

APPLICATION REFERRED FROM THE WEEKLY LIST**WEEKLY LIST NO. 1563 – 12 MARCH 2021****21/00078/FUL****HILLVIEW HOUSE, 7 HILLSIDE ROAD, EASTWOOD****APPLICATION TO REMOVE PLANNING CONDITION NO. 9
ON PLANNING CONSENT REFERENCE 15/00046/FUL
(DEMOLISH EXISTING BUNGALOW AND REPLACE WITH
1NO. FOUR-BED AND 1NO. FIVE-BED TWO STOREY
DWELLINGS) TO ALLOW FOR RE-POSITIONED
BOUNDARY FENCE TO WESTERN SITE BOUNDARY****1 DETAILS OF REFERRAL**

- 1.1 This item was referred from Weekly List No. 1563 requiring notification to the Assistant Director, Place and Environment by 1.00 pm on Wednesday, 17 March 2021 with any applications being referred to this meeting of the Committee.
- 1.2 Cllr I H Ward referred this item on the grounds that the land within Mr and Mrs Pannell's ownership which abuts Rayleigh Avenue has never been designated as a nature reserve or indeed an area which requires wildlife protection. The previous owner was unable to look after his garden due to infirmity. The area of concern has always been garden pre-1948. "What I see now is a measurable improvement on the visual amenity which complies with policy. There is no material change of use and the fallback position has not been fully considered during the determination of this application".
- 1.3 The item that was referred is attached at appendix 1 as it appeared in the Weekly List.
- 1.4 A plan showing the application site is attached at appendix 2.

2 RECOMMENDATION

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

To determine the application, having considered all the evidence.

If you would like this report in large print, Braille or another language please contact 01702 318111.

Application No :	21/00078/FUL	Zoning : Residential
Case Officer	Ms Katie Ellis	
Parish :	Rayleigh Town Council	
Ward :	Lodge	
Location :	Hillview House 7 Hillside Road Eastwood	
Proposal :	Application to remove planning condition No. 9 on planning consent ref 15/00046/FUL (Demolish Existing Bungalow And Replace With 1no. Four Bed And 1no. Five Bed Two Storey Dwellings) to allow for re-positioned boundary fence to western site boundary.	

SITE AND PROPOSAL

1. The site is a rectangular corner plot at the junction of Hillside Road and Rayleigh Avenue and is made up of a residential plot. A group of trees exist to the west, the majority of which are subject to a Tree Preservation Order. A two-storey, detached dwelling is sited on the residential plot with a driveway to the front. There is a group of trees towards the western boundary, subject to a Tree Preservation Order. The site slopes downwards to the north (rear).
2. The site adjoins No. 7 Hillside Road to the east which is a detached house. Opposite the site to the south are Numbers 2 and 4 Hillside Road as well as two fairly recently constructed detached houses (12/00773/FUL). Numbers 101, 99 and 97a also face the western boundary on the opposite side of Rayleigh Avenue. To the rear, the site adjoins open fields.
3. The site is within the residential envelope of Eastwood with the rear boundary forming a border with allocated Metropolitan Green Belt land which extends to the north. There are no public rights of way (footpaths/bridleways) directly adjoining or running close to the site.

The Proposal

4. Planning permission is being sought for the removal of condition 9 of planning permission 15/00046/FUL which permitted the demolition of an existing bungalow and the construction of two, two-storey detached dwellings; this application was approved by the Council on 7 May 2015.
5. Condition 9 reads;

Prior to the erection of any enclosing boundary treatment to plot 1 or to the western or southern application site boundaries precise details of the type (design and scale) and position of any boundary treatment proposed to this

plot shall be submitted to and approved in writing by the Local Planning Authority. Boundary treatment shall include fencing or railing to delineate the enclosed rear garden to plot 1 which shall exclude the wooded margin to the western boundary in a position to be submitted and agreed. The wooded margin shown hatched on the approved drawing 103a shall remain outside the residential curtilage of the dwelling to plot 1 and shall not be used as residential garden and no permitted development rights under Part 1, Class E of the Town and Country Planning (General Permitted Development) Order (2015) as amended shall apply to this part of the site in perpetuity. Boundary treatment shall be installed as agreed and retained in the approved form.

6. A letter dated 12th April 2016, confirms condition 9 imposed on 15/00046/FUL was not fully discharged as Drawing Number 252 entitled 'Boundary Details' shows a proposal to erect fencing of type B, 1.8 metres in height and close-boarded within the area referred to in condition 9 as the wooded margin. This area was specifically required to be excluded from the rear garden of the residential dwelling to plot 1 and therefore the proposed positioning of the type B fencing could not be agreed.
7. Whilst undertaking a site visit, it was acknowledged that a 1.8m close-boarded timber fence has been constructed along the western edge of the site, in a position previously refused, within the area referred to as the wooden margin. The positioning of the fence encloses the wooden margin within the residential curtilage therefore leading to a material change of use of land. The area of hardstanding to the front has also been extended into the wooden margin. As it stands, the development has failed to comply with condition 9 and therefore, a breach of planning control has occurred.
8. It was also noted that part of the land running along the rear of Nos. 5 to 27 Hillside Road has been segregated into 11 individual pieces of land by post and rail fencing. This is subject to a separate enforcement investigation and does not form part of this planning application.

Relevant Planning History

Application No. 15/00046/FUL - Demolish Existing Bungalow and Replace With 1 no. Four Bed And 1 no. Five Bed Two Storey Dwellings - Approved 7 May 2015.

Assessment

Main Considerations

9. This application is made under S.73 of the Town and Country Planning Act 1990 for the removal of condition 9 of planning reference 15/00046/FUL.
10. Condition 9 reads;

Prior to the erection of any enclosing boundary treatment to plot 1 or to the western or southern application site boundaries precise details of the type (design and scale) and position of any boundary treatment proposed to this plot shall be submitted to and approved in writing by the Local Planning Authority. Boundary treatment shall include fencing or railing to delineate the enclosed rear garden to plot 1 which shall exclude the wooded margin to the western boundary in a position to be submitted and agreed. The wooded margin shown hatched on the approved drawing 103a shall remain outside the residential curtilage of the dwelling to plot 1 and shall not be used as residential garden and no permitted development rights under Part 1, Class E of the Town and Country Planning (General Permitted Development) Order (2015) as amended shall apply to this part of the site in perpetuity. Boundary treatment shall be installed as agreed and retained in the approved form.

11. The reason for the above condition is to enable the Local Planning Authority to protect the existing un-domesticated character of the wooded area to the western boundary of the site.
12. Whilst undertaking a site visit, it was acknowledged that there is a 1.8m close-boarded timber fence sited along the western boundary enclosing the wooded margin, this area comprises a number of preserved trees (TPO/00011/97), soft vegetation and landscaping to the west of the host dwelling. The area of hardstanding to the front of the dwelling has been extended into area referred to as the wooden margin. Application No.15/00046/FUL confirms the western part of the site, the wooded margin shown hatched on the approved drawing 103a, should remain outside of any residential curtilage/garden in order to retain the existing character and appearance which provides an important contribution to visual amenity and the edge of settlement, semi-rural character and appearance of this site. Condition 9 was necessary to control the type (design and scale) and position of any boundary treatment to the west and front of the site to protect the open, unenclosed and un-domesticated appearance of the wooded edge to the site from residential pressure such as pruning, compaction, storage, outbuildings and other paraphernalia detrimental to the rooting systems of the trees and their longevity and health over time.
13. The street scene along Rayleigh Avenue and Hillside Road is characterised by detached dwellings with open frontages which incorporate soft landscaping and comprise of low boundary treatments with well-established vegetation creating a soft and pleasant environment along this part of the street scene, providing some visual relief from the built form and a buffer between the houses and the passage of vehicles and pedestrians to maintain a semi-rural character which is locally characteristic.
14. Fully enclosing the area of land introduces a prominent barrier that would appear as an incongruous feature along Rayleigh Avenue. It is also considered that change of use of land referred to as the wooded margin to residential garden would have had a significant impact on the character and

appearance of the area.

The close boarded timber fence along the western boundary appears out of place and detracts from the visual quality of the space, devaluing the site's contribution to the streetscene. Additionally, the host site's location on a prominent corner plot also means the site is prominent and seen easily from the public realm and the previously visible soft landscaped open frontage contributed significantly to the character and appearance of the street scene. The proposed fence would run for a significant length, flanking the site resulting in an increased degree of prominence. The introduction of a 1.8m close bordered timber fence in close proximity to the highway would be conspicuous, resulting in a visual change and would detract from the overall semi-rural character and appearance of the street scene, having a significant detrimental impact upon the street scene contrary to policy CP1 of the Core Strategy and policies DM1 and DM3 of the Development Management Plan and the National Planning Policy Framework and therefore, it would not be acceptable to remove condition 9 of planning reference 15/00046/FUL.

Representations:

15. NEIGHBOUR REPRESENTATIONS : Five letters have been received from the following addresses;

Hillside Road 2, 4,
Rayleigh Road 95, 97
One letter received, unknown address.

15. And which in the main make the following objections;

- Concerns that the removal of condition 9 may enable use of adjoining land and the site leading to future housing development.
- Impact on wildlife

16. Rebuttal letter from the Applicant;

- All the houses built in this area are built to the 1996 development plan.
- There are no areas of nature.
- There will be no loss of trees as all have got T.P.O's and have been pruned in the last couple of months, as agreed in writing by James Choat tree officer.
- There is now more view since the trees have been pruned.
- All wildlife reports were submitted in 2015-16 when planning was applied for.
- There has never been badger setts on site.
- The rear fence was agreed with the planning enforcement officer, see letter dated 3rd December 2020, last paragraph.
- All work on the rear field was completed by the farmer who owned it.
- The application is not to obtain rear access, this has not been applied for.

- I will agree to any conditions relating to the land involved, there will be no future developments of any dwellings or temporary buildings on this land, it will maintain its current use.
 - All the land up to my boundaries are registered as mine.
 - Owners in Rayleigh Avenue have cleared approximately 3m of shrubbery and built a car parking area against my western fence.
 - The O.S map shows my boundary to be in line with property number 2 Hillside.
 - This application has only ever been about the fence remaining.
 - I would like to reiterate to the neighbours surrounding this property/land that there will be no future developments.
17. Rebuttal letter from agent acting on behalf of the Applicant;
18. Many of the matters raised have already been dealt with by Officers of the Council dating back to the mid 1990's by virtue of condition discharge. A review of the documentation when the Eastwood Rise area was released through the Local Plan process and indeed via many of the Planning applications, will note that the land within Mr Mrs Pannell's ownership which abuts Rayleigh Avenue has never been designated as a nature reserve or indeed an area which requires wildlife protection.
19. To the contrary until Mr Mrs Pannell purchased the site, Planning Enforcement investigated and considered issuing a section 215 notice. The erection of the fence which was erected several years ago has not caused any demonstrable harm. The visual amenity of adjoining neighbours and indeed the wider community has been vastly improved by virtue of the site being cleared of dumped waste, landscaping and planting being installed to encourage wildlife, and the badger set afforded extra protection.
20. The simple point here is that the fence was erected several years ago. There has been no harm caused to wildlife, and no report submitted by the objectors to support their claims.
21. It should also be noted that in the event the fence is removed the badger set which is protected by a matter of law will then become exposed causing potential harm exactly the opposite which the objectors are trying to achieve which is badgers protection.

REFUSE

- 1 The material change of use of land referred to as the wooded margin to residential garden and the 1.8m close bordered timber fence is harmful to visual amenity, particularly given the location on a corner plot. The unauthorised fence is a conspicuous feature significantly reducing the open character of Rayleigh Avenue and Hillside Road. The fence significantly reduces the existing open, soft landscaped green character which would significantly detract from the overall character and appearance of the area and would have an adverse impact upon the street scene. The proposed development would be contrary to policy CP1 of the Core Strategy and

policies DM1 and DM3 of the Development Management Plan and relevant parts of the National Planning Policy Framework relating to achieving good design.

As such condition 9 to the permission for two dwellings granted on 7 May 2015 under application reference 15/00046/FUL should be retained and a new inner fence line placing the group of trees outside the curtilage of the house to plot 1 provided.

Relevant Development Plan Policies and Proposals:

Policies H1, H5, H6, CP1, ENV1, ENV9, CLT1 and T8 of the Core Strategy 2011

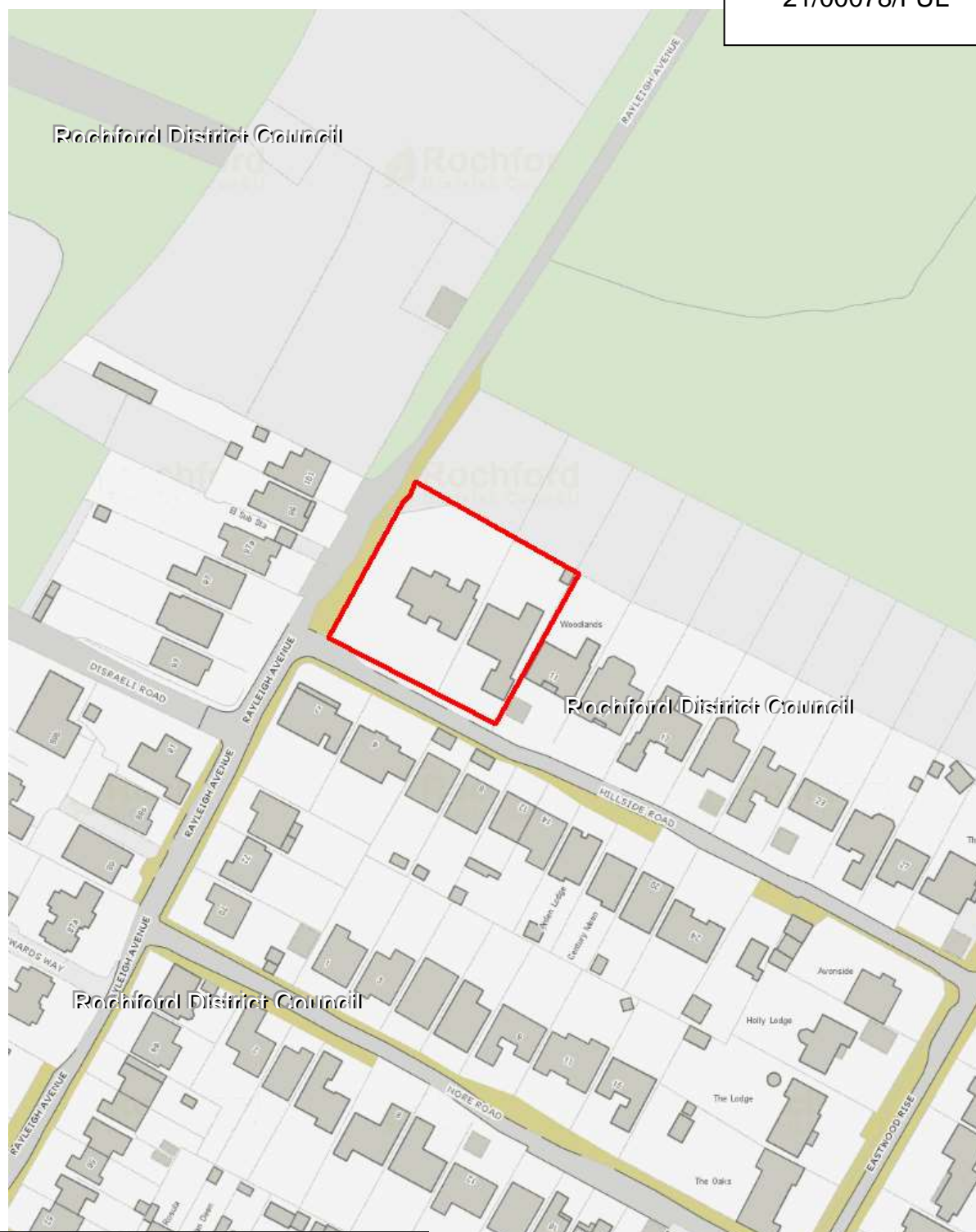
Policies DM1, DM2, DM3, DM4, DM5, DM25, DM27 and DM30 of the Development Management Plan 2014

National Planning Policy Framework

Allocations Plan (2014)

SPD - Parking Standards

21/00078/FUL



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