

**Alleged Unauthorised Development**

**Ryarsh**

**11/00198/UNAUTU**

**567465 158462**

Downs

Location: Land Rear Of Houses On London Road Ryarsh West Malling  
Kent

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**1. Purpose of Report:**

- 1.1 To update Members on the position following the service of an Enforcement Notice authorised by APC2 on 26 October 2011 relating to an unauthorised material change of use of land for use as private residential gardens having a domestic character, the erection of fences to facilitate the change of use and the installation of a child's climbing frame and slide directly associated with the unauthorised domestic use of the land.
- 1.2 The original Main Report and Supplementary Report to APC2 on 26 October 2011 is attached as an Annex.

**2. The Site:**

- 2.1 The site comprises an area of land containing about 0.21 hectares situated to the rear of three pairs of semi detached houses (Three Oaks, Oakhurst, Glenville, Langdale, Fernleigh and Eastry) on the south side of the A20 London Road, Ryarsh opposite Callis Court Nurseries. The land is called The Old Pear Orchard by the owner. The northern boundary of the land abuts the southern boundary of the long-established rear gardens of these houses. The land is about 37 metres wide, 35 metres long on the western side and 82 metres on the eastern side. The land is bounded on the west side by the curtilage of Holmesdale and on the east side by the curtilage of 2 London Road. The southern boundary abuts a track that provides vehicular access to the land from London Road and to the rear gardens of five houses to the west. This track is also a public right of way (MR136) to Ryarsh Lane, West Malling. Beyond the track is open agricultural land behind a tall hedge.

**3. History:**

- 3.1 TM/11/01873/FL                      Refused                      08.09.2011  
Change of use of land from agriculture to private garden through incorporation into six domestic curtilages.
- 3.2 TM/12/00677/FL                      Approved                      25.04.2012  
Change of use to part use of land as extension to garden, with no sheds, greenhouse, cold frames, compost bins, pergolas, play equipment or other similar structures to be kept on the land and part use as meadow. Retention of post and rail fencing.

#### **4. Determining Issues:**

- 4.1 The Enforcement Notice authorised by APC2 on 26 October 2011 was issued and served on the owners and the occupiers on 21 December 2011. Appeals were lodged against the service of the Notice, but the Planning Inspectorate has agreed to an extension of the period within which the statements have to be submitted until 4 May 2012 to allow time for further discussions to take place and for a revised planning application to be considered.
- 4.2 Although the issue and service of the Enforcement Notice was authorised by APC2, Cllr Balfour did also ask that Officers consider how the various interested parties might be advised how they might best use the land legitimately within the terms of the Planning Acts. Following discussions with the interested parties a revised planning application reference TM/12/00677/FL was submitted which showed only part of the land adjoining the southern boundary of the adjoining houses as extensions to the domestic gardens, to be used on the basis that no domestic paraphernalia or outbuilding would be located on this land. The area between the southern extent of the extended garden areas and the southern boundary of the land (adjacent to the PROW) would be kept as an open meadow. The children's climbing frame and slide had already been removed from the land.
- 4.3 Application TM/12/00677/FL overcame the objections to the original proposal and was approved on 25 April 2012 with conditions that allow the use of part of the land as extensions to the gardens, but prohibits the erection of any sheds, greenhouse, cold frames, compost bins, pergolas, awnings, garden furniture, similar garden structures, children's play equipment (including swings, slides, climbing frames, swimming or paddling pools, trampolines, sports goals, etc), raised flower beds above 300 mm in height or other domestic paraphernalia. There is also a condition requiring the open meadow to be maintained as an informal open space and prohibiting the erection of buildings or placing of domestic paraphernalia or the planting of trees or shrubs on the land. A further condition controls the erection of fences on both areas. The conditions aim to preserve the openness of the Metropolitan Green Belt in accordance with Policy CP3 of the Tonbridge and Malling Borough Core Strategy and paragraphs 87, 88 and 90 of the National Planning Policy Framework (2012).
- 4.4 The owner is agreeable to the conditions imposed and has taken down the fences as required. The appellants have confirmed with the Planning Inspectorate their intention not to pursue their appeals against the service of the Enforcement Notice. The Enforcement Notice will have no effect against the development that has now been granted planning permission and it is appropriate that it should now be withdrawn. In the event of the conditions attached to the planning permission not being complied with, a Breach of Conditions Notice could be served to secure compliance.

**5. Recommendation:**

The Enforcement Notice issued on 21 December 2011 **BE WITHDRAWN** and all parties served with a copy of the Notice and the Planning Inspectorate be informed of the withdrawal.

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