

UNAUTHORISED CHANGE OF USE OF LAND FROM LANDSCAPING BUFFER TO GARDEN LAND AND ENGINEERING WORKS TO CREATE A CULVERT

LAND TO THE REAR OF 18 HISPANO AVENUE WHITELEY FAREHAM HANTS

Report By

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Comments

In August 2010, a complaint was made to Fareham Borough Council that a culvert had been constructed over a water course at the rear of this property, and land to the rear (east) of the property had been enclosed to create a larger back garden. The land which had been enclosed is not in the ownership of the resident who has enclosed it.

Officers wrote to the occupier of 18 Hispano Avenue highlighting the fact that the change of use of the land and the backfilling of a watercourse required planning permission. In the absence of a planning permission the works were unauthorised and the occupier's views were sought as to whether they intended to reinstate the land to its original condition or submit a planning application seeking retrospective planning permission. No response was received to this or a subsequent letter.

The land in question is not owned by Fareham Borough Council and enquiries were made to establish exactly who the owner was. This took a considerable amount of time and it appeared to Fareham Borough Council that the owners were Bovis Homes South East Region Ltd. Bovis Homes did accept they were the owners initially and indicated they would address the unauthorised development carried out.

Officers contacted Bovis Homes on a number of occasions requesting that they secured the removal of the unauthorised works. After a lengthy period of time they advised this Council that they no longer believed they owned the land and did not intend to take any further action.

Following the position taken by Bovis Homes, Officers wrote to the owner of 18 Hispano Avenue in June 2012 regarding the change of use of the Land and the culvert. The occupier responded and proposed that because of the cost implications of undertaking the remedial work, he would remedy the breach in part. More specifically his proposal involved relocating the fence to its original position but leaving the culvert in place.

It was agreed that Officers would visit the site with the Coastal and Land Drainage Officer to assess the effect of the culvert. This visit took place in July 2012.

Following that visit the Coastal and Land Drainage Officer made the following observations:

Having seen the culvert I would encourage the council to ensure the owner returns the ditch to its original condition. The reasons for this are:

1. Should the culvert remain it will be difficult to maintain in the long term and is likely to become partially blocked with leaves and autumn debris due to the nature of the

surrounding land and gardens. The original ditch was both accessible and relatively simple to clear and maintain.

2. The reduced flow capacity compared to the original ditch is likely to increase the risk of flooding (Blockages mentioned in 1 would further increase the risk).

3. Stagnant standing water is now apparent either side of the culvert. This poses potential health risks and mosquito and rats were witnessed on site. With a community area close by I feel this should be addressed in the near future.

4. The culvert itself is poorly constructed and currently sits several inches above the level of the ditch. This prohibits flow except when high volumes flow within the channel.

In August the Council's Planning Enforcement Officer acknowledged the expense of carrying out the complete reinstatement works and suggested to the owner of 18 Hispano Avenue that the reinstatement could take place over a three month period. No response was forthcoming. Further letters were sent to the occupier on the 19th of September 2012 and 18th of October 2012, with no response received to either.

Works have been undertaken which clearly require planning permission being the change of use of land and the construction of a culvert. Despite numerous attempts by Officers to resolve the matter without the use of formal action, the breaches still remain. Officers consider it now appropriate to consider whether it is expedient to take planning enforcement action. In taking such a decision Officers believe there are two main issues to consider.

Firstly the effect on the character of the area caused by enclosing part of a landscaping buffer into a private garden area; and secondly the effects upon drainage arising from the partial culverting of a previously open ditch.

In respect of the first issue, the site is a corner plot on a modern estate which is spaciouly laid out, with generous gaps between the predominantly detached 2 storey houses. Most front gardens are open plan or enclosed by low vegetation. Landscaping is an attractive feature of the estate with mature trees and vegetation behind the properties at this end of Hispano Avenue.

One of the fundamental design approaches implemented in the Whiteley development was incorporating new development within existing landscaped areas. The retained trees, hedgerows and other planting contribute greatly to the character of the development and the visual amenity of the area and provides for wildlife corridors. Incursions into these areas erode their character and if repeated elsewhere would be detrimental to the wider area and therefore need to be vigorously protected.

It is for these reasons Officers consider the unauthorised enclosure of part of the planting buffer and associated engineering development harms the character and appearance of the area. The unauthorised development is contrary to Policy CS17 of the Fareham Borough Core Strategy and Policy DG4 of the Fareham Borough Local Plan Review which seek to retain landscaping. Furthermore the National Planning Policy Framework is supportive of high quality and inclusive design and the positive role of landscaping in development.

The second issue relates to the increased risk of flooding as detailed by the observations of the Coastal and Land Drainage Officer referred to earlier in this report. From observations made on site and the comments of the Coastal and Land Drainage Officer, Officers

consider the retention of culvert would be contrary to Policy CS15 of the Fareham Borough Core Strategy.

In conclusion the change of use of the landscaping buffer to private garden area and the retention of the culvert is contrary to planning policy and Officers believe it is expedient to take planning enforcement action in this case for the reasons, and within the timescales, set out below.

Recommendation

That the Solicitor to the Council be authorised to issue a Planning Enforcement Notice under the provisions of the Town and Country Planning Act 1990, in respect of the breach of planning control consisting of the change of use of the land from landscaping area to garden land.

Action To Remedy The Breach

Remove from the Land the culvert and back filled earth to restore the ditch to its former state. Remove the fence enclosing the land within the garden of 18 Hispano Avenue which is beyond the curtilage of the property and reinstate the garden boundary fence. Remove all structures and chattels from the land incidental to the residential enjoyment of 18 Hispano Avenue.

Time For Compliance

Three months

Reason For Issuing The Enforcement Notice

It appears to the Council that the above breach of planning control has occurred within the last ten years.

1. The culvert increases the risk of flooding (having been undertaken to facilitate the use of the land as garden land) in that:-

The culvert will be difficult to maintain in the long term and is likely to become partially blocked with leaves and autumn debris due to the nature of the surrounding land and gardens. The culvert itself is poorly constructed and currently sits several inches above the level of the ditch. This prohibits flow except when high volumes flow within the channel. The reduced flow capacity compared to the original ditch is likely to increase the risk of flooding with blockages further increasing the risk.

Accordingly the development is contrary to Policy CS15 of the Adopted Fareham Borough Core Strategy (2011) (Avoiding unacceptable levels of flood risk).

2. One of the fundamental design approaches implemented in the Whiteley Development was incorporating new development within existing landscaped areas. The retained trees, hedgerows and landscaping contribute greatly to the character of the development and the visual amenity of the area.

The land enclosed forms part of one of those retained areas of landscaping. The loss of part of this area is harmful to the character of the area and if repeated elsewhere would cause further harm to the character and appearance of the area. The enclosure of this land into the garden of 18 Hispano Avenue is contrary to policy CS17 of the Fareham Borough Core Strategy and Policy DG4 of the Fareham Borough Local Plan Review which seek to retain landscaping.

Fareham Borough Council does not consider that planning permission should be given, because planning conditions could not overcome these objections.

Land to the rear of 18 Hispano Avenue

FAREHAM

BOROUGH COUNCIL



18 Hispano Avenue
Scale 1:1250

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