

DEVELOPMENT MANAGEMENT COMMITTEE – 20 SEPTEMBER 2023

Application Number	3/23/0775/FUL
Proposal	Change of use of land to residential curtilage and erection of a 1.8 metre height fence (set in by 1.5 metre) and with managed peripheral landscaping.
Location	Land to the Rear Of 74, 75 And 76 Magnaville Road, Bishop's Stortford, Hertfordshire, CM23 4DW
Applicant	Edmunds, Banks and Munro
Parish	Bishop's Stortford
Ward	Bishop's Stortford South

Date of Registration of Application	20 th April 2023
Target Determination Date	15 th June 2023
Reason for Committee Report	Call in request – Cllr Hollebon
Case Officer	Nicholas Reed

RECOMMENDATION

That planning permission be **REFUSED** for the reasons set out at the end of this report.

1.0 Summary

- 1.1 The planning application seeks permission for the change of use of land to residential garden and erection of a 1.8 metre height fence (set in by 1.5 metre) and with managed peripheral landscaping.
- 1.2 Planning permission was previously refused on 19th January 2023, under Local Planning Authority ref. 3/22/2385/FUL, for the change of use of land to residential curtilage and erection of a 2 metre high fence.
- 1.3 The main considerations for the proposal are:

- Principle of development
- Design and Layout
- Neighbour Amenity
- Highways Implications
- Landscaping and Biodiversity

1.4 The main issue for consideration is whether the proposed development is acceptable, having regard to policies in the East Herts District Plan 2018, the Bishop's Stortford Neighbourhood Plan for All Saints, Central, South and part of Thorley (First Revision) and the National Planning Policy Framework (July 2021).

2.0 Site Description

2.1 The application site is located within the settlement of Bishop's Stortford and is comprised of an area of landscaped amenity land located within a late 20th Century housing development (Thorley Park). The parcel of land is rectangular in shape and measures approximately 7 metres in width and 50 metres in length. The land is bounded to the north and east by boundary fencing associated with the rear gardens of properties located in Magnaville Road. To the west of the site are three parking spaces and to the south of the site is a public footpath that extends in an east, west direction and links into a public right of way (Bishop's Stortford 27), which is located to the west of the site. To the south of the site are a cluster of two storey blocks of flats which are located within an open, landscaped setting. The site is occupied by grassland and mature trees and hedging contributing to the landscape character and green infrastructure network within the immediate and wider locality.

3.0 Background to Proposal

3.1 Planning permission has previously been refused for the enclosure of the application site with 2 metre high fencing and the change of use to residential curtilage under ref. 3/22/2385/FUL. The application was refused for the following reason:

1. The proposed development would result in the private enclosure and consequent loss of an area of open amenity space, which would have a detrimental impact on the character and appearance of the street scene and wider area. The proposal fails to demonstrate that the development would retain, protect or enhance biodiversity and green infrastructure. The proposal would thereby be contrary to Policies DES3, DES4, NE4 and HOU12 of the East Herts District Plan 2018 and the National Planning Policy Framework.

4.0 Key Policy Issues

- 4.1 These relate to the relevant policies in the National Planning Policy Framework (NPPF), the adopted East Herts District Plan 2018 (DP), and the Bishop's Stortford Neighbourhood Plan for All Saints, Central, South and part of Thorley (First Review):

Key Issue	NPPF	District Plan Policy	Local Plan policy
Principle of Development	Section 11	HOU12	
Design and Layout	Section 11 Section 12	DES4 HOU12	HDP2 HDP3
Neighbour Amenity	Section 12	DES4	
Highway Implications	Section 9	TRA2	
Landscape and Biodiversity	Section 15	DES3 NE4	GIP5

Other relevant issues are referred to in the 'Consideration of Relevant Issues' section below.

5.0 Summary of Consultee Responses

5.1 HCC Highway Authority

The Highway Authority has commented that they do not wish to restrict the grant of planning permission. The application is acceptable in principle from a highways context. A public footpath runs along the southern boundary of the site and the proposed

fencing should not obstruct access to the street lighting column opposite the footpath to The Colts. An Informative relating to the storage of construction materials is recommended.

5.2 EHDC Landscape Advisor

The Council's Landscape Advisor comments that the site currently comprises an area of open space with trees alongside a public footpath within a residential housing estate and is an important part of the planned green infrastructure for the existing development, and which, as such, is important to retain.

- 5.3 This application runs contrary to Policy NE4 Green Infrastructure which aims to avoid the loss, fragmentation or functionality of the existing green infrastructure network. Neglect in the management of this open space, whether conscious or otherwise does not sway in favour of its removal/loss in terms of green infrastructure and public amenity, albeit that improved land management/maintenance may need to be put in place. Quite often such urban green infrastructure is the only "natural environment" that people connect with on a day-to-day basis, and this area of land contributes to the visual amenity of the immediate environs as well as the wider surroundings

6.0 Bishop's Stortford Town Council Representations

- 6.1 Bishop's Stortford Town Council comments that the Committee supports this application as it will improve the area which at present is land which is full of dog waste bags, litter, and a general dumping ground since the removal of brown refuse bins. The residents will install new fencing which will be put in place and this will be softened by plants and flowers.

7.0 Summary of Other Representations

- 7.1 The application has been advertised by neighbour consultation to local residents 20/04/2023. At the time of writing this report a total of 6 contributors commented on the application.
- 7.2 4 responses have been received in objection to the proposal on the following grounds:
- Thorley is a beautiful neighbourhood in Bishop's Stortford.
 - The footpaths provide an essential link across this part of Bishops Stortford, allowing cut throughs where there are no roads, allowing easy walking links to town and the station and as such reducing congestion, carbon footprints and making our town an open and welcoming friendly pedestrian environment.
 - This particular footpath provides a popular an essential safe link to hundreds of houses on Magnaville Road, The Colts, Grace Gardens, Hayley Bell Gardens Pamela Gardens, Pynchbek and Villers- Sur Marne to name but a few. It also provides an essential link to many flats and school children at both Richard Whittington and the high school. This footpath should not be removed as a result.
 - We object to this use of the land as it could set a precedent for public walkways to be narrowed. We believe narrow paths at dusk, early morning and night can become a place where people may feel unsafe walking alone therefore it is a loss of community space.
 - The application offers no benefit to the general public. Policy NE4 of the District Plan says that development proposals should avoid the loss, fragmentation or functionality of the green infrastructure network, including within the built environment. This application would lead to fragmentation and loss of green open space in Thorley Park. The Key Character Management Principle underlying Policy GIP2 in the adopted Bishop's Stortford Neighbourhood Plan for the area says that public green space within residential estates should be protected and enhanced. This proposal would have the opposite effect.
 - The proposed development would result in the private enclosure and the consequent loss of an area of open amenity

- space, which would have a detrimental impact on the character and appearance of the street scene and wider area.
- The Bishop's Stortford & District Footpaths Association (BSDFA) objects to yet another planning application on Thorley Park that would result in the loss of a green space which has intrinsic amenity value. The verge is well established and breaks up the urban landscape on the estate providing an important wildlife corridor. The character of the public path would be compromised by the loss of the verge and the erection of high fencing which would adversely impact the open character of this area.
 - This is the latest in a series of planning applications seeking to enclose and/or develop amenity space on Thorley Park. We are very concerned that if this application is approved it could set an undesirable precedent for future applications on the estate.
 - We note that those supporting the application make reference to the verge being unkempt and overgrown. It is now recognised that such areas provide a haven for wildlife and that they should be celebrated rather than enclosed or built on.
 - When Thorley Park was developed as a major urban extension of Bishop's Stortford in the 1970's and 1980's, careful thought was given at the time of that development to housing density, the layout of the residential streets and, most importantly, the provision of green spaces both to provide connecting routes between parts of the development and to the town centre and to the Thorley District Centre.
 - Regrettably, not all these green spaces were adopted by the local authority on completion of the development (although it does maintain some of them) and we understand that a number of them have been sold off by the liquidators of Carillion, leading to speculative applications to convert public open space into private amenities. In this application the applicant hopes to convert land that has been treated as public open space and has been enjoyed as such by the public for many years into private amenities in the form of extended gardens. The applicant argues that the space is currently neglected and used as a waste dumping ground. If that is the

problem, the answer lies in maintaining it properly, not privatising it.

- This application offers no benefit to the general public - only to the residents whose gardens would be extended, and to the present owner of the site from the proceeds of sale. Policy NE4 of the District Plan says that development proposals should avoid the loss, fragmentation or functionality of the green infrastructure network, including within the built environment. This application would lead to fragmentation and loss of a green open space in Thorley Park. The Key Character Management Principle underlying Policy GIP2 in the adopted Neighbourhood Plan for the area says that public green space within residential estates should be protected and enhanced. This proposal would have the opposite effect.

7.3 2 responses have been received in support of the proposal. The following comments were received:

- The site is overgrown with thorn bushes and unkempt hedges;
- The land is not being used for amenity purposes, i.e., the definition of amenity land, which includes a plot of land used or intended to be used for a park, garden, playground, graveyard, educational institution, health institution, reading room, library, community centre, and places for religious workshops. None of these apply to the land, as it is simply not being used, except for dog fouling;
- The development would not impact the visual aspect of the area. A simple walk around the area would reveal that gardens abut the footpath on both sides, forming an alley on Thorley in numerous places, just across the main road;
- It would be a positive outcome for the area if this land were fenced in and looked after;
- There are various walkways around Thorley, that have been left in an awful state and are turning into a dumping ground.

8.0 Planning History

8.1 The following planning history is of relevance to this proposal:

Reference	Proposal	Decision	Date
3/22/2385/FUL	Change of use of land to residential curtilage and erection of a 2 metre high fence.	Refused	19 th January 2023

9.0 **Consideration of Relevant Issues**

Principle of Development

- 9.1 Policy HOU12 allows for the change of use of amenity land to residential garden, only in certain circumstances. The change of use of land will only be granted where it would not result in an adverse effect on the character and appearance of the surrounding area and includes appropriate landscaping and boundary treatments. Part II of Policy HOU12 states that the enclosure of amenity land into residential garden within housing estates will not normally be given.
- 9.2 The proposal would comprise of a change of use of the application site to residential garden and the erection of a 1.8 metre high fence which is to be set in by 1.5 metres from the boundary, with managed peripheral landscaping.
- 9.3 The proposal would result in the enclosure of a valuable area of open landscape amenity space and green infrastructure within an established housing development. The loss of the existing landscaping and erection of new fencing would be harmful to the character and appearance of the street scene and wider locality. An appropriate landscaping scheme has not been submitted. The proposal would therefore fail to comply with Policy HOU12 of the East Herts district Plan 2018.
- 9.4 If this amenity space is enclosed and given over to residential garden, a precedent may be set for similar future applications in the wider area which would result in the loss and erosion of the wider

green infrastructure network seen throughout the Thorley Park housing estate to the detriment of the general amenity of the immediate and wider area.

Design and Layout

- 9.5 Policy DES4 of the East Herts District Plan (2018) states all development proposals, must be of a high standard of design and layout to reflect and promote local distinctiveness.
- 9.6 The application site is comprised of an area of landscaped amenity land approximately 7 metres in width and 50 metres in length. The land is formed of areas of grassland and mature hedging and trees. The land consists of an area of soft landscaped amenity land within the Thorley Park housing estate. The purpose of such areas of the soft landscaping is to soften the appearance of built form and provide visual relief from hard landscape features and create an open verdant character to an area. Such landscaped areas are an important characteristic of the Thorley Park estate and are often focused on pedestrian routes, parking areas and other communal or public areas. These landscaped areas form part of the wider green infrastructure network and positively contribute to the landscape character and general amenity of the wider area.
- 9.7 The immediate locality is characterised by detached and semi-detached properties within Magnaville Road (to the north) which are set within well-proportioned modest plots, and blocks of Maisonettes to the South (The Colts) which are set within spacious communal landscaped grounds. There are numerous areas of surface and covered parking nearby which serve the maisonettes. The surrounding area contains areas of landscaped amenity land and planting in the form of mature trees and hedging. The streetscape within the locality is therefore characterised by relatively dense housing and hard landscaping features set in close proximity to the highway, with generous areas of landscaped amenity space which serves to soften the built form within the street and succeeds in creating a pleasant, open and spacious character. These landscaped amenity areas form an integral part of

the character and appearance of the street scape and locality and provide valuable areas of urban greening and green infrastructure.

- 9.8 The proposed development would comprise of the enclosure of an area of landscaped amenity land with a 1.8 metre fence and the change of use of the land to residential use. The proposed fencing would be set back from the site boundary by a 1.5 metre with a managed landscaped buffer strip being provided.
- 9.9 The proposed development would fundamentally alter the character and appearance of the locality. The effect of this would be the erosion of the open and verdant character of the area and the introduction of visually harmful hard landscaping features into the street scene, to the detriment of the area and the amenity of pedestrians using the footpath.
- 9.10 No landscaping details have been provided and any potential planting and soft landscaping within the proposed managed landscaped buffer would take time to establish; during this time the proposed development would appear as a harmful hard landscape feature which is readily visible from the public realm.
- 9.11 The proposal would result in the loss of an important area of mature landscaping which has intrinsic amenity value. The erection of 1.8metre high solid fence would introduce a substantial length of blank and featureless elevations which would detract from the existing soft landscaping within this area thereby resulting in an adverse effect on the character and appearance of the surrounding area and landscape. The proposal would therefore be contrary to Policies DES4 and HOU12.

Neighbour Amenity

- 9.12 The proposed fencing would be 1.8 metres in height and would be located approximately 4.5 metres from the closest residential property to the south (18 and 19 The Colts). The proposed development would be screened from the adjacent properties by existing boundary treatments, which include hedging and hedging.

- 9.13 The proposed development would be located sufficiently far from neighbouring properties to avoid a detrimental impact on the general amenity of the adjoining occupiers in terms of overbearing impacts, loss of privacy, or overshadowing. The proposal would accord with Policy DES4(c).

Highway Implications

- 9.14 The proposed fencing would be set back from the public footpath and parking area by 1.5 metres and as such there are no concerns relating to the obstruction of the footpath or obstruction to visibility for vehicles manoeuvring in and out of the parking spaces.
- 9.15 The Highway Authority does not wish to restrict the grant of planning permission. They have commented that access to the street lighting column should not be obstructed. They have recommended an informative relating to the storage of construction materials. The proposal would accord with Policy TRA2 of the District Plan 2018.

Landscape and Biodiversity

- 9.16 Policy DES3 states that development proposals must demonstrate how they will retain, protect and enhance existing landscape features which are of amenity and/or biodiversity value, in order to ensure that there is no net loss of such features. Where losses are unavoidable and justified by other material considerations, compensatory planting or habitat creation will be sought either within or outside the development site.
- 9.17 Policy NE4 (II) states that development proposals should avoid the loss, fragmentation or functionality of the green infrastructure network, including within the built environment. Proposals should maximise opportunities for urban greening.
- 9.18 Policy GIP5 of the Bishop's Stortford Neighbourhood Plan (First Revision) requires that development proposals should seek to protect wildlife and promote biodiversity.

- 9.19 The site is comprised of grassland, hedging and mature trees. The site is split into three main areas; an area of grass that occupies the southern part of the site adjacent to the footway, a section of hedging to the rear of the site which is adjacent to the existing boundary fencing, and a small grove of trees at the eastern end of the site. A mature birch tree is located in the south western corner of the site; this tree is a good quality specimen which appears to be in good condition. This soft landscaping and planting contribute positively to the character, appearance and general amenity of the street scene.
- 9.20 The biodiversity value of the site is unknown, and the application is not supported by an ecology report. The site, nevertheless, provides some habitat for wildlife and has intrinsic amenity, landscape, and biodiversity value as an area of green space within a built-up area.
- 9.21 The proposed fencing would be set back from the footway by approximately 1.5 metres and as such any supporting fence post is likely to need to be sunk into the ground in close proximity to the birch tree in the south eastern corner of the site; this is not considered to be good practice and would potentially harm the tree. Furthermore, at least one of the trees at the eastern end of the site would need to be removed in order to construct the fence. No arboricultural report has been submitted in support of the application which identifies the trees within the site or the potential impact of the proposed development on those trees.
- 9.22 No landscaping scheme has been provided as part of the application and it is unclear how the land would be used following a change of use to residential garden and its incorporation into the private gardens of the properties to the north. The presence of the existing trees and hedging on the site may result in pressure to remove these in the future in order to maximise the proposed private garden space. No landscaping or planting scheme for the managed landscape buffer have been provided.
- 9.23 It is advised by the applicant that the site is currently untidy and used as a dumping ground for garden waste, litter and dog waste. Numerous visits to the site have been undertaken; it was observed

that the site was not unduly overgrown, untidy, and no significant garden waste or litter was present; although it is acknowledged that some dog waste bags were present. It is contended that the proposal would allow the site to be cleaned up and the landscaped buffer would provide a maintained landscaped area. It is noted that the proposal would not prevent the type of antisocial behaviour identified.

- 9.24 The Council's Landscape Officer objects to the proposed development, advising that the proposal would result in the loss of an important area of planned green infrastructure and does not comply with Policy NE4. Neglect in the management of this open space, whether conscious or otherwise does not sway in favour of its removal/loss in terms of green infrastructure and public amenity.
- 9.25 Insufficient information has been submitted to demonstrate that the proposed development would retain, protect and enhance existing landscape features which are of amenity and/or biodiversity value or avoid the fragmentation of green infrastructure within the built environment or that appropriate compensatory landscaping could be provided. The proposal would therefore fail to accord with Policies DES3 and NE4 of the District Plan 2018 and Policy GIP5 of the Bishop's Stortford Neighbourhood Plan for All Saints, Central, South and part of Thorley.

Other Matters

- 9.26 Responses to the majority of the representations received have been addressed within the body of the report.
- 9.27 The comments received objecting to the loss of the footpath are noted, however, it is not proposed to block or obstruct the public footpath.

10.0 Conclusion

- 10.1 The proposal would result in the loss of an important area of mature landscaping which has intrinsic amenity value to the wider

footpath network and character of the area. The erection of 1.8 metre high fencing would introduce a substantial length of blank and featureless structure which detracts from the existing soft landscaping within this area thereby resulting in an adverse effect on the character and appearance of the surrounding area and landscape. The proposal would therefore be contrary to Policies DES4 and HOU12.

- 10.2 Insufficient information has been submitted to demonstrate that the proposed development would retain, protect and enhance existing landscape features which are of amenity and/or biodiversity value or avoid the fragmentation of green infrastructure within the built environment or that appropriate compensatory landscaping could be provided. The proposal would therefore fail to accord with Policies HOU12, DES3 and NE4 of the District Plan 2018 and Policy GIP5 of the Bishop's Stortford Neighbourhood Plan for All Saints, Central, South and part of Thorley.
- 10.3 Overall, on the balance of considerations, the proposed development would not accord with the Development Plan when taken as a whole and the NPPF (2021 and 2023).

RECOMMENDATION

That planning permission be **REFUSED** for the following reason:

The proposed development would result in the enclosure and consequent loss of an area of open amenity space, which would have a detrimental impact on the character and appearance of the street scene and wider area. The proposal fails to demonstrate that the development would retain, protect or enhance biodiversity and green infrastructure. The proposal would thereby be contrary to Policies DES3, DES4, NE4 and HOU12 of the East Herts District Plan 2018 and Policy GIP5 of the Bishop's Stortford Neighbourhood Plan for All Saints, Central, South and part of Thorley (First Revision), and the National Planning Policy Framework (July 2021 and September 2023).