

Estate Management Appeals Panel
29 September 2016

WELWYN HATFIELD COUNCIL

Minutes of a meeting of the ESTATE MANAGEMENT APPEALS PANEL held on Thursday 29 September 2016 at 7.30pm in the Council Offices, The Campus, Welwyn Garden City, Herts AL8 6AE

PRESENT: Councillors S.Johnston (Chairman)
J.Beckerman, R.Basch, M.Birleson, M.Larkins,
F.Thomson

ALSO PRESENT
BY INVITATION: Appellant (A.Mitchell for item 13)

OFFICIALS
PRESENT: Development Management Service Manager (L.Hughes)
Planning Enforcement Officer (M.Saunders)
Governance Services Officer (M.Lowe)

9. SUBSTITUTION OF MEMBERS:

The following substitution of Panel Members had been made in accordance with Council Procedure Rules 19-22:-

Councillor M.Larkins for A.Chesterman.
Councillor R.Basch for M.Cowan.

10. APOLOGIES:

Apologies for absence were received from Councillors A.Chesterman and M.Cowan.

11. MINUTES:

The Minutes of the meeting on 28 July 2016 were approved as a correct record and signed by the Chairman.

12. DECLARATIONS OF INTEREST BY MEMBERS:

Councillor S.Johnston declared non-pecuniary interest in items on the Agenda as appropriate by virtue of being a Member of Hertfordshire County Council.

13. 10 RUSSELLCROFT ROAD, WELWYN GARDEN CITY - 6/2016/0956/EM - REMOVAL OF PINE TREE LOCATED IN REAR GARDEN:

The report of the Head of Planning set out an appeal against the refusal of Estate Management Consent for the removal of a Scots pine tree located within the rear garden of this property.

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The application had been refused because the removal of the tree would result in the loss of landscaping that would detrimentally harm the character and visual amenity of the area. Insufficient justification had been provided to demonstrate why the loss of the tree was required. Accordingly the proposal failed to maintain the character and appearance of the application site and surrounding area and was harmful to the values and amenities of the Estate Management area, contrary to Policies EM3 of the Estate Management Scheme.'

Policy EM3 states "*Works to trees and hedgerows will only be allowed where the works would not result in the loss of landscaping which would harm the character and amenities of the area and where sufficient justification for the works has been given or there are other considerations that apply.*"

The Council acknowledged that there was a need to prevent the erosion of the landscape within the town and believed the retention of frontages, hedgerows and trees was critical to preserve the town's unique character and amenities.

The key issue in the determination of the appeal was the impact on the amenities values of the surrounding area.

The Officer recommendation was that Members upheld the delegated decision to refuse Estate Management Consent and dismiss the appeal.

Austin Mitchell, the appellant, was in attendance and spoke highlighting a number of reasons in support of the removal of the tree and advised, should the appeal be granted, that a semi-mature tree of a more appropriate species would be planted.

In response to a question by a Member, the Development Management Service Manager confirmed that should the Panel be minded to allow the appeal then it would be possible to add conditions to the approval in relation to the provision of the planting of a semi-mature tree of an appropriate species.

Members were of the view that the proposed removal of the Scots pine tree with the replacement a semi-mature tree of a more appropriate species would not be detrimental to the street scene and local amenity value.

It was moved by Councillor J.Beckerman, seconded by Councillor M.Larkins and

RESOLVED:
(5 voting for, 1 against)

That the appeal be allowed and Estate Management consent granted, subject to the following conditions:

1. All works carried out in pursuance of this consent shall be and remain part of the Premises and shall be subject to the terms and

conditions of the conveyance in all respects as if such works had at all times formed part of the Premises.

REASON: To comply with the requirements of the Leasehold Reform Act 1967 Estate Management Scheme for Welwyn Garden City.

2. This consent or copy hereof shall be annexed to the Conveyance.

REASON: To comply with the requirements of the Leasehold Reform Act 1967 Estate Management Scheme for Welwyn Garden City.

3. There shall be no encroachment over the boundary of the plot either above or below ground level, nor any interference with the foundations of the adjoining property without the agreement of the adjoining owner or lessee.

REASON: To comply with the requirements of the Leasehold Reform Act 1967 Estate Management Scheme for Welwyn Garden City.

4. This consent now issued is given by the Council only in accordance with the requirements of the Management Scheme/Conveyance or Leasehold Covenants.

REASON: To comply with the requirements of the Leasehold Reform Act 1967 Estate Management Scheme for Welwyn Garden City.

5. The development/works shall not be started and completed other than in accordance with the approved plans and details:

Site Location Plan & Sketch Location Plan & Block Plan and Photographs received 16 May 2016.

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

6. No works to the tree(s) hereby approved shall commence until details of a suitable replacement tree have been submitted to and approved in writing by the Council. Subsequently, the approved replacement shall not be planted, other than in accordance with the approved details.

REASON: A replacement tree is required given the current amenity value of the tree(s) in accordance with the requirements of Policy EM3 of the Estate Management Scheme.

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7. The agreed landscaping comprised in the above details shall be carried out in the first planting and seeding seasons following the removal of the tree hereby permitted: and should the tree within a period of 5 years from its planting die, is removed or becomes seriously damaged or diseased shall be replaced in the next planting season with another of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards 8545: 2014.

REASON: To ensure proper implementation of the agreed landscape details in the interest of the amenities and values of the Garden City in accordance with Policy EM3 of the Estate Management Scheme.

14. 65 VALLEY ROAD, WELWYN GARDEN CITY - 6/2016/0842/EM - REPLACEMENT OF FRONT DOOR:

The report of the Head of Planning set out an appeal against the refusal of Estate Management Consent for the replacement of the front door. The application (/2016/0842/EM) was refused on 15 July 2016 for the following reason:

“The proposed alteration to the colour of the front door would be detrimental to the appearance of the subject property, the surrounding streetscene and the character and appearance of Welwyn Garden City; contrary to Policy EM1 of the Welwyn Garden City Estate Management Scheme”.

The proposal was for the replacement of the existing front door. The proposed front door would utilize UPVC or composite materials and would be identical in design to that which was existing at the premises. However the colour of the replacement door would be altered to midnight blue.

The key issue in the determination of this appeal was the impact the development would have on the amenities and values of the subject property, the surrounding area and Welwyn Garden City.

The appeal property was located on a substantial plot at the junction of Youngs Rise and Valley Road. The property was set back approximately 30 metres from the street frontage and was encircled by mature hedges which are approximately 1.5 metres in height.

Policy EM1 of the Estate Management Scheme (EMS) states that extensions and alterations would only be allowed where the works are in keeping with the design, appearance, materials and architectural detail used in the existing building, and would not harm the amenities and values of the area.

With the above mentioned policy in mind, it was considered that although the design of the new door would be in keeping with others in the locality, the proposed (midnight blue/navy) colour would not and as such the proposal would

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be contrary to policy EM1 of the Estate Management Scheme as the majority of properties in the locality have front doors that are either white or pastel in colour.

The Council acknowledged that there were examples of front doors within the vicinity of the site which did not conform to the general appearance of properties. One such example at 30 Youngs Rise was cited as an example. Like the appeal property, this house was also set back from the street frontage and was enclosed by hedges. This property also had a midnight blue front door. Members noted that this development was unauthorised. Estate Management Consent had not been sought or granted for this development.

The proposed development would, by reason of the proposed colour of the front door, fail to comply with the requirements of Policy EM1 (Extensions and Alterations) of the Welwyn Garden City Estate Management Scheme. Permitting this form of development would serve to undermine the character, appearance and values of the Estate Management Scheme and its policies.

Members expressed the view that the proposed front door would not be harmful to the visual amenity of the area. The impact of colour of the then proposed front door would not be as harmful to the visual amenity of the area as would a change to the design of the door.

The Chairman reminded the Panel that at its last meeting it dismissed an appeal on the colour of a front door which was not in accordance with the Estate Management Scheme.

It was moved by Councillor J.Beckerman, seconded by Councillor M.Larkins and

RESOLVED:
(5 voting for, 1 against)

That notwithstanding the Officers recommendation to refuse consent and dismiss the appeal, the appeal be allowed and consent granted, subject to the following conditions:-

1. All works carried out in pursuance of this consent shall be and remain part of the Premises and shall be subject to the terms and conditions of the conveyance in all respects as if such works had at all times formed part of the Premises.

REASON: To comply with the requirements of the Leasehold Reform Act 1967 Estate Management Scheme for Welwyn Garden City.

2. This consent or copy hereof shall be annexed to the Conveyance.

REASON: To comply with the requirements of the Leasehold Reform Act 1967 Estate Management Scheme for Welwyn Garden City.

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3. There shall be no encroachment over the boundary of the plot either above or below ground level, nor any interference with the foundations of the adjoining property without the agreement of the adjoining owner or lessee.

REASON: To comply with the requirements of the Leasehold Reform Act 1967 Estate Management Scheme for Welwyn Garden City.

4. This consent now issued is given by the Council only in accordance with the requirements of the Management Scheme/Conveyance or Leasehold Covenants.

REASON: To comply with the requirements of the Leasehold Reform Act 1967 Estate Management Scheme for Welwyn Garden City.

5. The development/works shall not be started and completed other than in accordance with the approved plans and details:

Location Plan II & Existing and Proposed Elevations.

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

15. UPDATE ON PROGRESS WITH ARBITRATION CASES:

The report of the Head of Planning updated the Panel with regard to arbitration cases that were put before the Panel on 28 July 2016.

RESOLVED:

- (1) That the closure of 179 Parkway and 72 Chequers be agreed.
- (2) 73 Walnut Grove – await outcome of Estate Management application and if approved, an informative sent to property owners to advise of the need to obtain a cross-over.
- (3) 73 Valley Road – materials sample to be presented to the Panel at its next meeting.
- (4) 26 The Croft – authority given for arbitration and that this case should be the first example of hard standing to go to arbitration.
- (5) 251 Knightsfield – Members did not like the current application and considered that the 2013 permission should be implemented (subject to the need to potentially resubmit if this application had expired).

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- (6) 54 Woodhall Lane - authority given for arbitration.
- (7) 31 Sandpit Road – awaiting application.
- (8) 72 Chequers – enforcement to be put on hold and depending on the outcome of arbitration for the first hard standing case that it be considered by RICS, this case might go to arbitration to gain an understanding of possible immunity periods.
- (9) 176 Heronswood - authority given for arbitration.
- (10) 104 Cole Green Lane - authority given for arbitration. However this case should be held until 26 The Croft has been determined by RICS. Should the case against 26 The Croft be successful, to take 104 Cole Green Lane to be taken to arbitration.
- (11) 38 Furzefield Road - authority given for arbitration. However this case should be held until 26 The Croft had been determined by RICS. Should the case against 26 The Croft be successful, 38 Furzefield Road to be taken to arbitration.

It was agreed that a suitable case would be taken for arbitration in due course, subject to agreement with the Panel beforehand, where the breach had been undertaken a number of years before. This would hopefully provide Officers with guidance regarding whether an immunity time limit should be introduced and also what the immunity period should be, for example, to mirror planning legislation time limits (4 years for development or 10 years for a change of use).

16. WELWYN GARDEN CITY ESTATE MANAGEMENT SCHEME:

The report of the Executive Director detailed the proposals considered by the Cabinet on the Welwyn Garden City Estate Management Scheme in July 2015 which sought to resolve on-going problems with its administration and enforcement. The main thrust of the recommendations was to replace the Scheme with Article 4 Directions and to apply to the High Court Land Tribunal to vary or terminate the Scheme and these were agreed by Cabinet.

Members noted that in the preceding months Officers had successfully progressed some of the recommendations, notably discussions with appropriate organisations as to whether another body might be prepared to manage the Scheme (with no such interest being expressed given the acknowledged problems) and a town-wide review to establish the merits of removing certain permitted development rights as part of an Article 4 Direction. Unfortunately progress was slowed by the resignation and replacement of the lead planning officer.

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In recognition of the fact that a sound case would need to be presented to the High Court if the Council was ultimately minded to vary or terminate the Scheme, Officers sought legal advice on the merits of the intended way forward. That advice was set out in detail in the report, but in summary it was that an Article 4 Direction would need to provide at least equivalent protection as the existing Scheme and that issues that could not be satisfactorily covered by an Article 4 Direction should be retained as part of the Scheme. In addition, the Council should publicly consult on this and alternative options and analyse any responses before proceeding and until the responses had been analysed, the Council was required to keep an open mind as to what the outcome might be. This was in response to a growing area of case law concerning consultation by local authorities, and the risks of challenge if it was not done from an objective start point.

RESOLVED:

- (1) That the report to Cabinet which agreed an eight week period of public consultation on alternative options for the future of the Welwyn Garden City Estate Management Scheme be noted.
- (2) That the consultation would take the form of a letter to all residents within the Scheme area, a slightly different letter to all other residents who lived in Welwyn Garden City but were not within the Scheme area and less targeted consultation via the Council's website and other communication channels such as newspaper adverts to other residents and bodies which may have an interest in the Scheme. Agreement of the consultation letter(s) would be with Counsel to mitigate any later challenges be noted.
- (3) That it be noted that Cabinet would receive a future report which set out the responses to the public consultation and recommends a preferred way forward as a consequence of those responses.

Meeting ended 8.30pm
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