

OFFICER REPORT FOR COMMITTEE

DATE: 09/11/2022

P/22/1277/FP

MR & MRS HITCHCOCK

WARSASH

**AGENT: MRS CHERYL WELLSTEAD-
CLARKE**

RETROSPECTIVE APPLICATION FOR CHANGE IN GARDEN LEVELS

31 ROSSAN AVENUE, WARSASH, SOUTHAMPTON, SO31 9JQ

Report By

Jenna Flanagan – direct dial 01329 824 815

1.0 Introduction

- 1.1 The development was previously considered by the Planning Committee in July 2021 as the subject of a planning enforcement report.
- 1.2 A Planning Enforcement Notice is in place which requires the levels in the rear garden of this property to be re-instated to those which existed before the engineering works were carried out.
- 1.3 This application has been called on to the agenda by Councillor Ford. Given that the Planning Committee previously decided that enforcement action should be taken and the subsequent appeal has been dismissed, Councillor Ford considers the committee need to clearly understand the officer recommendation and determine the current application.

2.0 Site Description

- 2.1 The appeal site lies on the north-west side of Rossan Avenue, within a row of 9 terraced dwellinghouses. The site consists of a mid-terrace dwellinghouse with a small east-facing rear garden. Access to the rear garden can be gained via patio doors from the rear of the dwellinghouse, or via a gated entrance on the east boundary of the rear garden. Along the east boundary is a pathway which runs between the end of the gardens of the row of terraced houses and a block of garages to the east.
- 2.2 The rear garden of the application site is sloped so the highest point of the garden is the north east corner. The garden decreases in height down towards the rear elevation of the house, where a small patio area has been created at the lowest level.

3.0 Description of Proposal

- 3.1 The applicant seeks to retain garden levels which have been changed to create flat levels (effectively ‘terraces’) in a previously sloped garden. The work is an engineering project which requires planning permission. No planning permission has been obtained and the development is therefore unauthorised.
- 3.2 The application proposes the introduction of additional trellis screening along the top of some of the existing boundary fencing.

4.0 Policies

- 4.1 The following policies apply to this application:

Adopted Fareham Borough Core Strategy

CS17: High Quality Design

Adopted Development Sites and Policies

DSP3: Impact on Living Conditions

Fareham Local Plan 2037 (Emerging)

The Fareham Borough Local Plan 2037 was submitted to the Planning Inspectorate on 30th September 2021 and an examination conducted in March and April 2022. Following the conclusion of the examination hearings the Inspector has requested a number of modifications to the Plan. The proposed modifications will be the subject of public consultation from 31st October until 12th December. The Council’s Local Development Scheme schedules that the new plan will be adopted in Winter 2022. On adoption the Local Plan will have full weight and in its current advanced stage is a material consideration for the determination of planning applications. The following draft policies of the emerging plan are of relevance.

D1: High Quality Design and Placemaking

D2: Ensuring Good Environmental Conditions

Other Documents:

Fareham Borough Design Guidance: Supplementary Planning Document (excluding Welborne) December 2015

5.0 Relevant Planning History

- 5.1 Planning Enforcement Notice served on 1st September 2021
Engineering operations to change the land levels in rear garden
- 5.2 No other planning history is recorded since development of dwellinghouse which was permitted on 9th April 1975.

6.0 Representations

- 6.1 Two representations were received during the notification period, one of support and one objecting to the development. The following points were raised:

Support:

- Garden levels are low
- Space used by family, for children to enjoy
- Due to garden size in a row of terraces, there are limited options to create a nice outdoor family space

Objection:

- If the garden levels are retained, the shed will remain
- Due to the garden levels, the shed overlooks neighbouring property
- Invades privacy

7.0 Consultations

No external or internal consultation.

8.0 Planning Considerations

Recent planning enforcement action

- 8.1 The development was the subject of a report considered by the Planning Committee on 14th July 2021. The report considered whether it was expedient to take enforcement action in relation to the unauthorised change in garden levels at the property. Following consideration of all the issues Members concluded that the development was unacceptable in planning terms and that a planning enforcement notice should be served.

- 8.2 The minutes of that meeting record that Members of the Planning Committee:

“RESOLVED that a planning enforcement notice should be served on the owner of 31 Rossan Avenue in connection with the unauthorised development comprising engineering works resulting in a change in the garden level. The harm that has been caused is an unacceptable adverse impact upon the neighbouring properties as a result of a loss of privacy and over-looking, contrary to Policy DSP3 of the Local Plan Part 2: Development Sites and Policies. In order to remedy the breach, the landowner is required to reinstate the levels in the rear garden back to those which existed before the engineering works were carried out.

The period for complying with the planning enforcement notice is three months.”

- 8.3 A Planning Enforcement Notice was subsequently issued on 1st September 2021. The homeowner lodged an appeal with the Secretary of State against the Planning Enforcement Notice.
- 8.4 As Members will be aware, enforcement appeals can be lodged on a number of grounds. In this instance the appeal was lodged on the following grounds:
- That the development did not breach the law (known as ground (c))
 - That the Council were too late in taking enforcement action and the development was now immune from such action under the law (known as ground (d))
 - That the steps required by the notice went beyond what was necessary to resolve the harm caused (known as ground (f))
- 8.5 It is important to note that a further ground of appeal available to the homeowner was that the work carried out was acceptable in planning terms and that planning permission should be granted for it (known as ground (a)). The homeowner did not pursue an appeal on this ground. This means that when a decision on the appeal was made at no point was the Planning Inspector asked to consider whether planning permission should be granted. The appeal decision therefore does not give any views at all on whether planning permission should be granted. With this in mind, and notwithstanding that the development has already been the subject of an enforcement report and appeal, the homeowner is entitled to submit a retrospective planning application to be considered by the Council so that a formal decision can be made as to whether planning permission should be granted.
- 8.6 The Planning Inspectorate considered the appeal on the above grounds only and concluded that the Planning Enforcement Notice should be upheld. The appeal was dismissed in a decision issued on 28th July 2022.

Outbuildings in the garden

- 8.7 As set out earlier in this report, engineering works have been undertaken to develop flat garden terraces in a previously sloped garden. Before the engineering project began, the garden benefitted from a small hard standing along the eastern boundary and a lawn area, which sloped down towards a

modest patio area at the rear of the dwelling. The original hardstanding area at the far end of the garden has been increased and extended towards the house by importing materials which have been compacted and held in place by a retaining wall which measures approximately 0.95 metres high.

- 8.8 An outbuilding has been erected on the highest level against the east boundary with a window in the west elevation facing towards the rear of the dwellinghouse. The outbuilding is used as a hobby room for the homeowner. It measures under 2.5 metre high from the highest point of the original ground level on which it is erected. The outbuilding itself is permitted development and does not require planning permission from the Council. The removal of this building was not a requirement of the Planning Enforcement Notice.
- 8.9 The outbuilding occupies most of the upper level of the garden. The applicant has erected a small bicycle store on the remaining area of the upper level and so the upper level is covered in its entirety by the shed and bicycle store. The bicycle store is also permitted development and does not require planning permission.
- 8.10 The following matters represent the key material planning considerations which need to be assessed to determine the suitability of the development proposal. The key issues comprise:
- a) Impact on neighbouring properties;
 - b) Impact on character and appearance of the area;
- a) Impact on neighbouring properties
- 8.11 The sloping nature of the garden 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 upwards 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.
- 8.12 The lowest part of the garden is the patio adjacent to the house. There are no issues with overlooking from this patio.
- 8.13 The middle garden level has also been created by building up the western end of the level to create a useable flat lawn area. The level is supported by a 0.82 metre high retaining wall.

- 8.14 The highest part of the garden remains the same height and is now occupied almost entirely by the outbuilding which benefits from permitted development rights. Garden steps run along the southern boundary of the application property.
- 8.15 The nature of the sloping gardens in the area does result in oblique views into the neighbouring rear gardens and towards the neighbouring rear elevations of the adjoining houses. However, when considering the impact on the privacy and 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. These views are slightly closer towards the rear elevation of the neighbouring dwellings by the nature of the developed garden levels. However, the views afforded from the lawn on the middle tier into neighbouring properties are materially different to before due to the now elevated height of the garden at this point. As a result of this Officers have discussed with the applicant introducing appropriate additional boundary screening to minimise the effects of increased overlooking.
- 8.16 Amended plans have been submitted and interested parties have been notified on the amended plans which include an additional 0.3 metre privacy trellis on top of the four western fence panels along the northern and southern boundaries. This increase in height will raise the fence panel adjacent to the rear elevation of the house to 2.2 metres along the southern boundary and 2.3 metres along the northern boundary. The rest of the southern boundary treatment will be less than 2 metres in height with one panel midway along the northern boundary measuring 2.1 metres in height. The design of the trellis reduces the overlooking from the application property garden, whilst allowing light to and outlook from the neighbouring properties.
- 8.17 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. With the addition of the proposed trellis screening, it is not considered that the changed garden levels would have an unacceptable adverse impact upon the privacy, light or outlook enjoyed by the residents in neighbouring properties.

b) Impact on character and appearance of the area

- 8.18 The application property can be seen from a small area along the vehicular highway of Rossan Avenue and within the junction of Howerts Close. The application property can also be seen from the access path running adjacent to the eastern boundary of the rear garden.

- 8.19 The terraced levels created within the rear garden are not visible from the wider area and the development is not considered to have a detrimental impact on the character and appearance of the area.
- 8.20 Notwithstanding the objection received, the retention of the alterations to the rear garden levels is considered acceptable subject to the provision of the boundary screening.

9.0 Recommendation

9.1 GRANT PLANNING PERMISSION, subject to the following Conditions:

1. The development hereby permitted shall be retained only in accordance with the following approved plans:
Location, Block & Site Plan, Existing & Proposed Plans & Sections –
Project No. 552 – Drawing No. 100

REASON: To avoid any doubt over what is permitted

2. Within two months of the date of this decision notice the additional 300mm trellis screening shown on approved drawing; Location, Block & Site Plan, Existing & Proposed Plans & Sections – Project No. 552 – Drawing No. 100 shall be installed in accordance with that drawing and shall thereafter be retained at all times.

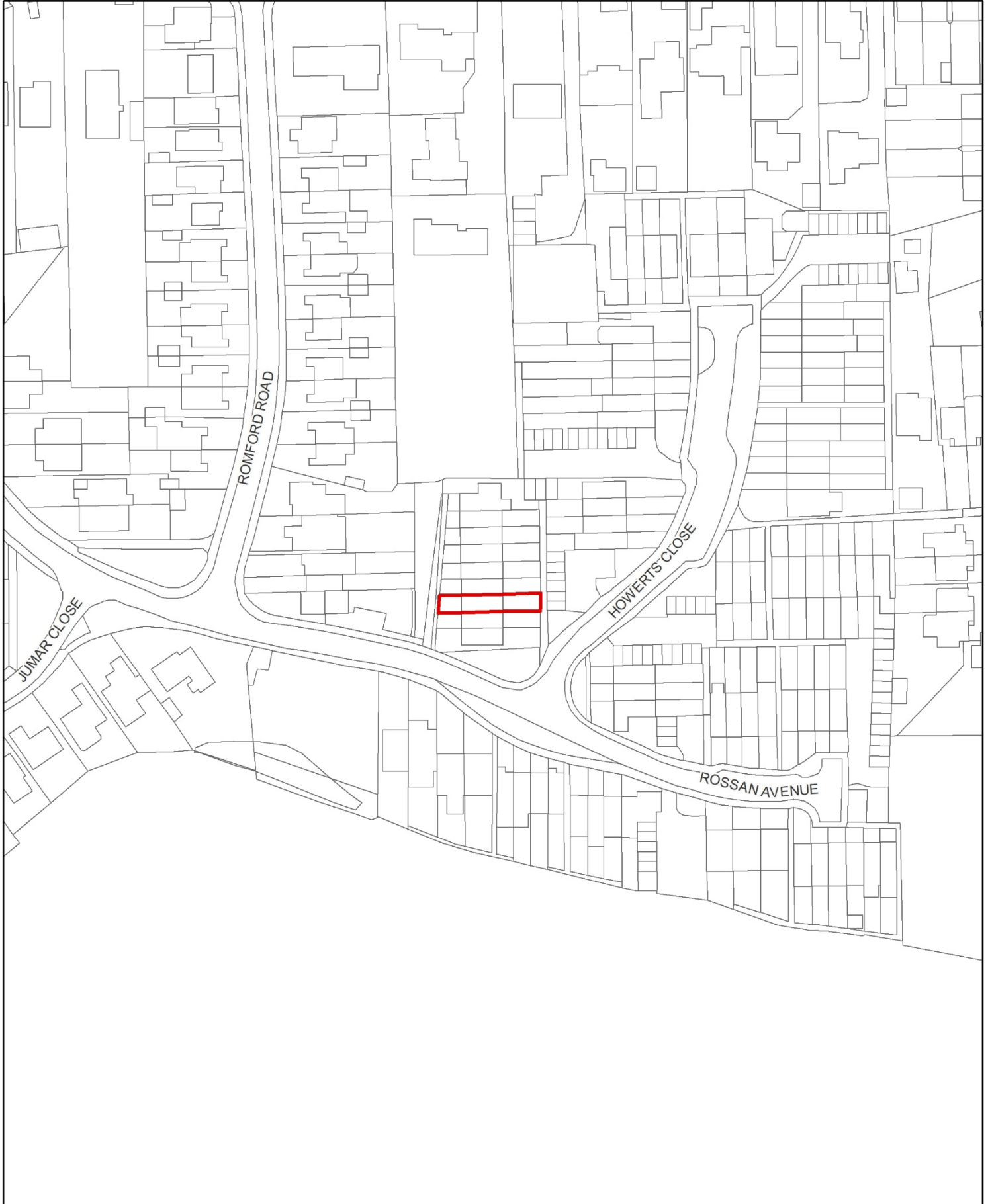
REASON: To protect the privacy of residents of neighbouring properties.

10.0 Background Papers

Application documents and all consultation responses and representations received as listed on the Council's website under the application reference number, together with all relevant national and local policies, guidance and standards and relevant legislation.

FAREHAM

BOROUGH COUNCIL



31 Rossan Avenue
Warsash
Scale 1:1,250



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