

DELEGATED OFFICER REPORT

Application Ref: X/25/99428

Site Address: THE FIRS, PORTSMOUTH ROAD, BURSLEDON, SOUTHAMPTON, SO31 8EW

Case Officer: Gregg Chapman

Description: Removal of condition 9 (retention of boundary hedge for privacy reasons) of application F/12/70209 (erection of a three bed dwelling).

Particular Site Constraints?	Yes ☒	No ☐
- Within the Urban Edge - Character Area Appraisal for Bursledon, Hamble-le-Rice, and Hound.		

Planning History?	Yes ☒	No ☐
F/12/70209 - Erection of a three bed dwelling – Approved, 13/03/13.		

Publicity:	Letters ☒	Site Notice ☐	Newspaper ☐
Representations:	2 letters – Support - Owner of 1 Claremont Cottages to north – I had the condition applied when the building of The Firs was planned and I was living at the property. I am in the process of selling part of the garden of 1 Claremont Cottage to Mr Harvey of The Firs. - Current occupant of 1 Claremont Cottage - I have no objections to the application.		
Parish Council:	No objection		
Tree Officer	No objection		
Ecology	Comments; - Although this application is for removal of a condition, it is essentially for removal of a hedge. - The overgrown fir trees provide potential habitat for nesting birds and bats and would be subject to the EBC tree replacement policy if removed. - Removal of the hedge and replacing it with a bare fence with no vegetation would lead to a net loss of biodiversity. This is contrary to DM 11 and the NPPF and the Environment Act 2021. If the hedgerow is longer than 5 m then 10% biodiversity net gain will be required. - A revision in the property boundary is mentioned in the planning statement but not shown on any of the documents submitted. - Further information is required on the position of the proposed new site boundaries and any potential biodiversity enhancements and landscaping proposed by the applicant. - Invasive species are also mentioned in the planning statement. Which species are these? It is the responsibility of the applicant to ensure that invasive species listed on Schedule 9 of the Wildlife and Countryside Act 1981 are not allowed to be spread into the wild. - If this application is permitted, a CEMP will be required to ensure that precautionary working methods prevent the spread of invasive plant species.		

Site Visit:	Yes ☒	No ☐
Details: 10 th June 2025		

Policy:**National Planning Policy Framework
Planning Practice Guidance****Development Plan:**

The Eastleigh Borough Local Plan 2016-2036 The most relevant policies are Development Management policy DM1.

Supplementary Planning Documents:

Quality Places; Character Area Appraisals - Bursledon, Hamble-le-Rice and Hound Character Area BHH 31

Assessment:

Condition 9 of application F/12/70209, stated that;

The existing hedging along the boundary with 1 Claremont Cottages to the north of the site must be retained to a height of at least 2.5m.

Reason: In the interests of amenity.

It is set out within the submitted supporting statement that the hedge which is formed of fir trees is largely deceased (which has been observed on site), and that an area of the garden of 1 Claremont Cottages, between The Firs and 1 Claremont Cottage is in the process of being sold to The Firs (this area is not defined, and is not required to be so for the purpose of the variation of condition submission). It is indicated that a boundary fence would be erected to provide privacy between properties.

No planning consent is required to sell garden land between neighbouring properties (or thus change boundaries), as no change of use occurs. Therefore, notwithstanding that trees within the hedgerow are deceased, upon sale of (what is presumed as the rear part of) the garden of 1 Claremont Cottage, the hedgerow would instead become a feature within the garden of the Firs, and would serve no boundary purpose, or thus amenity purpose.

Furthermore, upon sale of the land, the hedgerow would become irrelevant (and the condition ultra vires), as it would no longer, as a matter of fact, be a hedge "*along the boundary with 1 Claremont Cottages*", which the condition refers to, as the boundary would move.

The purpose of the condition appears to have been to form boundary treatment, and prevent overlooking of the garden at 1 Claremont Cottages from the rear of the new property (now constructed and known as The Firs). This was a specific request of the then occupier of 1 Claremont Cottages within their comments to application F/12/70209, and was subsequently conditioned. With the current ownership arrangements and the current outlook, without any boundary hedgerow, overlooking of the rear part of the garden would be possible, with the dwelling at 1 Claremont Cottages approximately 21 metres distant. As such the relationship is with the rear part of the garden only, and not the immediate part of the garden outside of the dwelling, most important for recreation/dining, etc.

The rear of the rear garden of 2 Claremont Cottages is separated from the Firs by approximately 6 metres, and the rear elevation of the dwelling further to the north is approximately 18.2 metres. In addition, the rear elevation of the Firs, at first floor, includes only rooflights that are well set in from the eaves, and were required (condition 14 of application F/12/70209) to be high level windows with cills no less than 1.7m above the floor level of the room it serves, preventing any overlooking. Permitted development rights were withdrawn preventing the insertion of any further windows (condition 13) or other alterations to the rear roof (condition 15).

It is, therefore, considered that given the distances, juxtaposition of neighbouring properties/rear parts of rear gardens, the conditions regarding window heights, and the insertion of new windows, that, whether or not the hedgerow were removed, that there would not be any significant amenity impacts associated with the removal of the hedgerow. The condition can therefore be removed.

Tree Removal

The Tree Officer has no objection to the removal of the hedge.

The Biodiversity Officer does make comments regarding the biodiversity potential of the hedge and the need for Biodiversity Net Gain (BNG), referring to the Environment Act. The application is exempt from BNG. As set out in Planning Practice Guidance,

“Biodiversity net gain does not apply to:

- section 73 permissions where the original permission which the section 73 relates to was either granted before 12 February 2024 or the application for the original permission was made before 12 February 2024”*

Other conditions

The variation of condition application creates a new planning permission. Clearly conditions related to the works for the construction of the dwelling, that has now occurred are not relevant and can be removed. The other conditions of the permission F/12/70209, which have not sought to be amended or removed, are re-imposed, all be it with sections related to the construction of development being removed, and elements relating to the retention of such matters (walls, parking) being retained. Further changes to conditions would need to be part of any condition variation application and considered upon their merits.

Other Matters

The Biodiversity Officer raises a request for a CEMP to address any removal of invasive species in the event of permission being granted. This is not considered necessary or reasonable for a submission that relates to a household, and where other legislation (Wildlife and Countryside Act) prevent, as an offence, the spread/removal/disposal of invasive species other than in prescribed matters. It is, also, not relevant to the condition, which sought the retention of the hedgerow for privacy purposes only.

There are no likely significant impacts on the SPA.

Climate Change

In July 2019, the Council declared a Climate Change and Environmental Emergency. In doing so it agreed, among other things, to: (a) put in place measures to ensure the Council's own operations and functions achieve carbon neutrality by 2025; (b) work with partners to aim for all projects and services delivered in the Borough to achieve carbon neutrality by 2030; (c) ensure that the Council's procurement policy recognises carbon neutrality as one of its primary considerations; and (d) recognise the urgency of action to mitigate and adapt to climate change in every decision taken by the Council. This is underpinned by the Climate and Environment Emergency Strategy 2020–2030 and the supporting Climate and Environmental Emergency Action Plan – Update June 2020.

The declaration of the Climate Change and Environmental Emergency demonstrates a strong commitment from the Council to achieve net zero. The NPPF, development plan and adopted local plan policy do not set this as a specific target, but it is a material consideration to be considered alongside all other material considerations. In any case addressing climate change is a core part of the NPPF and local plan policy. The need to

support the economy is part of the Strategic Environmental Assessment for the adopted local plan, as is an assessment of climate impacts.

Equalities Implications:

Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states:

- A public authority must, in the exercise of its functions, have due regard to the need to:
 - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

When making policy decisions, the Council must take account of the equality duty and in particular any potential impact on protected groups. It is considered that this application does not raise any equality implications

Conclusion:

Recommendation:

PERMIT ☒

REFUSE ☐

Comments ...