



**WOKINGHAM
BOROUGH COUNCIL**

Address: 1 Wheelton Close, Earley, Wokingham, RG6 7YD

**Expediency Report
RFS/2024/089902**

1.0 Background Information

An enforcement investigation commenced on 13th November 2024 relating to the unauthorised change of use of amenity land to residential and the erection of associated fencing to enclose the land. A site visit was carried out on 14th November 2024 to investigate further.

The Enforcement Officer who visited the site on 14th November 2024 noted that an area of amenity land adjacent to Skelmerdale Way had been enclosed with close boarded fencing, materially changing the use of the land to residential by forming an extension of 1 Wheelton Close's rear garden.



Figure 1.0 – Case Officer site visit photo dated 14th November 2024 showing the unauthorised development.

The Council had previously received two applications for works almost identical to those carried out on site (application references 230291 and 240650). The difference

between these applications and the unauthorised development is that they involved brick walls, whereas what has been erected is fencing. Planning application 230291 was refused by the Council on 10th March 2023, an appeal against 230291 (APP/X0360/W/23/3322810) was dismissed on 24th January 2024 and planning application 240650 was refused by the Council on 25th April 2024. Applications 230291 and 240650 were refused on the same grounds:

1. The proposed change of use of existing amenity land to residential garden facilitated by the erection of a new brick wall boundary treatment, by reason of its siting closer to the adjacent public highway and creation of an inconsistent boundary line to the neighbouring property would result in the loss of important visual amenity land and soft landscaping which in turn would adversely affect the spacious nature and openness of this amenity land that connects Wheelton Close and Skelmerdale Way, to the detriment of the character and appearance of the street scene and surrounding area. The proposal is thus contrary to section 12 of the National Planning Policy Framework (2024) policies CP1 and CP3 of the Core Strategy (2010) and Policy CC03 and TB21 of the Managing Development Delivery Local Plan (2014), the National Design Guide (2021) and the Borough Design Guide Supplementary Planning Document (2012).

Following the Enforcement Officer's visit to the site, a letter was sent to Mr Aaron Shone, the owner of the site, on 14th November 2024. This letter requested that Mr Shone submit timescales to both cease the unauthorised use of the land and remove the unauthorised operational development, restoring the land to its original condition prior to the breach taking place. A deadline of 14 days was given to respond.

On 29th November 2024, Mr Shone responded to the Enforcement Officer's letter dated 14th November 2024. Mr Shone's response disputed the land's use classification as amenity land and provided examples of what he viewed as 'similar' examples of development in the surrounding area. Mr Shone refused to provide timescales for the removal of the development and insisted that the Council entertained an in person meeting to discuss an appropriate solution to ameliorate the breach.

On 29th November 2024, the Enforcement Officer responded to Mr Shone's letter dated 29th November 2024. This letter explained to Mr Shone that the Council understood that the land is within his ownership, but this did not qualify the land's use as residential; without a fence the land has a visual amenity value for the wider area which is removed if it is enclosed. The Enforcement Officer reminded Mr Shone that the unauthorised development was previously found unacceptable by both the Council and the Planning Inspectorate.

As Mr Shone was not willing to provide a timescale for the removal of the unauthorised development, the Enforcement Officer explained that the Council would begin the process of serving a formal enforcement notice requiring the removal of the unauthorised development if it was not voluntarily removed.

On 11th December 2024, the Council received a letter from Mr Shone dated 2nd December 2024 responding to the Enforcement Officer's letter dated 29th November 2024. Mr Shone continued to dispute the land's use classification and whether the erection of the fencing constituted a change of use. Furthermore, additional evidence

was provided in attempts to demonstrate how the unauthorised development was in-keeping with its surroundings. A further request for an in-person meeting was made.

On 16th December 2024, the Enforcement Officer emailed Mr Shone responding to his letter dated 2nd December 2024. This email explained to Mr Shone why the Council viewed the land as amenity land and how its enclosure with the fencing resulted in a material change of use. A reminder was made about the fact the Planning Inspectorate did not dispute whether the 230291 appeal scheme was a change of use as ultimately, they could have done so in determining the appeal. The request for an in-person meeting was agreed and the Enforcement Officer queried Mr Shone's availability for a meeting in January 2025.

On 18th December 2024, Mr Shone replied to the Enforcement Officer providing details of his availability, outlining that his objective for the meeting is to understand the basis of the allegation of unauthorised development and to attempt to resolve the dispute amicably.

On 2nd January 2025, the Enforcement Officer confirmed that a meeting at 11am on 17th January 2025 in the Council Offices was scheduled. During the meeting, the Enforcement Officer and Enforcement Team Lead attempted to clarify why the Council viewed the land as amenity land and why its enclosure resulted in a change of use. Further to this, further explanations were provided as to why it was previously deemed unacceptable by both the Council and Planning Inspectorate.

Mr Shone was resistant to the Council's viewpoint on the breach and outlined that the land was never specified as amenity land when the estate was originally given planning permission, nor is it specified on the land deeds. The Enforcement Officer explained that amenity land is not a recognised formal use class, but areas of land with amenity value (commonly defined and understood as amenity land in Planning) to be land which provides non-monetary benefits to those who use it. The land subject of this Enforcement Notice, prior to the breach was physically separated from 1 Wheelton Close's garden and house by the original fence line (see **Figure 2.0** below). It was not accessible, nor useable for residential purposes prior to the unauthorised works carried out. It was again highlighted that the Planning Inspectorate determined that the land adjacent to 1 Wheelton Close is amenity land.



Figure 2.0 – Case Officer site visit photo dated 3rd April 2024 showing the application site prior to the breach occurring.

Following the completion of the meeting in the Council Offices on 17th January 2025, the Enforcement Officer and Team Lead met Mr Shone on site the same day to discuss a potential approach to address the Council's concerns regarding the breach. The Enforcement Officer outlined that a key consideration for the Council was to set the fence back from the pathway by at least 1 metre to reduce its visual impact. Suggestions were also made to 'dog-leg' the fence around the tree seen in **Figures 1.0 and 2.0** above to ensure that the existing planting was not obscured by the boundary treatment. It was agreed on the visit to the site on 17th January 2025 that the Council would entertain some draft plans revising the fence location but the Enforcement Officer outlined to Mr Shone that this did not guarantee the Council would find them acceptable or remove the potential for an Enforcement Notice to be served.

On 22nd January 2025, the Council received a letter from Mr Shone accompanied by a set of draft plans. Mr Shone outlined that he was hesitant to have a 1 metre set back from the pathway because of other examples in the area and suggested the dog-leg approach to the fencing would appear disjointed in the street scene.

On 6th February 2025, the Enforcement Officer emailed Mr Shone responding to his letter dated 22nd January 2025. The Enforcement Officer explained to Mr Shone that the Council considered the revised plan options proposed unacceptable and stated that the minimum of at least a 1 metre set back was necessary. Further to this, additional explanations were provided regarding the planning history of the site; The Enforcement Officer provided Mr Shone with an excerpt of the estate's original landscaping plan (Consent 09873, determined 18/07/1979, **Figure 3.0** below) clearly highlighting the physical separation of the land from 1 Wheelton Close's residential

curtilage and the fact it was designed for landscaping buffers to visually enhance and soften the setting of the estate.

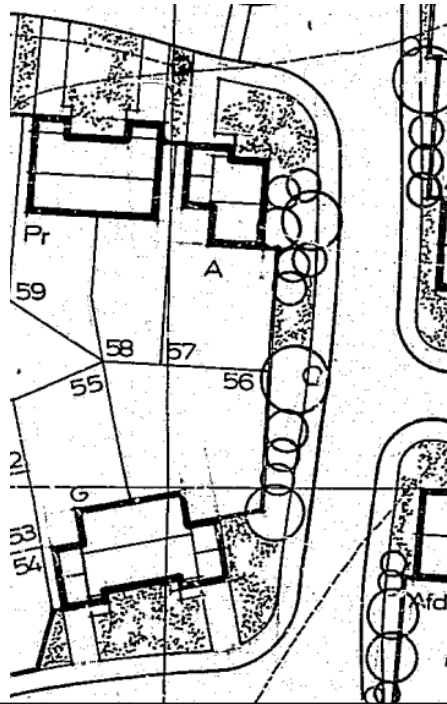


Figure 3.0 – Landscaping plan from Consent 09873, determined 18/07/1979

Mr Shone responded to the Enforcement Officer's email on 10th February 2025 further disputing the land's use classification and again provided examples of other developments in the surrounding area. Given that Mr Shone felt the discussions with the Council were not likely to reach a positive conclusion, he proposed the following options to the Council:

1. The Council concede that the land is not classed as amenity land.
2. The Council respond to Mr Shone confirming no further action will be taken on the unauthorised development and retrospectively approve the previously refused applications.
3. Alternatively, the Council agree to a set back of 30cm from the pathway.

On 17th February 2025, the Enforcement Officer responded to Mr Shone outlining that the Council did not consider any of the options proposed as viable and that they maintained their view that the land is amenity land by classification, outlining that they cannot retrospectively reverse the decision on a determined application and a fence set back only 30cm from the footpath would be visually unacceptable. The Enforcement Officer explained that the maintained disagreement on the classification of the land and comparisons to other properties was clearly posing an issue moving forward, an issue very unlikely to be overcome in a manner that pleases both parties.

Based on these conclusions, the Enforcement Officer outlined to Mr Shone on 17th February 2025 that they would begin the process of issuing an Enforcement Notice for the unauthorised development.

2.0 The Site

1 Wheelton Close is a corner plot adjacent to junction shared between Wheelton Close and Skelmerdale Way. The land subject of this notice forms part of a large area of amenity space that faces onto Skelmerdale Way. When the estate was constructed in the 1970s onwards, purposeful amenity space was provided adjacent to the Highway to create a sense of openness and naturalness in the surrounding area.

Prior to the breach occurring, the amenity space was predominantly open grassland with a handful of mature hedgerows adjacent to the existing eastern garden fence. This form of suburbia resulted in a spacious environment and a pleasant and attractive area. Other examples of amenity space of a similar appearance are observed on Skelmerdale Way, Melling Close and Ribbleton Close.

The original creation of the amenity space in this location is important as it improves the visual connectivity and permeability of the surrounding roads. From Skelmerdale Way, the road bends across to the East, connecting both the dwellings and pedestrian routes from the North to the South. There is also a continuity of greenspace from Melling Close to Skelmerdale Way. This minimises the visual impact of the highway and limits sense of enclosure.

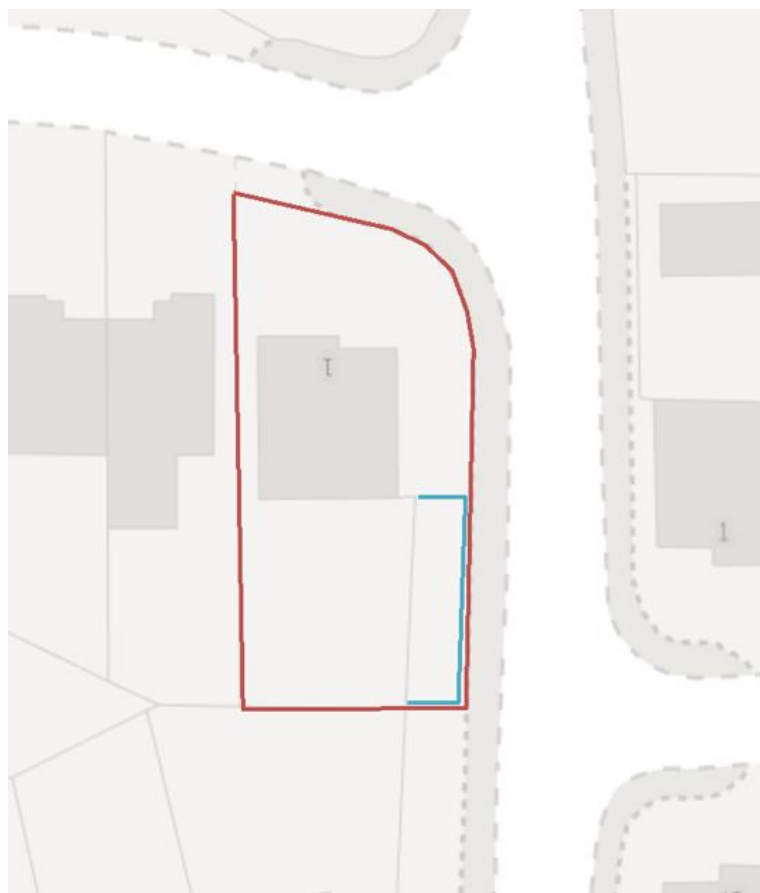


Figure 4.0 – Map demonstrating the ownership boundaries of no.1 Wheelton Close (unauthorised fencing highlighted in blue).

3.0 The Planning Unit

In the case of *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 Bridge J took the opportunity to set out clear criteria for determining the correct planning unit. He identified 3 criteria for determining the correct planning unit, which are set out below:

- (a) Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation is considered.
- (b) Even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered.
- (c) Where there are two or more physically separate and distinct uses, occupied as a single unit, but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.

Based on the Burdle Tests, the planning units is identified below in **Figure 5.0**:

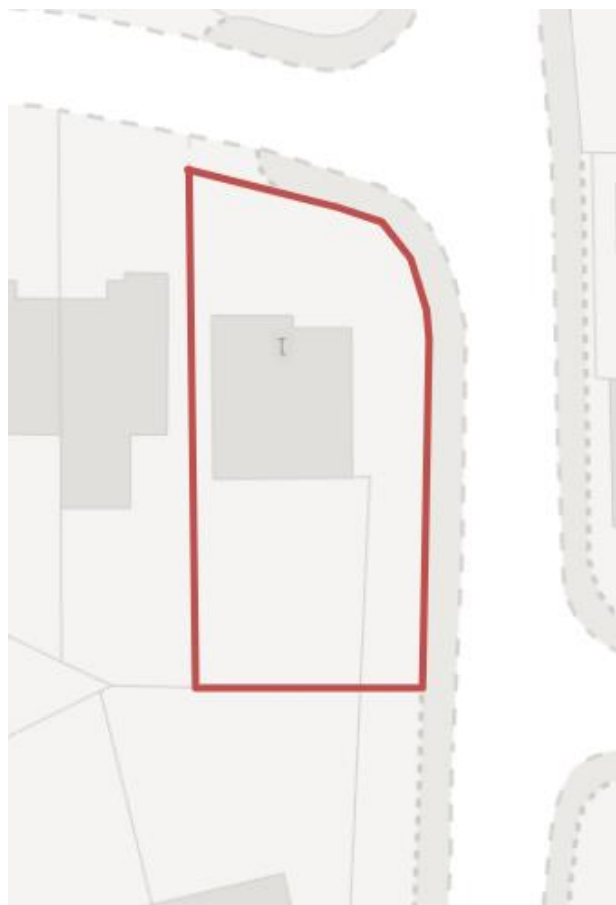


Figure 5.0 – Map of Planning Unit

4.0 Alleged breach of planning control

S55 of the Town and Country Planning Act 1990 (as amended) defines “development” in two strands - “the carrying out of building, engineering, mining or other operations, in, on, over or under land” or “the making of any material change in the use of any buildings or other land”.

It is recommended that an enforcement notice is served in respect of the unauthorised development.

In this case the breach of planning control consists of:

Notice: Operational Development and Material Change of Use

“Without planning permission, the material change of use of amenity land to residential and the erection of associated fencing and posts.”

5.0 Relevant Planning History:

PLANNING HISTORY		
Application No.	Description	Decision & Date
222592	Householder application for the proposed erection of an 1800mm high brick wall to the side eastern boundary.	Withdrawn 21/10/2022
230291	Full application for the proposed change of use of amenity land to residential garden and erection of a 1.8m high brick wall.	Refused 10/03/2023, Dismissed at Appeal 24/01/2024
240650	Full application for the proposed change of use of amenity land to residential garden and erection of a 1.8m high wall.	Refused 24/04/2024

6.0 Consultations

No further consultations since the recent applications have been undertaken in relation to this report.

7.0 Nature of breach of planning control

The change of use of existing amenity land to residential garden facilitated by the erection of a new close boarded fence boundary treatment, by reason of its siting closer to the adjacent public highway and creation of an inconsistent boundary line to the neighbouring property, has resulted in the loss of important visual amenity land and soft landscaping which in turn has adversely affected the spacious nature and

openness of this amenity land that connects Wheelton Close and Skelmerdale Way, to the detriment of the character and appearance of the street scene and surrounding area.

See refusal reasons on the Decision Notice for applications 230291 and 240650.

8.0 Material Planning policies

PLANNING POLICY	
National Policy	National Planning Policy Framework (NPPF) National Planning Policy Guidance (NPPG)
Core Strategy (CS)	CP1 – Sustainable Development CP3 – General Principles for Development CP6 – Managing Travel Demand CP7 – Biodiversity CP9 – Scale and Location of Development Proposals
MDD Local Plan (MDD)	CC01 – Presumption in Favour of Sustainable Development CC02 – Development Limits CC03 – Green Infrastructure, Trees and Landscaping CC06 – Noise CC07 – Parking CC09 – Development and Flood Risk CC10 – Sustainable Drainage TB23 – Biodiversity and Development
Other	Borough Design Guide Supplementary Planning Document CIL Guidance + 123 List National Design Guide

9.0 Main Planning Issues

The loss of an appreciable section of amenity land with soft landscaping and replacing it with a close boarded fence within close proximity to the public footpath does not meet the relevant policy test of maintaining or enhancing the high quality of the environment as set out in criterion 1 of CS policy CP1. Skelmerdale Lane is a main access road through the estate that connects to several other roads and therefore public views afforded of the site are frequent and uninterrupted.

The concerns outlined both above, and as part of 230291's refusal were both supported by the Planning Inspectorate at appeal (APP/X0360/W/23/3322810):

“The proposed development would retain some space around the dwelling including the corner of the appeal site where Wheelton Close meets Skelmerdale Way. However, the erection of a hard boundary adjacent to the highway would significantly erode the openness of the existing undeveloped and verdant strip of land when viewed from public vantage points.

I acknowledge the retention of two existing trees. Nevertheless, the loss of the landscaped amenity land and its replacement with an austere hard boundary edge close to the highway would fail to integrate appropriately into the street

scene. This would be harmful to the sense of spaciousness and verdant character of this area.

This harm would be further exacerbated by the creation of an inconsistent boundary with 45 Melling Close to the rear and these impacts in combination would not respect or enhance the character and appearance of the area.”

Mr Shone’s main case surrounds the fact there are “*numerous examples in the immediate area where houses on similar corner plot have side boundaries that abut the pavement. These garden boundaries appear to be part of the original layout of the estate and the current proposal merely reflects the siting of other existing boundary enclosures.*”.

In any suburban housing development, there will be inevitable situations where small sections of boundary treatment are close to the highway, but these are generally either attempted to be designed out, minimised or mitigated with landscaping. There is no design guidance or policy which states that boundary fences adjacent to footpaths and the loss of estate soft landing is a positive change. On the contrary, it well established that amenity landscaping is an important factor of any place. The landscaping to the side of the house was an obvious design rationale to provide an attractive public realm to the road – the loss detrimentally effects the quality of the public realm.

Several references have been made by Mr Shone regarding the ‘unkempt and untidy appearance’ of the amenity land prior to the breach. The applicant owns the land and is therefore responsible for maintaining its visual appearance so its original visual state cannot be used in support of the development. Mr Shone also states that the land was ‘difficult to maintain’ but has not explained why the continued maintenance of it was difficult. Such areas of land are common features in residential estates and are generally maintained without any issues.

Overall, the change of use of existing amenity land to residential garden facilitated by the erection of a new close boarded fence boundary treatment, by reason of its siting closer to the adjacent public highway and creation of an inconsistent boundary line to the neighbouring property, has resulted in the loss of important visual amenity land and soft landscaping which in turn has adversely affected the spacious nature and openness of this amenity land that connects Wheelton Close and Skelmerdale Way, to the detriment of the character and appearance of the street scene and surrounding area.

The unauthorised development is therefore contrary to section 12 of the National Planning Policy Framework (2024) policies CP1 and CP3 of the Core Strategy (2010) and Policy CC03 and TB21 of the Managing Development Delivery Local Plan (2014), the National Design Guide (2021) and the Borough Design Guide Supplementary Planning Document (2012).

10.0 Summary of negotiations with transgressors

The most relevant negotiations with the transgressors are set out in the Background Information section of this report.

11.0 Cost Benefit Analysis

N/A

12.0 Human Rights and Public Sector Equality Duty

The following articles of the Human Rights Act 1998 are relevant in this case:

Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence.

Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions.

Both rights could be outweighed when considering the general interest and the rights and freedoms of others, particularly the Council's duty as a Local Planning Authority to uphold the integrity of the planning system. The erection of the fencing as outlined in this report is of small scale and unobtrusive and any harm to the area is minimal.

Equality: Section 149 of the Equality Act 2010 imposes a general public sector equality duty upon local authorities in the following terms:

"(1) – A public authority must, in the exercise of its functions, have due regard to the need to:

eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

foster good relations between persons who share a relevant protected characteristic and persons who do not share it. "

It is therefore necessary for the authority, in consideration of this report, as with consideration of any other proposal, to ensure that the above requirements have been met. There are no equality issues arising from taking enforcement action against the unlawful development, as the requirement in the proposed enforcement notice is to cease the residential use of the land and subsequently remove the operational development from the land and restore it to its original condition.

13.0 Proportionality

The Council believes it is acting in a fair and reasonable manner as it has tried informally to resolve the breach of planning control through the planning process

however this course of action has failed. All other forms of action to secure compliance with planning control and uphold council planning policies have been considered and cannot effectively be achieved by any lesser means than those recommended below.

The 'tool to assist with assessing harm' contained in Appendix 2 of the Local Planning Enforcement Plan is attached which scores 5 which indicates that enforcement action should be taken.

Furthermore, Paragraph 60 of the NPPF states that 'effective enforcement is important to maintain public confidence within the planning system'. In this case it is considered expedient, as per the reasons outlined in this report, to overcome the harm and to prevent the escalation of such developments in this locality and in general.

The Planning Practice Guidance (ref: 17b-005-2014030) states that effective enforcement is important to:

- Tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- Maintain the integrity of the decision-making process;
- Help ensure that public acceptance of the decision-making process is maintained.

There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. The potential impacts have been outlined in the above report. The criteria in bullet points 2 and 3 are key in this case to maintaining public confidence in the system.

The proposed enforcement action is being taken against the unauthorised the material change of use of amenity land to residential and the erection of associated fencing that causes adverse harm to the character of the area and fails to maintain the quality of the environment. It is clearly necessary and proportionate to take action to preserve the environment and consequently in the public interest to do so. Two applications have been refused for the unauthorised development, with application 230291 also dismissed at appeal by the Planning Inspectorate.

In this case it is expedient to take action for the reasons outlined in this report to maintain the quality of the environment and to prevent the escalation of such developments on site, or at neighbouring properties, (See **Appendices 2 and 3**).

14.0 Recommendation

It is recommended that an enforcement notice is issued:

Alleged breach:

- A. "Without planning permission, the material change of use of amenity land to residential and the erection of associated fencing and posts."

Reasons for issue:

- i. It appears to the Council that the breach of planning control has occurred within the last ten years.
- ii. Planning application 230291 was refused on 10th March 2023, an appeal against 230291 (APP/X0360/W/23/3322810) was dismissed on 24th January 2024 and planning application 240650 was refused on 25th April 2024 for the unauthorised development subject of this notice.
- iii. The material change of use of amenity land to residential facilitated by the erection of fencing and enclosure of the Land, and by reason of its siting closer to the adjacent public highway and creation of an inconsistent boundary line with the neighbouring property, has resulted in the loss of visual amenities and incidental estate soft landscaping which in turn adversely affects the spacious nature and openness of the area including the character and appearance of that area connecting Wheelton Close and Skelmerdale Way. This is contrary to the National Planning Policy Framework (2024), Policies CP1 and CP3 of the Wokingham Borough Core Strategy (2010) and Policy CC03 and TB21 of the Wokingham Borough Managing Development Delivery Local Plan (2014), the National Design Guide (2021) and the Borough Design Guide Supplementary Planning Document (2012).
- iv. Planning permission should not be given because planning conditions would not overcome these objections.
- v. To remedy the breach of planning control.

Requirements:

- i) Cease the residential use of the Land.
- ii) Remove from the Land the fencing including fence posts and foundations between the points marked A to B shown in the approximate location edged in blue on the attached plan.
- iii) Return the Land to its former condition prior to the breach taking place.
- iv) Permanently remove all resultant materials associated with steps (ii) and (iii) from the Land.

Time period: 3 months

Signed: 

Operational Manager – DM & Compliance

Dated:.... 09.06.25.....

Report Author: Kieran Neumann

APPENDIX 1 - Tool to assist with assessing harm

			Score
1	Is the breach:	Worsening? (1) Stable? (0)	0
2	Highway safety issue	Yes? (2) No? (0)	0
3	Other safety issue (not covered by other legislation)	Yes? (2) No? (0)	0
4	Is it causing serious or irreversible harm to the environment or surrounding area	Yes – Widespread? (2) Yes – Local? (1) None? (0)	2
5	Age of breach	Within 6 months of immunity? (2) Less than 3 months old? (1) More than 3 months old? (0)	0
6	Planning policy breach	Yes? (1) No? (0)	1
7	Flood risk	Zone 3 (2) Zones 2 (1) Zone 1 (0)	0
8	Breach of planning condition or Article 4 direction	Yes? (1) No? (0)	1
9	Conservation Area or adjacent to	Yes? (1) No? (0)	0
10	Listed Building or affecting character or setting of / Registered Listed Park and Garden or other adjacent sensitive site	Yes?(1) No? (0)	0
11	Particularly sensitive site e.g. SSSI, AONB, Scheduled Ancient Monument, Listed Garden, Archaeological Importance	Yes? (1) No? (0)	0
12	Affecting TPO trees/Ancient Woodland/Ancient or Veteran Trees	Yes? (2) No? (0)	0
13	Undesirable precedent (please provide details)	Yes? (1) No? (0)	1 (Refer to the report above and Appendices 2 and 3)
		Total	5

APPENDIX 2 – 230291 Committee Officer Report



WOKINGHAM
BOROUGH COUNCIL

DELEGATED OFFICER REPORT

Application Number:	230291
Site Address:	1 Wheelton Close, Earley, Wokingham, RG6 7YD
Expiry Date:	3 April 2023
Site Visit Date:	22 September 2022
Proposal: Full application for the proposed change of use of amenity land to residential garden and erection of a 1.8m high brick wall.	

PLANNING CONSTRAINTS/STATUS

Bat Roost Habitat Suitability
Scale and Location of Development Proposals - Earley
Great Crested Newt Consultation Zone
Nuclear Consultation Zone
Replacement Mineral Local Plan
Landscape Character Assessment Area
SSSI Impact Risk Zones

PLANNING POLICY

National Policy	National Planning Policy Framework (NPPF) National Planning Policy Guidance (NPPG)
Core Strategy (CS)	CP1 – Sustainable Development CP3 – General Principles for Development CP6 – Managing Travel Demand CP7 – Biodiversity CP9 – Scale and Location of Development Proposals
MDD Local Plan (MDD)	CC01 – Presumption in Favour of Sustainable Development CC02 – Development Limits CC03 – Green Infrastructure, Trees and Landscaping CC06 – Noise CC07 – Parking CC09 – Development and Flood Risk CC10 – Sustainable Drainage TB23 – Biodiversity and Development
Other	Borough Design Guide Supplementary Planning Document CIL Guidance + 123 List National Design Guide

PLANNING HISTORY

Application No.	Description	Decision & Date
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222592	Householder application for the proposed erection of an 1800mm high brick wall to the side eastern boundary.	Withdrawn 21/10/2022
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CONSULTATION RESPONSES

Internal

WBC Highways – No objection subject to condition(s)
WBC Landscape and Trees – No comments received

External

None consulted

REPRESENTATIONS

Parish/Town Council	No comments received
Ward Member(s)	No comments received
Neighbours	No comments received

APPRAISAL

Site Description:

The application site is a substantial area of amenity space adjacent to junction shared between Wheelton Close and Skelmerdale Way. When the estate was constructed in the 1970s onwards, purposeful amenity space was provided adjacent to the Highway to create a sense of openness and naturalness in the surrounding area. The amenity space is predominantly open grassland with a handful of mature hedgerows adjacent to the existing eastern garden wall. This form of suburbia results in a spacious environment, where properties are made pleasant and attractive to reside in. Other examples of amenity space of a similar appearance are observed on Skelmerdale Way, Melling Close and Ribbleton Close.

The creation of the amenity space in this location is important as it improves the visual connectivity and permeability of the surrounding roads. From Skelmerdale Way, the road bends across to the East, connecting both the dwellings and pedestrian routes from the North to the South. There is also a continuity of greenspace from Melling Close to Skelmerdale Way. This minimises the visual impact of the highway and limits sense of enclosure.

Proposal Description:

This application seeks approval for the proposed change of use of a section of amenity land to residential curtilage. This would be facilitated by the erection of a 1.8 metre high brick boundary wall by extending the existing boundary wall outwards by approximately 3.2 metres to the east. The total area of amenity space subject of the change of use would be approximately 40sqm.

Principle of Development:

The National Planning Policy Framework has an underlying presumption in favour of sustainable development which is carried through to the local Development Plan. The Managing Development Delivery Local Plan Policy CC01 states that planning applications that accord with the policies in the Development Plan for Wokingham Borough will be approved without delay, unless material considerations indicate otherwise.

The site is located within settlement limits and as such the development should be acceptable providing that it complies with the principles stated in the Development Plan.

Policy CP3 of the Core Strategy states that development must be appropriate in terms of its scale of activity, mass, layout, built form, height, materials and character to the area in which it is located and must be of high quality design without detriment to the amenities of adjoining land uses and occupiers.

Character of the Area:

The Wokingham Borough Council Local Plan sets out the requirements for sustainable development at policy CP1 of the Core Strategy. Policy CP3 of the Core Strategy states that development must be appropriate in terms of its scale, mass, layout, built form, height and character of the area and must be of high quality design. It also states that proposals should *“Contribute to a sense of place in the buildings and spaces themselves and in the way they integrate with their surroundings (especially existing dwellings) including the use of appropriate landscaping”*.

Policy CC03 of the MDD Local Plan sets out that development proposals should provide for new or protect and enhance the Borough’s Green Infrastructure networks, and promote accessibility, linkages and permeability between and within existing green corridors including public rights of way such as footpaths, cycleways and bridleways. Policy TB21 of the MDD Local Plan refers that *“Proposals shall retain or enhance the condition, character and features that contribute to the landscape”*.

R1 of the WBC Design Guide states that Residential development should be designed to contribute positively towards the historic or underlying character and quality of the local area. This may be achieved through blending in with a strongly positive existing character, responding where relevant to the positive elements of its historic context or, where the site is large enough to allow for a distinctive identity to be created, by establishing a new character that relates well to the existing.

The National Design Guide section B1, paragraph 67 also states that the built form of well-designed places should relate well to:

- the site, its context and the opportunities they present;
- the proposed identity and character for the development in the wider place;

Paragraph 68 follows on from this stating that houses and streets should establish an appropriate relationship with the pattern, sizes and proportions of existing houses in the local area.

The proposed boundary wall would be sited within immediate proximity to the footpath and maintenance equipment with no spatial relief between them. To facilitate the wall's construction, the existing hedgerow would be removed, whereas the Whitebeam Tree and Cockspur Thorn would be retained.

The loss of the soft landscaping would have significant impact on the street scene and character of the area, since the amenity space occupies a prominent position and can be viewed from a distance while approaching from both sides of the footpath and the road. By repositioning the existing boundary wall, it would create an awkward protrusion and overall harsher boundary treatment much closer to the highway, which would be detrimental to the openness and rhythm of both the surrounding amenity space and the prevailing verdant character of the street scene.

Neighbouring Amenity:

There are no neighbouring amenity concerns.

Highway Access and Parking Provision:

Accurate drawings have been provided demonstrating visibility splays of 2.4m x 43m from Wheelton Close onto Skelmerdale Way. The plan shows that the proposed brick wall will not impact visibility splays, therefore WBC Highways Officer has no objection to the proposed.

Landscape and Trees:

The proposals would result in the loss of green infrastructure that positively contributes to the visual amenities of the area. This is contrary to policy CC03 of the MDD Local Plan, which states that development proposals should "Protect and retain existing trees, hedges and other landscape features".

Conclusion:

The proposed change of use of part of the existing amenity land to residential to include the erection of a brick wall boundary treatment, by reason of its siting closer to the adjacent public highway, would result in the loss of important visual amenity land and soft landscaping which in turn would adversely affect the spacious nature and openness of this amenity land that connects Wheelton Close and Skelmerdale Way, to the detriment of the character and appearance of the street scene and surrounding area. The proposal is contrary to the NPPF, policies CP1 and CP3 of the Core Strategy, and Policy CC03 of the MDD Local Plan and the National Design Guide.

It is therefore recommended that this application be refused.

The Public Sector Equality Duty (Equality Act 2010): In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the

application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

RECOMMENDATION

Conditions agreed:	Not required
Recommendation:	Refusal
Date:	9 March 2023
Earliest date for decision:	2 March 2023

Recommendation agreed by: (Authorised Officer)	
Date:	9 March 2023

APPENDIX 3 – 240650 Committee Officer Report

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	240650
Site Address:	1 Wheelton Close, Earley, Wokingham, RG6 7YD
Expiry Date:	10 May 2024
Site Visit Date:	3 April 2024
Proposal: Full application for the proposed change of use of amenity land to residential garden and erection of a 1.8m high wall.	

PLANNING CONSTRAINTS/STATUS

Bat Roost Habitat Suitability
Scale and Location of Development Proposals – Earley (Major Development Location)
Great Crested Newt Consultation Zone – Green Risk Zone
Landscape Character Assessment Area
SSSI Impact Risk Zones

PLANNING POLICY

National Policy	National Planning Policy Framework (NPPF) National Planning Policy Guidance (NPPG)
Core Strategy (CS)	CP1 – Sustainable Development CP3 – General Principles for Development CP6 – Managing Travel Demand CP7 – Biodiversity CP9 – Scale and Location of Development Proposals
MDD Local Plan (MDD)	CC01 – Presumption in Favour of Sustainable Development CC02 – Development Limits CC03 – Green Infrastructure, Trees and Landscaping CC06 – Noise CC07 – Parking CC09 – Development and Flood Risk CC10 – Sustainable Drainage TB23 – Biodiversity and Development
Other	Borough Design Guide Supplementary Planning Document CIL Guidance + 123 List National Design Guide

PLANNING HISTORY

Application No.	Description	Decision & Date
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222592	Householder application for the proposed erection of an 1800mm high brick wall to the side eastern boundary.	Withdrawn 21/10/2022
230291	Full application for the proposed change of use of amenity land to residential garden and erection of a 1.8m high brick wall.	Refused 10/03/2023, Dismissed at Appeal 24/01/2024

CONSULTATION RESPONSES

Internal

WBC Highways – No objections

WBC Landscape and Trees – Objections

External

None consulted

REPRESENTATIONS

Parish/Town Council	One letter of support received: - Improvement on the current layout - In-keeping with other perimeter fences along Skelmerdale Way - The applicant already owns the land (<i>Officer comment: This is not a material planning consideration in this instance; the fact that the applicant owns the land was acknowledged as part of application 230291, which was still refused by the Local Planning Authority and subsequently dismissed by the Planning Inspectorate.</i>)
Ward Member(s)	No comments received
Neighbours	Earley Town Council (ETC) raises objection to this application and recommends that WBC refuses the application as the loss of the hedge and visual amenity space, will have a significant impact on the street scene, when taken with the hedge opposite. ETC feel the loss of the hedge and amenity land would have an unacceptable impact on the important visual amenity of the area, as supported by the Inspector at the Appeal on application 230291, and Policy CP3, being of an inappropriate built form and character to the area to the detriment of the visual amenity of local residents; and Policy CP1, in that the proposal fails to maintain or enhance the quality of the local environment; and Policy CC03, failure to retain the existing visually important hedge. If WBC are minded to approve this application the following condition is requested that due to the impact of these proposals on the important visual amenity of the location, a

	suitable replacement landscape scheme is required, and such a scheme is to be submitted to WBC for approval prior to work commencing, and such approved scheme shall be implemented within the first planting season after completion of the works, to ensure an adequate replacement, as supported by Policy CP1, to maintain the high quality of the environment; Policy CP3, to be of an appropriate character to the area, and contribute to the sense of place with appropriate landscaping; as supported by Sections R12, R13 and R14, of the Borough Design Guide, boundary treatments to contribute positively, open space and landscaping well designed soft landscape, as supported by Policy CP3.
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APPRAISAL

Site Description:

The application site is a substantial area of amenity space adjacent to junction shared between Wheelton Close and Skelmerdale Way. When the estate was constructed in the 1970s onwards, purposeful amenity space was provided adjacent to the Highway to create a sense of openness and naturalness in the surrounding area. The amenity space is predominantly open grassland with a handful of mature hedgerows adjacent to the existing eastern garden wall. This form of suburbia results in a spacious environment, where properties are made pleasant and attractive to reside in. Other examples of amenity space of a similar appearance are observed on Skelmerdale Way, Melling Close and Ribbleton Close.

The creation of the amenity space in this location is important as it improves the visual connectivity and permeability of the surrounding roads. From Skelmerdale Way, the road bends across to the East, connecting both the dwellings and pedestrian routes from the North to the South. There is also a continuity of greenspace from Melling Close to Skelmerdale Way. This minimises the visual impact of the highway and limits sense of enclosure.

Proposal Description:

This application seeks approval for the proposed change of use of a section of amenity land to residential curtilage. This would be facilitated by the erection of a 1.8 metre high brick wall with the top half characterised by brick pillars and close boarded fencing. An existing hedgerow would also be removed but shrub planting is proposed on the wall's eastern flank to replace it.

This scheme is an almost identical submission to application 230291 which was refused by the Local Planning Authority in March 2023 on the following grounds:

- The proposed change of use of existing amenity land to residential garden facilitated by the erection of a new brick wall boundary treatment, by reason of its siting closer to the adjacent public highway and creation of an inconsistent boundary line to the neighbouring property would result in the loss of important visual amenity land and soft landscaping which in turn would adversely affect

the spacious nature and openness of this amenity land that connects Wheelton Close and Skelmerdale Way, to the detriment of the character and appearance of the street scene and surrounding area. The proposal is thus contrary to the National Planning Policy Framework (2021) policies CP1 and CP3 of the Core Strategy (2010) and Policy CC03 and TB21 of the Managing Development Delivery Local Plan (2014) and the National Design Guide (2021) and the Borough Design Guide Supplementary Planning Document (2012).

The Planning Inspectorate subsequently dismissed an appeal against this decision on 24th January 2024. During this appeal, the applicant submitted revised plans but these were not fully considered by the relevant parties prior to the decision being made. Despite this, the Council provided some brief criticisms of the revisions within their statement of case and also questioned the extent of the Appellant's support for the appeal scheme, as providing revisions to it that are considered less impactful than the original plans indicated some acknowledgement of the previously proposed harm.

The proposed site plan for this application is materially identical to the revised plan proposed by the applicant at the appeal stage. The other main changes to the proposals since 230291 are as follows:

- A minor change is the boundary treatment makeup; the solid brick wall has now been replaced with a mixed infill of brick wall/pillars and close boarded fencing.
- The depth of the boundary treatment's protrusion onto the amenity land has been reduced from 3.2 metres to approximately 2.4 metres. The total area of amenity space now subject of the change of use is approximately 24sqm (was previously 40sqm).
- Additional planting provision.

Principle of Development:

The National Planning Policy Framework has an underlying presumption in favour of sustainable development which is carried through to the local Development Plan. The Managing Development Delivery Local Plan Policy CC01 states that planning applications that accord with the policies in the Development Plan for Wokingham Borough will be approved without delay, unless material considerations indicate otherwise.

The site is located within settlement limits and as such the development should be acceptable providing that it complies with the principles stated in the Development Plan.

Character of the Area:

Policy Context:

The Wokingham Borough Council Local Plan sets out the requirements for sustainable development at policy CP1 of the Core Strategy. Criterion 1 of Policy CP1 states that proposal should maintain or enhance the high-quality of the environment.

Policy CP3 of the Core Strategy states that development must be appropriate in terms of its scale, mass, layout, built form, height and character of the area and must be of high quality design. It also states that proposals should *“Contribute to a sense of place in the buildings and spaces themselves and in the way they integrate with their surroundings (especially existing dwellings) including the use of appropriate landscaping”*.

Policy CC03 of the MDD Local Plan sets out that development proposals should provide for new or protect and enhance the Borough’s Green Infrastructure networks, and promote accessibility, linkages and permeability between and within existing green corridors including public rights of way such as footpaths, cycleways and bridleways. Policy TB21 of the MDD Local Plan refers that *“Proposals shall retain or enhance the condition, character and features that contribute to the landscape”*.

R1 of the WBC Design Guide states that Residential development should be designed to contribute positively towards the historic or underlying character and quality of the local area. This may be achieved through blending in with a strongly positive existing character, responding where relevant to the positive elements of its historic context or, where the site is large enough to allow for a distinctive identity to be created, by establishing a new character that relates well to the existing.

The National Design Guide section B1, paragraph 67 also states that the built form of well-designed places should relate well to:

- the site, its context and the opportunities they present;
- the proposed identity and character for the development in the wider place;

Paragraph 68 follows on from this stating that houses and streets should establish an appropriate relationship with the pattern, sizes and proportions of existing houses in the local area.

Assessment:

The reduction in the depth of the wall’s overall protrusion is acknowledged. However, the revisions fail to address the concerns of both the Council and the Planning Inspectorate in that by repositioning the existing boundary wall, the proposals would still create an awkward protrusion and overall harsher boundary treatment much closer to the highway, which would be detrimental to the openness and rhythm of both the surrounding amenity space and the prevailing verdant character of the street scene.

The proposed loss of an appreciable section of amenity land with soft landscaping and replacing it with a brick wall within close proximity to the public footpath can in no sense be considered to meet the relevant policy test of maintaining or enhancing the high quality of the environment as set out in criterion 1 of CS policy CP1. Skelmerdale Lane is a main access road through the estate that connects to a number of other roads and therefore public views afforded of the site are frequent and uninterrupted.

The objections outlined both above and as part of 230291’s refusal were both supported by the Planning Inspectorate at appeal (APP/X0360/W/23/3322810):

“The proposed development would retain some space around the dwelling including the corner of the appeal site where Wheelton Close meets

Skelmerdale Way. However, the erection of a hard boundary adjacent to the highway would significantly erode the openness of the existing undeveloped and verdant strip of land when viewed from public vantage points.

I acknowledge the retention of two existing trees. Nevertheless, the loss of the landscaped amenity land and its replacement with an austere hard boundary edge close to the highway would fail to integrate appropriately into the street scene. This would be harmful to the sense of spaciousness and verdant character of this area.

This harm would be further exacerbated by the creation of an inconsistent boundary with 45 Melling Close to the rear and these impacts in combination would not respect or enhance the character and appearance of the area.”

Like the 230291-appeal statement, the applicant’s case still largely surrounds the fact that there are “*numerous examples in the immediate area where houses on similar corner plot have side boundaries that abut the pavement. These garden boundaries appear to be part of the original layout of the estate and the current proposal merely reflects the siting of other existing boundary enclosures.*” (paragraph 5.8, page 12, Planning Statement).

In any suburban housing development, there will be inevitable situations where small sections of boundary treatment are close to the highway but these are always either attempted to be designed out, minimised or mitigated with landscaping. There is no design guidance or policy which states that boundary walls adjacent to footpaths and the loss of estate soft landing is a positive change. On the contrary, it well established that amenity landscaping is an important factor of any place. The landscaping to the side of the house was an obvious design rationale to provide an attractive public realm to the road – the loss detrimentally effects the quality of the public realm.

The applicant asserts that brick walls immediately abutting footways in the estate are not unusual, but the way the proposed brick wall would sit within the street scene would be unusual. Wokingham Borough Design Guide Principle R12 states that boundary treatments should be designed to positively contribute to the quality of the public realm. The brick wall would be sited within immediate proximity to the footpath and maintenance equipment with no spatial relief between them. It would only occupy approximately 24sqm of the amenity land that would completely interrupt the undeveloped nature of the amenity land, creating an awkward protrusion in the middle of it and an overall harsher boundary treatment much closer to the highway.

Reference is again made to the ‘unkempt and untidy appearance’ of the amenity land. The applicant owns the land and is therefore responsible for upkeeping its visual appearance so its current visual state cannot be used in support of the appeal scheme. The applicant also states that the land is ‘difficult to maintain’ but has not explained why the continued maintenance it is difficult. Such areas of land are common features in residential estates and are maintained without any issues.

The provision of landscaping on the wall’s eastern flank is acknowledged and would visually soften some aspects of the development but this would take time to mature and would not, in isolation, offset the visual harm of the wall’s repositioning. Furthermore, landscaping cannot be used as a permanent solution to a poorly designed

scheme. Landscape is transient in nature and cannot be conditioned to remain in perpetuity.

Neighbouring Amenity:

There are no neighbouring amenity concerns.

Highway Access and Parking Provision:

Accurate drawings have been provided demonstrating visibility splays of 2.4m x 43m from Wheelton Close onto Skelmerdale Way. The plan shows that the proposed brick wall will not impact visibility splays, therefore WBC Highways Officer has no objection to the proposed.

Landscape and Trees:

The proposals would result in the loss of green infrastructure that positively contributes to the visual amenities of the area. This is contrary to policy CC03 of the MDD Local Plan, which states that development proposals should "Protect and retain existing trees, hedges and other landscape features"

Community Infrastructure Levy (CIL):

When planning permission is granted for a development that is CIL liable, the Council will issue a liability notice as soon as practicable after the day on which the planning permission first permits development. Completing the assumption of liability notice is a statutory requirement to be completed for all CIL liable applications.

The Public Sector Equality Duty (Equality Act 2010): In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

RECOMMENDATION	
Conditions agreed:	Not required
Recommendation:	Refusal
Date:	24 April 2024
Earliest date for decision:	10 April 2024

Recommendation agreed by: (Authorised Officer)	MC
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Date:	24.04.2024
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