

3/13/2086/FP – Change of use of land to garden, erection of shed, summerhouse and hardstanding – Retrospective application at land r/o no.'s 13, 14, 15, 16, 17, 22, 42, 43, 44, 49, 50, 51 and 52, Penningtons, Bishop's Stortford, CM23 4LE for Mr G Goodyear

Date of Receipt: 05.12.2013

Type: Full – Minor

Parish: BISHOP'S STORTFORD

Ward: BISHOP'S STORTFORD – CENTRAL AND SOUTH

RECOMMENDATION:

That planning permission be **GRANTED** subject to the following conditions:-

1. Three Year Time Limit (1T12)
2. Approved plans (2E10) (Photo 1, Photo 2, Plan 1, Site Location Plan, Site Plan).

Directive:

1. Other Legislation (01OL)

Summary of Reasons for Decision

East Herts Council has considered the applicant's proposal in a positive and proactive manner with regard to the policies of the Development Plan (Minerals Local Plan, Waste Core Strategy and Development Management Policies DPD 2012 and the 'saved' policies of the East Herts Local Plan Second Review April 2007); the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2012 (as amended). The balance of the considerations having regard to those policies is that permission should be granted.

_____ (132086FP.NM)

1.0 Background:

- 1.1 The application site is shown on the attached OS Map. It is located within the built up area of Bishop's Stortford. The site comprises a strip of land in between the Thorley and St Michael's Mead residential estates and previously formed an undeveloped area which was planted with trees, following the construction of the Thorley housing development.
- 1.2 It appears that the strip of land was originally provided as a landscape

buffer in the mid 1980's to separate the Penningtons development from what was then open countryside to the west (now part of the St Michaels Mead development). No planning conditions were imposed on the permission to seek the retention of the landscape strip, but the site is subject to a covenant, known as the 'Thorley Covenant', to which the Urban District Council of Bishop's Stortford (which became East Herts District Council from 1974) and Rialto Properties Ltd were parties to. The covenant required, amongst other things, that the strip of land be planted with trees and that these should be maintained thereafter.

- 1.3 In October 2013 the Council's Planning Enforcement team was informed that trees had been felled within the application site; that a number of properties within Penningtons had extended their gardens into this space, and that a summer house, a shed and some hard standing had been constructed.
- 1.4 Further investigations indicated that the owners of the various properties in Penningtons had purchased the land from the successor of the original building developer in May 2013 and had then incorporated the land within the garden areas of the individual properties. The owners were advised that this change of use, and the operational development on some plots, required planning permission.
- 1.5 The current application was subsequently submitted as a result, and seeks retrospective planning permission for the change of use of the land and for the erection of the summer house, shed and the hard standing. The summer house and shed that form part of this application are situated within the land to the rear of No. 17 Penningtons. The summerhouse is located centrally within this part of the site and is approximately 4.3 metres in length by 3.7 metres in width. The summerhouse has a hipped roof that reaches a height of 3.2 metres. The shed is approximately 3.7 metres by 2.4 metres and has a low dual pitched roof. The hard standing that forms part of this application is situated within the land at the rear of No. 51 Penningtons and forms a small patio area.
- 1.6 Officers understand that in 2011, prior to purchasing the land, the owners of the properties affected sought the advice of the Council's Property and Environmental Services in respect of the covenant relating to it. They were advised by Officers that, in their view, the Council would be unlikely to enforce the covenant in this case as the tree belt had become 'trapped' at the rear of housing development following the St Michaels Mead development. However, any formal decision in respect of the covenant would ultimately need to be made by Full Council and is a separate matter from this application for planning permission.

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- 1.7 Members will be aware that the existence of a restrictive covenant is a private land ownership matter and this should not be given weight in the determination of this planning application.
- 1.8 The application site is outside the Bishop's Stortford Conservation Area and the trees that have been removed were not subject to a Tree Preservation Order (TPO). The consent of the Council, as local planning authority, for the felling of the trees was not required and therefore there is not a breach of planning control.
- 1.9 This application therefore only seeks permission for those matters identified in paragraph 1.5 above.

2.0 Site History:

- 2.1 Outline planning permission was granted for the Thorley development under reference 3/72/2071/OP.
- 2.2 Planning permission was granted for 71 dwellings, which forms the road now known as Penningtons, in 1985 under reference 3/85/0662/FP.

3.0 Consultation Responses:

- 3.1 The Council's Landscape Officer has recommended approval of the application. They have no objection to the change of use of the land to residential garden, given the context of the site and its location. They state that, in the interests of local amenity, at least some of the tree belt should be restocked by way of mitigation / compensation for the loss of woodland recently incurred. They recommend that a 5 metre (minimum) strip along the western boundary of the site is planted with suitable trees at approximately 4 metre centres and allowing sufficient space from buildings to allow for future growth.
- 3.2 The Council's Solicitor has confirmed that the covenant on the land is a separate matter and should not form a material consideration in the determination of the current planning application.

4.0 Town Council Representations:

- 4.1 Bishop's Stortford Town Council objects to the proposal. They comment that damage has occurred to the site and consider that the site should be restored to the state that it was in previously. This means to remove all of the buildings and hardcore from the site and to replace these with soil and trees. They are displeased with the loss of screening for the surrounding neighbours, wildlife and trees.

5.0 Other Representations:

5.1 The application has been advertised by way a discretionary site notice and neighbour notification.

5.2 7 No. letters of objection from residents of The Thatchers, Brewers Close, Cutlers Close, Thresher Close and Penningtons have been received which can be summarised as follows:

- The trees have been removed without permission;
- The loss of the trees results in a loss of screening and privacy to the neighbouring dwellings within St. Michaels Mead;
- The loss of trees will have effected wildlife;
- The loss of trees has affected the character of the area;
- Children are no longer able to play safely outside of their own homes;
- The proposal will increase traffic;
- The trees used to form a sound barrier between the two housing estates and it is feared that the noise impact will be unbearable once the land is in full use.

5.3 8 No. letters of support have been received, all from residents of Penningtons (7 of these are from the occupiers of properties whose land forms part of the application site) and these can be summarised as follows:

- The Council were contacted when the land was purchased and no objections were raised;
- The trees removed were not protected by a TPO;
- A report undertaken by an Arboriculturalist found that some of the trees were not the correct type to be planted close to buildings and were growing considerably in height due to their density which posed a risk to neighbouring houses;
- The removal of the trees has allowed sunlight into the properties within Penningtons;
- A number of the Penningtons residents intend to plant gardens that will encourage wildlife;
- The land had suffered from neglect and litter and the trees were difficult and expensive to maintain;
- Some of the residents in Penningtons have already purchased and planted more suitable trees for the land than those that have been removed;
- Some of the neighbouring properties have benefited from the removal of overhanging trees which has enabled a satellite dish to

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be added to No. 41 The Thatchers and has benefited a proposal for a rear extension to No. 43 The Thatchers.

5.4 In addition to the neighbour letters received, a representation has been submitted from Circle Housing South Anglia which raises concerns in respect of any access that may be required from the neighbouring land in St. Michaels Mead.

5.5 A representation has been received from Cllr Woodward which raises concerns that the proposal removes part of the fundamental design protection of a shelter belt between Thorley and St Michael's Mead.

6.0 Policy:

6.1 The relevant 'saved' Local Plan policies in this application include the following:

- ENV1 Design and Environmental Quality
- ENV2 Landscaping
- ENV5 Extensions to Dwellings
- ENV7 Extension of Curtilage of a Residential Property
- ENV16 Protected Species

6.2 The National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG) are also material considerations in the determination of the application.

7.0 Considerations:

7.1 The site is located within the built up area of Bishop's Stortford. It is outside the Conservation Area and the trees that have been removed at the site were not protected by a Tree Preservation Order. Their removal did not therefore require consent under the Town and Country Planning Acts and as such their loss does not form a material planning consideration in the determination of this planning application.

7.2 The principle considerations for this application are therefore in respect of whether the proposed change of use of the land and the erection of a shed, summer house and hard standing would have an unacceptable impact upon the character and appearance of the surrounding area and the amenities of neighbouring residential occupiers.

7.3 The area that surrounds the application site comprises of residential estates where a large number of the dwellings have rear and side gardens adjoining the gardens of their neighbouring properties. The

proposed extension of the residential gardens of the properties in Penningtons would result in a very similar situation, whereby the rear and side gardens of the properties would mostly back onto the rear or side gardens of the dwellings in the adjoining St Michaels Mead development. In some cases the extended gardens would back onto the access or parking area of the properties within St Michaels Mead. Officers consider that the proposal would result in a layout and form of development that would be similar to, and in keeping with, the existing pattern of development within the area.

- 7.4 It is acknowledged that the site forms a noticeable divide between the Thorley and St Michael's Mead developments. However, when the requirement was made for the land to be planted with trees as part of the Thorley development this created a boundary between the residential estate and the open undeveloped land to the west. The Thorley development was granted outline planning permission 16 years before permission was granted for the St Michaels Mead and Officers therefore consider that the requirement to plant trees within the application site was originally made to protect the openness of the rural land to the west of the site and not necessarily to create a divide between the Thorley development and any development on the land to the west.
- 7.5 Officers do not consider it to be necessary to retain the land as a buffer between the two residential developments and consider that the proposal to extend the gardens of the dwellings in Penningtons, which will result in them adjoining the gardens and parking areas of the neighbouring properties in St Michaels Mead, to be acceptable. The proposal would not have an unacceptable impact upon the character, appearance or layout of the area and as such accords with the aims of Policies ENV1 and ENV7 of the Local Plan.
- 7.6 It is noted that the proposed summer house, shed and patio would not ordinarily require planning permission within the residential curtilage of a dwelling house. However, as these developments have occurred on land that is currently outside of the residential curtilage of the dwellings, 'permitted development' rights in respect of outbuildings and hard standing do not apply.
- 7.7 The summer house, shed and hard standing form modest developments which Officers consider to be appropriate within the garden areas of the dwellings. Officers consider that these developments do not have a detrimental impact upon the character and appearance of the dwellings or that of the surrounding area as a whole, in accordance with the aims of Policies ENV1 and ENV5.

Neighbour Amenity

- 7.8 As outlined above, the proposal would result in an extension to the garden areas of the properties in Penningtons so that in most cases they would adjoin the existing side and rear gardens of the neighbouring dwellings in St Michaels Mead. This is a common relationship within the surrounding area which Officers consider would not result in unacceptable living conditions for either occupier.
- 7.9 Whilst it is acknowledged that the residential use of land adjoining the existing gardens in St Michael's Mead could lead to some increased noise disturbance, the degree of this impact would not be significant or necessarily any different to the level of noise disturbance caused between other residential properties within the surrounding area.
- 7.10 The summer house that has been constructed is set back approximately 5.5 metres from the closest boundary of the property which is the boundary with the front drive and parking area for the neighbouring dwellings in Brewers Close. The shed has been erected to the rear of the existing garage at No. 17 Penningtons and retains a space of 1 metre to the southern site boundary with No. 16 Penningtons and approximately 10 metres to the western boundary with the parking area in Brewers Close. Having regard to the siting of the buildings in relation to the site's boundaries and their modest size, scale and design, Officers consider that they would not result in a detrimental impact upon the amenities of the neighbouring occupiers.
- 7.11 The patio area that has been constructed to the rear of No. 51 Penningtons is located centrally within this part of the site and would not result in a detrimental impact upon the amenities of neighbouring occupiers.

Other Matters

- 7.12 The concerns that have been raised by neighbouring occupiers and the Town Council in respect of the loss of trees; the impact that this has had upon wildlife; the character of the area, and the amenities of neighbouring occupiers due to the screening and noise protection that they provided, are duly noted. However, as the site is not within a Conservation Area and the trees were not protected by a TPO, the loss of the trees does not form a material planning consideration in the determination of this application and therefore no weight should be given to this.
- 7.13 The recommendation made by the Landscape Officer for replacement

tree planting to be required by condition has been considered. However, as set out above, Officers consider, that the proposed use of the land as additional garden space and the erection of the summer house, shed and hardstanding would not result in an unacceptable impact upon the character and appearance of the area or the amenities of neighbouring occupiers and as such a condition for new tree planting is not necessary to make the proposal acceptable. Furthermore, it is apparent from the Landscape Officer's comments that their recommendation for new tree planting is to mitigate against the loss of trees that has occurred. However, as outlined previously within this report the loss of the trees does not form a material consideration in the determination of this application.

- 7.14 Officers consider that the imposition of a condition to require tree planting in this case would be unreasonable and unnecessary and the reasons for such a condition would not be relevant to the considerations of the current application and therefore would fail the necessary tests for imposing conditions

8.0 Conclusion:

- 8.1 For the above reasons, the proposed change of use of the land and the summer house, shed and hard standing are considered to be acceptable in terms of Local Plan policy and their impact on the character and appearance of the surrounding area.
- 8.2 It is therefore recommended that planning permission be granted for the development subject to the conditions set out at the head of this report.