

**ITEM NUMBER: 5c**

<b>20/03189/RET</b>	<b>Retention of Works: Balustrade to main house patio, terraced garden areas, raised lower lawn area and retaining structure. Installation of electric gate.</b>	
<b>Site Address:</b>	<b>Lanresse Rucklers Lane Kings Langley Hertfordshire WD4 9NQ</b>	
<b>Applicant/Agent:</b>	<b>Mr Jatinder</b>	<b>Mr Jon Tankard</b>
<b>Case Officer:</b>	<b>James Gardner</b>	
<b>Parish/Ward:</b>	<b>Kings Langley Parish Council</b>	<b>Kings Langley</b>
<b>Referral to Committee:</b>	<b>Contrary to the view of Kings Langley Parish Council</b>	

**1. RECOMMENDATION**

That planning permission be **GRANTED**.

**2. SUMMARY**

2.1 The changes in land levels and the construction of retaining walls are engineering operations, which would preserve the openness of the Green Belt and would not conflict with the purposes of including land within the Green Belt. The erection of the balustrade and gates to the frontage can be justified on the basis of very special circumstances.

2.1.1 In visual terms, the retaining walls, gates and balustrade would be innocuous and not prominent from public vantage points.

2.1.2 The impact of the land level changes on the residential amenity of Leaside would not be so severe as to warrant a refusal of planning permission.

2.1.3 The location of the electronic gates (6m back from the highway) would ensure that there would be no adverse impacts on highway safety.

**3. SITE DESCRIPTION**

3.1 The application site is located on the northern side of Rucklers Lane, Kings Langley, and comprises of a detached bungalow which is set back from the highway by approximately 40 metres and occupies an elevated position. To the front there is a substantial area of block paving and a detached brick-built carport

3.1.1 The bungalow has been subject to extensive extension and remodelling as part of planning application 4/00624/18/FHA. The design represents a modern and sympathetic interpretation of the brick and flint bungalows prevalent in this part of Rucklers Lane. The front elevation is characterised by a large gable feature with a Juliet balcony at first floor level. To either side are clay tiled hipped roofs which include pitched roof dormers. Areas of flint are interspersed with bands of brick and brick quoin detailing.

**4. PROPOSAL**

4.1 Retrospective planning permission is sought for the retention of landscaping works (i.e changes to garden levels and construction of retaining walls) and the 1.1 metre balustrade around the raised patio area. Planning permission is sought prospectively for the erection of electronic gates at the entrance to the site.

**5. PLANNING HISTORY**

Planning Applications (If Any):

4/00624/18/FHA - Front extension infilling existing area, raised central area and creation of a crown Roof.

*GRA - 21st August 2018*

4/01467/90/FUL - Single storey front extension (resubmission)

*GRA - 15th November 1990*

4/00844/90/FUL - Single storey side extension

*REF - 6th September 1990*

Appeals (If Any):

## **6. CONSTRAINTS**

Special Control for Advertisements: Advert Spec Contr

CIL Zone: CIL2

Green Belt: Policy: CS5

Parish: Kings Langley CP

SPD Zone 3

EA Source Protection Zone: 3

## **7. REPRESENTATIONS**

### Consultation responses

7.1 These are reproduced in full at Appendix A.

### Neighbour notification/site notice responses

7.2 These are reproduced in full at Appendix B.

## **8. PLANNING POLICIES**

Main Documents:

National Planning Policy Framework (February 2019)

Dacorum Core Strategy 2006-2031 (adopted September 2013)

Dacorum Borough Local Plan 1999-2011 (adopted April 2004)

Relevant Policies:

NP1 - Supporting Development

CS1 - Distribution of Development

CS5 - The Green Belt

CS10 - Quality of Settlement Design

CS11 - Quality of Neighbourhood Design

CS12 - Quality of Site Design

CS29 - Sustainable Design and Construction

Supplementary Planning Guidance/Documents:

Parking Standards Supplementary Planning Document (2020)

Roads in Hertfordshire, Highway Design Guide 3rd Edition (2011)

## 9. CONSIDERATIONS

### Main Issues

9.1 The main issues to consider are:

The policy and principle justification for the proposal;  
The quality of design and impact on visual amenity;  
The impact on residential amenity; and  
The impact on highway safety and car parking.

### Principle of Development

9.2 The application site is located within the Metropolitan Green Belt. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

9.2.1 Paragraph 146 of the NPPF (2019) states that engineering operations are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. For the avoidance of doubt, changes in land levels and the construction of retaining structures are considered to be engineering operations.

9.2.2 Fencing and gates do not fall within the list of acceptable development in the Green Belt as outlined in paragraphs 145 and 146 of the NPPF.

9.2.3 Policy CS5 of the Dacorum Core Strategy (2013) states that the Council will apply national Green Belt policy to protect the openness and character of the Green Belt, local distinctiveness and the physical separation of settlements. Policy CS5 is silent in terms of whether engineering operations within the Green Belt are appropriate development.

9.2.4 Consideration needs to be given to paragraph 213 of the NPPF, which states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the NPPF. Due weight should be given to the policies according to their consistency (the closer the policies of the plan to the policies of the Framework, the greater the weight that may be given). On this basis, it is considered that greater weight should be given to the NPPF (paragraph 146).

### Green Belt Impact Assessment: Preservation of Openness

9.2.5 Paragraph 146 of the NPPF is supportive of engineering operations in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

9.2.6 It is accepted that 'openness of the Green Belt' comprises both a visual and spatial element (*Turner v Secretary of State for Communities and Local Government [2016]*). Case law (*Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC [2018]*) has established that "whether the development would 'preserve' the openness of the Green Belt" does not mean that a proposal can only be regarded as 'not inappropriate in the Green Belt' if the openness of the Green Belt would be left entirely unchanged; rather, the verb 'preserve' should be understood in the sense of "keep safe from harm" – rather than "maintain (a state of things)".

9.2.7 The National Planning Practice Guidance (NPPG) also acknowledges that openness has both visual and spatial dimensions.

9.2.8 Drawing no. 1172 SK500E demonstrates the change in levels across the site. In particular, the ground level has been increased by a maximum of 0.70 metres, with a 1.1 metre brick and flint retaining wall being constructed on the north-eastern side of the garden.

9.2.9 Rucklers Lane is located at a lower level than the application site, which itself is heavily screened by mature landscaping and trees. As a result, the retaining wall would only be visible from a very narrow viewpoint within the street scene, where it would be seen in the context of the substantial carport.

9.2.10 Whilst land levels have been increased, these works are considered to be modest in scale; and, importantly, retain the sloping nature of the front garden – i.e. they do not raise it up in an excessively unnatural manner.

9.2.11 The terraced flowerbeds referred to in the application description are also shown on drawing no. 1172 SK500E. The crosswise stone retaining walls are extremely limited in scale and have a height of no more than 30cm. The lengthwise brick retaining wall is similarly modest.

#### Green Belt Impact Assessment: Purposes of Green Belt

9.2.12 Another requirement of the NPPF is that engineering operations do not conflict with the purposes of including land within the Green Belt.

9.2.13 Paragraph 134 of the NPPF states that the Green Belt serves five purposes:

- a) to check the unrestricted sprawl of large built up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

9.2.14 Of the above list, it is only considered that (c) is of relevance. The re-contouring of the land would not, however, result in a material change of use; rather, it would remain as a residential garden. A retaining wall (considered to be part-and-parcel of the engineering operation) has been constructed, but it is of modest height (1.1 metres) and limited extent (10.35 metres long). It is submitted, therefore, that the proposal would not result in encroachment into the countryside. By extension, the proposal would not conflict with the purposes of including land within the Green Belt.

#### Electronic Gates and Balustrade - Very Special Circumstances

9.2.15 The erection of the balustrade around the patio area adjacent to the house, and electronic gates at the entrance to the application site, would constitute inappropriate development in the Green Belt, which, by definition, is harmful and should not be approved except in very special circumstances

9.2.16 Paragraph 144 of the NPPF provides further guidance in terms of when development that would otherwise be considered inappropriate should nonetheless be approved. It states that:

*'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.*

9.2.17 It is understood that the gates to the frontage are to ensure a safe and secure environment for the applicant's children: given the steep gradient between the dwelling and the highway, there is a

risk that children playing on bicycles, skate boards, roller skates etc could inadvertently careen onto Rucklers Lane, which has a 60mph speed limit in this location.

9.2.18 It is worth noting that a means of enclosure generally falls within permitted development. However, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) limits the height of a gate or means of enclosure to 1 metre where it would be adjacent to a highway used by vehicular traffic.

9.2.19 The word “adjacent” is not defined in the GPDO and therefore each case needs to be judged on its own individual circumstances. This has inevitably resulted in a broad range of decisions by both Planning Officers and Planning Inspectors. The distance from the highway, a change in levels, and the presence of intervening features are all capable of affecting whether a gate or means of enclosure is adjacent to a highway. In this instance, the proximity is such (6 metres) that the gate is considered to be adjacent to the highway and not permitted development. However, were the gates to be moved back further from the highway, they would constitute permitted development. This is a relevant material consideration.

9.2.20 The purpose of the balustrade is to protect residents from the drop to either side of the raised patio. This does not benefit from permitted development rights, as the height of the balustrade when measured from the natural ground level (i.e. not the patio itself) would exceed 2 metres.

### Planning Balance

9.2.21 The Government attaches great importance to Green Belts. Paragraph 144 of the NPPF states that substantial weight should be given to any harm to the Green Belt. In this case it is considered that the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is outweighed by other considerations:

- The gate is required to provide a safe environment for the applicant’s children.
- In visual terms, there would be a limited impact on the openness of the Green Belt owing to its limited height and limited visibility within the street scene. The use of stained timber infill panels would also help the gate to blend in with the rural context.
- In spatial terms, the erection of the gates would not result in any further areas of land being developed.
- A gate of identical dimensions could be erected under permitted development if it were set back slightly further from the highway.
- The balustrade is required for the safety of the applicant, his family and any visitors to the property.
- It would be more visually prominent than the gate; however, it is important to note that it would be seen against the silhouette of the main dwelling, which rises to 1.5 storeys in height.
- In spatial terms, the erection of the balustrade would not result in any further areas of land being developed.

9.2.22 The above considerations would, in my view, outweigh the extremely limited harm to the Green Belt and therefore represent very special circumstances.

### Quality of Design / Impact on Visual Amenity

9.3 Policies CS11 and CS12 of the Dacorum Core Strategy seek to ensure that, amongst other things, development protects or enhance significant views within character areas and integrates with the streetscape character.

9.3.1 The height of the electronic gates would be approximately 1.8 metres and therefore are considered to be of a suitable scale for a domestic setting. The inclusion of natural features (timber infill panels) will assist in integration with the surrounding streetscape.

9.3.2 The brick and flint retaining wall references the main dwelling and appears to have been finished to a high standard, though will not in any case be prominent from public vantage points.

9.3.3 The balustrade is proposed to be 1.1 metres high and constructed from metal with gaps between the respective bars.

9.3.4 The garden terracing walls are primarily constructed from flint and are thus congruent with the external finish of the main dwelling.

9.3.5 Accordingly, the development is considered to comply with Policies CS11 and CS12 of the Dacorum Core Strategy.

#### **Impact on Residential Amenity**

9.4 Policy CS12 of the Dacorum Core Strategy seeks to ensure that, amongst other things, development avoids visual intrusion, loss of sunlight and daylight, loss of privacy and disturbance to surrounding properties.

9.4.1 With perhaps the exception of isolated houses in the middle of the countryside, there will inevitably be a certain level of mutual overlooking between most dwellings. This will sometimes relate to windows facing each other across a street or gardens; in other instances, first floor windows will afford views of neighbouring gardens to varying degrees.

9.4.2 The pertinent question in this instance is whether the raising of the land to the front of the Lanresse has resulted in an unacceptable loss of privacy to the front garden area of Leaside, the occupants of which have raised concerns in this regard.

9.4.3 A comparison between the level of overlooking pre-development and post-development is a logical starting point. In other words, what can now be seen which could not previously be seen and from where?

9.4.4 The section shown on drawing no. 1172 SK500E indicates that the greatest change in levels has occurred on the north-eastern side of the garden; that is to say, on the side farthest away from the Lanresse / Leaside boundary. This is evidenced by the construction of the retaining wall on the north-eastern side. No such retaining structure exists on the south-western side of the garden, indicating that, comparatively speaking, there has been a relatively limited change in levels.

9.4.5 The effect is that the increase in height on the north-eastern side of the garden is unlikely to result in a materially greater level of overlooking overall. Leaside's garden would always have been visible when standing adjacent to the boundary with the substation. It would have also been visible, and indeed still is, from the first floor windows of Lanresse.

9.4.6 Consideration also needs to be given to the fact that these gardens are located to the front of the respective dwellings. It is generally accepted that front gardens are less private, largely due to the fact that dwellings more often than not front highways or other public spaces. It is acknowledged

that these particular front gardens benefit from greater levels of privacy than is ordinarily the case thanks to the provision of substantial landscaping between the highway and the front gardens.

9.4.7 Whilst it is acknowledged that raising of the garden level on the north-eastern side of the site may have resulted in slighter higher levels of overlooking, these views would, in any case, almost certainly have been possible from the area immediately adjacent to the boundary. It is also important to note that these new views would be from a greater distance – i.e. on the opposite side of the garden. There is no evidence to suggest that there has been a substantial increase in land levels immediately adjacent to the Lanresse / Leaside boundary. And as already mentioned above, overlooking of Leaside's front garden is also already possible from the first floor windows of Lanresse, as well as its raised patio area. In general, it is not possible to protect every area of a residential garden from overlooking; nor is this necessarily desirable, as it would then preclude the benefits of natural surveillance.

### Conclusion

9.4.8 In light of the above, it is submitted that the levels of overlooking are not so severe as to weigh in favour of a refusal of planning permission. The development would comply with Policy CS12 of the Dacorum Core Strategy.

### **Impact on Highway Safety and Parking**

9.5 Policy CS12 of the Dacorum Core Strategy states that development should, inter alia, provide a safe and satisfactory means of access for all users.

#### Highway Safety

9.5.1 The Roads in Hertfordshire: Highway Design Guide states that: *If security, garage or gate facilities are provided on residential premises, they shall be sited at least 6 metres from the highway boundary or back of footway as appropriate.* It then goes on to state that the 6 metre distance may be reduced to 5.5 metres if the gates open inwards or are in the form of a roller.

9.5.2 The plans indicate that the proposed gates would be set back from the highway by approximately 6 metres and have a sideways sliding mechanism. This would allow sufficient space for a vehicle to wait for the gates to open without obstructing the highway. No alterations are proposed to the existing access.

#### Parking

9.5.3 Parking provision within the site would remain unchanged.

### Conclusion

9.5.4 The gates would not result in any adverse impacts on highway safety and parking provision would remain acceptable. Accordingly, the proposal complies with Policy CS12 of the Dacorum Core Strategy and the Parking Standards Supplementary Planning Document.

### **Other Material Planning Considerations**

#### *Impact on Trees and Landscaping*

9.6 No implications.

#### Response to Neighbour Comments

9.7 These points have been addressed above other than the following point:

*“Finally, according to the relevant title plan at the land registry, the applicants do not own the land at the bottom of their garden, and appear not to have declared this on the planning application form, or contacted the owner, we believe Herts County Council/Highways, for permission.”*

9.7.1 Response: The applicant has been asked to comment on the above and has confirmed that, so far as he is aware, the land outlined in red on the location plan is within his ownership.

#### Community Infrastructure Levy (CIL)

9.8 This application is not CIL liable.

## **10. CONCLUSION**

10.1.1 The changes in land levels and the construction of retaining walls are engineering operations, which are not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within the Green Belt.

10.1.2 Preservation of the openness of the Green Belt has been interpreted by the courts as meaning “keep safe from harm” as opposed to “maintain (a state of things)”. The relatively limited increase in land levels across the site and the manner in which this has been achieved is such that it is considered that the openness of the Green Belt would be preserved. Furthermore, the change in levels is not considered to conflict with the purposes of including land within the Green Belt.

10.1.3 Given their limited height, as well as other material considerations, the erection of the electronic gates and the balustrade surrounding the raised patio are considered to be acceptable on the basis of very special circumstances.

10.1.4 It is submitted that in visual terms the proposed development is acceptable and would not be injurious to the character and appearance of the area.

10.1.5 Consideration has been given to the concerns raised by the residents of Leaside in terms of overlooking and loss of privacy. In summary, whilst it is acknowledged that additional views of the front garden area may now be possible, an acceptable degree of separation exists to ensure that overlooking over and above that reasonably expected in a residential context is unlikely to occur, the greatest areas of land level changes being set away from the Lancrease / Leaside boundary.

10.1.6 The electronic gates are located a sufficient distance away from the highway (6 metres) in order to ensure that there would be no adverse impacts on highway safety.

## **11. RECOMMENDATION**

11.1 That planning permission be **GRANTED** subject to conditions.

### **Condition(s) and Reason(s):**

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

**1172 SK500E Existing and Proposed Landscape Works  
002 Rev A Plan & 3D Views**

Reason: For the avoidance of doubt and in the interests of proper planning.

## APPENDIX A: CONSULTEE RESPONSES

Consultee	Comments
Parish/Town Council	<p>Objection.</p> <p>All Members present declared a Personal Interest in this application as one the Council's Members is an immediate neighbour and had raised an objection. The Council supported this objection. This was on the grounds that the terrace and structures have a severe impact on the privacy the residents of "Leaside".</p>

## APPENDIX B: NEIGHBOUR RESPONSES

### Number of Neighbour Comments

Neighbour Consultations	Contributors	Neutral	Objections	Support
5	3	0	3	0

### Neighbour Responses

Address	Comments
<p>Four Winds Lady Meadow Kings Langley Hertfordshire WD4 9NF</p>	<p>I am very concerned with the application of electric gates so close to Rucklers Lane. Rucklers Lane has no speed restrictions and the property in question is very close to a blind bend where traffic quite often travels at great speed especially in the rush hour. There are often accidents in that area. I have no objection with electric gates to the property but I feel strongly that they should be far enough off the road for a car or a large delivery van to wait without causing obstruction.</p> <p>S. T. Judd</p>
<p>Sans Souci Rucklers Lane Kings Langley Hertfordshire WD4 9NQ</p>	<p>Concerning application number 20/03189/RET</p> <p>There is no detail on the plans concerning how far back from the road edge the electric gates will be positioned.</p> <p>The gates are not yet in position.</p> <p>Rucklers Lane is a single track rural lane and the section between</p>

	<p>Roundwood and Lady Meadow, in which this property is positioned, is notorious for the numerous accidents that occur. These range from minor to very serious.</p> <p>The gates therefore need to be positioned so that vehicles , including delivery vehicles, entering the property can pull clear of the road while waiting for the gates to be operated and opened.</p> <p>Furthermore the development should not include any features that would obscure the view for vehicles leaving the property and joining the lane, hence avoiding further accidents..</p>
<p>Leaside Rucklers Lane Kings Langley Hertfordshire WD4 9NQ</p>	<p>We object strongly to this planning application, as it has a highly detrimental impact on the privacy we had at our property, and is in contravention of the relevant policy that prevents the loss of privacy.</p> <p>By substantially raising the ground level in the mid garden and at the bottom, the residents at Lanresse have allowed themselves to look over the electrical substation between the two properties and at the whole of the front of our property at Leaside.</p> <p>And unfortunately this Summer they did so - they disrupted private, family bubble events by sitting or standing on the mid decking and lower lawn and watching us.</p> <p>This is why we requested the Enforcement action that followed.</p> <p>Two of our late parents and we have tried on quite a few occasions over the last sixty years to plant hedges along this boundary to screen out the view of the substation, but the ground is so poor nothing other than what is there now has ever grown in it, and it would not be possible to resolve this problem with planting on our side of the substation.</p> <p>The bottom of our property is open to Rucklers Lane, as one of our late fathers was a village doctor and wanted to be accessible, but some years ago we planted a birch hedge to screen the view partially, and in the lane people are passing by and minding their own business, rather than sitting or standing and watching us.</p> <p>One can get an idea of the scale of the problem from the attached photographs.</p> <p>The first two photos show that the ground level is visible from our property, so anybody standing on that land can clearly see our property, whereas before they couldn't because of the substation.</p> <p>The second pair of photos compare the relief on the two sides of the substation fence bordering Lanresse - the first of these shows the true height of the fence, i.e. the original relief of the slope, and the second shows, as much as I could gain access, the considerably reduced height on the Lanresse side due to how much the land has been raised.</p>

We also object as the application raises the ground so much that it technically represents development of the Green Belt, involves material changing/building up of the landscape, and, as in recent decisions elsewhere on the development where we live, it effects the openness of the Green Belt.

The building at Lanresse was granted planning permission about two years ago for development way over that permitted in the Green Belt due to permitted development rights being claimed as worse, when in fact the latter didn't exist because they involved our land, not theirs. Either way, this application would therefore involve even more development of the Green Belt.

Finally, according to the relevant title plan at the land registry, the applicants do not own the land at the bottom of their garden, and appear not to have declared this on the planning application form, or contacted the owner, we believe Herts County Council/Highways, for permission.

We therefore object strongly to this planning application and appeal to Dacorum Borough Council to refuse planning permission.

We understand that Kings Langley Parish Council has supported this objection, so if you are minded to recommend that permission is granted, we would be grateful if one of us could be contacted as early as possible, so we can prepare/register to speak at the relevant Development Management Committee.

In kind, we would be available to assist with any further photographs of the problem from Leaside's point of view.