

Alleged Unauthorised Development

Ightham

10/00294/UNAWKS

559764 156781

Ightham

Location:

9 Durlings Orchard Ightham Sevenoaks Kent TN15 9HW

1. Purpose of Report:

- 1.1 To report an alleged breach of planning control consisting of, without planning permission, the erection of a 2 metre high close boarded fence in contravention of condition 13 of planning permission TM/96/00641/FL.

2. The Site:

- 2.1 The site is on the south-eastern side of Durlings Orchard, a cul-de-sac accessed from the south-eastern side of Borough Green Road. The site includes a large detached dwellinghouse in large grounds consisting partly of domestic curtilage and partly private open space to the north-east of the house.
- 2.2 The property is on the edge of the rural settlement, but the private open space is within the Green Belt and an Area of Outstanding Natural Beauty (AONB). There is residential development fronting Borough Green Road to the north and to the west and south with open countryside to the east.

3. History (selected):

- | | | | | |
|-----|------------------|-------------------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1 | TM/10/02599/FL | Refused | 07.12.2010 | Erection of 2 metre high close boarded fence (retrospective) |
| 3.2 | TM/09/00436/TNCA | No Objection | 07.04.2009 | Fell Oak tree very close to house. |
| 3.3 | TM/03/02703/TNCA | No Objection | 24.09.2010 | Remove two dead/diseased trees, one small Ash, prune Cob Platt to improve appearance and productivity and prune Oak tree near to house. |
| 3.4 | TM/99/00194/TNCA | No Objection | 08.03.1999 | Lop one Oak tree to rear of house |
| 3.5 | TM/97/00369/RD | Granted | 07.04.1998 | Details of landscaping and boundary treatment and future management of the open space submitted pursuant to conditions 11 and 14 of TM/96/00641/FL (residential development). |
| 3.6 | TM/96/00641/FL | Granted with Conditions | 20.02.1997 | Residential development of 17 dwellings, open space, access road and ancillary landscaping. |

- 3.7 TM/94/00693/LDCE Certified 12.07.1994
Certificate of Lawfulness of Existing use: use as builder's yard etc.

4. Alleged Unauthorised Development:

- 4.1 Without planning permission the erection of a 2 metre high close boarded fence in contravention of condition 13 of planning permission TM/96/00641/FL. A length of close boarded fence about 15 metres long and 2 metres high has been erected approximately 1 metre inside an existing hedge on the northerly boundary adjacent to a branch of Durlings Orchard fronting 6, 7 and 8 Durlings Orchard.
- 4.2 Condition 13 of planning permission TM/96/00641/FL removed those permitted development rights under Part 1, Classes A, D, E and Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Part 1 Class E includes the provision within the curtilage of a dwellinghouse of any building or enclosure incidental to the enjoyment of the dwellinghouse as such, while Part 2, Class A relates to the erection, construction, maintenance, improvement or alteration of any gate, fence, wall or other means of enclosure. Condition 13 was imposed to ensure that should any excavations reveal contamination, suitable remediation works can be undertaken to ensure that the site is safe and fit for human habitation on a continuing basis, and specifically in the case of Unit 17, to protect the character of the area and prevent unjustified encroachment into the Green Belt. What was initially referred to as Unit 17 is now 9 Durlings Orchard.
- 4.3 In the light of condition 13, a planning application was required for the erection of the fence. A retrospective planning application TM/10/02599/FL was submitted and planning permission refused under delegated powers on 7 December 2010. The fence remains on site in breach of planning control and it is appropriate to consider enforcement action to secure its removal.

5. Determining Issues:

- 5.1 9 Durlings Orchard is situated within the south-eastern part of a large plot which includes a residential curtilage and an area of private open space. This private open space was that part of the development site that was not part of previous builder's yard that was subject to the Certificate of Lawfulness of Existing Use issued under TM/94/00693/LDCE. The area was the subject of a Management Plan approved under TM/97/00369/RD that aimed to maintain the existing cobnut orchard and enhance the local environment and ecological diversity. This plan provides guidance for the management of the cobnut orchard and planting details for a section of woodlands planting. A landscaping scheme was approved under TM/97/00369/RD that provided specific boundary treatment that included low level post and wire fencing with hedge planting, which was implemented and is evident on site. This boundary treatment provides a low and soft appearance along this boundary to maintain a visible openness and views of the orchard and open space from adjoining land, which is consistent with Green Belt policy, limiting damage to the openness of the Green Belt. As noted in paragraph 4.2 above, to ensure protection of the

openness of this area, Condition 13 of TM/96/00641/FL removed permitted development rights for the erection of fencing, gates and other forms of enclosure of the land so that any such development could be thoroughly assessed in respect of its likely impact on that area.

- 5.2 The close boarded fence results in a detrimental visual impact that has had a damaging effect on the openness of the Green Belt and open landscaped character of the area and fundamentally contrary to the landscape strategy approved for the Durlings Orchard development. At the time of the application no significant evidence was provided that would constitute very special circumstances that would outweigh the harm and damaging effect the close boarded fencing has on the character and visual amenity of the area and openness of the Green Belt. Planning permission has therefore been refused and an appeal against that decision may be anticipated. It is now appropriate to take enforcement action to secure the removal of the fence.

6. Recommendation:

An Enforcement Notice **be issued** as set out below and copies **be served** on all interested parties.

The Notice to take effect not less than 28 days from the date of service, subject to:

- The concurrence of the Legal Services Partnership Manager, he being authorised to amend the wording of the Enforcement Notice as may be necessary.
- In the event of an appeal against the Notice the Secretary of State and the appellant to be advised that the Local Planning Authority is not prepared to grant planning permission for the development the subject of the Enforcement Notice.

Breach Of Planning Control Alleged

Without planning permission, the erection of a 2 metre high close boarded fence in contravention of condition 13 of planning permission TM/96/00641/FL.

Reasons For Issuing The Notice

It appears to the Council that the breach of planning control has occurred within the last 10 years. The close-boarded fence, by virtue of its height, solid nature and suburban appearance, results in demonstrable harm to the open landscape character, visual amenity and the openness of the Green Belt. The fence erodes the rural edge to Ightham village that was a specific element of the landscape strategy for the site. The erection of the fence is therefore contrary to PPG2 (Green Belts), policies CP1 and CP24 of the Tonbridge and Malling Core Strategy 2007 and policy SQ1 of the Tonbridge and Malling Borough, Managing Development and the Environment Development Plan Document 2010. The Enforcement Notice is necessary to alleviate the nuisance and detriment to amenity resulting from the unauthorised development. The Council has refused planning permission for the retention of the fence because planning conditions could not overcome these objections.

Requirement

Take down the 2 metre high close boarded fence erected or constructed in the approximate location shown marked A – B on the plan attached to the Notice.

Period For Compliance

Two calendar months from the date that the notice takes effect.

Contact: Gordon Hogben