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HAVANT BOROUGH
COUNCIL

- 7 DEC 2016

RECEIVED

'Willheard'
1B. Fairlea Road
Emsworth
Hampshire
PO10 7SX

6th December 2016.

FAO: Mr Andrew Biltcliffe,

Dear Mr Biltcliffe,

Planning Application Ref, APP/16/01184 :- No. 9 Fairlea Road, PO10 7SX. Change of use of land to private garden.

Further to the Council's Notice of a Planning Application I submit my observations and comments.

My representations are under the four headings of: 1) Summary of objection. 2) Comments on Application Form. 3) Comments on Application photographs. 4) Background and additional Information. All parts combine to inform of my objection to the application.

Summary of Objections.

The current use of the land (excluding unauthorised change of use) is:-

- 1) That of land drainage and flood protection.
- 2) That of biodiversity/natural environment, inhabited by protected species.

I hereby, formally advise my objection to the application for a change of use. If, Havant Borough Council decides to deprioritise the flood protection and wildlife/biodiversity protection, in favour of the planning application, for a private garden, I ask that the following conditions are applied:-

- 1) Unauthorised fences, barriers and obstructions to access be removed.
- 2) The applicant demonstrate authority for upholding planning conditions by providing proof of ownership of the land, prior to formal lawful consent being effective.
- 3) Open access to be provided for the fire service and public utilities, including drainage and water services. Note: the land also abuts properties in Woodlands Avenue.
- 4) A permanent public right of way is maintained with open access from Fairlea Road. (To allow free access for urgent and general maintenance of the gradient to and the drain inlet.)

- 5) A point of access, into the land, is re-opened, from the Southwest corner of No. 1D, Fairlea Road. (As previously used to maintain and continue a consistent gradient from No. 1D, 1C, 1B and 1A, to the drain inlet. Also essential for the expediency of flood relief work, see photographs).
- 6) Hold full responsibility, at all times, for the effective and regular maintenance of the gradient to, and the drain inlet. Hold responsibility to provide an immediate response, at any time, to clear any impediment to the efficient functioning of the watercourse and drainage. Place a covenant in the Deeds of No. 9 Fairlea Road, to ensure that successors in title, will uphold this condition. Register the amendments to the charges in the Deeds, with the Land Registry. Fences to be removed until proof received from Land Registry that amendments to Deeds have become valid.
- 7) Appropriate mitigation is put in place to ensure wildlife is protected in compliance with statutory legislation (Wildlife and Countryside Act, 1981(as amended), The Conservation of Habitats and Species Regulations 2010 (as amended), NERC Act 2006 (SPI habitats and Species) and the environmental/biodiversity policies of Havant Borough Council and Hampshire County Council (DM8 Conservation, Protection and Enhancement of Existing Natural Features and Hampshire Biodiversity Action Plan. To include at least a preliminary ecological appraisal and provide recommendations for further surveys where appropriate.
- 8) Retrospective work is carried out to return the natural environment to its original state, as prior to any unauthorised change of use. To not only comply with legislation and to compensate for the species lost, but to comply with 'no net loss in biodiversity' in line with National Planning policy Framework, 2012.
- 9) Provision is made to encourage the return of any disturbed species; including, the protected species, slowworms, newt, and bats.
- 10) The Ash tree referred to in the application be provided with a TPO. (Cross reference to my comments on Photograph No. 8 below).
- 11) Natural England to be consulted before any future disturbance to species, and the natural environment and habitat.

In consideration of the above, I ask that the land is returned to its long term condition, as existed before the unauthorised change of use. Essentially, I oppose the land being incorporated into a private garden thus preventing continuation of the, free and fully open access to others, as established and regularly used over many years.

Application Form comments.

I question if a fully completed application form was submitted. I cannot see parts, 9 and 10.

Item 6. Access. Historically, fully open and unimpeded pedestrian access existed from the public highway. This formed the main point of access for land drainage maintenance and urgent clearing action. This long established access has now been fenced off by the unauthorised creation of a private garden. I oppose the placement of fences and ask that open access is reinstated. As a senior citizen, scaling fences and obstacles to gain access would be difficult. I regard the newly instated barriers to access, as discriminatory obstacles to our freedom to protect our homes from flooding.

Item 12. Flood Risk. I dispute that the area is not at risk of flooding. I note that an 'X' indicates disposal by a Soakaway. I dispute the effectiveness of a soakaway in this area with its high water table and deep clay subsoil. I understand that a connection to a main sewer was provided in 1982. Free and open access is required at all times to maintain the watercourse and drain inlet. I oppose the erection of fences that prevent free and open access.

The proposal is within 20 metres of a watercourse. But, an omission on the form completion has not placed an 'X' in the appropriate box.

An omission on the form has not placed an 'X' in the box to indicate that the proposal 'will increase the flood risk elsewhere'. I profoundly disagree; and claim that flooding elsewhere will occur as a matter of certainty if planning permission is allowed.

Item 13. Biodiversity and Geological Conservation. The applicant has failed to consider the impact on protected species at the site. Since 1979 I have witnessed birds, slowworms, newts and bats at, and nearby the site location. There are also ponds and terrestrial habitats with connectivity to the site (within 500m, nearest pond is 55m). Some of these creatures are broadly protected by legislation, whilst others are protected dependent upon specific identification. Looking at the applicant's submitted photographs, it appears that much of this valuable habitat has been destroyed, by the creation of an unauthorised change of use into a private garden. I am opposed to this change of use and ask that measures are taken to restore the habitat and encourage the return and abundance of species. I particularly ask that the policies of both Havant and Hampshire Councils are upheld in this matter together with the relevant legislation, with enforcement action, as may be necessary.

Item 14. Existing use is described as a "Ransom Strip" I dispute this and note that no evidence is provided in the planning documents. In fact, the historic, existing use is that of land drainage and nature conservation. I oppose the change of use.

Item 24. Ownership. The applicant provides no proof of ownership. The comments written in the 'The steps taken were' box on the form, does not appear to provide evidence that 'all reasonable steps have been taken'. I do not believe that any valid documentary evidence is provided in the application, to give evidence that "All reasonable steps have been taken to find out the names and addresses of anyone else is/was the owner". I am opposed to planning consent without proof of ownership where responsibility can be placed upon the Registered Owner for compliance with planning conditions, and their successors in title.

For the purpose of compliance with the, Order 2015 Certificate under Article 14, I dispute that a single notice in a Portsmouth based newspaper, of limited circulation and readership, is evidence that "All reasonable steps have been taken to find out the names and addresses of everyone else who, on the day 21 days before the date of this application, was the owner". I therefore, respectfully ask that Havant Borough Council ensures that full compliance with Order 2015, Article 14 is satisfied to full legal requirements.

Application photographs comments. (As numerically listed in the Application).

Photo 1. Dated 10-11-16. Indicating far westward view within rough levelled private garden and distant foliage. Before unauthorised change of use it was a mature natural habitat for wildlife.

Photo 2. Dated 10-11-16. Showing gradient to and drain inlet. Recent, high fencing, now blocks off established access from outside of what is now the unauthorised private garden.

Photo 3. Not dated. Similar view to Photo 1, but apparently more recent with autumn leaves and new high fencing topped with trellis. Former mature natural habitat, now laid to private garden lawn.

Photo 4. Dated 10-11-16. Marked by applicant as "Drainage Water Sump". The light coloured fence panel, at the top centre of photograph, is recent and now blocks off established pedestrian access from Fairlea Road.

Photo 5. Dated 10-11-16. Similar to photographs 1, and 2 shows private lawn created in former established undisturbed natural environment and habitat. Appears more recent than photograph 1, which is dated also 10-11-16.

Photos 6 and 7. Not dated. Indicates partial remains of natural habitat at actual date? photograph was taken. From my best recollection, photographs 6 and 7 are a typical representation of the entire landscape before being subjected to an unauthorised change of use into a private garden. Note the presence of Bamboo and other water-loving vegetation.

Photo 8. Dated 10-11-16. Applicant's attached note reads, as written. "Ash tree with no TPO has been trimmed by Mike Read Arborist as it was overgrowing No 9 Fairlea Road. Work Paid for by Ourselves". I comment that whilst I respect the professional work of the Arborist, the referred to Trimming of the Ash, is additional to the tree reduction work carried out on the protected Oak, (Ref; APP/11/2014), thus with the accumulative potential to adversely affect the abundance and diversity of the species within the remaining habitat, particularly bats. This together with the removal of vegetation, for the creation of a private garden laid to lawn, adds to the reasons of my objection, to the application for a change of use. I therefore, propose that the land is allowed to revert to its natural state, with provisions made to encourage the return of the diversity of protected species to the habitat. In this respect the conditions of a TPO, on the Ash tree, could protect the continued existence of this mature tree and control nesting season disturbance.

Photographs 1,2,4,5 and 8, are marked with the date of 10-11-16. Photographs 3, 6&7 have no date mark.

I ask that the following background information is considered in the Council's decision making process.

Background and Additional Information.

My wife and I moved into our property on the south side of Fairlea Road in 1979. At this time the open land to the south of our property was undeveloped. We were aware that surface water accumulated on this undeveloped land with ponding. At this time, surface water also accumulated at the rear of Fairlea Road properties, falling on a slight westerly gradient, to form a pond at a low point (adjacent to No. 9 Fairlea Road) and then gradually dispersed naturally into the undeveloped land to the south (now a 1982 Woodlands Avenue development).

About 1980/81, Havant Borough Council (HBC) sold the undeveloped land and granted consent for the development of bungalows and houses that now form the properties towards the far eastern end of Woodlands Avenue, which back onto our property.

In 1982 there occurred a significant accumulation of surface water along the southerly rear gardens of Fairlea Road. This coincided with the solid filling of foundations for the new Woodlands Avenue housing development. Together with other neighbours, I approached Havant Borough Council to request the Council's help in resolving the flooding issue. I recall a visit from an officer, Mr Rogers, from HBC Technical Services Department, and his subsequent advice. The Officer confirmed that the developer had agreed with him, to lay a new drain from the low point in Fairlea Road and connect it to the new drainage system for the Woodlands Avenue development. The drainage work was completed to everyone's satisfaction and has served its essential purpose ever since. Prior to the 'unauthorised change of use' and erection of fences, there existed fully open access allowing residents to clear any obstructions/debris at the drain inlet and gradient, as located adjacent to the curtilage of No. 9 Fairlea Road.

Resembling the 1982 situation, there has been a periodic accumulation of surface water caused by rain fall. By always having free and completely open access, residents have protected their properties from flooding, by immediately clearing any obstructions to the drain inlet. Once cleared, the water discharges into the drain, thereby providing flood protection. The current planning application for 'a change of land use to a private garden' would take away the established land use by residents, to protect their properties from flooding. Indeed, an instant response can be required, in storm conditions when, as an example, shed roof covering, obstructed the inlet. I am opposed to access being controlled by the present owners of No.9 Fairlea Road and their successors in title. As previously stated, the applicant does not own the land related to his application. I am opposed to the applicant's proposal for a change of use into a private garden.

Established open access to the land has been via the public footpath at the southwest end of Fairlea Road. This has recently been fenced off. An established alternative access to the gradient and drain inlet, has been via neighbouring rear gardens. Most conveniently, I would assist my [REDACTED] neighbour, [REDACTED], to clear debris, where the drain inlet abuts his land, but this too is now fenced off, to which I am opposed.

In 1982 both the Council and the Woodlands Avenue developer carried out vital work in providing the drainage. In line with policy CS15 Flood and Coastal Erosion Risk of the Havant Borough Council Core Strategy (2011) which states *'All development will be required to ensure that there is no net increase in surface water run off'*, The drain has successfully protected properties from surface water flooding. Removing the drain from open access, for maintenance at any time, will directly conflict with this policy. Indeed, we have witnessed the large volume of water flowing into the drain, especially when residents have used the open access to clear storm debris. My obvious concern is that with the drain inlet now hidden behind high fencing, that the functioning of the drain could become disabled. I would stress that the land is not abandoned. Myself and neighbours at 1A-1B-1C and 1D, who rely upon the drain, have historically and regularly attended to ensure the reliable functioning of the land drainage. The unauthorised fencing now erected also blocks access to the public utilities responsible for land drainage, in further direct conflict with Council Policy CS15, as referred to above. On these grounds, I am opposed to the application for a change of use into a private garden.

Since 1979 I have observed, newts, birds, slowworms, and bats in the vicinity of the land. Policy DM8 explicitly states *'development will only be permitted when it protects natural features of nature conservation and/or amenity important on the site, for example trees, woodlands, hedgerows, soils, streams, stream corridors, springs, ditches or ponds from damage, destruction and a deterioration in quality'*. I note for your attention that this natural and undisturbed land contains many of these habitats listed as having importance including a ditch, shrubs, trees and tussocky grassland with connectivity to the wider landscape. Optimal habitats for protected species, newts including the European protected great crested newt, bats, nesting birds, slowworms and mammals such as fox and hedgehog. I am opposed to a change of use to this long established natural habitat, into a private garden.

My search of Land Registry records has not identified the applicant as being the registered owner of the land. Indeed, any party that is not the rightful owner of the land could not guarantee to uphold planning conditions, themselves or by the actual land owner and their successors in title. I am opposed to approving this particular application for a change of use without there being proof of land ownership.

I enclose herewith, photographs showing accumulated surface water that dispersed when residents quickly removed storm debris from the watercourse. Thus, illustrating the need for effective drainage with free and open access to the land, to allow residents to continue to protect their properties from flood water.

I thank the Council for considering my representations.

Yours sincerely,

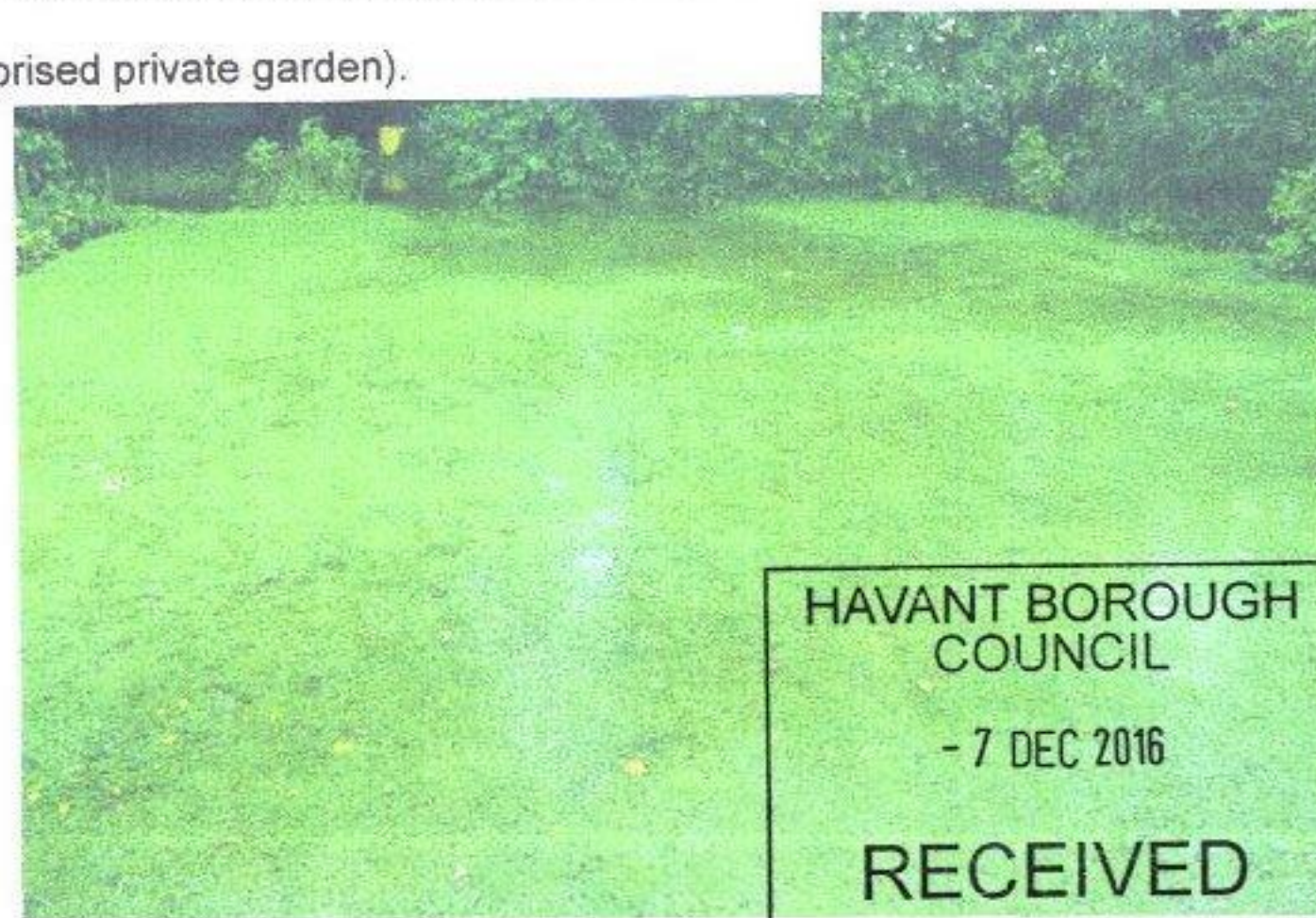
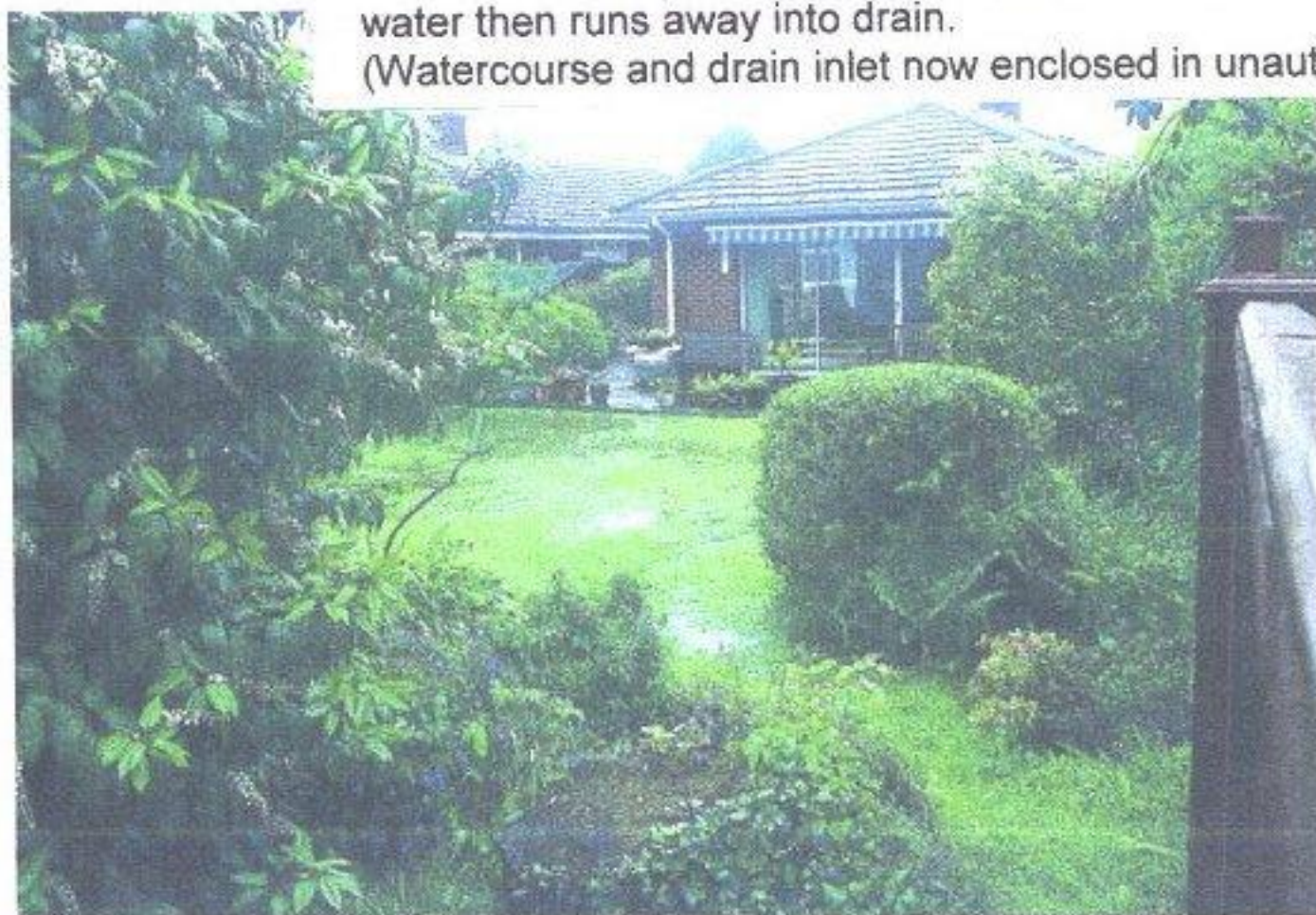


Robert Heard

Enc. Photographs



Residents use open access, at any time, to clear storm debris from watercourse. Accumulated water then runs away into drain.
(Watercourse and drain inlet now enclosed in unauthorised private garden).



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