
Site Address:	1 Earnley Road, Hayling Island, PO11 9SU		
Proposal:	Change of use of amenity land to residential garden (part retrospective).		
Application No:	APP/15/00346	Expiry Date:	27/05/2015
Applicant:	Mrs G Browning	Team:	Team 1
Agent:		Case Officer:	Steve Weaver
Ward:	Hayling East		

Recommendation: **GRANT PERMISSION**

1 Site Description

- 1.1 The application site comprises a detached two storey house which is the westernmost in a line of dwellings running along the northern side of Earnley Road. As originally built, it is understood that the dwelling featured a typical open plan front garden and enclosed rear garden, with the line of the western side wall of the dwelling marking that boundary of the plot. The dwelling is prominent in views north along Itchenor Road.
- 1.2 To the west of the dwelling lies a tract of open space measuring between 11m and 12m, and beyond this lies The Hollies Caravan Park. To the north of the dwelling lies a substantial area of public open space which eventually meets the foreshore of Chichester Harbour, part of which lies within the ownership of the Council. A public footpath network crosses this open space, one of which (footpath 517) leads south through the area to the west of the dwelling, meeting up with the Earnley Road frontage at a chain link fenced frontage with a narrow access point through two pillars.

2 Planning History

- 2.1 99/64143/000
Single storey rear extension to provide accommodation for elderly relative. Permitted and implemented.
- 2.2 APP/14/00858
Rear extension. Permitted and implemented.
- 2.3 The application submitted in this case follows an enquiry received by the planning enforcement team, whereby it was established that part of the area of open space lying to the west of the property had been enclosed with 1m high picket style fencing to be used as an extension to the front garden.

3 Proposal

- 3.1 This application follows on from the enquiry referred to in paragraph 2.3 above and relates to the following matters:
- (a) retrospective permission for the enclosure of the area of amenity space to the west of the property, south of the building line of the dwelling - an area roughly 7m deep and between 6m-7m wide; and
 - (b) an application to extend the enclosed area further north, alongside the side wall of the dwelling and the rear garden, to eventually align with the rear boundary of the

property. The width of the further enclosed area will vary from 6m (southern end) to 2m (northern end) due to the alignment of the adjacent public footpath.

4 Policy Considerations

National Planning Policy Framework 2012

Havant Borough Local Plan (Core Strategy) March 2011

CS12	(Chichester Harbour Area of Outstanding Natural Beauty (AONB))
CS13	(Green Infrastructure)
CS15	(Flood and Coastal Erosion)
CS16	(High Quality Design)
CS17	(Concentration and Distribution of Development within the Urban Areas)
CS6	(Regeneration of the Borough)
DM1	(Recreation and Open Space)
DM8	(Conservation, Protection and Enhancement of Existing Natural Features)
DM9	(Development in the Coastal Zone)

Havant Borough Local Plan (Allocations) July 2014

AL2	(Urban Area Boundaries and Undeveloped Gaps between Settlements)
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Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

HCC Countryside Access Team

Havant Footpath no. 517 runs along the western boundary of this application site.

The Definitive Statement for this footpath specifies a width of 2.5 metres along the path between grid ref SZ 7461 9876 and SZ 7462 9887, which includes the whole of the section from Earnley Road past the application site.

This means that there should be 2.5 metres' width of surface available for public use of the path between these points.

We believe that the fencing along the eastern side of this path from the point where it joins Earnley Road already encroaches onto the width of the footpath, and that the continuation of this boundary as shown in the application would represent a further encroachment onto the path.

We must therefore OBJECT to this application.

Chichester Harbour Conservancy

Object - The Conservancy's main concern is related to restricting the width of the adjoining public footpath, under CS1 (7), CS11 (6)/CS 12 (1)(2)(4) especially EL1,2 & 4 of the AONB Management Plan), CS16 (4), DM9 (4), especially where this meets the street. This must make it difficult for ramblers with small children in a buggy or cyclists to access this part of the AONB. It is understood that this is a defined footpath in terms of its recognised width under the Wildlife and Countryside Act

1981. The Conservancy therefore must object to this proposal where it does not respect that legally prescribed width, on the basis of the proposals being detrimental to recreation within the Borough of Havant and the Conservancy's objective of promoting recreation to allow people to enjoy the scenic beauty of the

AONB.

Recommendations: (1) Propose recommend refuse (2) That if the applicant is unwilling to move any fencing to reinstate the public footpath to its legally recognised width within 56 days of any notice given by Havant Borough Council in writing, to take appropriate Enforcement action (in concert with any action Hampshire County Council may take) to ensure this right of way is available at its correct width.

Open Space Society

No comments received

Public Spaces Development Manager

No comments received

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: One

Statutory advertisement: Not applicable.

Number of representations received: 3

Summary:

- 6.1 Previous occupants helped themselves to the land and cultivated it as a flower grassed area for many years. Acquisition of further land will not benefit No.1 as there is a substantial brick wall on the existing boundary.

Comment: It is understood that the front garden extension took place a significant period of time ago - to the extent that it is unlikely that this breach of planning control could now be enforced. The applicant has advised that she wishes to extend the enclosed area adjacent to her house as little maintenance takes place of this area.

- 6.2 Precedent for further properties in the area to enclose other areas of pleasant communal space.

Comment: The land to the side of No. 1 is viewed as a separate parcel of land from the larger area of open space to the rear, and as such this application's approval is not considered to set a precedent for other properties to follow suit.

- 6.3 Loss of open land to the community.

Comment: The role and function of the piece of open land affected by this application is considered further at Section 7 below.

- 6.4 Enclosure impairs access to open space by emergency vehicles.

Comment: Vehicular access to the larger area of open space to the rear is taken from the other end of Earnley Road; the access to the land the subject of this application being on foot only from Earnley Road.

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
- (ii) Impact upon the character of the area
- (iii) Impact upon the adjacent right of way
- (iv) Impact upon nearby properties

(i) Principle of development

7.2 Whilst linking through to a more substantial area of public open space, the application site in this case is located within the urban area as defined by the Local Plan; in such locations further development is normally considered acceptable subject to the usual development control criteria. The open space to the side and rear of the property does not comprise one of the Local Plan's identified Local Green Spaces and thus there is no specific protection given to the land under the related Local Plan policies. Nonetheless the impact of the loss of open space on the character of the area is a matter for consideration which is addressed below.

7.3 Before proceeding to consider the specific impacts of the change of use, however, it is necessary to recognise that the area of the site south of the dwelling's building line has been enclosed for many years. The Council's own aerial photograph records identify the land as already having been enclosed and forming an established part of the residential curtilage of 1 Earnley Road in 2005. The implications of this are significant, in that it means that such use of the land is likely to be immune from any planning enforcement action and would be found lawful were a Certificate of Lawfulness to be applied for. There is therefore considered to be no reasonable basis upon which the continued future use of this land as residential curtilage can be resisted. Furthermore, this established position necessarily provides the context for considering the further enclosure of land which also forms part of this application.

(ii) Impact upon the character of the area

7.4 The area of land which comprises the application site holds a relatively prominent position at the western end of Earnley Road, visible in views north along Itchenor Road as well as from the public footpath to the west and open space to the north. The change of use of the southern portion of the application site before 2005 will have altered the character of the street scene at this point by introducing a more manicured and enclosed land use than the more general amenity space character that previously existed - however this is now well established and, as discussed above, can be regarded as a lawful use given the passage of time. In practice, the absence of buildings on the land and the modest picket fencing used for its boundaries have to some extent mitigated the loss of general openness arising from its enclosure, and in its current form it does not appear out of character with the residential street scene, which features similar open plan gardens of varying size.

7.5 With regard to the land lying to the north of the existing enclosed space, which it is proposed to additionally take within the residential curtilage, this is not prominent in views from Earnley Road, but is clearly visible from the public footpath and open space area. The land is currently used as general amenity space without a specific function, with the far larger area of open space to the rear offering more opportunities for passive and active recreation; rather the land either side of the route of the public

footpath acts as an undeveloped corridor to this larger open space area. With the enclosure of the land to the front of the building line established as a feature in the immediate landscape, it is considered that the further enclosure of the land proposed with a tapering boundary line (owing to the alignment of the footpath) and with similar means of enclosure would relate sympathetically to the existing extended garden and would not seriously harm the character of the open space to which it currently belongs as the overall sense of an undeveloped, largely open corridor would remain. A corridor width of between 4m - 9.5m would remain within the unenclosed general open space.

- 7.6 Whilst residents' concerns about the precedent set by such an enclosure are noted, the specific function of the land in question, coupled with its historic enclosure to an extent whereby the use of the widest area of the application site can be regarded as now lawful, mean that the circumstances surrounding this application are unlikely to be applicable to land forming part of the larger area of open space.

(iii) Impact upon the adjacent right of way

- 7.7 Both the Chichester Harbour and HCC Rights of Way consultation responses have been guided by the Definitive Statement for Footpath 517, which adjoins the site to the west, which states that there should be a width available of 2.5m for public use of the footpath. In this regard, reference to the Block Plan submitted with the application demonstrates that a width of between 4m (at the southern end) and 9.5m (at the northern end) remains available within the footpath corridor following the enclosure of the land. An impediment to this width being available in practice is the degree of overgrown vegetation converging on the footpath; however the applicant has recently undertaken some clearance work to improve the situation and it is considered that the 2.5m requirement can easily be accommodated within the footpath corridor without prejudicing the retention of vegetation on the boundary of The Hollies Caravan Park which forms part of the setting of the Park.
- 7.8 The case officer has sought clarification from HCC Rights of Way team as to whom the responsibility for footpath clearance falls, but despite repeated requests the information has not yet been forthcoming. It is not considered that this Rights of Way issue alone should prejudice the determination of this planning application, and given that the Definitive Statement's criteria can still be met following the implementation of the scheme, there is not considered to be a sustainable ground for refusal of this application on this matter.

(iv) Impact upon nearby properties

- 7.9 The longstanding enclosure of the land to the south of the building line of 1 Earnley Road has, as discussed above, been in place for at least 10 years without representations being made in respect of it. Whilst the submission of this application has elicited objections based on the loss of an area of communal land, the remaining footpath corridor and far larger area of open space beyond will enable local residents' activities and amenities to continue to be served.
- 7.10 Other than the general impact upon the footpath and open space network in the area discussed at (ii) above, the enclosure of the land per se is not considered to have any adverse impacts upon specific residential dwellings or caravans near the site.

8 Conclusion

- 8.1 In conclusion, it is recognised that the change of use and enclosure of the land

proposed will alter to some extent the character of the area, but set against a background whereby the most visible element of the application has been established for at least 10 years and thus cannot be enforced against, the additional enclosure coming forward will relate appropriately to its established surroundings. Concerns regarding the available width of the Definitive Footpath raised by statutory consultees can be addressed by proper management of the open space to which it belongs; sufficient land exists outside of the application site for this to be achievable.

- 8.2 The application is therefore recommended for approval. Conditions are considered appropriate to ensure that the form of fencing used matches that existing on the site, and withdrawing permitted developments on the land for the erection of buildings and structures which would adversely affect the open character of the footpath corridor.
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9 RECOMMENDATION:

That the Executive Head of Planning and Built Environment be authorised to **GRANT PERMISSION** for application APP/15/00346 subject to the following conditions:

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

Plans and Elevations: as proposed Drawing No. PA14-150:03
Photographs (x3) dated 26/03/2015

Reason: - To ensure provision of a satisfactory development.

- 2 The fencing to be installed to the southern, western and northern boundaries of the land the subject of this permission shall at all times be and remain in accordance with the fencing type, height and materials depicted on the photographs submitted with this application, and shall not be altered to an alternative form of fencing or other means of enclosure without the prior written approval of the Local Planning Authority.

Reason: To maintain an open character to the land in the interests of the amenities of the area and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.

- 3 Notwithstanding the provisions of any Town and Country Planning General Permitted Development Order, no extension, building or structure shall be erected within the application site without the prior written approval of the Local Planning Authority.

Reason: To maintain an open character to the land in the interests of the amenities of the area and having due regard to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.