levy (CIL) Charging Schedule (2015)

BACKGROUND

This planning application is retrospective in nature and has been submitted following an enforcement complaint and investigation, which has established that there are breaches of planning control.

In this case the breaches of planning control are the material change of use of the amenity land to residential garden and the erection of close boarded timber fencing which exceeds 1 metre in height adjacent to a highway. The Committee is requested

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to note that even though land adjacent to a residential property may be within the ownership of person(s) together with that residential property, it does not necessarily follow that the lawful use of the adjoining land is residential use. In this case the original layout for the housing development in the local area shows that the now enclosed amenity land fell outside the fenced enclosure to the residential garden of the house of No.1 Randolph Close. It also displayed the characteristics of 'amenity land,' which is an area that is landscaped for the benefit and enhancement of the estate as a whole, rather than a private garden associated with a residential use. There is a similar arrangement to other nearby properties, including to the side of No.15 Randolph Close (to the north-east).

The planning application form states that the work or change of use started on 04/03/2023 and was completed on 11/03/2023.

PLANNING ISSUES

01. The main planning issues to consider in determining this planning application are the effects on:
- Character and appearance of the area;
 - Neighbouring amenity;
 - Other matters; and
 - Local finance considerations
- having regard to the relevant policies of the Development Plan, other relevant material planning considerations (including Supplementary Planning Documents) and national planning policy and guidance.

Character and appearance of the area

02. Policy CS21 (Design) of the Woking Core Strategy (2012) states, amongst other things, that *"Proposals for new development should...Create buildings and places that are attractive with their own distinct identity; they should respect and make a positive contribution to the street scene and the character of the area in which they are situated, paying due regard to the scale, height, proportions, building lines, layout, materials and other characteristics of adjoining buildings and land [and] Incorporate landscaping to enhance the setting of the development, including the retention of any trees of amenity value, and other significant landscape features of merit, and provide for suitable boundary treatment/s"* (emphases added).
03. Policy CS24 (Woking's landscape and townscape) of the Woking Core Strategy (2012) states that *"All development proposals will provide a positive benefit in terms of landscape and townscape character, and local distinctiveness"* (emphasis added).
04. Policy CS17 (Open space, green infrastructure, sport and recreation) of the Woking Core Strategy (2012) is also considered applicable in this instance. The preamble to the policy states (at para 5.146) that *"Green infrastructure relates to a network of multi-functional open space and other environmental features [and that, among others] the following can form part of green infrastructure networks: Natural and semi-natural greenspaces, Amenity greenspace"*. Furthermore, noting the definition of 'Open space' in the glossary to the NPPF (2021), which states *"All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual*

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amenity”, and thus addresses the role of open space in terms of public value and visual amenity, it is considered that Policy CS17 applies to the area of amenity land in this instance because (prior to its enclosure with fencing) it formed an area of open space of public value which contributed positively to the visual amenity of the area. Whilst, in its former condition, the area of amenity land may not have been actively used, that fails to appreciate the (pre-enclosure) public value of the land in visual amenity terms.

05. Policy CS17 states that *“Development involving the loss of open space will not be permitted unless: alternative and equivalent or better provision is made in the vicinity, or the development is directly related to the enhancement of the open space”*. The proposal results in the loss of open space (to residential garden land) and would not provide alternative and equivalent or better provision in the locality or be directly related to the enhancement of open space. The proposal is therefore contrary to Policy CS17 of the Woking Core Strategy (2012) in this regard.
06. Policy DM2 (Trees and landscaping) of the Development Management Policies Development Plan Document (DM Policies DPD) (2016) states that *“Trees, hedgerows and other vegetation of amenity and/or environmental significance or which form part of the intrinsic character of an area must be considered holistically as part of the landscaping treatment of new development. When considering development proposals, the Council will...(iii) require landscape proposals for new development to retain existing trees and other important landscape features where practicable”*.
07. Paragraph 126 of the National Planning Policy Framework (NPPF) (2021) states that *“The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development”*. The NPPF (2021) also states that planning decisions should ensure that developments, inter alia, *“are visually attractive as a result of good architecture, layout and appropriate and effective landscaping...establish or maintain a strong sense of place, using arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit”* (paragraph 130).
08. The ‘Residential extensions’ section (9D) of Supplementary Planning Document (SPD) Design (2015) states that *“Boundary treatment should be well considered and in keeping with the existing building and streetscape”*.
09. No.1 Randolph Close is located within Goldsworth Park. Goldsworth Park was developed by New Ideal Homes Ltd and was begun in the 1970s. It contains over 4,500 properties and was implemented over a fifteen year period. The estate was deliberately laid out as closes, clusters and small groups of houses to break up the scale of the development and create individual areas. Residential properties are generally arranged along cul-de-sacs, which branch off the main distributor roads. The housing layout and typology creates a sense of unity throughout the estate.
10. The area of amenity land in this instance measures around 13 metres in length and around 3 metres in width (i.e., it has an area of around 39 sq.m). The relocated fencing is therefore around 3 metres closer to the back edge of the footway than the former situation. The amenity land also slopes down slightly

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towards the (lawful) garden of No.1 Randolph Close, by between around 0.2 metres and 0.4 metres. The combined effect of the spacing between the former fencing and the back edge of the footway, and the slightly lower ground level at which the former fencing was located, is that the former fencing was much less prominent in the Creston Avenue street scene than the present, new fencing.

11. The predominant grain and pattern of development in the local area is of single and two storey semi-detached and terraced houses fronting the cul-de-sacs of Randolph Close, Semper Close, Choir Green and Mint Walk. Only three houses directly front onto this section of Creston Avenue, which is a distributor road (i.e., Nos.1, 3 & 5 Creston Avenue), these are located to the rear (south-west) of the application site. Several houses fronting nearby cul-de-sacs present their side elevations/boundaries to the distributor road of Creston Avenue, including Nos.1 & 15 Randolph Close, Nos.25 & 26 Mint Walk, No.2 Staveley Way and at No.21 Semper Close. There are numerous areas of amenity land within the local area, including a notable space through the middle of Mint Walk. Due to the orientation of the house on the application site, and its corner location, its side (east) elevation/boundary faces onto Creston Avenue.
12. However, as originally designed, the side elevations/boundaries of Nos.1 & 15 Randolph Close aligned with the front elevations of Nos.1, 3 & 5 Creston Avenue (to the south-west). Formerly the side (east) garden fence of the application property aligned with the side elevation of the house itself, and with the front elevations of Nos.1, 3 & 5 Creston Avenue, which have open frontages/front gardens (i.e., there are no front fences or walls at Nos.1, 3 & 5 and their potential installation is precluded via a planning condition attached to the original permission). This original layout of the housing in this area thus provided for a circa 3 metre wide area of amenity land between the side of the house/garden at No.1 Randolph Close and the back edge of the footway, which maintained an openness and spaciousness, particularly when taken together with the further area of amenity land to the side of No.15 Randolph Close (to the north-east) and the open plan frontages/front gardens of Nos.1, 3 & 5 Creston Avenue (to the south-west). That original housing/amenity land layout is shown on the relevant planning permission drawings for the development of housing in the local area (pp refs: 32661 & 80/1096). Collectively the amenity land to the sides of Nos.1 & 15 Randolph Close combines with the open plan frontages/front gardens of Nos.1, 3 & 5 Creston Avenue to create a spacious and attractive landscape setting to this entrance into the Goldsworth Park estate (this entrance being from Robin Hood Road).
13. Given the relative extent of the relocated side boundary fencing facing Creston Avenue, combined with its height, alignment forwards of the front elevations of Nos.1, 3 & 5 Creston Avenue, and its appearance, it has an unduly imposing presence in the Creston Avenue street scene. It dominates the entrance to Creston Avenue (when entering from Robin Hood Road) and because of its corner location, is prominent in views from both Creston Avenue and Robin Hood Road.
14. The new, relocated fencing now extends up to, and in line with, the back edge of the footway and therefore is located forwards of the front elevations of Nos.1, 3 & 5 Creston Avenue, whereas previously it was set back from both the footway and generally aligned with the front elevations of Nos.1, 3 & 5. That former alignment, together with the circa 3 metre wide area of amenity land between the fencing and the footway, afforded the boundary treatment a much

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more subservient and softer relationship with the Creston Avenue street scene. In contrast, the relocated close boarded timber fencing, with concrete posts, appears harsh and unsympathetic to its context.

15. Combined with the loss of amenity land, the relocated close boarded timber fencing undermines the openness and spaciousness of this part of the Goldsworth Park estate. Moreover, because of its height and alignment at the back of the footway, the enclosure is also somewhat oppressive to pedestrians.
16. In this instance it is also a material consideration that planning permission was refused at the application site in June 1987 for a form of development which is almost identical to that for which retrospective planning permission is presently sought. Planning permission was refused in 1987 for the "*Relocation of close boarded fence to perimeter of side and rear garden*" because "*The proposed development would result in the enclosure of a prominent piece of open space, which contributes to the visual amenities and spaciousness of this part of the estate*" (ref: 87/0261). Whilst the 36 year age of that planning decision is acknowledged it must nonetheless be afforded weight in the determination of the present planning application because it relates to the same application site and an almost identical form of development.
17. The applicant has submitted a document with the planning application, which contains photographs of similar timber fencing at nearby No.2 Staveley Way and at No.1 Chipstead Court. The example at No.2 Staveley Way includes timber fencing of a similar height and which is located at the back edge of the footway. The example at No.2 Staveley Way is located on the opposite side of Creston Avenue (to the north-east) to the application site and it is clear that the existing alignment of the side elevations of the houses, and of the fencing, at No.2 Staveley Way (and at No.26 Mint Walk) is that which is shown on the original approved plans for this area of housing development. The example at No.2 Staveley Way (and at No.26 Mint Walk) is therefore not comparable because the original layout of this part of the estate did not incorporate areas of amenity land between the side of those houses and the back edge of the footway, as was the case to the side of No.1 Randolph Close. Moreover, on the opposite (eastern) side of Creston Avenue no houses front Creston Avenue directly, as is the case with Nos.1, 3 & 5 Creston Avenue (to the south-west). As set out previously the former amenity land to the side of No.1 Randolph Close was clearly originally designed to work collectively with the amenity land to the side of No.15 Randolph Close and with the open plan design of the frontages to Nos.1, 3 & 5 Creston Avenue. This is not comparable to the situation on the opposite side of Creston Avenue, including at No.2 Staveley Way and at No.26 Mint Walk.
18. The further example within the applicants supporting document is at No.1 Chipstead Court, which is around 145 metres north of the application site (as the crow flies). Due to this separation distance, and the curve of Creston Avenue around to the north-west, No.1 Chipstead Court is not considered to form part of the contextual street scene with the application site. Planning permission was refused in February 1976 (ref: 76/0033) for "*The re-siting of a 6ft high boundary fence, 6ft 7ins forward to enclose a strip of land 42ft in length alongside part of the flank wall and rear garden of No.1 Chipstead Court*" because that development "*would, if approved, set a precedent for other fences on the Goldsworth Park Estate to be moved into a similar position. The overall effect of the loss of grass verges between footpaths and fences would be*

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detrimental to the visual amenities of the development.” However, planning permission was subsequently granted on appeal in January 1977.

19. In granting planning permission at No.1 Chipstead Court the Inspector stated (at para 6) that *“The curving nature of the Avenue to the south of your home has resulted in some garden fences obtruding to within 2-3ins of the footpath”* and (at para 7) that *“To the north, your rear garden abuts on to land used for car parking by the tenants of a council housing estate. In this area I have noted that the enclosing fences encroached to within 10ins of the footpath. The side of your house overlooks open allotment gardens on the west side of Creston Avenue”*. At paragraph 8 the Inspector states that *“The impression I gained when approaching your house from both north and south is that, unlike the prominent features of other projecting fences to which I have referred, your site enjoys the advantage of being somewhat set back, especially as it borders the outer curves of this winding avenue”* and that (at para 9) *“Since lodging your appeal for permission to enclose a strip of land 6ft 7ins in width, you have offered to reduce this slightly to allow for the planting of creeping plants. I have therefore made a condition to this effect.”* At paragraph 10 the Inspector concludes that *“In these circumstances, I take the view that a re-siting of this fence would not represent a departure from the general pattern of boundary fences on this estate, nor would it offend the visual amenities or outlook from neighbouring homes”* (emphases added).
20. It is clear from the appeal decision (particularly from those elements to which emphasis has been added above) that the decision of the Inspector turned on the particular circumstances of No.1 Chipstead Court, which is around 145 metres away from the application site (as the crow flies). Furthermore, the 46+ year age of that appeal decision, together with the site specific nature of the design and character consideration involved, are such that the appeal decision should be afforded only very limited weight in the determination of the present planning application, which stands to be considered on its individual, and site specific, merits and against the provisions of the present Development Plan and other material considerations (i.e., including the NPPF (2021) and SPD Design (2015)).
21. Moreover, and as set out previously, the former amenity land to the side of No.1 Randolph Close was originally designed to work collectively with the amenity land to the side of No.15 Randolph Close and with the open plan design of the frontages to Nos.1, 3 & 5 Creston Avenue, clearly this is not comparable to the situation at No.1 Chipstead Court.
22. The ‘newness’ of the timber of the fence presently appears ‘stark’, this effect is compounded by the rather harsh appearance of the concrete posts. Whilst the new timber would appear less stark as it weathers, that would take time. In respect of any potential planting ‘in front of’ the fence this would not be possible because of the positioning of the fence tight against the back edge of the footway, notwithstanding that any such potential realignment of the fence or planting (which the present planning application does not propose in any case) would not address the harmful loss of amenity land.
23. Overall, the development results in unacceptable harm to the character and appearance of the area, contrary to Policies CS21 and CS24 of the Woking Core Strategy (2012), SPD Design (2015) and to paragraphs 126 and 130 of the National Planning Policy Framework (NPPF) (2021). Those policies state,

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amongst other things, that all development proposals will provide a positive benefit in terms of landscape and townscape character, and local distinctiveness. It must be noted that the harm and policy conflict would not be overcome by reducing the height of the fencing, not least because the alignment and loss of amenity land would remain.

24. The applicant sets out, within a covering letter to the planning application, that the reasons for undertaking the development are down to several factors:
 - “1) *Anti-Social Behaviour regarding the volume of litter dropped onto the land due to its situation next to a bus stop (servicing the Number 91 bus route).*
 - 2) *Dog Fouling on the land as there is no deterrent in place to identify the land as private.*
 - 3) *Trespassing by people waiting for the bus.*
 - 4) *Privacy into the property and garden from the footpath and bus stop due to the sloping elevation down to the pre-existing garden fence.”*
25. Whilst the applicant has submitted some photographs of litter and dog fouling there is no wider context to these photographs to show that they took place on the area of amenity land in question. In any case, on the basis of site visit observations throughout the local area, there was little evidence of littering and dog fouling being a notable issue, including on land close to the bus stop on the opposite side of Creston Avenue. Whilst an included photograph does show two persons standing on the amenity land in question there is little to suggest that trespass onto the amenity land was a frequent issue or caused any particular problems. In respect of achieving improved levels of privacy to the rear elevation and rear garden of the house at No.1 Randolph Close it is material that the garden fence appeared to remain in its former location, and at its former height, since original construction of the house in the 1980s. In any case, less harmful alternatives to improving privacy, such as adding a trellis atop the fence (in its former position) (this would require planning permission if the overall height would exceed 2 metres above ground level), could be undertaken to improve privacy. It must also be noted that issues around potential littering, dog fouling and trespass are not specific to the particular area of amenity land in this instance, and that, in the event this application was permitted on that basis, such concerns could be used to seek to justify the enclosure of such areas of amenity land anywhere within the Borough, and particularly within the Goldsworth Park estate.
26. It is noted that the installed fencing extends alongside only a small part of the flank (east) elevation of the house and that a new flowerbed has been installed by the applicant to the side of the house within this ‘unenclosed’ area to the side, together with an area which remains laid to lawn. However, these factors are not considered to outweigh the harm to the character and appearance of the area which is caused by the enclosure of the amenity land and the relocated timber fencing.
27. Whilst each planning application is considered on its individual merits, in the event this planning application was to be permitted, there is nonetheless a more than reasonable prospect of similar development being able to be repeated elsewhere within the wider Borough, and particularly within the Goldsworth Park estate. Permitting this planning application would make it more difficult for the Local Planning Authority to resist further applications for

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such development, thereby compounding the harm to character and appearance which has been identified.

28. It is acknowledged that Policy CS21 of the Woking Core Strategy (2021) also seeks to ensure, inter alia, that “*schemes provide appropriate levels of private...amenity space*”, and that incorporating the former amenity land into the private garden area increases the outdoor private amenity space at the house. However, any gain from the amenity land in this respect is clearly outweighed by the described harm to the character and appearance of the area. Furthermore, the house at the application site provides around 70 sq.m gross floorspace, has a building footprint of around 44 sq.m., and has a (lawful) private rear garden area of around 50 sq.m (of around 12 metres depth and around 4.5 metres width), this being both in accordance with the recommendations within SPD Outlook, Amenity, Privacy and Daylight (2022) and consistent with the grain and pattern of development in the local area. As such, it is not considered that the house is deficient in respect of outdoor private amenity space.
29. Overall, the loss of amenity land, and the associated relocation of the timber fencing, undermines the openness, spaciousness and attractive informal landscape setting to this entrance into the Goldsworth Park estate and has an unduly imposing presence in the Creston Avenue street scene which appears harsh and unsympathetic to its context. Furthermore the proposal results in the loss of a parcel of informal open space, which performed a public value function as visual amenity, and fails to provide alternative and equivalent or better provision in the locality or to be directed related to the enhancement of open space. The development fails to respect and make a positive contribution to the character of the area within which it is located, fails to incorporate appropriate and effective landscaping and to provide for suitable boundary treatments, and also fails to provide a positive benefit in terms of landscape and townscape character. The development is therefore contrary to Policies CS17, CS21 and CS24 of the Woking Core Strategy (2012), Policy DM2 of the Development Management Policies DPD (2016), Supplementary Planning Document (SPD) Design (2015) and the provisions of the National Planning Policy Framework (NPPF) (2021) (most notably paragraphs 126 and 130).

Neighbouring amenity

30. Policy CS21 of the Woking Core Strategy (2012) states, inter alia, that “*Proposals for new development should...Achieve a satisfactory relationship to adjoining properties avoiding significant harmful impact in terms of loss of privacy, daylight or sunlight, or an overbearing effect due to bulk, proximity or outlook*”. SPDs Outlook, Amenity, Privacy and Daylight (2022) and Design (2015) provide more detailed guidance in respect of considering/assessing neighbouring amenity impacts.
31. The potential loss of enjoyment of a view is not a ground on which planning permission can potentially be refused although the impact of a development on outlook is a material planning consideration and stems on whether the development would give rise to an undue sense of enclosure or overbearing effect to neighbouring/nearby residential properties. There are no established guidelines for what is acceptable or unacceptable in this regard, with any assessment subjective as opposed to empirical, with key factors in this

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assessment being the existing local context and arrangement of buildings and uses.

32. In respect of daylight, and where existing habitable room windows/openings are orientated at 90° in relation to a proposed development, SPD Outlook, Amenity, Privacy and Daylight (2022) states (at para 5.10) that “*they may affect the daylighting of an adjoining dwelling if they project beyond 3 metres of the building elevation, particularly if positioned close to a common boundary. Significant loss of daylight will occur if the centre of the affected window (or a point 1.6m in height above the ground for floor to ceiling windows/patio doors) lies within a zone measured at 45° in both plan and elevation*”.

No.5 Creston Avenue:

33. No.5 Creston Avenue is the only immediately adjoining property to the new fencing/enclosed amenity land and is a single storey end-of-terrace house to the rear (south-west), the front elevation of which faces Creston Avenue. The closest front window within No.5 serves a kitchen, which is also served by a side-facing (north-east) window. The new fencing projects forwards of the front elevation of No.5, whereas the former fencing generally aligned with the front elevation of No.5. Whilst the new fencing projects forwards of the front of No.5 it does not do so by a significant distance (by around 3.2 metres) and is located around 1.5 metres away from the house of No.5. The new extent of fencing is not located directly opposite the side-facing kitchen window of No.5, passes the 45° angle test for daylighting in respect of the closest front facing window of No.5, and is located to the north-east of No.5 such that it does not cause any significant overshadowing/loss of sunlight to No.5. These combined factors, together with the stepped height of the fencing which projects forwards of the front elevation of No.5, are such that the fencing achieves a satisfactory relationship to adjoining No.5 Creston Avenue, avoiding significant harmful overbearing effect, and also avoiding significant harmful loss of daylight and sunlight.
34. Considering its height and positioning in relation to adjoining and nearby properties, other than No.5 Creston Avenue (discussed above), the new fencing and the enclosure of the amenity land does not give rise to material neighbouring amenity impacts to any other properties. However, the preceding represents only an absence of harm in this respect (i.e., is neutral) and does not outweigh the other harms identified or weigh positively in favour of the proposal.

Other matters

35. The application site does not fall within an area at risk of flooding, either from rivers (i.e., fluvial) or from surface water. The height and positioning of the relocated fencing is such that it does not give rise to any highway safety issue. Again, the preceding represents only an absence of harm in these respects (i.e., are neutral) and do not outweigh the other harms identified or weigh positively in favour of the proposal.

Requirements of the enforcement notice

36. In this case, the breach of planning control is the material change of use from amenity land to residential garden and the erection of close boarded timber

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fencing. The requirements of the enforcement notice therefore need to be, in short, to cease the use of the amenity land as residential garden, remove the fencing, re-instate the former boundary treatment in its former location, restore the amenity land to its previous condition and remove all associated materials.

37. It must also be noted that potentially reducing the fencing to 1 metre in height above ground level (although this is not proposed by the applicant) would not remedy the breach of planning control. That is because 'permitted development' (PD) rights do not grant retrospective planning permission and because, moreover, the material change of use of amenity land to residential garden would remain.

Local finance considerations

38. No gross floorspace would result. As such, the proposal is not Community Infrastructure Levy (CIL) liable.

Conclusion

39. For the reasons set out within this report, the proposed development would conflict with the policies of the Development Plan, and other material considerations, including the NPPF (2021). There are no material considerations that indicate the application should be determined other than in accordance with the Development Plan and other material considerations. Therefore, for the reasons given, it is recommended that planning permission should be refused.
40. It is also considered expedient to serve an Enforcement Notice having regard to the provisions of the Development Plan and to other material considerations. As such, authority is sought to serve an Enforcement Notice. It is considered expedient to take enforcement action for the following reasons:
 1. It appears to the Council that the change of use from amenity land to residential garden, and the associated erection of new 1.8m tall boundary fencing, has occurred within the last ten years and therefore is not immune from enforcement action due to the passage of time.
 2. The loss of amenity land, and the associated relocation of the timber fencing, undermines the openness, spaciousness and attractive informal landscape setting to this entrance into the Goldsworth Park estate and has an unduly imposing presence in the Creston Avenue street scene which appears harsh and unsympathetic to its context. Furthermore the proposal results in the loss of a parcel of informal open space, which performed a public value function as visual amenity, and fails to provide alternative and equivalent or better provision in the locality or to be directed related to the enhancement of open space. The development fails to respect and make a positive contribution to the character of the area within which it is located, fails to incorporate appropriate and effective landscaping and to provide for suitable boundary treatments, and also fails to provide a positive benefit in terms of landscape and townscape character. The development is therefore contrary to Policies CS17, CS21 and CS24 of the Woking Core Strategy (2012), Policy DM2 of the Development Management Policies DPD (2016), Supplementary Planning Document (SPD) Design (2015) and the

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provisions of the National Planning Policy Framework (NPPF) (2021) (most notably paragraphs 126 and 130).

3. The Council does not consider that planning permission should be given because planning objections cannot be overcome by way of condition(s).
 4. Paragraph 59 of the National Planning Policy Framework (NPPF) (2021) states that "*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control*".
41. The preceding reasons therefore make it expedient to undertake enforcement action and issue the necessary Enforcement Notice. The financial implications including staff resources, the costs of any subsequent appeal, court hearing, legal representation and/or any other costs (including, where appropriate, taking direct action) are all matters that have been considered in the preparation of this report. An appeal against an Enforcement Notice could be subject to an application for full or partial award of the Appellant's costs in making an appeal if it were considered that the Council acted unreasonably. If the Planning Committee decide to take enforcement action and the owner decides to exercise their right of appeal, it is considered unlikely that this case would be determined by Public Inquiry and therefore appeal costs to the Council are likely to be comparatively minimal.

BACKGROUND PAPERS

Site visit photographs
x2 letters of representation

RECOMMENDATION

Refuse planning permission for the following reason(s):

01. The loss of amenity land, and the associated relocation of the timber fencing, undermines the openness, spaciousness and attractive informal landscape setting to this entrance into the Goldsworth Park estate and has an unduly imposing presence in the Creston Avenue street scene which appears harsh and unsympathetic to its context. Furthermore the proposal results in the loss of a parcel of informal open space, which performed a public value function as visual amenity, and fails to provide alternative and equivalent or better provision in the locality or to be directed related to the enhancement of open space. The development fails to respect and make a positive contribution to the character of the area within which it is located, fails to incorporate appropriate and effective landscaping and to provide for suitable boundary treatments, and also fails to provide a positive benefit in terms of landscape and townscape character. The development is therefore contrary to Policies CS17, CS21 and CS24 of the Woking Core Strategy (2012), Policy DM2 of the Development Management Policies DPD (2016), Supplementary Planning Document (SPD) Design (2015) and the provisions of the National Planning Policy Framework (NPPF) (2021) (most notably paragraphs 126 and 130).

It is further recommended that: -

27 JUNE 2023 PLANNING COMMITTEE

The Interim Director of Legal and Democratic Services be instructed to issue an Enforcement Notice under Section 172 of The Town and Country Planning Act 1990 (as amended) and Officers be authorised in the event of non-compliance with the Notice to prosecute under Section 179 of the Act, or appropriate power, and/or take direct action under Section 178 in the event of non-compliance with the Notice.

Enforcement action be authorised to issue an Enforcement Notice in respect of the above Land requiring the following within three (3) months of the Notice taking effect:

- (i) Permanently remove the close boarded timber fence and concrete posts from the land;
- (ii) Permanently cease the use of the amenity land as residential garden;
- (iii) Re-instate the boundary of the residential garden with a wall or fence no greater than 2 metres in height in its previous alignment before the breach took place;
- (iv) Restore the amenity land to its previous condition before the breach took place (the previous condition of the land being as shown on p.1 of the Photographs document submitted by the applicant, untitled and undated);
- (v) Remove from the Land all materials, rubble and debris, including all associated paraphernalia, arising from compliance with the above.

Informatives

01. The plans and particulars relating to the planning application hereby refused are numbered/titled (all rec'd by the LPA on 01.05.2023):

2023/T08/01 Rev 00 (Existing Plans & Elevations), dated 23.04.2023

2023/T08/02 Rev 00 (Proposed Plans & Elevations), dated 23.04.2023

2023/T08/03 Rev 00 (Location & Block Plans), dated 23.04.2023

Covering letter submitted by the applicant, titled '1 Randolph Close', undated (2pp)

Photographs submitted by the applicant, untitled and undated (4pp)

02. This statement is provided in accordance with Article 35(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015. Woking Borough Council seeks to take a positive and proactive approach to development proposals. The Council works with applicants in a positive and proactive manner by:

- Offering a planning pre-application advice service; and
- Where possible officers will seek minor amendments and/or additional information to overcome issues identified during the application process.

In this instance the applicant seeks to regularise a breach of planning control and did not seek planning pre-application advice from the Council prior to carrying out the unauthorised development. It was not considered that minor amendments and/or additional information would overcome concerns/issues identified during the application process.