

4/002312/11/DRC – DETAILS OF LANDSCAPING AS REQUIRED BY CONDITION 3 OF PLANNING PERMISSION 4/02672/05 (CONSTRUCTION OF 150 DWELLINGS WITH ASSOCIATED ACCESS, PARKING, LANDSCAPING (INCLUDING DECULVERTING OF THE RIVER BULBOURNE) AND AMENITY SPACE).

LAND OFF, STAG LANE, BERKHAMSTED.

APPLICANT: BELLWAY HOMES (NORTH LONDON)

(Case Officer- Mark Staincliffe)

[Grid Ref - SP 98432 08325]

Summary

It is recommended that the Council take no further enforcement action in relation to the unimplemented landscaping opposite 34-44 Sheldon Way.

Condition 3 of planning application 4/2672/05/FUL required various planting to take place within the site, the details relating to this condition was discussed at the committee meeting of 26 April 2012 and subsequently approved. The landscaping within the site is almost complete; however, two trees cannot be planted in the locations specified on the approved plans due to the existence of utilities and services.

Site Description

The site comprises a number of houses constructed between Stag Lane and Riversend Road/Belton Road. The report relates specifically to the provision of two trees opposite 34-44 Sheldon Way. The remaining landscaping on site has been carried out in accordance with the approved plans.

Proposal

Condition 3 of planning permission 4/02627/05/FUL proposed numerous landscaping works and these details were approved by members on 26 April 2012.

The approved plans proposed the planting of two trees adjacent to an existing footpath opposite numbers 34-44 Sheldon Way. Whilst excavation works were taking place in preparation for the planting of the trees, workman uncovered gas and water pipes in the location of the proposed planting.

It is recommended that the Council choose to under enforce the requirements of condition 3 of planning application 4/02672/05/FUL and allow the developer to return the area to a block paved, shared surface.

Referral to Committee

This decision is referred to the Development Control Committee in accordance with the resolution on planning application 4/02672/05/FUL at the Development Control Meeting of the 12 October 2006. The minutes of the DCC meeting of the 12 October 2006 state that:

"the central area is to be landscaped innovatively to provide the best environmental solution for the amenity area within the development. The detailed landscaping scheme is to be reported back to the committee and not to be dealt with by officers under delegated powers".

The DCC expressed a clear desire for the landscaping of the site to be determined by members. As the scheme can't be implemented in accordance with the approved plans members must make the decision in accordance with the resolution passed on 12 October 2006.

Planning History

Application 4/002312/11/DRC relates to the landscaping of the site. This application was submitted to the Council to discharge condition 3 of planning application 4/02672/05/FUL. Members approved this condition and the developer subsequently implemented the scheme in accordance with the approved plans apart from the two trees in question.

Policies

National Policy Guidance

National Planning Policy Framework (NPPF)

Dacorum Borough Local Plan

Policies 11, 49, 51, 54, 61, 63, 76, 79, 99, 100, 101, 103, 106, 107, 113, 115, 124 and 129.

Appendices 3, 5 and 8

Pre-Submission Core Strategy

Policies CS12, CS13, CS26, CS29 and CS31

Supplementary Planning Guidance

Environmental Guidelines
Stag Lane Development Brief

Representations

There is no statutory duty to consult on the Council's decisions to take or not take formal enforcement action. However, some local residents have commented on the proposal to provide no planting in this location. These comments are summarised below:

- No tree planting in this location is necessary
- Trees in this location will prohibit cars entering and leaving their allocated spaces
- The trees will hinder emergency service vehicles entering the street
- There are no issues of illegal parking within the site since the signs were displayed
- A six meter access road should be maintained

Considerations

Background

A complaint was received by the planning enforcement team that the trees in question were not being planted in accordance with the approved plans. Officers duly visited the site and discussed the planting with the contractors. The contractors explained that the trees could not be planted in the correct location because of a gas and water pipe which was located in the exact location of the trees. Officers were shown the exposed utilities and shown possible alternative locations for the two trees.

The alternative locations for the trees would result in the width of the access road being reduced to approximately 4.6m as the trees would have to be moved away from the public footpath and closer to numbers 34-44 Sheldon Way.

All works on site relating to the planting of these trees has ceased until a decision is made on the requirement to plant the two trees. Having considered the alternative locations for the trees and the comments from local residents, it is considered not expedient to take any further action in relation to this planting. If no planting is required in this location the developer will be asked to make good the shared surface.

It is important to note that the Council has received no comments relating to the failure of the developer to plant the two trees in question.

Expediency

The Council's planning enforcement policy was formally adopted in April 2010. This document sets out the Council's approach to handling planning related enforcement matters. The power to issue an enforcement notice is discretionary. National guidance states that an enforcement notice should only be used where the Council are satisfied that there has been a breach of planning control and it is expedient to issue a notice, having regard to the provisions of the development plan and to any other material considerations. Failure to plant the two trees is clearly a breach of planning control, however, Department of the environment Circular 10/97 provides specific guidance on the enforcement of planning legislation and issuing of enforcement notices. This Guidance states 'an enforcement notice should not normally be issued solely to "regularise" development which is acceptable on its planning merits'.

Council Officers have considered the development as it has been built and are of the opinion that, on balance, no real harm has arisen, compared to the situation that would have existed had the two trees been planted. As a result of the guidance set out above it is considered that it would not be in the public interest to take formal enforcement action and require the planting of the two trees.

Conclusions

The applicant has made reasonable attempts to resolve this unfortunate issue with regards to the landscaping of this small part of the site. The landscaping of this site has been problematic and it is important that such matters are now drawn to a conclusion in the interests of current and future residents of the scheme. Overall, the implemented scheme is considered to be good quality with substantial improvements in both the landscape quality of the site and its ecological value. The inability of the developer to plant the remaining two trees is not considered to be detrimental to visual appearance of the site.

RECOMMENDATION – That **NO FURTHER ENFORCEMENT** ACTION is taken

