

6C

ENF/2018/00036

WARD: STJ

**Subject:** 7 Martin Way, St Johns, Woking, Surrey, GU21 7RX.

**Description:** Unauthorised development – construction of metal bike shed to the front of the property and associated engineering operations including removal of soil to re-level the land, formation of gravel surface, installation of wooden sleepers as retaining walls and erection of a wooden lattice fence

**Case Officer:** Russell Ellis

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**1. PURPOSE**

To authorise all necessary enforcement action to remedy the breaches of planning control including proceedings in the Magistrates Court

**2. RECOMMENDATION**

(i) Issue an Enforcement Notice in respect of the above land requiring the following within three months of the notice taking effect:

- (a) Remove the metal bike shed/store
- (b) Remove the wooden lattice fence
- (c) Reinststate the excavated area of the land to its former level and condition prior to the engineering operation taking place (see associated photos and drawings).
- (d) To re-seed the excavated area of the land
- (e) To remove all materials and paraphernalia associated with the reinstatement of the land described at (c) above

**3. SITE DESCRIPTION**

The site is located at the end of a cul-de-sac off St John's Road. The property is one of 6 semi-detached properties (Nos 5, 6, 7, 8, 9 & 10) that sit a-top of a relatively steep bank looking down onto Martin Way. Separate garages are associated with these properties in their own block at then of Martin Way.

The properties no's 5-10 own the land in front of each house ie. the bank, but as this area is forward of the front elevation of the properties, no permitted development would be allowed for engineering or building works and therefore permission must be sought and granted.

**4. PLANNING HISTORY**

PLAN/2015/0345	Prior notification for a single storey rear extension to extend a maximum of 4m, maximum height of 3.8m and a maximum height of eaves 2.65m
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Approved

PLAN/2015/0443      Excavation of front garden slope to provide two parking spaces and erection of retaining walls and railings to site of proposed parking area.  
Refused on the below reason:

**Reason**

The proposed excavation of the open grassed amenity area to form two parking spaces with the erection of substantial and high retaining walls and railings would result in a visually harmful and harsh urbanising feature which would be prominently viewed within the locality. The proposed development would be detrimental to the pleasant and open green character of the application site, its adjoining area and the overall character and appearance of this part of Martin Way contrary to Policies CS21 and CS24 of the Woking Core Strategy, the guidance in the Council's SPG - Residential Boundary Treatment (2000) and the policies of the NPPF.

**NB:** For clarity, the level of excavation proposed in this refused application was far in excess of the current levelling shown in attached photos that are to be discussed and it is in no way inferred that this refused application has been carried out. We would concede for openness that the current excavation by comparison is modest.

Withdrawn or No Further Action applications are not shown as they did not become public.

**5. REPORT**

Planning Enforcement were contacted in February 2018 following concerns about work being carried out to the front of the property. Concerns were raised that the refused application (PLAN/2015/0443) referred to above in the planning history was actually proceeding.

A site visit was undertaken by an Enforcement Officer in March 2018 who met with the owner and it was established that landscaping works were to take place including planting etc to match other areas in the road (See photos). The owner confirmed he had no intention of creating a parking area as per the refusal.

During discussions with the owner he mentioned the possibility of a bike or similar "store" being positioned to the front as part of the works. Whilst it appeared there would be no issue with the landscaping and planting as described on site, the Enforcement Officer advised the owner that any structure proposed would firstly be forward of the front elevation of the property and therefore not benefit from Permitted Development and secondly that the land was considered to be outside the residential curtilage of the property. Whilst the land in question is most definitely "owned" by no 77 it does not fall within the residential curtilage of the property and should not be used as residential garden. This also removes any possibility of relying on such works being considered permitted development

At the time of the Enforcement Officer's visit there was no breach of planning control and the owner was advised to obtain further advice if a structure was proposed and/or to submit an application.

In March 2019 we later received a follow up complaint that the work had progressed and a bike store had now been installed, without an application, contrary to previous advice. A follow up visit was made in March 2019 by an Enforcement Officer.

During this site visit the Enforcement Officer found that a section of the bank had been excavated to create a levelled gravel area measuring approximately 2m x 2.4m, using wooden railway/"gardening" sleepers approximately 0.5m in height to create a retaining wall. Wooden lattice screening has also been erected on one side. A metal bike shed/store was in situ on the gravelled area. The bike shed/store measures approximately 2.2m wide x 1m deep x 1.3m high (highest), and is metal in construction. From the manufacturers website (Asgard) these stores without bikes weigh 122kg (19 st) so are not portable as by design they are not meant to be easily removed. It has been placed so as to sit level on a section of the bank, said section having been removed/excavated. There is no evidence to show if the excavation was undertaken by hand or using machinery as works were complete. The removal of substantial soil and the formation of a retaining wall is not *de minimus* and does not come within the definition of permitted development and is easily defined as an engineering operation for which planning permission is required.

Several attempts to contact and engage with the owner have been made without success and no response has been received to letters/emails. In the first instance, as with the majority of breaches, Enforcement Officers gave the owner the opportunity to submit a retrospective planning application to assess the acceptability of the development.

In the absence of a retrospective application submitted for consideration and/or engagement from the owner the Council is left with little option but to take enforcement action.

The Council must also have regard to its public sector equality duty (PSED) under S.149 of the Equalities Act 2010. This requires consideration to be given to the need to eliminate unlawful discrimination. It is not known whether the owner falls within one of the protected characteristics. Officers do not consider that the recommendation in this report would have a disproportionate impact on any potential characteristic.

It is considered expedient to serve an Enforcement Notice and therefore authority is sought to serve an Enforcement Notice.

## **6. EXPEDIENCY OF TAKING ACTION**

It is considered expedient to take Enforcement Action because:-

1. The bike store/shed by reason of its design, scale, form and prominence has a detrimental impact upon the character and appearance of the area contrary to Policy CS21 (New Design) of the Woking Core Strategy 2012. The lattice fencing by reason of its design, scale, form and prominence has

- a detrimental impact upon the character and appearance of the area contrary to Policy CS21 (New Design) of the Woking Core Strategy 2012
2. The excavation works and removal of the grassed amenity area creates a harsh urban feature and removes a significant part of the wider open grassed amenity area on this part of Martin Way. The loss of the grassed amenity area is highly visible within the street scene and the wider locality of this part of Martin Way resulting in an unacceptable and visually harmful impact contrary to Policies CS21 (New Design) and CS24 (Woking's Landscape and Townscape) of the Woking Core Strategy 2012.
  3. It appears to the Council that the breaches occurred within the last 4 years
  4. Section 58 of the National Planning Policy Framework (NPPF) states 'effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control'. It is considered that enforcement action is proportionate for the reasons listed above.

## **7. FINANCIAL IMPLICATIONS**

The financial implications including staff resources, the costs of any subsequent appeal, court hearing, legal representation and/or any other costs (including where appropriate, taking direct action) are all matters that have been considered in the making of this report.

An appeal against an Enforcement Notice could be subject to an application for full or partial award of the Appellant's costs in making an appeal if it was considered that the LPA acted unreasonably.

If the committee decide to take enforcement action and the owner decides to exercise their right of appeal, this case is unlikely to be determined by Public Inquiry and therefore costs are likely to be minimal.

## **8. RECOMMENDATION**

(i) Issue an Enforcement Notice in respect of the above land requiring the following within three months of the notice taking place:

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