

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date **14 July 2021**

Report of: **Director of Planning and Regeneration**

Subject: **31 ROSSAN AVENUE, WARSASH, SO31 9JQ –
ENGINEERING WORKS RESULTING IN A CHANGE OF
GARDEN LEVELS**

SUMMARY

This matter is reported to the Planning Committee in accordance with the agreed procedure for breaches of planning control not considered expedient to enforce against. A Ward Member or the Chairman of the Planning Committee have a different view and wish for the item to be brought before the Planning Committee.

RECOMMENDATION

It **is not** considered reasonable, proportionate and expedient in view of policies contained within the Development Plan to instigate formal planning enforcement action.

INTRODUCTION

SITE DESCRIPTION

1. The site is a mid-terrace family house set on the north west side of Rossan Avenue with a small, east facing, sloped rear garden. There are a number of similar type properties in Rossan Avenue. Access to the rear garden is provide by a pathway which runs between a block of garages to the east of the property and the rear gardens of the row of terraced houses. The highest point of the garden is at the north east corner where the garden joins the rear footpath access.

INVESTIGATION OF THE BREACH

2. In August 2020, it was brought to the attention of the Local Planning Authority that new levels had been created and an outbuilding had been erected in the rear garden of 31 Rossan Avenue. The site was visited, and three flat levels had been created in the previously sloped rear garden by importing materials to create tiers from the highest part of the garden, stepping down towards the rear of the house. An outbuilding had been erected on the highest level, furthest from the house with a reflective window. The outbuilding is within 2 metres of the boundary and when measured from the highest part of the land is 2.5 metres in height. The outbuilding is to be used as a hobby room for the homeowner. The development is now complete.
3. Under the provision of Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015, an outbuilding can be constructed within the curtilage of a dwelling house provided that if within 2 metres of the boundary of the property it does not exceed 2.5 metres in height and is used for purposes incidental to the enjoyment of the dwelling. Therefore, the outbuilding is Permitted Development (i.e. it does not require planning permission) and is not subject to the consideration of this expediency report.
4. However, there are no provisions within the Town and Country Planning (General Permitted Development) Order 2015, for increasing the land level of the garden to create flat levels in a previously sloped garden. It is considered to be an engineering project due to the importation of materials and work undertaken to raise parts of the garden in order to form the flat levels. There are no permitted development rights for an engineering project and therefore these works would require planning permission.
5. The occupants of 31 Rossan Avenue have been invited to make a planning application for the retention of the garden levels. At the time of writing this report, the householder has not submitted a planning application despite the best efforts of Officers to encourage them to do so.
6. There has been a breach of planning control in that, without planning permission, an engineering project has been undertaken creating tiered levels in the rear

garden. The breach has occurred within the last four years and the Council is therefore able to take formal enforcement action to remedy the breach if considered expedient to do so. The following report assesses the planning merits of the engineering works and the expediency of taking enforcement action.

POLICY

7. National Legislation/Policy/Guidance

- Town and Country Planning Act 1990;
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

8. Fareham Borough Local Plan Part 1 , Core Strategy (2011):

CS17 – High Quality Design

9. Fareham Borough Local Plan Part 2: Development Sites and Policies (2015)

DSP3 – Impact on Living Conditions

PLANNING ASSESSMENT

10. As outlined in the site description above, the sloping nature of the gardens is a particular feature of the properties in Rossan Avenue and especially in relation to the row of terraced houses. Some of the neighbouring properties have not made any changes to the rear garden levels which results in the garden sloping away from the rear of the property to the eastern boundary. Other properties have undertaken similar engineering projects to level the garden by creating tiers. The site subject of this report is flanked by an example of both.
11. The nature of the sloping gardens in the area does mean there are oblique views from rear gardens into neighbouring rear gardens and towards the rear elevations of the adjoining houses. These oblique views are generally afforded regardless of whether the garden remains in its original sloping design or whether the garden has been changed to create tiered levels.

12. The highest part of the garden where the outbuilding is located is no higher than it was before any work was carried out to tier the garden. Officers have considered the development of the garden levels in relation to the outlook, light, privacy and living conditions of the occupants of the neighbouring properties.
13. It is not considered that the development of the garden levels has an unacceptable adverse impact upon the neighbouring properties light or outlook. In consideration of the privacy and impact on the living conditions of the residents of the adjoining properties, it is the assessment of Officers that there were similar views across the adjoining gardens with the sloping nature of the original garden. Because views into neighbouring properties would previously have been possible from the rear garden of 31 Rossan Avenue before any work to alter the levels took place, views from the newly tiered garden are little different in terms of the impact they have on the privacy of neighbours in their own properties. Other properties in the area have minimised the impact on privacy through planting and additional screening and such measures, although not a requirement in order to make the development acceptable in planning terms, could be utilised here by the homeowners.
14. Because of the nature of the changes being to a rear garden and that garden being enclosed, the changes to the garden levels cannot be easily seen or appreciated from the public realm and are not considered harmful to the appearance of the surrounding area.
15. In summary, Officers invited a planning application for the retention of the alterations to the garden levels as it was considered that such an application could be supported. No application was made however the absence of an application to regularise unauthorised development is not in itself sufficient reason for the Council to take planning enforcement action. Such a decision must turn on the merits of the particular circumstances of the case and an assessment made as to the harm that has arisen as a result of the breach of planning control. The Officer assessment set out in this report is clear that, whilst there are oblique views across the neighbouring gardens from the new tiered garden, those views are similar to those that already existed beforehand in the original sloped garden. Officers have observed that similar views are afforded of neighbouring gardens along this part of Rossan Avenue due to the gradient of the rear gardens. In conclusion, it is not considered that it would be expedient to take formal planning enforcement action in this case.

RISK ASSESSMENT

16. There are no significant risk considerations in relation to this report

CONCLUSION

17. Based on the assessment, consideration of the relevant Act and other relevant material considerations including advice contained within the policies of the Development Plan, para 207 of the NPPF (2019) and PPG, it **is not** considered reasonable, proportionate and expedient in view of policies contained within the Development Plan to instigate

formal planning enforcement action.

Background Papers:

ENF/52/20

Enquiries:

For further information on this report please contact Jenna Flanagan. (Ext 4815)

FAREHAM

BOROUGH COUNCIL



31 Rossan Avenue
Scale: 1:1,250



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Licence 100019110, 2018