

Site Address: Land adjacent to 9, Fairlea Road, Emsworth
 Proposal: Change of use of land to private garden (retrospective).
 Application No: APP/16/01184 Expiry Date: 13/01/2017
 Applicant: Mr A W Payne
 Agent: Case Officer: Tina Pickup
 Ward: Emsworth

Recommendation: **GRANT PERMISSION**

1 Site Description

The application site relates to a strip of land measuring approximately 31m long by between 5m and 8m wide to the south of the original residential curtilage of 9 Fairlea Road, Emsworth. The land was originally open and left with vegetation, effectively open space, with no known owner. It has a drainage ditch running along its length and two significant trees, one of which at the frontage is TPO'd. At some point in early August 2016 the land was incorporated into the garden area of 9 Fairlea Road and a fence erected at the western end, enclosing it and making it private garden land. This material change of use required planning permission and hence this application is retrospective.

The site is within a dense residential area at the end of a cul-de-sac. The land slopes gently down to the west. The curtilages of other residential dwellings abut the site with a row of detached dwellings in Woodlands Avenue to the south having their rear boundaries abutting the length of the plot.

2 Planning History

96/61953/000 - 30% reduction of 1 Oak covered by TPO 1033, PERM,05/09/1996
APP/11/01214 - Reduce height by 2m, reduce width by 2m, raise crown to give
clearance of 2.5m over No. 9 Fairlea Road, and deadwood 1No. Oak tree (T2) subject
to TPO 1033. , PERM,31/08/2011
APP/11/01762 - Tree Works. UNK.

3 Proposal

Change of use of land to private garden (retrospective).

4 Policy Considerations

National Planning Policy Framework

Havant Borough Local Plan (Core Strategy) March 2011

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS16	(High Quality Design)
CS17	(Concentration and Distribution of Development within the Urban Areas)
DM8	(Conservation, Protection and Enhancement of Existing Natural Features)

Havant Borough Local Plan (Allocations) July 2014

DM25 (Managing Flood Risk in Emsworth)
AL1 (Presumption in Favour of Sustainable Development)
AL2 (Urban Area Boundaries and Undeveloped Gaps between Settlements)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Arboriculturalist - none received

Engineering/Drainage - The applicant would be required to maintain the drainage system to avoid negative impact on neighbours. He has the right to receive water but the responsibility to pass it on in such a way as to not create problems for others. To not maintain / block / destroy the infrastructure would open the applicant to charges of contributory negligence from his neighbours, and possible legal action under the Land Drainage Act.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 4

Number of site notices: 1

Statutory advertisement: The applicant posted an Article 13 Notice in the Portsmouth News on November 11th 2016

Number of representations received: 3

Summary: Four properties 1A, 1B, 1C and 1D in Fairlea Road whose gardens slope westwards and after bad weather water drains to ditch on the site; without this free flow gardens badly flood; applicant may well be good neighbour and allow this free flow but future owners may not be so co-operative; wish a legal obligation to owner of 9 Fairlea to ensure long term cooperation; water can rise to threshold of house if drainage flow blocked; when water rising in bad weather neighbours all go and clear ditch of debris - gaining immediate and unobstructed access to site and ditch; this self-help in emergency essential to protect homes from flooding; the fences prevent access; wish fences and barriers to land be removed; proof of ownership required; open access for drainage services provided; permanent public right of way maintained; point of access re-opened from southwest corner of 1D; covenant placed in Deeds of 9 for effective and regular maintenance of drain inlet; ecological appraisal and appropriate mitigation required in compliance with policy DM8 and Wildlife & Countryside Act, Habitats Regs etc; land should be put back to natural state to ensure no net loss in biodiversity and encourage return of slow worms, newts and bats; TPO made on ash tree; Natural England be consulted; form incorrect in stating no increase

to flood risk elsewhere; applicant does not own site and dispute that all reasonable steps have been taken to find out owner; advert placed in Portsmouth News for land in Emsworth does not comply with Article 14; before Woodlands Av housing development land drained onto open area; when houses built in 1982 accumulation of surface water led to flooding issues and developer laid new drain from low point in Fairlea Road to connect to new Woodlands Av drainage system; this was completed to everyone's satisfaction and served essential purpose since with open access to residents to clear drain inlet of debris; CS15 requires development to ensure no net increase in surface water run off;

Comment: These issues will be considered below.

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development and ownership issue
- (ii) Impact of proposed use on character of area
- (iii) Drainage issues
- (iv) Ecology issues

(i) Principle of development and ownership issue

The application site is situated within an urban area where further development is considered acceptable subject to the usual development control criteria. The applicant does not own the site, and the ownership of this parcel of land is unknown. However this does not prevent anyone from making a planning application provided the correct procedures are adhered to. In this case a Certificate D has been completed and a Notice published in the Portsmouth News on 11th November 2016.

Objectors have queried whether the placing of the Notice in a Portsmouth paper for a site in Emsworth is adequate to fulfill the legal requirements and whether all reasonable steps have been undertaken to find the owner. The Town and Country Planning (Development Management Procedure) Order 2015 requires at Article 13:

b) where the applicant has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by publication of the notice after the prescribed date in a newspaper circulating in the locality in which the land to which the application relates is situated.

The Portsmouth News does circulate in Emsworth and therefore it is considered that the applicant has undertaken the appropriate Notice to comply with Article 13. The last known land Registry document for the site reveals that a Mr Albert Terence Pitassi of 51 Bath Road owned the whole area subsequently developed as the cul-de-sac of Fairlea Road in 1960. However it is known from other land registry documents that Mr Pitassi sold 51 Bath Road in 1962. The applicant has attempted to trace Mr Pitassi but found that he died in 1979 with his wife dying before him in the 60's.

A view on this issue has been sought from the Council's legal team who have commented that "The publication of the notice in the Portsmouth News, in my view, is sufficient notification under article 13" and that the applicant has done his best to track

down the last known owner. Therefore Certificate D is accepted as the correct procedure in this case.

Notwithstanding this correct procedure, the granting of planning permission does not convey ownership which remains a separate issue and an Informative can be added to this effect.

(ii) Impact of proposed use on character of area

The site lies within a residential area - all surrounding land comprises residential curtilages and gardens. Therefore in planning terms, to use the parcel of land for an extended residential curtilage is compatible with the surrounding area and an appropriate land use. However, if permission is granted then the land would benefit from permitted development rights and the erection of any structures could have an effect on the drainage ditch that crosses the site (see below), as could any side extension to the dwelling. Therefore it is considered necessary to withdraw permitted development rights appertaining to Classes A, E and F developments. With this restriction the proposed use of the land is considered appropriate and compliant with policies CS17 and CS16 of the Core Strategy, 2011.

(iii) Drainage issues

The site includes a drainage ditch which is understood from neighbours to have been constructed in about 1982 by the developers of Woodland Avenue. This was to ease flooding and drainage of the gardens of the properties in Fairlea Road, particularly nos 1a - 1d. Since the 80's the parcel of land comprising the application site has always simply been left open which has enabled residents to quickly access it to clear and maintain the ditch at times of bad weather. By enclosing the land within a private residential garden neighbours are denied this easy access for emergency clearance of the ditch and it is this loss of access that is the main cause of objection.

However, the Drainage engineer has not raised any objection to the proposal because the responsibility of the maintenance of the ditch would transfer to the applicant/occupier of 9 Fairlea Road. He has advised that the necessary maintenance would be to keep the ditch open and in a condition suitable to receive and convey water. This would include keeping any grass mown etc. and free of trees growth, bushes etc. In the event of the ditch not being maintained, becoming blocked and a complaint received from a third party, the Land Drainage Authority can under their legislation, undertake an inspection to identify any works that need doing and such works would have to be completed to the land drainage authority's satisfaction within 6 weeks, otherwise the work would be done in default and recharged.

Alternative legislation (Land Drainage Act) covers this issue - the applicant has the responsibility to pass water on in such a way as to not create problems for others. To not maintain / block / destroy the infrastructure would open the applicant to charges of contributory negligence from his neighbours, and possible legal action under the Land Drainage Act. Whilst the loss of access to undertake emergency maintenance is objectionable to neighbours, this is not a reason to refuse the current planning application because drainage issues are covered by other legislation. It is however possible to condition the permanent retention of the drainage ditch, which will alert future occupiers to the need to maintain the ditch. Otherwise an Informative can be added to the decision notice advising the applicant of his responsibilities to maintain the ditch to pass on water in such a way as to not create problems for others.

Since it is essential that this ditch is maintained then any structures or hardsurfaces (eg patios) erected in the extended garden, or side extensions to the house, could be detrimental to the free flow of water. Hence it is important that no such engineering operations or structures are erected on the land that could infill the ditch and so it necessary to withdraw permitted development rights appertaining to Classes A, E and F developments.

(iv) Ecology issues

Objectors have also noted the change in character of the land from its former natural state to more domesticated garden and the resultant loss of wildlife habitats. Objectors have requested that Natural England be consulted on the application but as a minor development for the change of use of a site that lies outside any protected area such as AONB, SSSI, SPA, SINC etc then neither Natural England or the County Ecologist are statutory consultees. The applicant would need to adhere to the provisions and protection of species provided by the Wildlife and Countryside Act 1981, but again this is under separate legislation. The land is currently simply grass and all the while there is no physical development or hard surfaces introduced, then the proposal is not considered to result in any harm to the local biodiversity. As above, to protect the area from development and retain the biodiversity in as natural a form as possible, it is considered necessary to remove permitted development rights for Classes A, E and F developments.

Associated with this is the request to TPO the ash tree located in the garden, at its eastern end. The tree at the western end, close to the public domain and head of the cul-de-sac is already TPO'd because it provides valuable public amenity. However the eastern tree is located such that it provides private amenity rather than public amenity, and as such does not meet the criteria for a TPO under the Town and Country Planning (Tree Preservation) Regulations 2012.

8 Conclusion

The change of use of the former open land to residential curtilage is an appropriate use within this built up residential area. The main objections relate to access to the ditch for drainage purposes but this is a matter for other legislation, the Land Drainage Act, and is not strictly a planning land use matter. With appropriate conditions withdrawing permitted development rights, and Informative's advising the applicant of his drainage responsibilities, then this application is acceptable and recommended for permission. As a retrospective application the standard time limit for implementation condition is not required.

9 **RECOMMENDATION:**

That the Head of Planning be authorised to **GRANT PERMISSION** for application APP/16/01184

(A) subject to the following conditions

- 1 The drainage ditch that runs along the southern boundary of the site shall be permanently retained and maintained to allow the free flow of water.

Reason: To enable the continued free flow of water to reduce flooding to adjacent land, in the interests of the amenity of neighbouring properties, in accordance with policies CS16 of the Havant Borough Core Strategy 2011, Policy DM25 of Havant Borough Local Plan Allocations, 2014 and the National Planning Policy Framework, 2012.

- 2 Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension, building, structure or hard surface permitted by Part 1, Classes A, E and F of the 2015 Order, as amended, shall be erected within the curtilage of the site without the prior written approval of the Local Planning Authority.

Reason: To protect the drainage ditch that runs along the southern boundary from any development and any infilling, in the interests of the free flow of water and amenity of neighbouring properties in accordance with policies CS16 of the Havant Borough Core Strategy 2011, Policy DM25 of Havant Borough Local Plan Allocations, 2014 and the National Planning Policy Framework, 2012.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans:

1:1250 Site Location Plan
1:500 Block Plan

Reason: - To ensure provision of a satisfactory development.