

27 JUNE 2023 PLANNING COMMITTEE

6d PLAN/2023/0463

WARD: MH

LOCATION: 14 Martinsyde, Woking, Surrey, GU22 8HT

PROPOSAL: Retrospective application for change of use from amenity land to private residential and associated removal of existing closeboard timber fence and construction of new closeboard timber fence.

APPLICANT: Mr & Mrs S Gardner

OFFICER: Benjamin Bailey

REASON FOR REFERRAL TO COMMITTEE

The recommendation includes enforcement action and the decision on whether to issue an Enforcement Notice falls outside the Scheme of Delegations.

SUMMARY OF PROPOSED DEVELOPMENT

Retrospective application for change of use from amenity land to private residential and associated removal of existing closeboard timber fence and construction of new closeboard timber fence.

PLANNING STATUS

- Urban Area
- Surface Water Flood Risk (Very High/High/Medium – All partial)

RECOMMENDATION

Refuse planning permission and authorise enforcement action.

SITE DESCRIPTION

No.14 Martinsyde is a two storey detached house located within a 1990s development of residential properties on land off the south side of East Hill. No.14 is externally finished in facing brick, with brown window frames, and demonstrates half-hipped, tiled roofs. It benefits from a subordinate attached element to its side (south-east), which was originally a garage and has since been converted into habitable space, with further accommodation provided at first floor level above. A private garden area is provided to the rear (south-west), being laid largely to lawn and ornamental planting, with a patio area close to the rear of the house, a shed is located within the rear garden. The frontage is 'open plan' and laid to lawn and ornamental planting. On-site car parking is provided on a driveway in front of the (now converted) original attached garage.

RELEVANT PLANNING HISTORY

PLAN/2017/0737 - Retrospective application for erection of a wooden shed in rear garden (amended description).
Permitted subject to conditions (30.08.2017)

PLAN/2016/1036 - Amendment to previously approved application PLAN/2015/0310 for the proposed removal of garage doors and insertion of two windows in the front elevation (amended description).

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Permitted subject to conditions (01.11.2016)

PLAN/2015/0310 - Extension of garage to merge a dwelling and conversion of space into habitable accommodation including rear roof dormer to facilitate loft conversion with the erection of a single storey side extension.

Permitted subject to conditions (18.05.2015)

PLAN/1992/0405 - Erection of 43 dwellings with associated access road, garages and parking following demolition of existing school building and dwelling house and erection of management store.

Permitted subject to conditions (20.01.1993)

CONSULTATIONS

None undertaken

REPRESENTATIONS

x2 letters of representation have been received objecting to the application raising the following points:

- Having referred to the documents and living on the road, do not believe this retrospective planning application should be allowed.
- Martinsyde has an open aspect with large swathes of amenity land that enhance the road appearance.
- Having been built in the 1990s, it is also worth noting the commonality of planting and aesthetic approach found throughout the road has been maintained.
- The fencing that has been constructed has been taken right up to the edge of the footpath. Clearly if every property was to adopt the same approach, then the road would feel like a prison camp. Whilst a number of the properties on Martinsyde sit on privately owned mini cul-de-sacs, number 14 does not, and believe it is inappropriate for the fence to be taken to the verge in this way.
- Urge Woking Council to take action in this case.
- The fence being so close to the pavement is too much and spoils the road.
- Have spoken with other neighbours who are also not happy, we don't think this should be allowed.

RELEVANT PLANNING POLICIES

National Planning Policy Framework (NPPF) (2021)

Section 2 - Achieving sustainable development

Section 4 - Decision-making

Section 12 - Achieving well-designed places

Woking Core Strategy (2012)

CS17 - Open space, green infrastructure, sport and recreation

CS21 - Design

CS24 - Woking's landscape and townscape

CS25 - Presumption in favour of sustainable development

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Development Management Policies Development Plan Document (DM Policies DPD) (2016)

DM2 - Trees and landscaping

Supplementary Planning Documents (SPDs)

Design (2015)

Outlook, Amenity, Privacy and Daylight (2022)

Other Material Considerations

Planning Practice Guidance (PPG) (online resource)

Community Infrastructure Levy (CIL) Charging Schedule (2015)

BACKGROUND

This planning application is retrospective in nature and has been submitted following an enforcement complaint and investigation, which has established that there are breaches of planning control.

In this case the breaches of planning control are the material change of use of the amenity land to residential garden and the erection of close boarded timber fencing which exceeds 1 metre in height adjacent to a highway. The Committee is requested to note that even though land adjacent to a residential property may be within the ownership of person(s) together with that residential property, it does not necessarily follow that the lawful use of the adjoining land is residential use. In this case the original layout for the housing development within Martinsyde shows that the now enclosed amenity land (together with the adjoining parking space seemingly originally associated with the adjoining 'management store') fell outside the fenced enclosure to the residential garden of the house of No.14 Martinsyde. The area of unenclosed land (formerly) laid to lawn/planting also displayed the characteristics of 'amenity land,' which is an area that is landscaped for the benefit and enhancement of the development as a whole, rather than a private garden associated with a residential use. There is a similar arrangement to other nearby properties within Martinsyde.

The planning application form states that the work or change of use started on 15/06/2022 and was completed on 15/07/2022.

PLANNING ISSUES

01. The main planning issues to consider in determining this planning application are the effects on:

- Character and appearance of the area;
- Neighbouring amenity;
- Other matters; and
- Local finance considerations

having regard to the relevant policies of the Development Plan, other relevant material planning considerations (including Supplementary Planning Documents) and national planning policy and guidance.

Character and appearance of the area

02. Policy CS21 (Design) of the Woking Core Strategy (2012) states, amongst other things, that *"Proposals for new development should...Create buildings and places that are attractive with their own distinct identity; they should respect and make a positive contribution to the street scene and the character of the area in which they are situated, paying due regard to the scale, height,*

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proportions, building lines, layout, materials and other characteristics of adjoining buildings and land [and] Incorporate landscaping to enhance the setting of the development, including the retention of any trees of amenity value, and other significant landscape features of merit, and provide for suitable boundary treatment/s" (emphases added).

03. Policy CS24 (Woking's landscape and townscape) of the Woking Core Strategy (2012) states that "*All development proposals will provide a positive benefit in terms of landscape and townscape character, and local distinctiveness*" (emphasis added).
04. Policy CS17 (Open space, green infrastructure, sport and recreation) of the Woking Core Strategy (2012) is also considered applicable in this instance. The preamble to the policy states (at para 5.146) that "*Green infrastructure relates to a network of multi-functional open space and other environmental features [and that, among others] the following can form part of green infrastructure networks: Natural and semi-natural greenspaces, Amenity greenspace*". Furthermore, noting the definition of 'Open space' in the glossary to the NPPF (2021), which states "*All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity*", and thus addresses the role of open space in terms of public value and visual amenity, it is considered that Policy CS17 applies to the area of amenity land in this instance because (prior to its enclosure with fencing) it formed an area of open space of public value which contributed positively to the visual amenity of the area. Whilst, in its former condition, the area of amenity land may not have been actively used, that fails to appreciate the (pre-enclosure) public value of the land in visual amenity terms.
05. Policy CS17 states that "*Development involving the loss of open space will not be permitted unless: alternative and equivalent or better provision is made in the vicinity, or the development is directly related to the enhancement of the open space*". The proposal results in the loss of open space (to residential garden land) and would not provide alternative and equivalent or better provision in the locality or be directly related to the enhancement of open space. The proposal is therefore contrary to Policy CS17 of the Woking Core Strategy (2012) in this regard.
06. Policy DM2 (Trees and landscaping) of the Development Management Policies Development Plan Document (DM Policies DPD) (2016) states that "*Trees, hedgerows and other vegetation of amenity and/or environmental significance or which form part of the intrinsic character of an area must be considered holistically as part of the landscaping treatment of new development. When considering development proposals, the Council will...(iii) require landscape proposals for new development to retain existing trees and other important landscape features where practicable*".
07. Paragraph 126 of the National Planning Policy Framework (NPPF) (2021) states that "*The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development*". The NPPF (2021) also states that planning decisions should ensure that developments, inter alia, "*are visually attractive as a result of good architecture, layout and appropriate and effective landscaping...establish or maintain a strong sense of*

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place, using arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit" (paragraph 130).

08. The 'Residential extensions' section (9D) of Supplementary Planning Document (SPD) Design (2015) states that "*Boundary treatment should be well considered and in keeping with the existing building and streetscape*".
09. No.14 Martinsyde is located within a 1990s development of 43 dwellings which was constructed on land off of the south side of East Hill. The development in Martinsyde was deliberately laid out to include several closes made up of small groups of houses in order to break up the scale of the development and create individual areas. No.14 addresses the 'main' road through the development (i.e., it is not within one of the several closes which stem off of the 'main' road). The original layout of Martinsyde incorporated notable areas to the front and sides of the houses, particularly to the front and sides of the larger, and detached, houses which directly address the 'main' road (as No.14 does), which include areas of lawn, planting, trees and hedges. These soft landscaped areas are informally laid out and create a verdant, spacious, open character to Martinsyde. It must also be noted that the detached houses within Martinsyde (of which No.14 is one) have been designed in an 'open plan' manner, without any obvious front boundaries and therefore the front gardens of these properties themselves provide a notable visual amenity to Martinsyde as a whole.
10. Whilst some brick walls and fences are evident (alongside the 'main' road) upon entering Martinsyde from East Hill these enclosures are concentrated in the north-eastern part of Martinsyde (i.e., that part closest to the junction with East Hill) and generally form the enclosures to the private garden areas of properties which front the several closes which branch off of this 'main' road. In any case, where such brick walls and fences are in place, they are set back notable distances from the 'main' road and have planting in front of them. The combination of the setbacks from the 'main' road, and the incorporation of planting in front of them, very much softens the appearance of these brick walls and fences.
11. In the case of No.14 the area of land to the side (north-west) was largely designed and laid out as amenity land. The original approved layout of the Martinsyde development, and aerial photography from as recently as 2021, show the (north-west) rear garden boundary fence of No.14 to generally align with the side (north-west) elevation of the house, and therefore to be set back from the back edge of the footway by a minimum distance of around 7 metres, thus heavily reducing the prominence and appearance of that fencing within the street scene.
12. It is evident that there was also formerly a single parking space within the now enclosed area (to its most south-west part). The original approved layout indicates that this parking space was laid out, as part of the original development within Martinsyde in the 1990s, in association with the adjoining 'management store', which is a single storey dual-pitched building located to the south-west. This 'management store' is not included within the red line of the present application site (nor is it included within any blue line, thus indicating it is not within the applicants ownership) and relatively recent planning application ref: PLAN/2019/1084 at adjoining Greenfield School

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(formerly the International School of London) shows this 'management store' within a blue lined area, indicating that (at that time, 2019) it was within the ownership of the adjoining school.

13. No planning conditions relating to the (former) parking space (or to the adjoining management store) are attached to planning permission ref: PLAN/1992/0405 (for the construction of development within Martinsyde). Whilst this is the case the incorporation of that parking space (together with the adjoining amenity land) into the private garden of the house at No.14 nonetheless represents a material change of use of the land and thus is in breach of planning control. Whilst the area formerly laid out as a parking space had a hard ground surface (seemingly tarmac), and would have been occupied, at least at times, by a parked car it nonetheless was open in nature and thus contributed to the spaciousness, and openness, of this corner, particularly collectively with the (former) adjoining amenity land.
14. In its former position the (north-west) rear garden boundary fence of No.14 generally aligned with the side (north-west) elevation of the house, and therefore was set back from the footway by a minimum distance of around 7 metres. In contrast the close board fencing is now located around 0.3 metres (i.e., 300mm) back from the footway, for a length of around 8 metres. Sections of close board fencing also extend from the side elevation of the house for a length of around 4.5 metres and, at an angle, from the corner of the fencing around the 'management store' by around 3.5m. Therefore, where previously there was a single line of fencing set back substantially from the footway, there is now three lines of fencing, and which extend up to the back edge of the footway. The area of amenity land (and that of the former parking space) which has been enclosed by close boarded fencing measures around 53 sq.m, thus is quite substantial.
15. The relocated fencing is therefore around 6.7 metres closer to the back edge of the footway than the former situation. Its former alignment, together with the circa 6.7 metre wide area of amenity land between the fencing and the footway, afforded the (former) boundary treatment a much more subservient and softer relationship with the Martinsyde street scene. In contrast, the relocated close boarded timber fencing, with concrete posts, appears harsh and unsympathetic to its context.
16. The original layout of the housing in Martinsyde provided for a notably wide area of amenity land between the side of the house/garden at No.14 and the back edge of the footway. This largely soft landscaped area was informally laid out to contribute positively to the verdant, spacious, open character to Martinsyde. That original housing/amenity land layout is shown on the relevant planning permission drawings for the development of housing in Martinsyde (pp ref: PLAN/1992/0405). Collectively the (former) amenity land to the (north-west) side of No.14 combined with other areas of informally laid out soft landscaped areas, and with the 'open plan' style front gardens of the detached houses in this part of Martinsyde (including that of No.14), to create a spacious and attractive landscape setting to the housing within Martinsyde.
17. Given the relative extent of the relocated boundary fencing facing Martinsyde, combined with its height, alignment and its appearance, it has an unduly imposing presence in the Martinsyde street scene. Its corner location increases its prominence in the street scene.

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18. Combined with the loss of amenity land (and the adjoining parking space), the relocated close boarded timber fencing undermines the openness and spaciousness of this part of Martinsyde. Moreover, because of its height and alignment at the back of the footway, the enclosure is also oppressive in the street scene.
19. The 'newness' of the timber of the fence presently appears 'stark', this effect is compounded by the rather harsh appearance of the concrete posts. Whilst the new timber would appear less stark as it weathers, that would take time. In respect of any potential planting 'in front of' the fence this would not be possible because of the positioning of the fence tight against the back edge of the footway (except for a minimal c.0.3m set back), notwithstanding that any such potential realignment of the fence or planting (which the present planning application does not propose in any case) would not address the harmful loss of amenity land.
20. Overall, the development results in unacceptable harm to the character and appearance of the area, contrary to Policies CS21 and CS24 of the Woking Core Strategy (2012), SPD Design (2015) and to paragraphs 126 and 130 of the National Planning Policy Framework (NPPF) (2021). Those policies state, amongst other things, that all development proposals will provide a positive benefit in terms of landscape and townscape character, and local distinctiveness. It must be noted that the harm and policy conflict would not be overcome by reducing the height of the fencing, not least because the alignment and loss of amenity land would remain.
21. The applicant has submitted no supporting/justification statement with the planning application, and (in the absence of such) it appears that the main reason for the enclosure of the amenity land (and adjoining parking space) was to increase the size of the private garden area of the house. It is acknowledged that Policy CS21 of the Woking Core Strategy (2021) also seeks to ensure, inter alia, that "*schemes provide appropriate levels of private...amenity space*", and that incorporating the former amenity land into the private garden area increases the outdoor private amenity space at the house. However, any gain from the enclosure of the amenity land (and adjoining parking space) in this respect is clearly outweighed by the described harm to the character and appearance of the area. Moreover, on the basis of the approved plans for pp ref: PLAN/2016/1036 (which has been built out) the house at the application site provides around 244 sq.m gross floorspace. It is noted that a shed in the rear garden was subsequently permitted under pp ref: PLAN/2017/0737. Taking account of the footprint of that permitted shed (around 12 sq.m) the house has a (lawful) private rear garden area of around 280 sq.m (and of between around 12 and 13 metres depth and around 23 metres width). This area of (lawful) private rear garden readily exceeds the gross floorspace of the house in accordance with the recommendations within SPD Outlook, Amenity, Privacy and Daylight (2022) (for large family dwelling houses) and is consistent with the grain and pattern of development in Martinsyde. As such, it is not considered that the house is deficient in respect of outdoor private amenity space.
22. It is noted that the installed fencing does not extend along the entirety of the (north-west) side elevation of the house (i.e., it is set back from the front elevation of the house) and that the front garden of the house remains 'open

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plan'. However, these factors are not considered to outweigh the harm to the character and appearance of the area which is caused by the enclosure of the amenity land (and adjoining parking space) and the relocated timber fencing.

23. It is acknowledged that planning permission (pp ref: PLAN/2019/0425) was granted in 2019 at nearby No.18 Martinsyde for, inter alia, *"Relocation of fence and change of use of open amenity land to private amenity land"*. Each planning application is considered on its individual merits and the delegation report for the application at No.18 states that the area in question *"is one which is only apparent towards the end of the cul-de-sac and therefore apparent to just 3 properties"* and that *"The existing amenity land is primarily enclosed by the vegetation in this section and although a contributing section of amenity space within Martinsyde, it is not considered a significant section of amenity land which requires preserving. The close timber board fencing would be sited approximately 1 metre further forward than the existing vegetation than the existing vegetation and whilst appearing harsh within the street-scene, considering the location of the application site towards the terminus of the cul-de-sac, the area is not deemed to be significantly affected by the change of use. In any affect, it is deemed prudent to attach a condition to any permission to ensure that in the first planting season of the year following erection of the fencing, a landscaping scheme showing vegetation towards the front of the fence shall be submitted to and approved in writing by the Local Planning Authority. This is secure by way of condition (Condition 4)"*.
24. The location and context of the enclosed amenity land at nearby No.18 Martinsyde is considered materially different to that of No.14. The land to the (west) side of No.18 is positioned at the very end of the 'main' road of Martinsyde, whereas the land to the side of No.14 is passed by the occupiers of Nos.15-21 Martinsyde (incl.) when those residents are entering or leaving the road and is also located on something of a corner in the main 'road'. There is also no footway passing nearby No.18 and the fencing at nearby No.18 is set back from the road, whereas at No.14 the fencing abuts (except for a minimal c.0.3m set back) the back edge of the footway which passes the land in question. For these combined reasons the grant of planning permission at nearby No.18 is not considered to justify the situation at the application site (No.14).
25. In addition, at the application site it would not be possible to provide any potential planting 'in front of' the fence, as was secured through a planning condition at nearby No.18, because of the (existing) positioning of the fence tight against the back edge of the footway (except for a minimal c.0.3m set back), notwithstanding that any such potential realignment of the fence or planting (which the present planning application does not propose in any case) would not address the harmful loss of amenity land. Furthermore, the c.0.3m set back of the (existing) fence from the back edge of the footway is insufficiently in width for any such planting to establish and survive.
26. Whilst each planning application is considered on its individual merits, in the event this planning application was to be permitted, there is nonetheless a more than reasonable prospect of similar development being able to be repeated elsewhere within Martinsyde. Permitting this planning application would make it more difficult for the Local Planning Authority to resist further applications for such development, thereby compounding the harm to character and appearance which has been identified.

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27. Overall, the loss of amenity land (and adjacent parking space), and the associated relocation of the timber fencing, undermines the openness, spaciousness and attractive informal landscape setting to Martinsyde and has an unduly imposing presence in the Martinsyde street scene which appears harsh and unsympathetic to its context. Furthermore the proposal results in the loss of a parcel of informal open space, which performed a public value function as visual amenity, and fails to provide alternative and equivalent or better provision in the locality or to be directly related to the enhancement of open space. The development fails to respect and make a positive contribution to the character of the area within which it is located, fails to incorporate appropriate and effective landscaping and to provide for suitable boundary treatments, and also fails to provide a positive benefit in terms of landscape and townscape character. The development is therefore contrary to Policies CS17, CS21 and CS24 of the Woking Core Strategy (2012), Policy DM2 of the Development Management Policies DPD (2016), Supplementary Planning Document (SPD) Design (2015) and the provisions of the National Planning Policy Framework (NPPF) (2021) (most notably paragraphs 126 and 130).

Neighbouring amenity

28. Policy CS21 of the Woking Core Strategy (2012) states, inter alia, that *“Proposals for new development should...Achieve a satisfactory relationship to adjoining properties avoiding significant harmful impact in terms of loss of privacy, daylight or sunlight, or an overbearing effect due to bulk, proximity or outlook”*. SPDs Outlook, Amenity, Privacy and Daylight (2022) and Design (2015) provide more detailed guidance in respect of considering/assessing neighbouring amenity impacts.
29. The potential loss of enjoyment of a view is not a ground on which planning permission can potentially be refused although the impact of a development on outlook is a material planning consideration and stems on whether the development would give rise to an undue sense of enclosure or overbearing effect to neighbouring/nearby residential properties. There are no established guidelines for what is acceptable or unacceptable in this regard, with any assessment subjective as opposed to empirical, with key factors in this assessment being the existing local context and arrangement of buildings and uses.
30. In respect of daylight, and where existing habitable room windows/openings are located directly opposite a proposed development, SPD Outlook, Amenity, Privacy and Daylight (2022) (at para 5.9) identifies that suitable daylight is achieved where an unobstructed vertical angle of 25° can be drawn from a point taken from the middle of each of the existing window openings.

Nos.20 & 21 Martinsyde:

31. Nos.20 & 21 Martinsyde are the closest houses to the new fencing/enclosed amenity land (and adjacent parking space) and are two storey detached houses located (to the north) on the opposite side of the ‘main’ road of Martinsyde. Their front elevations face predominantly south towards the application site.
32. The relocated fencing remains between around 5 and 6 metres away from the front garden boundaries of Nos.20 & 21 and further distant from the front

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elevations of Nos.20 & 21. Whilst the new fencing is opposite the front elevations of Nos.20 & 21 it is 'across the street' from them. Moreover, the separation distances between the new fencing and Nos.20 & 21 readily exceed the c.1.9 metre height of the new fencing such that the new fencing avoids significant harmful overbearing effect to Nos.20 & 21. The new fencing passes the 25° angle test for daylighting and thus avoids significant harmful loss of daylight to Nos.20 & 21. Whilst the new fencing is located to the south of Nos.20 & 21 collectively its height, and the retained separation distances, ensure that no significant harmful loss of sunlight arises to Nos.20 & 21.

33. Considering its height and positioning in relation to adjoining and nearby properties, other than Nos.20 & 21 Martinsyde (discussed above), the new fencing and the enclosure of the amenity land (and adjacent parking space) does not give rise to material neighbouring amenity impacts to any other properties. However, the preceding represents only an absence of harm in this respect (i.e., is neutral) and does not outweigh the other harms identified or weigh positively in favour of the proposal.

Other matters

34. The application site does not fall within an area at risk of flooding from rivers (i.e., fluvial risk). Whilst areas of surface water flood risk (Very High/High/Medium – All partial) exist within, and adjacent to, the application site the proposal does not result in any additional built footprint, such that surface water flood risk is not considered to represent a planning constraint in this particular instance. The height and positioning of the relocated fencing is such that it does not give rise to any highway safety issue. Again, the preceding represents only an absence of harm in these respects (i.e., are neutral) and do not outweigh the other harms identified or weigh positively in favour of the proposal.

Requirements of the enforcement notice

35. In this case, the breach of planning control is the material change of use from amenity land (and adjoining parking space) to residential garden and the erection of close boarded timber fencing. The requirements of the enforcement notice therefore need to be, in short, to cease the use of the amenity land (and adjoining parking space) as residential garden, remove the fencing, re-instate the former boundary treatment in its former location, restore the amenity land (and adjoining parking space) to its previous condition and remove all associated materials.
36. It must also be noted that potentially reducing the fencing to 1 metre in height above ground level (although this is not proposed by the applicant) would not remedy the breach of planning control. That is because 'permitted development' (PD) rights do not grant retrospective planning permission and because, moreover, the material change of use of amenity land to residential garden would remain.

Local finance considerations

37. No gross floorspace would result. As such, the proposal is not Community Infrastructure Levy (CIL) liable.

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Conclusion

38. For the reasons set out within this report, the proposed development would conflict with the policies of the Development Plan, and other material considerations, including the NPPF (2021). There are no material considerations that indicate the application should be determined other than in accordance with the Development Plan and other material considerations. Therefore, for the reasons given, it is recommended that planning permission should be refused.
39. It is also considered expedient to serve an Enforcement Notice having regard to the provisions of the Development Plan and to other material considerations. As such, authority is sought to serve an Enforcement Notice. It is considered expedient to take enforcement action for the following reasons:
 1. It appears to the Council that the change of use from amenity land (and adjacent parking space) to residential garden, and the associated erection of new closeboard timber fencing, has occurred within the last ten years and therefore is not immune from enforcement action due to the passage of time.
 2. The loss of amenity land (and adjacent parking space), and the associated relocation of the timber fencing, undermines the openness, spaciousness and attractive informal landscape setting to Martinsyde and has an unduly imposing presence in the Martinsyde street scene which appears harsh and unsympathetic to its context. Furthermore the proposal results in the loss of a parcel of informal open space, which performed a public value function as visual amenity, and fails to provide alternative and equivalent or better provision in the locality or to be directly related to the enhancement of open space. The development fails to respect and make a positive contribution to the character of the area within which it is located, fails to incorporate appropriate and effective landscaping and to provide for suitable boundary treatments, and also fails to provide a positive benefit in terms of landscape and townscape character. The development is therefore contrary to Policies CS17, CS21 and CS24 of the Woking Core Strategy (2012), Policy DM2 of the Development Management Policies DPD (2016), Supplementary Planning Document (SPD) Design (2015) and the provisions of the National Planning Policy Framework (NPPF) (2021) (most notably paragraphs 126 and 130).
 3. The Council does not consider that planning permission should be given because planning objections cannot be overcome by way of condition(s).
 4. Paragraph 59 of the National Planning Policy Framework (NPPF) (2021) states that *“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”*.
40. The preceding reasons therefore make it expedient to undertake enforcement action and issue the necessary Enforcement Notice. 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

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preparation 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 were considered that the Council acted unreasonably. If the Planning Committee decide to take enforcement action and the owner decides to exercise their right of appeal, it is considered unlikely that this case would be determined by Public Inquiry and therefore appeal costs to the Council are likely to be comparatively minimal.

BACKGROUND PAPERS

Site visit photographs
x2 Letters of representation

RECOMMENDATION

Refuse planning permission for the following reason(s):

01. The loss of amenity land (and adjacent parking space), and the associated relocation of the timber fencing, undermines the openness, spaciousness and attractive informal landscape setting to Martinsyde and has an unduly imposing presence in the Martinsyde street scene which appears harsh and unsympathetic to its context. Furthermore the proposal results in the loss of a parcel of informal open space, which performed a public value function as visual amenity, and fails to provide alternative and equivalent or better provision in the locality or to be directly related to the enhancement of open space. The development fails to respect and make a positive contribution to the character of the area within which it is located, fails to incorporate appropriate and effective landscaping and to provide for suitable boundary treatments, and also fails to provide a positive benefit in terms of landscape and townscape character. The development is therefore contrary to Policies CS17, CS21 and CS24 of the Woking Core Strategy (2012), Policy DM2 of the Development Management Policies DPD (2016), Supplementary Planning Document (SPD) Design (2015) and the provisions of the National Planning Policy Framework (NPPF) (2021) (most notably paragraphs 126 and 130).

It is further recommended that: -

The Interim Director of Legal and Democratic Services be instructed to issue an Enforcement Notice under Section 172 of The Town and Country Planning Act 1990 (as amended) and Officers be authorised in the event of non-compliance with the Notice to prosecute under Section 179 of the Act, or appropriate power, and/or take direct action under Section 178 in the event of non-compliance with the Notice.

Enforcement action be authorised to issue an Enforcement Notice in respect of the above Land requiring the following within three (3) months of the Notice taking effect:

- (i) Permanently remove the close boarded timber fence and concrete posts from the land;
- (ii) Permanently cease the use of the amenity land (and adjacent parking space) as residential garden;
- (iii) Re-instate the boundary of the residential garden with a wall or fence no greater than 2 metres in height in its previous alignment before the breach took place;

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- (iv) Restore the amenity land (and adjacent parking space) to its previous condition (i.e., lawn except for the parking space which was surfaced in tarmac) before the breach took place;
- (v) Remove from the Land all materials, rubble and debris, including all associated paraphernalia, arising from compliance with the above.

Informatives

01. The plans and particulars relating to the planning application hereby refused are numbered/titled (all rec'd by the LPA on 22.05.2023):

1165 / 01 Rev 01 (Existing Site Plan & Elevations), dated 15.05.2023

1165 / 02 Rev 01 (Proposed Site Plan & Elevations), dated 15.05.2023

1165 / 03 Rev 01 (Site Location and Block Plans), dated 15.05.2023

02. This statement is provided in accordance with Article 35(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015. Woking Borough Council seeks to take a positive and proactive approach to development proposals. The Council works with applicants in a positive and proactive manner by:

- Offering a planning pre-application advice service; and
- Where possible officers will seek minor amendments and/or additional information to overcome issues identified during the application process.

In this instance the applicant seeks to regularise a breach of planning control and did not seek planning pre-application advice from the Council prior to carrying out the unauthorised development. It was not considered that minor amendments and/or additional information would overcome concerns/issues identified during the application process.