

E/09/0152/B – Unauthorised erection of fence and change of use of amenity land to residential curtilage at the rear of 12 Harebell Close, Hertford, SG13 7TF

Parish: HERTFORD CP

Ward: HERTFORD KINGSMEAD

RECOMMENDATION

That the Director of Neighbourhood Services, in consultation with the Director of Internal Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the removal of the unauthorised fence and the cessation of the unauthorised use of the land, as part of the residential curtilage of the property.

Period for compliance: 1 Month

Reasons why it is expedient to issue an enforcement notice:

The enclosure of the amenity land to the rear of the property and its incorporation into the garden area of the dwelling is detrimental to the open, landscaped character of the surrounding area. It is therefore contrary to policy ENV7 of the East Herts Local Plan Second Review April 2007.

_____ (015209B.PD)

1.0 Background

- 1.1 The site is shown on the attached Ordnance Survey extract. The property is a semi detached dwelling that fronts onto Harebell Close with its rear boundary wall facing on to Vixen Drive.
- 1.2 It was brought to the attention of the Enforcement team in April 2009 that the owner of the property had erected a new fence to the rear of the property that enclosed an area of open amenity space fronting Vixen Drive.
- 1.3 Following a discussion with the owner, it was explained to him that, although the land was in his ownership it did not form part of his residential curtilage, but was part of the amenity land associated with the development of the wider residential estate.

As such, its incorporation into the garden of 12 Harebell Close constituted a material change of use of the land. In addition, the fencing, due to its height adjacent to the highway, also required planning permission.

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- 1.4 The owner responded in April 2009 by informing officers, that a telecommunications company had erected equipment cabinets on the land without his consent and he was in the process of seeking their removal.
- 1.5 A further letter was sent to the owner, dated 16th December 2009 requiring the fence to be removed and the land reinstated to amenity land within the following 21 days as the equipment cabinets had been moved to outside this area. Following a site visit on the 12th January 2010 however it was noted that the fence was still in place.

2.0 Planning History

- 2.1 There is no recent planning history.

3.0 Policy

- 3.1 The relevant policies of the East Herts Local Plan Second Review April 2007 are :-
 - ENV7 – Extension of Curtilage of a Residential Property.

4.0 Considerations

- 4.1 In granting planning permission for this estate in the 1990's, the Council was keen to ensure that its layout and design provided for open areas of landscaping to help soften the appearance of the development. Accordingly, the approved plans for the development included areas of landscaping which, although conveyed to individual properties, were not part of the individual residential curtilages and were to remain as open landscaping.
- 4.2 The enclosure of this amenity land constitutes a material change of use of the land for which planning permission has not been sought or granted. The fence is visually prominent and detrimental to the appearance of the area, and the enclosure of the soft landscaped area results in a harsh edge to the development which is detrimental to the character and appearance of the area.
- 4.3 The development is hereby contrary to policy ENV7 of the East Herts Local Plan Second Review April 2007, which seeks to ensure the retention of communal amenity land around housing developments and states that planning permission for the enclosure of such land into private gardens will not usually be given.

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4.4 It should be noted that an Enforcement Notice was issued and served on another property within this same estate, where the same situation arose in 2004. The notice required the cessation of the land for residential purposes; the re-erection of a fence along the original boundary of the residential curtilage; and the reinstatement of the soft landscaping on the land. This notice was the subject of an appeal to the Planning Inspectorate. This appeal was dismissed by the Planning Inspector who concluded that, *“I considered, as a matter of fact and degree that its incorporation into the garden of [No.60] by moving the fence to the edge of the footpath constituted a material change of use of the land as described in the notice. As there is no planning permission for this development, it is in breach of planning control. The appeal therefore fails”*.

5.0 Recommendation

5.1 For the above reasons it is recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the removal of the unauthorised fence; the cessation of the use of the land for residential purposes; and the reinstatement of the land to soft landscaped amenity area.