

Committee: Development Control Committee

Date: 15 December 2003

Agenda Item No: 6

Title: Enforcement of Planning Control: Land opposite The Fox and Hounds Public House, High Street, Clavering

Author: Interests in land: Mr D L & Mrs P B Smith
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Introduction

- 1 This report concerns the unlawful extension of an existing residential curtilage to incorporate additional garden land and the siting of a large shed and children's play equipment thereon, widening of an existing access bridge and creation of a vehicular hardstanding. The report recommends that enforcement and, if necessary, legal action be taken to require the cessation of the use of the land as extended residential curtilage, the removal of the shed, play equipment and hardstanding from the land and the reduction in the width of the access bridge to previously determined dimensions.

Notation

- 2 ADP: Outside Development Limits / Conservation Area (part) / Area of Special Landscape Value. UDP: Outside Settlement Boundary / Conservation Area (part)

Planning History

- 3 Planning permission refused in 1972 for the erection of three dwellings (SWR/614/72 refers) - appeal dismissed. Permission granted in 1981 for the erection of a detached bungalow (Sidestream) (UTT/0735/81). Permission refused in 1987 for the erection of four detached dwellings (UTT/0992/87) - appeal dismissed. Permission refused in 1992 for the erection of one dwelling, double garage with access drive (UTT/0114/92) - appeal dismissed.

Site Description

- 4 This site is located on the western side of High Street, Clavering, opposite The Fox & Hounds Public House. It is bordered by woodland on its northern side, by the residential property known as Sidestream on its southern side and by Colehills Close on its western side. A stream runs parallel to its frontage with High Street over which an access bridge exists leading into the site. The site area comprises approximately 0.2 ha.
- 5 In 2001, the owner of Sidestream cleared the land of vegetation and removed trees along the frontage, laid turf on the land and enclosed it with a 1m high picket fence. Further, the owner widened the existing access bridge, formed a hardstanding, placed a large shed on railway sleepers on the turfed land and,

more recently, children's play equipment. All of these works have been confirmed by Council inspections. The land now has the appearance of a domestic garden.

Consideration of Evidence

Use

- 6 An examination of the previous planning history for this site serves as a useful indicator of its previous usage. In the Particulars of Present and Previous Use of Building or Land section for the 1972, 1987 and 1992 planning applications, the applicant variously describes the present use of land then as "Vacant" and "Derelict and overgrown". Where details of the last previous use are required to be provided, the applicant stated "Formerly garden" and "Previously thought to be pub beer garden". In the 1987 and 1992 applications, the applicant stated "YES" to whether the proposal involves a change of use of the land. The Planning Inspector's description of the site on appeal describes it variously as "*wooded grassland with dense undergrowth*" and "*the site was used as a garden in connection with the Fox and Hounds Public House where your client is the publican. It is now an unused area of land overgrown with trees and shrubs as well as an abundance of undergrowth and ground cover*".
- 7 Aerial photography obtained by the Council for survey dates 1980 and 1990 shows that the land was formerly overgrown with dense vegetation, although a further aerial photograph that has come into the Council's possession (source and date unknown, although of older origin) shows the land in some kind of use, possibly allotments. It is evident from this aerial photography, however, and also from Council inspections, Ordnance Survey maps and the drawings pertaining to the original planning permission for Sidestream (UTT/0735/81) that the land had no previous relationship with this property. This view is reinforced by an H M Land Registry Office Copy Register Entry that shows that Title Absolute of the land was conveyed to the owners of Sidestream on 19 June 2001, which is consistent with the date that the works are alleged to have taken place. As such, officers consider that an extension of the residential curtilage of Sidestream has occurred to incorporate the land.
- 8 Furthermore, the available evidence, notably the aerial photography and planning history as described above, strongly suggests that any land use that had been occurring prior to the title transfer and recent works carried out had been previously abandoned. The owner vigorously claims, however, that the land continues to have a garden status by virtue of its historical connection with The Fox & Hounds Public House, located immediately opposite the site. To further his claim, he has submitted a letter written by a previous landlord, who resided at the pub between 1981 and 1985 and who has stated that the land was used as a private garden for the use of the inn landlord and that this had been confirmed by the Area Manager of Benskins Brewery which, at that time, owned the freehold. This person has further stated that the land was a garden for a considerably longer period of time than before the 1980's as it was a private garden for another landlord between 1955 and 1981 and immediately after the war. The letter concludes that several members of Clavering Parish Council can testify to this. A copy of this letter is attached to

this report.

- 9 In order to demonstrate a lawful use, the landowner would have to show that the land has been used continuously for this purpose for the last ten years (the qualifying period). This would mean evidence would have to be submitted from 1993 onwards. The facts available do not support this. Furthermore, the landowner's supporting letter only takes into the account the period up to 1985 (i.e. outside this qualifying period) and the landowner has not submitted any evidence in support of his case pursuant to this date. Neither has a Certificate of Lawfulness application for an Existing Use been submitted to the Council. Whilst it is known that the landowner, himself, was the publican of the Fox & Hounds Public House during a period in the 1990's, officers do not recall that he used the land during this period. On balance therefore, officers are of the opinion that a lawful use as existing garden cannot be sustained and that a material change of use of the land from unused/overgrown land to residential use in association with Sidestream has occurred for which a grant of planning permission is required. As this has not been sought or obtained, the use is considered unlawful.

Works

- 10 The laying of turf on the land does not constitute development and the erection of the 1 metre high picket fence is permitted development. The landowner has advised the Council that the shed erected on the land is being used for the storage of garden implements for the domestic enjoyment of Sidestream. In view of the above, it is considered that the siting of this structure does not enjoy existing residential permitted development rights and requires planning permission. The same applies to the children's play equipment that has been sited and the vehicular hardstanding that has been created.
- 11 Council inspections clearly show that the bridge over the stream onto the land has been strengthened and physically widened on two separate occasions (in 2001 and thereafter) and the owner does not deny this. It is considered that the alterations carried out are material and therefore require planning permission. There is conflicting evidence, however, as to the status of the bridge. Whilst the Parish Council claim that the bridge was never wide enough to accommodate a vehicle (and has submitted photographic evidence to show this), the owner has claimed that it was and was so used by agricultural vehicles and the like. The Council's own documentary evidence suggests that use by vehicles was very improbable and that it was at best used as a footbridge. Furthermore, it is not aware that the bridge had been regularly used in recent times, due probably to the overgrown nature of the site.

Consultations:

ECC Transportation & Operational Services:

- 12 No objections are raised to the access modifications providing the owner submits a planning application, subject to any works within the limits of the public highway being carried out to the satisfaction of this authority.

Representations

Clavering Parish Council:

Three letters received:

- 13 (i) "The owner of the Fox Garden appears to have converted a footbridge from the High Street into a vehicular access and we do not appear to have had a planning application for this. As background information, the Fox Garden has always been on the opposite side of the road from the Fox & Hounds Public House and the garden was retained by a previous landlord when the pub was sold, The present owner has now bought the bungalow next door to the garden (Sidestream) and has joined the garden to the bungalow. The garden always had a small footbridge from the road (we have many old photographs showing this), but never a vehicular access"
- (ii) "We are able to supply a copy of a photo showing the vegetable garden, the footbridge, fenced either side with no possibility for even a small horse and cart and the Fox & Hounds on the other side of the road when it was a Hawkes & Son pub many years ago".
- (iii) "The garden was originally used to grow vegetables for the customers of The Fox & Hounds and apparently later it was used as gardens and vegetable plots by various villagers. Several members of the Parish Council can remember this and confirm (the bridge) was only a footbridge. The grass bank is continuous and the kerb has not been dropped to make a vehicle access.

Planning Considerations

- 14 **The main issues are (i) the impact of the proposal on the character and appearance of the rural Area of Special Landscape Value and the Conservation Area (ESP Policies C5 & CS2, ADP Policies S2, C2, DC2 and DLP Policies S7, ENV1 & GEN8) and (ii) the impact of the proposal on highway safety (ADP Policy DC1 and DLP Policy GEN1).**
- 15 The change of use of this site to extended residential curtilage has resulted in a change in its appearance and in the type and form of vegetation. As a result, the site is more open in character than the site had previously been and views into the site and through to neighbouring built form is now possible. It has not therefore retained the character and appearance of the area. The site has been excluded from development limits largely because of its contribution to the character of the village environment. It was formerly an attractive wooded site, which played an important part in the approach to the main part of the village and an important natural feature within the conservation area in which it is partly sited.
- 16 In determining the landowner's 1992 appeal against the Council's refusal of planning permission for 1No. dwelling on the land (UTT/0114/92), the inspector commented:

'I found that, because of its prominent location on the northern approaches to the village and also due to its overgrown and wooded character, the site is unlike other undeveloped spaces in and around Clavering. It imparts a rural appearance to this particular approach along High Street. No individual tree or sections of landscaping contribute to the unique appearance of the site, instead it is a combination of the overall groups of trees, shrubs as well as dense undergrowth, which over the years have matured to produce this area of natural landscaping. I believe that, together with open areas of countryside to the northwest, the site represents a transition between this part of Clavering and the built-up section of Hill Green. Accordingly, I consider that in its present unique and overgrown form, it is an important and valuable part of the village.'

- 17 The addition of the garden shed and children's equipment and the laying of the hard surfacing has greatly compounded the unsatisfactory loss of vegetation and further eroded the rural character and appearance of the site. Together with the turfing and the picket fence (outside planning control), they have resulted in a manicured, domesticated character that adversely affects the character and appearance of the area. Had the change of use been implemented whilst retaining much of the mature vegetation and supplementing it where appropriate and also avoiding the use of built form and hard surfacing, the impact on the character and appearance of the conservation area could have been much reduced.
- 18 In the report to committee concerning planning application UTT/0114/92, it was stated under Planning Considerations "*There is an existing narrow access over the stream, which is insufficient for a car*". The access bridge, as altered, is wide enough, suitable and now used by cars. The widening of this access has increased the openness of the site to the detriment of the character and appearance of the area and in effect has exploited it.
- 19 Essex County Council Highways have raised no objections to the modified access with respect to highway safety grounds. On this basis, it is considered that an access in this location serving one dwelling unit only should not result in a highway hazard.

Conclusion

- 20 The loss of vegetation and the works carried out by the owner as described above are considered to be detrimental to the character and appearance of the area and contrary to policy. The principal of the change of use in this location is considered unacceptable and non-negotiable and should be resisted to avoid further exploitation of the site. It is further considered that the Parish Comments concerns regarding the owner's actions are justified.

RECOMMENDED that enforcement and, if necessary, legal action be taken to require the cessation of the use of the land as extended residential curtilage, the removal of the shed, children's play equipment and hardstanding from the land and the reduction in the width of the access bridge to previously determined dimensions.

Background Papers:, Planning applications/Appeal documentation, Aerial photographs, Parish Council letters/photographs, Land Registry Office Copy Entry, Officer filenotes, Essex County Council Highways consultation response.

Committee: Development Control Committee
Date: 15 December 2003
Agenda Item No: 7
Title: Appeal Decisions
Author: John Mitchell (01799) 510450

APPEAL BY	LOCATION	APPLICATION NO	DESCRIPTION	APPEAL DECISION & DATE	DATE OF ORIGINAL DECISION	SUMMARY OF DECISION
Mr & Mrs Reuter	Brockhall Grange Ongar Road Great Dunmow	UTT/0441/03/FUL	Appeal against refusal to grant planning permission for the self-containment of annexe to dwelling	DISMISSED 10 Nov 2003	21 Feb 2003	The Inspector agreed with the Council's case.
Mr A Walker	Land adj. to St.Helens Mill Road Tye Green Wimbish	UTT/0371/03/FUL	Appeal against refusal to grant planning permission for the erection of a dwelling and the construction of a new access	DISMISSED 28 Nov 2003	13 May 2003	The Inspector concluded that although planning permission has been granted in the past for a house on the site, this had now lapsed and the local plan now shows the site as outside development limits. As such the proposal was for a new house in the countryside and should be refusal.
Richard Palmer	Springvale Cambridge Road Newport	UTT/0718/03/FUL	Appeal against refusal to grant planning permission for alterations to Springvale and a new dwelling on the adjacent plot	ALLOWED 28 Nov 2003	4 July 2003	The Inspector concluded that the proposed development would be satisfactory in the street scene and have no adverse effects for the amenity of the occupiers of nearby dwellings