

APPLICATION REFERENCE: PL/2020/03005/COU

Site Address: Land Adjacent To 9 Bellamy Close, Shirley, Solihull

Proposal:	Change of use of land from untitled, unused land to use ancillary to the residential occupation of 9 Bellamy Close.
Web link to Plans:	Full details of the proposal and statutory consultee responses can be found by using the above planning application reference number at: https://publicaccess.solihull.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QLJGVZOE01100

Reason for Referral to Planning Committee:	The proposal has given rise to a substantial amount of concern (6 objections) and in the opinion of the Development Management Group Manager should be referred to Planning Committee.
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Recommendation:	APPROVAL SUBJECT TO CONDITIONS
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EXECUTIVE SUMMARY

This application seeks permission to change the use of a piece of untitled, unused land adjacent to 9 Bellamy Close for use ancillary to the residential occupation of 9 Bellamy Close. The land is located within the garaged courtyard area to the eastern corner of Bellamy Close. The application is retrospective.

This report will demonstrate that the proposal is visually acceptable, will not be unduly harmful to neighbouring amenity and would not impact on highway safety or the free flow of the road network

Accordingly, the proposal is compliant with policies P8, P14 and P15 of the Local Plan and policies and is therefore recommended for approval.

MAIN ISSUES

The main issues in this application are the effects of the development:

- Firstly, on the character and appearance of the street scene and surrounding area; and

- Secondly, impact on residential amenity
- Thirdly, impact to highway safety and the free flow of the road network

CONSULTATION RESPONSES

Statutory Consultees

None

Non Statutory Consultees

The following Non-Statutory Consultee responses have been received:

- Local Lead Flood Authority – No comments
- SMBC Highways – No objection

PUBLICITY

The application was advertised in accordance with the provisions set down in the Town and Country Planning (General Development Procedure) Order 2015.

Six responses were received objecting to the proposal and two in support. All correspondence has been reviewed and the main issues raised are summarised below (Planning Committee Members have access to all third party correspondence received):

In Support

- The proposal makes the area much tidier and would add value to houses. The land previously was always a mess and an eye sore. It was also used for dumping rubbish/fly tipping
- Offers more security as it doesn't allow for random cars to be coming and going around the back of the houses

Against

Neighbour Amenity

- Loss of privacy (due to alleged commercial activity)
- Fence erected is an obstruction and results in difficulty driving in/out of garages without several manoeuvres

Character and Appearance

- Intensifies development within Bellamy Close

- Land used to store building materials, rubbish etc and in connection with the applicant's business/company
- Believes land will be used as a builder's yard as the applicant had one in his previous property. This would result in large building equipment, delivery vehicles, congestion and additional noise. Commercial activity would result in loss of privacy

Highways

- Proposed site is part of the access to all garages and used for parking and as a turning circle
- Results in loss of parking spaces and exacerbates the current parking problems in the Close. Spaces have already been lost due to the development approved and currently under construction adjacent to 12 Bellamy Close

Other non-material planning considerations

- Fence already erected
- Applicant doesn't own land which amounts to trespass
- Applicant should have consulted all residents instead of taking the land for himself
- Flow of builders vans coming and going to the property due to the extension works being carried out to the rear of the dwelling
- Previous owners were refused possession of the land after living there for 13 years as they had not maintained it
- The title outside one of the garages has been overlooked by both SMBC and the owner of no 9, the fence encroaches onto this land
- Drainage pipes discharging from the rear extension onto untitled land and drainage reports states 'no comment' or whether the site was visited
- Fence should be attached to existing dwelling rather than the rear extension
- Inadequate parking is dangerous for elderly residents and young children

PLANNING ASSESSMENT

Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires that: -

'Where in making any determination under the planning acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise'.

The National Planning Policy Framework at paragraph 2 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

This report considers the proposal against the Development Plan (Solihull Local Plan), the relevant policies of the National Planning Policy Framework (“NPPF”) 2019, the National Planning Practice Guidance

The effect of the proposal on the character and appearance of the surrounding area

The Solihull Local Plan (2013) seeks to ensure that development proposals achieve good quality, inclusive and sustainable design that conserves and enhances the local character, distinctiveness and streetscape quality. The level of enhancement required is dependent on and is proportionate to the scale and nature of the development. The development in this case, is a change of use of land which is minor in nature when compared to the full spectrum of planning submissions made to the LPA, and therefore the level of enhancement required would be minor and limited to its acceptability by way of how it is used and compliance with the design principles as set out in Policy P15.

The surrounding area is characterised by residential properties varying from terraced properties to semi-detached and detached dwellings. The immediate surrounding properties of Bellamy Close are all two storey terraced properties set within a well-defined and distinct ‘U’ shaped pattern of development consisting of dwellings with a small front garden area fronting Bellamy Close.

The application site is a piece of grassed land immediately adjacent to 9 Bellamy Close. The land sits within the easterly corner of Bellamy Close in a courtyard area bordered by garages belonging to residents of Bellamy Close. Permission was recently granted via the appeals process in May 2018 for the erection of two three bedroom bungalows in the opposite (southerly) corner of Bellamy Close which are currently under construction.

The land has been enclosed by a close boarded fence which is a common design and feature found in residential areas, and can be evidenced throughout the surrounding area and across the Borough. However, as the fence does not require planning permission, it is only the change of use of land being considered.

Concerns have been raised that the land will be used to store building materials in association with the applicant’s business/company and will be used as a builder’s yard as the applicant had one in his previous property. This would result in large building equipment, delivery vehicles, congestion and additional noise. An unannounced visit to the application site did not witness any commercial activity being carried out. The land contained domestic dustbins, a children’s ‘Wendy House’ and some building waste. The building waste appeared to be in association to a rear extension which has recently been constructed using permitted development rights, ‘waste’ of this type is expected in association with a development under construction. The suspected use of the land as builder’s yard is merely speculation, no evidence has been presented to corroborate this.

A letter of support has been received stating that the land was previously a mess, an eye sore and was also used for dumping rubbish/fly tipping, support received also considers the proposal makes the area much tidier and would add value to houses.

Given it is common to see a piece of land adjacent to a domestic dwelling used for ancillary purposes enclosed by a fence of this height (which does not require planning permission), it is not considered that the change of use of land is detrimental to the character of area and is therefore in accordance with Policy P15 of the Solihull Local Plan (2013). Neutral weight should be given to this matter in the planning balance.

Impact on residential amenity

The Solihull Local Plan (2013) seeks to protect and enhance the amenity of existing and potential occupiers neighbouring an application site.

The proposed change of use of untitled, unused land to use ancillary to the residential occupation of 9 Bellamy Close is not expected to have an undue impact upon neighbour amenity. This is primarily because the proposed use would be private garden land and represents a modest enlargement of the existing curtilage. Such use could not reasonably be expected to cause undue noise or disturbance. Support has been received stating that the proposal offers more security as it doesn't allow for random cars to be coming and going around the back of the houses.

Concerns have been raised that the fencing off of the land has made it difficult driving in/out of garages. The Highway Authority acknowledges that the fence panels installed have reduced the space available for vehicles to manoeuvre into/out of the garages however, Paragraph 8.3.51 of Manual for Streets (MfS) indicates that a width of 6m should be sufficient for vehicles to manoeuvre into/out of parking spaces that are laid out in a perpendicular arrangement. This typically applies to parking spaces that measure 2.4m wide however, Paragraph 8.3.53 of MfS suggests that where space is limited and vehicles may not be able to manoeuvre into/out of parking spaces in one movement, some back and fore manoeuvring may be required which is likely to be acceptable where traffic volumes and speeds are low. The Highway Authority considers it likely that traffic volumes and speeds are very low within the garage courtyard area, and vehicles potentially having to carry out multiple movements to manoeuvre into/out of the garages should not have a detrimental impact on public highway safety.

Third party representation regarding land being used for commercial activity/as a builder's yard have been addressed in the previous section.

The erection of a fence measuring no more than 2m fence constitutes permitted development under Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). In such circumstances the impact of the fence upon neighbour amenity is not a matter for consideration

The proposed change of use of land is not expected to cause any unreasonable impact on neighbour amenity. The development therefore complies with Policy P14 of the Solihull Local Plan 2013. Neutral weight should be given to this matter in the planning balance.

Impact to highway safety and the free flow of the road network

Concerns have been raised by neighbours that the application site is part of the access to all garages and is used for parking and as a turning circle. It is also said that the fencing off of the land results in inadequate parking which is dangerous for elderly residents and young children. Spaces have also been lost due to the development approved (allowed at appeal) adjacent to 12 Bellamy Close.

Historic aerial images dating back to 2002 show that the application site has always been a grassed area which suggests that this particular piece of land was never intended for access or parking. Historic aerial images for the piece of land adjacent to 12 Bellamy Close show a wooded area up until 2017, therefore it cannot be established whether this area was used for parking. Nevertheless, homeowners would have been fully aware of the limited parking spaces available when purchasing their properties.

Monitoring of the application site by the Highway Authority did not observe any parking of vehicles and that the surface of the garage courtyard area is in poor condition. It also did not appear that the area was overly used by vehicles or that the garages are used for the parking of vehicles due to the small size and condition of the garages. Even if vehicles did park on the area of land in question, it is likely that the size of the area would only be able to accommodate approximately two vehicles, without obstructing access to the existing garages. It is unlikely that the displacement of two parked vehicles onto Bellamy Close or surrounding public highway roads will have a severe impact on public highway safety, or on the operation of the local highway network.

Therefore the proposed change of use of land is not expected to have any adverse impact upon the highway. The proposal therefore accords with Policy P8 of the Solihull Local Plan 2013. Neutral weight should be given to this matter in the planning balance.

Other non-material planning considerations

Numerous matters have been raised with regards to ownership of land, that the applicant should have consulted all residents instead of taking the land for himself and the fence encroaches onto the title outside one of the garages. These are all private legal matters and are not material planning considerations.

Although the fence has already been erected, it does not require planning permission. Consent is being sought for the change of use of land. Concerns have been raised that the fence should be attached to the existing dwelling rather than the rear extension. The positioning of the fence does not impact on neighbour amenity or the character of the area. It is suspected this comment relates to the claim of encroachment onto the title of one of the garages. However, as mentioned above, this would be a private matter between neighbouring properties/land.

It is expected that builders vans would frequent a property whilst a development is under construction. Given the development was a small rear extension which is

practically complete, this should no longer persist and would not have resulted in a major impact to the highway network as the traffic volumes and speeds are very low within the Close due to its layout.

The drainage pipes discharging on untitled land are part of an extension which did not require planning permission. The Drainage team (also known as the Local Lead Flood Authority) were consulted in association with the change of the use of land to which a response of 'no comment' was provided.

Public Sector Equality Duty

In determining this application, Members must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions).

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149 is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation to grant permission in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In determining this application, Members should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority to act in a manner that is incompatible with the European Convention on Human Rights.

Members are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered a proportionate response to the submitted application based on the considerations set out in this report.

CONCLUSION

The proposed change of use of land from untitled, unused land to use ancillary to the residential occupation of 9 Bellamy Close does not result in a detrimental impact on the street scene, neighbour amenity or highway safety. As such, the development is compliant with Policies P8, P14 and P15 of the Solihull Local Plan (2013), NPPF and guidance contained within the House Extension Guidelines (2010).

RECOMMENDATION

Approval is recommended subject to the following précis of conditions a full list of standard conditions is available using the following link:

<http://www.solihull.gov.uk/Resident/Planning/searchplanningapplications>

1. Compliance with approved plans (CS00)
2. The site to which this application relates shall only be used for purposes incidental to the use of 9 Bellamy Close, Shirley as a single dwelling house.