

OTTERY ST MARY
(Town)

ENFORCEMENT REPORT

Applicant: Betterment Properties Ltd (Weymouth)

Location: Claremont Fields, OSM
(Grid Ref: 309755/94939)

Planning breach: Landscaping Conditions

Planning History

App. No.	Year	Proposal	Date and Decision
P1810	2004	Erection of bungalows in open space	Refused
P1926	2004	Erection of bungalow in open space	Refused
P1653	2002	Variation on 19 number units (to increase height to three stories)	Allowed on appeal 19.05.03
P1661	1993	Erection of 87 residential units	Allowed on appeal
P1688	1992	Erection of 87 residential units	Allowed on appeal

Representations

Two letters from local residents have been received, plus a petition on behalf of 4 households, which is attached to this report.

Summary of Objections

1. Object to bench opposite her property.
2. No need for fencing as the area is not to be a recreation play area.
3. Railings block the view and unnecessary on top of wall.
4. Obstructs view out of drive.
5. No land drain has been put in which results in water flowing down householder's drive.
6. Not in keeping with the estate – a real eyesore.
7. Complaint about the condition of the land and the need for the Council to enforce the planning condition in order to fulfil the landscape requirement.

Planning Background

Condition 7 of the original planning permission granted by the Inspector states that “no development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping. All planting, comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwellings in each phase of development. Any trees and plants which within a period of five years from the completion of each phase of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation”.

Subsequent variations on planning applications including the erection of 19 number 3 storey dwellings in place of previously approved two storey dwellings reinforces the requirement for landscape, as follows:

Condition 4 - No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, in accordance with the attached details which shall include indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection; and

Condition 5 – Which is a condition requiring 5 year maintenance.

Landscape plans required as part of the condition on the allowed appeal for 87 houses on the Claremont Fields site were received by the Council in October 2004 but were never approved. The housing development however proceeded and is now complete. There is evidence in the planning file that earlier discussions with Prowtings (the previous developer) had included play equipment and a higher specification of design for this open space area. However, this was not followed through upon acquisition of the land by Betterment Properties. The issue of the outstanding landscape condition did not surface until the refusal of the applications for bungalows on the open space.

Betterment Properties served a “purchase notice” on East Devon District Council to try and enforce it to take over the responsibility for this land without any provision for maintenance. This was dismissed by the Secretary of State on 5th July 2005. Following this decision the Council sent a letter to the Developer on 6th September 2005 setting out all the requirements, including detailed landscape proposals which can be found appended to this report. A meeting was arranged between the Developer and the Council to discuss the landscape requirements for this open space which took place on 15th November 2005 and Betterment Properties generally accepted the Council’s proposals, including an in principle agreement of a commuted sum to cover maintenance of the public open space.

The drawings contained within Appendix 3 were received by the Council on 6th February 2006. These drawings and the content of an accompanying Betterment Property’s letter of 1st February confirmed the developer’s commitment to undertaking the necessary work and to paying a commuted sum of £20,000 for the future maintenance of the open space by the Council. This generally met the requirements of the Council as regarding the earlier agreement and work commenced and should have been completed by the end of April 2006 to achieve completion within the first planting season following the completion of development as required by condition 7.

Observations

The conditions on the both the original consent and the amended consent are what is known as ‘precedent conditions’ i.e. they have to be complied with before work commences on site. However in this case the landscaping scheme was not carried out even in line with the submitted drawings received by the Council in 2004. However through negotiations an agreed scheme and a timetable for work was subsequently agreed but the developers failed to meet the completion timetable of April 2006. Inspection of the work by Officers has shown that much of the planting has failed and there is no evidence of the drainage connections. As built drawings of the drainage connection have therefore been requested.

The quality of the work generally is sub-standard, in particular the lack of preparation in terms of stone picking, weed control and general preparation of the grassed area was not undertaken and no watering has taken place since the turf was laid. As a consequence the site now again requires soil preparation, re-turfing, final surface treatment of footpaths, correct continuation of railings and the installation of furniture to comply with the agreed scheme. The railings that have been installed have been done so in a sub-standard manner and are unacceptable leaving gaps at the base which would enable children or animals to crawl underneath onto the highway. However, it is clear that this is not a play area but a general landscaped area in which people can sit and this may not be regarded as a problem by the Committee.

Conclusion

The result of the above is that although we now have a landscaped area laid out, it has not been properly maintained and has been left to deteriorate. Consequently there is a breach of the relevant condition of planting maintenance, even setting aside the fact that the precedent

condition was not complied with at the correct time. Further, the site is not in a sufficient condition to warrant adoption by the Council even accompanied by the £20,000 referred to above as it would be necessary to re-lay out the landscaping, reconstruct the drainage system (it is assumed) and complete all other work including installing furniture.

However, an issue has arisen between the Officers and local residents about whether or not the railings alongside the road should be removed to improve the visual appearance of the area. The residents supported by both Ward Members, believe that the area should be open and not interfered by the presence of perimeter railings. The converse argument is that the lack of railings could result in children using the area running out into the road, in particular very young children or toddlers and there are therefore health and safety issues here. Further the railings were also intended to prevent animals from entering the area and fouling it.

Member's views are therefore sought as to the way forward. To move forward comes in a number of distinct elements. The first revolves around the need to reinstate the landscaping scheme on site and set it out in accordance with the approved plans. The options here are to serve a 215 Notice which is an Untidy Land Notice but this is not recommended as it is, in the Officer's view, insufficiently untidy to warrant such legal action. Second option could be to take a Breach of Condition Notice through the Magistrates Court but this would be a long process which may not result in a quick resolution of the condition of the site itself. The third option would be for the Council to undertake the work and charge the developer.

The next issue relates to the adoption of the land. If options 1 and 2 suggested above are followed there is no likelihood that the land would come into public ownership. If the land is left with the developers there should in all likelihood be an ongoing situation of chasing up the landscaping over the next 5 years to comply with the condition and this is a burden on the workload of the department. If however the Council decides to undertake the work and re-charge the developer the land will then reach an adoptable standard and the Council can go through the appropriate procedures to take over the land which is recommended as the best approach.

The final element relates to the detail of the railings which are shown on the drawing in Appendix 4 together with the associated photographs. Guidance is required as to whether or not the area is to be left open or continues to be enclosed by railings which would of necessity have to be re-set to prevent access underneath them.

Recommendations:

1. that the Head of Legal & Member Services be asked to take such legal action as is considered necessary to remedy the breach of landscape conditions;
2. that the Executive Board be recommended that the Council investigates undertaking the work itself and re-charging the developer/landowner;
3. That the Council adopts the land if requested to do so by the developer with a commuted sum of £20,000 for maintenance;
4. Whilst Members' views are sought on the issue of the railings, it is considered that they are acceptable on Health and Safety grounds.

List of Background Papers

The file containing all letters, consultations, and documents referred to in the report.