

**R02**

**F/TH/19/1289**

PROPOSAL: Retrospective application for the change of use of amenity land to residential garden and the erection of boundary fence

LOCATION: 4 The Spinney MARGATE Kent CT9 3JS

WARD: Cliftonville East

AGENT: Mr John Elvidge

APPLICANT: Mr D Blackman

RECOMMENDATION: Refuse Permission

For the following reason:

1 The erection of the fence, by virtue of the prominent location, height, and materials, forms a dominant, incongruous and obtrusive form of development in the streetscene, diminishing the sense of place and local distinctiveness in the locality, severely detrimental to the character and appearance of the area and the Northdown Conservation Area, contrary to the aims of saved Policy D1 of the Thanet Local Plan, and paragraphs 127 and 130 of the National Planning Policy Framework

#### SITE, LOCATION AND DESCRIPTION

Number 4 The Spinney is a semi-detached two storey property that backs on to Upchurch Walk to the north. It sits as part of a row of four similar dwellings (to its east) that appear to originally have had a similar rear boundary line along Upchurch Walk. This boundary line was previously set in from the highway with trees, shrubs and vegetation along a landscaped strip providing some visual relief from built form. To the east of the site a public bridleway runs between Upchurch Walk and The Spinney.

The site sits within the Northdown Conservation Area, which stops just before Upchurch Walk. Upchurch Walk has an open character with many properties fronting the street. Low or natural boundary treatments are a common feature here, with those of solid construction being brick or open fencing.

#### RELEVANT PLANNING HISTORY

F/TH/18/1451 - Retrospective application for the erection of a fence up to 2m in height adjacent to the highway. Withdrawn.

TCA/17/1593 - 5No. Ash - fell. Raise No objection.

F/TH/93/0710 - Erection of 8 x 3 bedroom houses with associated garages and parking facilities, landscaping, footpaths and walls and realignment of Bridleway TM 1 - Granted.

### PROPOSED DEVELOPMENT

This application seeks planning permission for the retrospective change of use of land to residential, and the erection of a 2m high boundary fence.

The change of use concerns two areas to the north and east of the site (side and rear) that previously formed part of a vegetated area along the public bridleway, and an area of landscaping that would have been private open space on Upchurch Walk. From the plans provided it appears that the increased footprint measures up to 4m from the previous boundary line in some areas, but this varies along the length of the site.

The fence runs the length of the side of the site and encloses it along Upchurch Walk. It appears to have replaced a lower means of enclosure than previously existed.

### DEVELOPMENT PLAN POLICIES

#### **Thanet Local Plan 2006 (Saved Policies)**

D1 - Design Principles  
D2 - Landscaping  
SR5 - Play Space  
SR11 - Private Open Space

### NOTIFICATIONS

Letters were sent to neighbouring property occupiers, a site notice was posted close to the site and an advert was posted in the local paper. Two letters of objection have been received surrounding:

- Previous objections received from application F/TH/18/1451 should be taken into consideration
- Loss of trees from application TCA/TH/17/1593
- Development out of keeping with the area
- Change from what was intended by the original development / developer of this site
- Loss of habitat for indigenous birds
- The retrospective nature of the application

**Margate Conservation Area Advisory Group** - Insufficient information to validate the application. No comment.

### CONSULTATIONS

**TDC Conservation Officer** - 4 The Spinney is a site located within Northdown Conservation Area in an area largely dominated by residential use.

Within The NPPF (National Planning Policy Framework) Section 16, paragraph 195 it highlights that local authorities should take into account the positive contribution that conserved heritage assets can make to sustaining communities including their economic vitality.

Unfortunately on this site a large, 2m high fence has been erected that encompasses the land to the rear of the property. This fence has been constructed from large wooden panels with concrete posts which appears very stark and obvious within its setting. It is regrettable that a more sympathetic material was not used for the construction of this boundary that could have referenced and related to other materials in the surrounding conservation area. Looking further than the site and to the rest of the surrounding street there are examples of brick walls, soft landscaping in the form of hedges and closest to the property is an aesthetically pleasing flint and brick wall.

It would be my recommendation that this fence boundary is removed, and if necessary it is replaced with an appropriate material which suits the character of the surrounding conservation area. The existing fence panels look stark and out of place to their location and therefore are disruptive and cause harm to the surrounding aesthetic of the conservation area. I do not believe this application meets local and national standards for conservation area as described in the policies above and therefore I object to this application.

**KCC Public Rights of Way (PROW)** - KCC object to the application. The proposed development directly affects Public Right of Way TM1. The existence of the right of way is a material consideration.

Public Bridleway TM1 passes the house of No 4 The Spinney (and other properties). The bridleway should have been diverted to the route currently being used to the side of the property. If this had been diverted when the houses were built then presumably the full width of that strip would have been recorded / considered the width of the highway. The new fence now encroaches on that width.

Historically the width available to the public was between 9m narrowing to 4m approximately, so this is a width that should be maintained as a minimum, if not the width as laid out when the houses were built (if greater).

There has been correspondence between KCC and the applicant as far back as 2014 advising of the existence of the Public Bridleway TM1. It was advised that in the first instance the applicant contact TDC to find evidence of a diversion being made by the developer. No evidence was found by TDC that an application to divert TM1 was made and therefore no order or confirmation to amend the definitive map was made.

In order for this proposal to be accepted the applicant must make an application under the Highways Act 1980 to divert the Public Bridleway so that it is outside of their property.

## COMMENTS

This application is reported to Planning Committee at the request of Councillor Shrub in order for Members to consider whether any harm is caused to the character and appearance of the area as a result of the works that have been undertaken.

## **Principle**

The application is for the retrospective change of use of amenity land to residential garden space and the erection of boundary fence. The site sits within an established residential area within the defined settlement of Margate. It is also within the Northdown Conservation Area.

Some extension has occurred into an established Public Bridleway and some into an area of private open space. Saved policy SR11 states that development will not be permitted on undeveloped private open space if it provides active recreational opportunities, meets a deficiency in recreational facilities or has an intrinsically beneficial quality and makes a contribution to the character and appearance of the area. The area former area of open space concerned to the rear of the site is not considered to have offered any recreational benefits, or intrinsic value to the area, and as such the loss of the open space is not considered to be contrary to saved policy SR11 of the Thanet Local Plan.

In terms of the boundary treatment that has been erected, there is no in-principle objection to the alteration or extension of a residential property.

It falls to be considered whether the proposal would have any impact on the character and appearance of the area, neighbouring residential amenity, the public right of way, highways matters and any other matters.

## **Character and Appearance**

Paragraph 127 of the NPPF states decisions should ensure that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, sympathetic to local character and history, establish or maintain a strong sense of place, and optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development and create places that are safe, inclusive and accessible. Paragraph 130 states that permission should be refused for developments which are of poor design, or fail to take opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides.

Paragraphs 193 and 196 of the NPPF advises that LPAs should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them into viable uses consistent with their conservation. In determining applications great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Saved policy D1 of the Local Plan outlines that the design of all new proposals must respect or enhance the character and appearance of the area, particularly in scale, massing, rhythm and use of materials.

Conservation areas are designated for their strong identities and patterns of development and, therefore, proposals should preserve or enhance the character and appearance of the area and reinforce the qualities that support the special architectural and historic interest of that area that warranted designation to begin with in order to maintain the quality of that area. Boundary treatments can drastically alter the character and appearance of an area, particularly where they relate poorly in terms of their scale, relationship with other development and the surrounding streetscape context. Gaps and undeveloped land can also be important features within conservation areas and surrounding areas, and their enclosure or development can have the potential to be detrimental to the conservation areas and their settings.

Although Upchurch Walk does not sit within the defined boundary of the Conservation Area, it does sit adjacent to it, with No. 4 The Spinney being wholly within the boundary. The character of this part is typically one of openness, with most dwellings facing onto Upchurch Walk, and therefore either leading directly onto the highway and having no front boundary treatments, or having low or natural boundary treatments. No. 2 Upchurch Walk and No. 22 Upchurch Walk, however, have a different relationship to the street with side boundaries facing the highway, comprised of brick and flint walls, staggered in height and stepping down immediately adjacent to the street edge. The other properties in The Spinney which have a similar relationship as the application site to Upchurch Walk (namely No.s 1-3) retain some brick and flint walls or appear with close boarded fencing which sits fairly uniformly, retaining a sense of both a fixed boundary line and degree of separation between 6 and 7m from the highway, screened by vegetation and some tree coverage.

The development that has been undertaken at the application site comprises close boarded fence panels set in gravel boards, between concrete posts. It runs along the rear and side of the application site which backs onto Upchurch Walk and the adjoining bridleway. The fencing has incorporated some amenity land to the side and rear of the site, and changed this to residential garden space, incorporating up to a further 4m to the rear. Spikes have been added along the top of the fence panels and CCTV signs put up at intervals along the length.

When permission was given for the erection of No. 4 The Spinney and the associated dwellings (ref: F/TH/93/0710) a clear area of amenity space and landscaping was proposed along the rear and side of the site, being considered essential to the principles of good design and to ensure adequate replanting to compensate for previously removed trees. The application was also concerned with the type of fencing to be used and required details of boundary treatments and planting to be agreed by the Council, securing these by condition, and the retention of historic brick and flint walls.

The change of use and associated fencing has resulted in built form projecting forward across large parts of these open areas, leaving only around 2m between the rear of the site and the highway. Whilst it is acknowledged that No. 4 The Spinney projected further towards the highway along Upchurch walk than No.s 1-3 and therefore has less open space to the rear, the soft open character of this part was retained. The works that have been undertaken as part of this application have noticeably exacerbated this difference, creating a visual prominence within the streetscene showing three sides of bulky and large development. The cumulative impact is one of a dominant, incongruous feature that is not considered to

preserve or enhance the conservation area to which it relates, and erodes the open character of this part of the streetscene, breaking the predominant rhythm of openness along the street. In contrast to the low boundaries and landscaped frontages found elsewhere in the streetscape, the development forms a stark and highly visible feature, with gravel boards to the corner and along the rear appearing to create additional bulk and height, having not been set down lower. The Officer site visit also revealed the use of spikes running along the fence and security signs posted along various panels. The overall appearance is stark, uninviting, and appears as an inconsistent projection of built development finished in inappropriate materials.

The works have failed to respect the pattern and rhythm of development in this location and the materials used are not appropriate to the historic environment. It was suggested to the applicant that these concerns could be overcome by both staining the existing timber fencing along the bridleway, and by replacing the fencing along Upchurch Walk with a more appropriate material finish. Staining the fencing along the bridleway a dark colour could reduce the visual prominence of untreated and solid development moving closer to the bridleway. The stark contrast in this area has been created by the removal of all trees and vegetation along the boundary and the failure to set the gravel boards down lower into the ground. The overall height, forward projection, and solid blank nature of works has resulted in harm to the character and appearance of the area which could be mitigated by staining and some replanting. The applicant accepted this suggestion, however this work alone would not overcome the concerns raised overall.

The second suggestion was that the most harmful part of the development was the change of use of the northern amenity land and enclosing fence panels, creating a stark and dominant form of development. Officers suggested that this may be made acceptable through the use of different materials. It was suggested that the fence panels should be removed and replaced with historic brick and flint walls, matching the existing walls at No. 3 The Spinney and also mirroring that seen at No. 22 Upchurch Walk. It was considered that this change could reduce the noticeable impact of the change of use and loss of amenity land, by continuing the use of a more appropriate and historically traditional material that would also act as a mirrored introduction to the public bridleway with the neighbouring site No. 22, and that the overall height could be retained and the increased garden space if the boundary treatment could respect the form, rhythm and scale of development. The applicant has not agreed to these works and as a result the fence is considered to be visually harmful to the character and appearance of this area and is considered to be contrary to the aims of saved policy D1 of the Thanet Local Plan and the aims of paras 127 and 130 of the NPPF. The development is not considered to preserve or enhance the character and appearance of the Conservation Area and is considered to result in harm, with the Council's Conservation Officer concerned that the works are disruptive and harmful to the surrounding aesthetic of the Conservation Area.

This harm is considered to be less than substantial. Where this is the case paragraph 196 of the NPPF states that the harm should be outweighed by a public benefit, including securing the optimum viable use of the asset. In this case the works are not considered to provide a public benefit as to outweigh the harm, with a purely private benefit occurring in this instance.

### *Fallback Position*

During discussions with the applicant, it has been contended that there is a fallback position in relation to the fence alone, with parts of it being lawful, and that as a result permission should be granted. This is a retrospective planning application, not a lawful development certificate. The change of use is not lawful and the works to erect a new fence in this location are in connection with the unauthorised change that has occurred. Therefore there is no fallback position. It is acknowledged however that some recent appeal decisions and court judgements have commented on likely fallback positions and in the interests of completeness, the position in relation to the fence alone has been considered briefly.

The applicant has contended that the erection of a fence adjacent to a highway but set back by 2m or more is permitted development. This is not the lawful position, with each case being taken on its own merits. The works are considered to be adjacent to the highway, with no sufficient obstruction between the fence and the highway as to indicate otherwise, and the fence appears to have been erected as a single act of development. The set back in this case is not considered to take the development within the scope of the rights set out in Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and it is therefore considered by Officers that the development should be judged on its planning merits.

### **Living Conditions**

Paragraph 117 of the NPPF states that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Saved policy D1 of the Thanet Local Plan outlines that new development should be compatible with neighbouring buildings and spaces, and should not lead to unacceptable loss of amenity through overlooking, noise or vibration, light pollution, overshadowing, loss of natural light, or sense of enclosure.

The works that have been undertaken are not considered to have resulted in harm to the amenities of neighbouring occupiers. Although the change of use and extension of the residential curtilage of the site towards the highway on Upchurch Walk has resulted in the loss of some open space, Google Images indicates that this area was previously covered with trees and vegetation. It was not of a significant size and space as to provide recreational facilities or a community benefit in this way and formed an area of private open space that could have been controlled by the applicant, preventing use by members of the public. As a result its loss is not considered to cause harm to neighbouring amenity.

The height and location of the fence is not considered to result in harm in terms of overbearing, overshadowing or harm to the living conditions of neighbouring occupiers given its location and context. The fence line along the public bridleway is not an uncommon feature or boundary delineation and is not considered harmful in this context. It is not considered that there has been any loss of surveillance to the bridleway from the erection of the fence.

The applicant has raised that the reason for the change of use and erection of the fence is in connection with the keeping of a Police dog and the works have been required to provide security and space for such. This could be seen as a benefit to the applicant. Although

Police dogs can offer a wider public benefit, there is no absolute requirement for them to be kept at residential properties in urban areas where there may be harm to the character and appearance of the area by virtue of the need to provide higher means of enclosures. As a result the benefit here is more akin to a private benefit and is not considered to outweigh the harm set out above.

As a result, overall the development is not considered to be harmful to neighbouring amenity. The harm in this instance is to visual amenity and the character and appearance of the area.

### **Public Right of Way**

Paragraph 98 of the NPPF states that planning policies and decisions should protect and enhance public rights of way and access and should take opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.

The change of use that has occurred has affected Public Bridleway TM1. KCC have raised an objection to the application, setting out that the bridleway does not appear to have been confirmed as diverted and therefore the definitive map indicates the bridleway running through the application site, as it would have been prior to the granting of permission for the erection of housing in this location. They also comment that historically the path would have been between 4m and 9m in width and that the 4m width should be maintained as a minimum.

It appears that over time the bridleway has been diverted on site and is now located to the east of No. 4 The Spinney. The change of use and extension of the residential curtilage of the application site impacts on the current location of the bridleway through a reduction in width of the route. Officers have visited the site to check the dimensions of the bridleway and a 3.8 metre width at its narrowest point has been retained.

Whilst it is acknowledged that the formal process for the diversion of TM1 has not taken place and been verified by KCC, this is a separate process to planning permission. Whilst the application represents a reduction of the bridleway width (at its narrowest being 20cm below previous minimum recorded by KCC), this is not considered to significantly harm a public right of way to constitute an objection to the planning application, given that the remaining route still provides a width usable as a pedestrian and cycle route. Therefore the proposal does not comprise the use of public right of way and would still allow the links to the south of the site onto the existing network of routes.

### **Highways**

No. 4 The Spinney sits in a row of four properties to this part of Upchurch Walk. None of these properties have rear access or vehicular parking facilities in this location and the works are therefore not considered to result in the loss of any visibility splays or parking in this area.

No. 22 Upchurch Walk sits adjacent to the site and fronts the highway. The change of use and associated fence to the rear of the site appears to have a modest projection beyond the wall of No. 22. Given the fencing sits 2m back from the highway, the works are not considered to result in highways safety implications for the occupiers of No. 22 or other road users in this area.

### **Other Matters**

Other matters raised through representations have been the retrospective nature of the application, the loss of wildlife habitat and trees, and insufficient information.

There is nothing in the legislation to preclude a retrospective application being submitted.

Application TCA/TH/17/1593 relates to an application for the removal of 5 No. Ash trees in 2017 between the application site and the bridleway. The Council raised no objections to this following arboricultural advice stating that the trees were not worthing of a Tree Preservation Order (TPO). This has increased the impact of the later development of the fence, and made it more a prominent and stark feature which has failed to preserve or enhance the character of this area, however the removal was lawful. The loss of habitat associated with the change of use was also lawful.

The application is considered to have been submitted with enough information to be determined.

### **Conclusion**

This application proposes the change of use of open amenity space to form part of a residential curtilage, and the erection of fencing around 2m in height along the side and rear of the site.

The site sits within a conservation area and adjacent to a public bridleway. It is sensitively located on a corner and the main considerations in this application are the impact on the character and appearance of the area, the living conditions of neighbouring occupiers, the public bridleway and the highway users.

The works have a noticeable and discordant appearance in this location. Whilst the change of use itself is not considered to be harmful, the works that have been undertaken to enclose the new area proposed have resulted in a large overbearing and expansive blank fencing arrangement, out of keeping with the prevailing pattern of development, materials, and openness across the streetscape. They have brought solid built form further forward and changed the character and nature of this space along the rear of No.s 1-4 The Spinney. Officers have worked with the applicant to suggest how the change of use may be acceptable and mitigation that could overcome the harm identified, however agreement could not be reached.

The harm caused is considered to be less than substantial and there is not considered to be any public benefit that outweighs the impact on the conservation area and wider streetscape.

The development is therefore considered to be contrary to the aims of saved policy D1 of the Thanet Local Plan and paragraphs 127 and 130 of the NPPF.

**Case Officer**

Vicky Kendell

TITLE:

F/TH/19/1289

Project

4 The Spinney MARGATE Kent CT9 3JS

