

**15/00183/COU****LAND ADJACENT TO 1 PARKWAY, RAYLEIGH****CHANGE OF USE OF LAND TO RESIDENTIAL GARDEN  
INCLUDING WIDENING OF EXISTING DRIVEWAY TO SIDE  
OF NO. 1 PARKWAY, RAYLEIGH**APPLICANT: **MRS JILLIAN SKEA**ZONING: **RESIDENTIAL**PARISH: **RAYLEIGH**WARD: **WHITEHOUSE****1 PLANNING APPLICATION DETAILS**

- 1.1 Planning permission is sought to change the use of an area of grass verge adjacent to No. 1 Parkway for use as part of the residential garden of this property and to widen the existing driveway to the property.
- 1.2 The area of land to which the change of use to garden relates is some 18 metres by 9 metres and has already been enclosed with close-boarded fencing.
- 1.3 The existing driveway to No. 1 Parkway runs along the northern side of the property with the site frontage largely hard surfaced to provide off-street parking. The proposal seeks to widen the driveway running along the northern side of the property by 1 metre to enable ease of use of the length of the driveway for the parking of cars.
- 1.4 In the course of the application the applicant amended the proposal to exclude from the proposal a new dropped kerb access which was originally proposed and to be positioned on the corner of the site at the junction of Parkway and Nevern Road. Instead this area of the site would remain as open, grassed verge.

**2 THE SITE**

- 2.1 The application site is located in a built-up, largely residential area of Rayleigh. There is a primary school within close walking distance of the site.
- 2.2 The area of land to which the application relates is located on the corner of Parkway and Nevern Road and was formerly a large open area laid to grass.

- 2.3 Open areas such as this are often built into housing estates to provide areas of soft landscaping in the interests of visual amenity. A similarly sized open grassed area of land is located opposite this site on the other corner of the road adjacent to No. 40 Nevern Road; this area although opposite the site is also under the same ownership as the land to which the current application relates with both being owned by the applicant.

### **3 PLANNING HISTORY**

- 3.1 EEC/306/54 - Boat House and store. APPROVED.
- 3.2 EEC/264/55 - Siting of 2 caravans. APPROVED.
- 3.3 ROC/443/86 - Erect detached dwelling. APPROVED.
- 3.4 ROC/87/814 - Detached chalet and garage. APPROVED.
- 3.5 F/0680/91/ROC - Garage. APPROVED.
- 3.6 15/00039/FUL - Demolish Existing Side Garage and First Floor Level, Retention of the Ground Floor Level. Erection of New First and Second Floor, Part Two/Part Single Storey Extension to Front and Side Incorporating Garage. Create Balcony to Front at First Floor With Steps to Side. WITHDRAWN.

### **4 CONSULTATIONS AND REPRESENTATIONS**

#### **Rayleigh Town Council**

- 4.1 First Response: No objection but concern as to where the driveway will be.
- 4.2 Second Response: No objection.

#### **Highways (ECC)**

##### First Response

- 4.3 From a highway and transportation perspective the impact of the proposal is NOT acceptable to the Highway Authority for the following reason:
- 4.4 As far as can be determined from the submitted plans, the proposal will encroach on and enclose Highway Land.
- 4.5 Insufficient information has been submitted to determine whether the proposed vehicular access and dropped kerb crossing is acceptable in terms of highway safety and efficiency.
- 4.6 Following a site visit carried out in April 2015, the applicant appears to have encroached on and enclosed highway land with the erection of a fence along the north and west of the proposal site. Highway Records have confirmed that

highway rights exist over the land. A Change of Use cannot be permitted until highway rights have been removed.

- 4.7 The applicant has not supplied sufficient plans or information indicating details of the proposed layout, including where they intend to incorporate the driveway and where they propose to create a new dropped kerb. The lack of such information does not allow us to comprehensively assess the suitability of the new vehicular access and as such could result in an unacceptable degree of hazard to all road users to the detriment of all highway users and highway safety.
- 4.8 However, should the applicant submit details of the proposed driveway and dropped kerb crossing, the Highway Authority may reconsider this aspect of the application.
- 4.9 Therefore, the proposal as submitted is contrary to the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

#### Second Response

- 4.10 From a highway and transportation perspective the impact of the proposal is NOT acceptable to the Highway Authority for the following reason:
- 4.11 As far as can be determined from the submitted plans, the proposal will encroach on and enclose Highway Land.
- 4.12 Following a site visit carried out in April 2015, the applicant appears to have encroached on and enclosed highway land with the erection of a fence along the north and west of the proposal site. Highway Records have confirmed that Highway Rights exist over the land. A Change of Use cannot be permitted until highway rights have been removed.
- 4.13 The applicant will be advised to apply for removal of Highway Rights and to consult the Statutory Undertakers to inform them of the intention to remove Highway Rights. The Statutory Undertakers will establish if any equipment is to be moved and will discuss costs with the applicant.
- 4.14 Therefore, the proposal as submitted is contrary to the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011.

#### 4.15 Neighbours

##### First Round Responses

- 4.16 Summary of the 6 responses received from the occupants of 12 Nevern Close, 61 Nevern Road, 2 Nevern Close, 57 Nevern Road, 7 Nevern Close and 34 Nevern Road;

- 4.17 This land was grabbed and fenced off even before local residents had been advised as to the intent. This land has always been considered as Council owned. Indeed, the Council have always maintained the land. So to have the ONLY piece of green in our immediate area taken and fenced off is an insult to local residents. There is very little "green" space available. Young local children have used it as a play area as there is no other green open public land in an otherwise built up area. In this situation the land has always been regarded by the local residents as part of an open public space for the benefit of residents and their families.
- 4.18 This land has never presented a problem until now when the whole affair has been handled extremely badly leaving residents feeling alienated and ignored by what has become a 'Fait Accompli'.
- 4.19 It is in no way currently or never has been integrated or intended to be integrated within the boundary or use of the domestic dwelling at 1 Parkway. It is a wholly unique piece of land not intended for or entitled to domestic use. On this basis I would contend that this planning application is invalid and inappropriate for domestic use.
- 4.20 Land has Highway Rights/Access across it.
- 4.21 Nevern Road is very narrow almost a service road. School at the bottom of Nevern Road, exit as proposed would cause additional hazards to children. All other driveways have clear sight for the driver and pedestrians.
- 4.22 I also foresee the dropped kerb access to the side of the property as a potential danger as it would not naturally lend itself to a normal expected driveway. There is a perfectly adequate large existing driveway to the front of the property which can easily be utilised to gain access. A drive-in access could present a danger to young children who walk past every day on their way to school. The question has to be asked why is a side access required when there is existing room for normal front access to the property by the present driveway.
- 4.23 I want to see the land returned to its former status.
- 4.24 When we purchased our home in 1987, we were attracted by the open spaces on both sides of Parkway (directly in front of our home) as an open space environment for all to enjoy and our children to grow up and play. We were advised at that time that this land was still owned by the original builders who had invested this land as open space for the community. We were also told that an application to purchase the land on the opposite corner of Parkway had been rejected by the builder to honour this commitment to the community who had purchased their properties on this understanding. Due to the builder going into liquidation, right to sell passed to HM Treasury who wholly ignored the "spirit" of the commitment to the community intended by the original builders. By enclosing this land the current owners are totally disrespecting

the neighbours and depriving the community of space previously and genuinely believed by most of the residents as a community space.

- 4.25 When major infrastructure work has been undertaken in the area in the past e.g. gas renewals this land was a resource to store plant and materials. This resource will no longer be available, thus putting additional burdens on the traffic negotiating the street and on street parking.
- 4.26 On occasions when Wyburns School has major events about 4 times a year. The road is incapable of providing sufficient on street parking for parents etc. so this land has been used as additional parking. Removing this resource will create intolerable stress on the community and especially residents.
- 4.27 Conversion to a garden will introduce privileges for the owner to hold social summer gatherings which given the close proximity of the garden to front windows of neighbours including myself will impose significant noise pollution and interference to the peace currently enjoyed in what is generally a senior citizen community.
- 4.28 A larger gathering raises issues of more guests visiting the garden for events. Parkway and Nevern Road cannot cope with the additional parking that will arise.
- 4.29 Introduction of the garden introduces the threat of light pollution as this area is directly overlooked by both my front bedroom windows.
- 4.30 I will be denied the right to take time to view out of my front windows to star gaze with a telescope for threat of being accused of invading the privacy of this garden.
- 4.31 1 Parkway already enjoys the use of a driveway. From viewing the plans it appears that this new driveway will cross the bordering strip of land on Nevern Road that is not owned by the applicant.
- 4.32 Nevern Road and Parkway have a significant issue with parking both by users of the school and the residents themselves. Within the last two years we have seen Nevern Road appear on Page 1 of the Evening Echo as a result of this problem. A parent, collecting a child, parking on the street had a windscreen smashed by an angry resident. I have seen on several occasions heated and almost violent arguments between school users because vehicles cannot pass one another due to the volume of cars parked on the street. When a delivery is made to a home around school home time it causes mayhem and angry exchanges.
- 4.33 In the junction around Nevern Road and Parkway residents are very territorial over parking around their properties. Exchanges can be very ugly. However they are a reflection on the fact that the number of cars per household are increasing and the cars of school users are getting larger and there are more of them. Properties in this community have the right to one dropped kerb but never two as is proposed by this application. If you allow it, you will reduce on

street parking which will add significant additional pressures on parking and only fuel existing tensions in the community.

- 4.34 NB. Within the three houses in Nevern Road directly opposite 1 Parkway there are 9 cars (ignoring any visitors), of which only three are kept on drives the others are parked on street.
- 4.35 Should you allow an additional dropped kerb for 1 Parkway it will have direct impact on my property as it will be opposite where I currently park my own car on street and sometimes my daughters visit from afar and park on the street. If you give permission for an additional space in the land adjacent to 1 Parkway my only solution would be to seek planning permission for my property to build an additional driveway and an additional dropped kerb. That will put further burdens on the community and probably result in others wanting to follow suit.
- 4.36 There is currently an adequate Dropped kerb access for this property in Parkway. An additional dropped kerb onto what is already a busy road, school and nursery, I believe would be an additional hazard to pedestrians and road users. With regard to the fenced off area, I assume the land was correctly purchased and the appropriate planning permission to erect fencing was approved.
- 4.37 The fence is an eyesore from the once green grass.
- 4.38 It is bad enough to take away green areas that can be enjoyed by local residents but then to use it for the benefit of a vehicle when there is ample parking on their existing driveway and garage and in the roadway.

#### Second Round Responses

- 4.39 Summary of additional points raised by the occupants of 61 Nevern Road, 57 Nevern Road;
- 4.40 They would in effect be taking MORE land. I understand the applicants have been advised by Essex County Council that they must attend Magistrates Court to apply for the removal of the highway rights and I feel any decision should await the result of that hearing. I and my neighbours wish to be kept informed if this application takes place.
- 4.41 P.82 Item (3) of the Council's Core Strategy states that 'built up areas need to drain to remove surface water'. There is no certainty that this will continue if the area is incorporated into "garden" use.
- 4.42 This green space, which has existed throughout the history of the area, provides a valuable contribution to the aesthetic value and character of the residential area, its loss would be contrary to other parts of the Core Strategy.

- 4.43 This area provides a visual linking function and it is my contention that the enclosure of this land is detrimental to the visual and environmental amenity of Nevern Road/Parkway which has until now been an asset to the area.
- 4.44 There are very few areas of open land in the vicinity and the loss of this albeit small green space is to be resisted.
- 4.45 I would like RDC to stick to its policy that retaining existing layouts will usually be protected and that this prominent open landscaped corner be returned to its previous open character.
- 4.46 The revised plans show that the original intention to have a new and additional dropped kerb has changed. The revised application refers to widening the driveway but it does not mention widening the existing dropped kerb. So in this paragraph I comment relating only to widening the driveway but not the dropped kerb.
- 4.47 From viewing the revised plans it appears that this new driveway will encroach on a strip of land under highway authority regulation. Also the plan does not show how the existing telegraph pole will be impacted by this request. Has BT OPEN REACH plc who are clearly affected by this application been consulted?
- 4.48 1 Parkway already has a dropped kerb to the same specification as all the properties on Nevern Road and Parkway.
- 4.49 If you allow one neighbour to have an extra 4 foot it will reduce on street parking for everyone else, which will add significant additional pressures on on-street parking and only fuel existing tensions in the community.
- 4.50 Should you allow a widened dropped kerb for 1 Parkway it will have direct impact on my property as it will be opposite where I currently park my own car on street and sometimes my daughters visit from afar and park on the street. There are times when I find I am blocked by school users because of the width of my dropped kerb, but with a little tolerance these are overcome. If the planning authority see the solution is to widen dropped kerbs by giving permission to 1 Parkway, then to overcome the knock on problems it will cause me I will need to seek planning approval to widen my dropped kerb. That will put further burdens on the community and probably result in others wanting to follow suit.

## **5 MATERIAL PLANNING CONSIDERATIONS**

- 5.1 This application must be determined in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan consists of the Rochford District Core Strategy (2011), the Development Management Plan (2014) and the Allocations Plan (2014). Other material considerations include

the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG).

- 5.2 The open grassed area that is the subject of this application and has been partly enclosed was likely originally planned as part of the layout of the housing estate to be open and grassed in the interests of visual amenity.
- 5.3 Supplementary Planning Document 2; Housing Design talks about enclosure of grass verges and acknowledges that grass and amenity area contribute to the character and appearance of housing estates and are intended for public benefit. The policy guidance advises that such areas are better retained as open areas with soft landscaping but that there may be occasions when enclosure in an adjacent private garden is acceptable particularly where there is a history of neglect. Where neglect is not a problem the policy guidance states that the preference will be for open areas to remain unenclosed as enclosure can result in a significant change in the overall design, layout and symmetry of an estate or locality to the detriment of the amenity of all the residents.
- 5.4 A similar open grassed space is sited opposite the site with another a short distance from the site to the corner of Winbrook Close and Winbrook Road. Enclosing boundary treatments are also set in from the footway along part of Nevern Road with a larger verge provided with street trees; although this strip is hard surfaced it sets the boundary treatment back from the footway providing a greater degree of spaciousness to the street scene. Other than these areas the locality is fairly densely built with no other notable green verges along or at street corners.
- 5.5 Prior to the recent enclosure, the open grass verge was a large space which contributed to visual amenity in the street scene. There is no evidence to suggest that the space was not well maintained.
- 5.6 Whilst the enclosure has reduced the extent of open green space it has not enclosed the whole as a considerable grass verge currently remains to the site frontage some 3 metres in depth and a grass verge remains along Nevern Road. The verge along Nevern Road is some 1.5 metres in width which is the same as the verge which extends to the side of another property to the rear of the application site at No. 2 Nevern Close; this latter section of verge is however hard surfaced. The verge that remains grassed to the north of the application site contributes to visual amenity to a greater degree. The enclosure of the grassed area has not resulted in a pinch point or the creation of an alleyway which would give rise to safety concerns for pedestrians. The grassed area prior to enclosure did however relate well to the street such that it had good visual amenity value which could have been appreciated by a considerable number of pedestrians particularly given the local primary school and pedestrian movements associated with this at the end of the street; this was not an unplanned and poorly positioned space in relation to the street, footways and the local environment.



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- 5.7 It is considered that the extent of grass verge that remains is sufficient to ensure that the boundary fencing does not appear imposing in the street scene; the remaining grass verge is sufficiently large especially to the site frontage to still contribute to visual amenity.
- 5.8 It is considered that the enclosure of the portion of the site that has taken place and use of this enclosed land as part of the residential garden of No. 1 would be acceptable given that a portion of the land would remain unenclosed and grassed and this remaining part would contribute to visual amenity.
- 5.9 Where screening walls or fencing is proposed SPD2 seeks that they be of a high standard. The enclosing fencing has already been erected and is a standard close-boarded fence. Whilst not of high quality design it is understood that it is the applicant's intention to plant hedging to soften the appearance of the fencing in time. Given that the original enclosing boundary treatment visible to the street scene was close-boarded fencing the proposal would not be unacceptable.
- 5.10 Fencing can be erected as permitted development under Part 2; Class A (Minor Operations) of the General Permitted Development Order 2015 providing it would not exceed 2 metres in height or 1 metre in height adjacent to a highway (including footway). A grass verge some 3 metres in width remains along Nevern Road and a verge some 1.5 metres in width remains along the site frontage to Parkway. The fencing by itself may therefore be considered permitted development although the use of the land as residential garden requires planning permission. The erection of the enclosing fencing may however be considered part and parcel of the change of use of the land to residential garden, if there only to facilitate this use and consequently if planning permission were refused for the change of use to residential the fencing that has been erected may be required to be removed. There can however be no requirement that the public be allowed to access the land which is now privately owned by the applicant. The value in public terms is purely visual.
- 5.11 Some open grass verges and amenity spaces were provided specifically to ensure adequate vision at junctions for motorists and pedestrians alike and in these circumstances the Local Authority would resist proposals for enclosure. In this case however the highways authority raises no objection to the proposed enclosure on the grounds of highway safety. Whilst an objection is raised on the basis that highway rights still exist on the land refusal on this ground would not be appropriate. It may be the case that if planning permission were granted the applicant would still be required to apply to extinguish highway rights over the land. If an application to extinguish highway rights were not successful it may be that the applicant could not retain the use of the land as residential garden as granted planning permission but this is no different for example to planning permission being granted over a main foul sewer and the planning consent not able to be implemented because of a third party restriction that cannot be overcome.

- 5.12 There is considered to be no objection to the proposal to widen the existing driveway by 1 metre. A low fence up to 1.2 metres in height or hedging would run along the extended driveway up to a point 1.5 metres from the highway boundary; this distance would ensure that pedestrian visibility would be provided from the edge of the driveway. The proposal does not specify a need to widen the existing dropped kerb access which it is considered could still adequately cater for the extended width driveway.

### CONCLUSION

- 5.13 The application must be determined in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
- 5.14 It is a matter of fact and degree as to the whether the extent of enclosure of the grass verge /amenity area as proposed would be detrimental to visual amenity and the character of the locality such as that planning permission should be refused. There is some considerable objection to the proposal from local residents who clearly valued the space and its contribution to the local environment as an unenclosed green space.
- 5.15 On balance, given the extent of open grassed verge that would remain it is considered that the degree of harm to visual amenity and the character of the locality would be such that planning permission should be granted.

### 6 RECOMMENDATION

- 6.1 It is proposed that the Committee **RESOLVES**

That planning permission be approved, subject to the following conditions:-

- 1) SC4B – Time limits
- 2) That part of the site shown hatched on the approved plan date stamped 23.03.2015 shall remain as open grass verge, undeveloped and shall not be hard surfaced and shall not be used as residential garden nor be used as a driveway for the parking of vehicles. Notwithstanding Part 2, Class A (Minor Operations) of the General Permitted Development Order 2015 no fences, walls or other means of enclosure shall be erected along the southern, western or northern boundaries of that area shown hatched on the above-mentioned plan.

REASON: In the interests of retention of part of the former larger area of open grass verge in the interests of visual amenity in the street scene.



Shaun Scrutton

Director

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### **Relevant Development Plan Policies and Proposals**

Policies CP1 and T8 of the Rochford District Core Strategy (2011).

Policies DM1 and DM30 of the Development Management Plan (2014).

Supplementary Planning Document 2: Housing Design

Allocations Plan (2014).

National Planning Policy Framework (NPPF).

Parking Standards Design And Good Practice Supplementary Planning Document (Adopted December 2010).

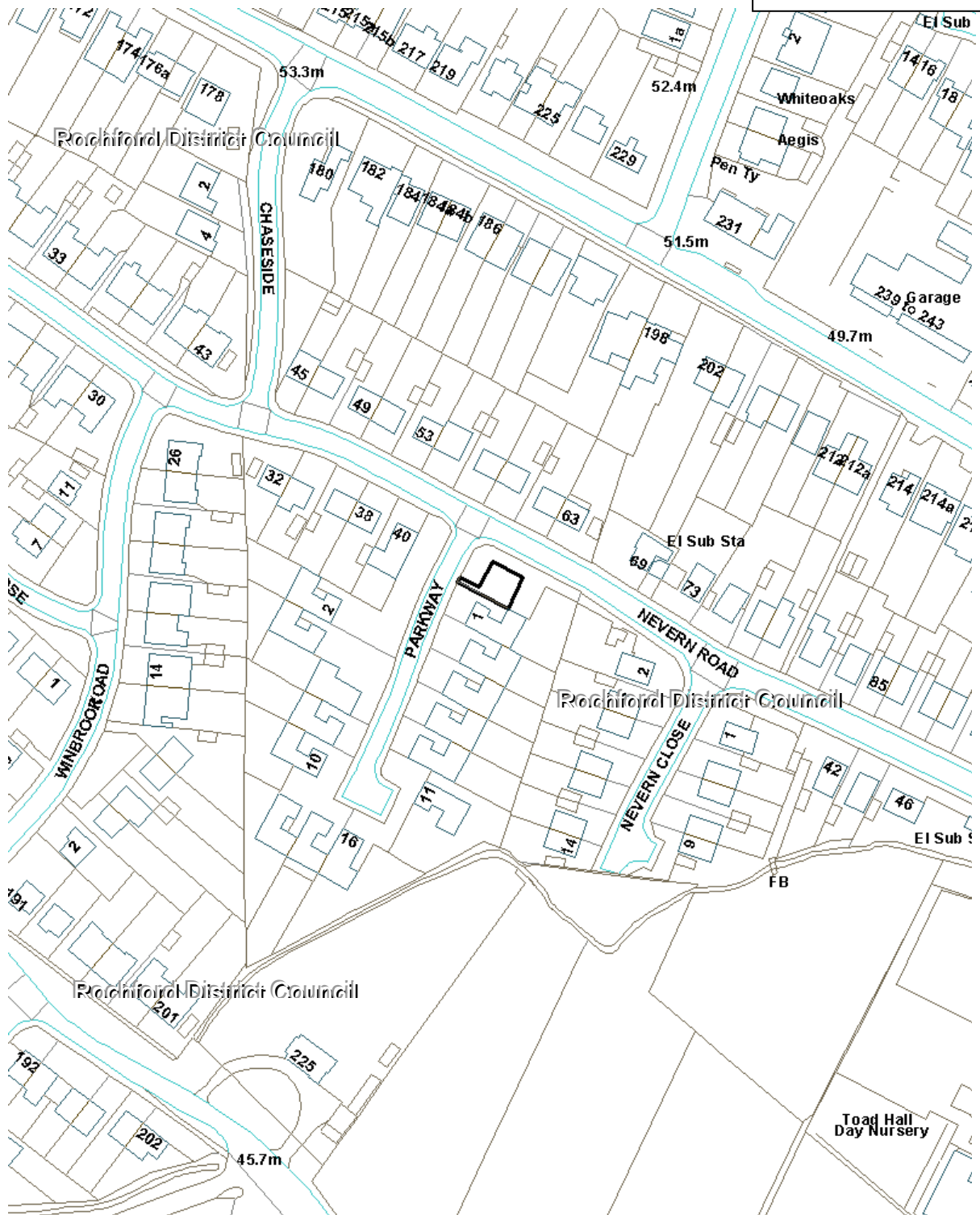
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