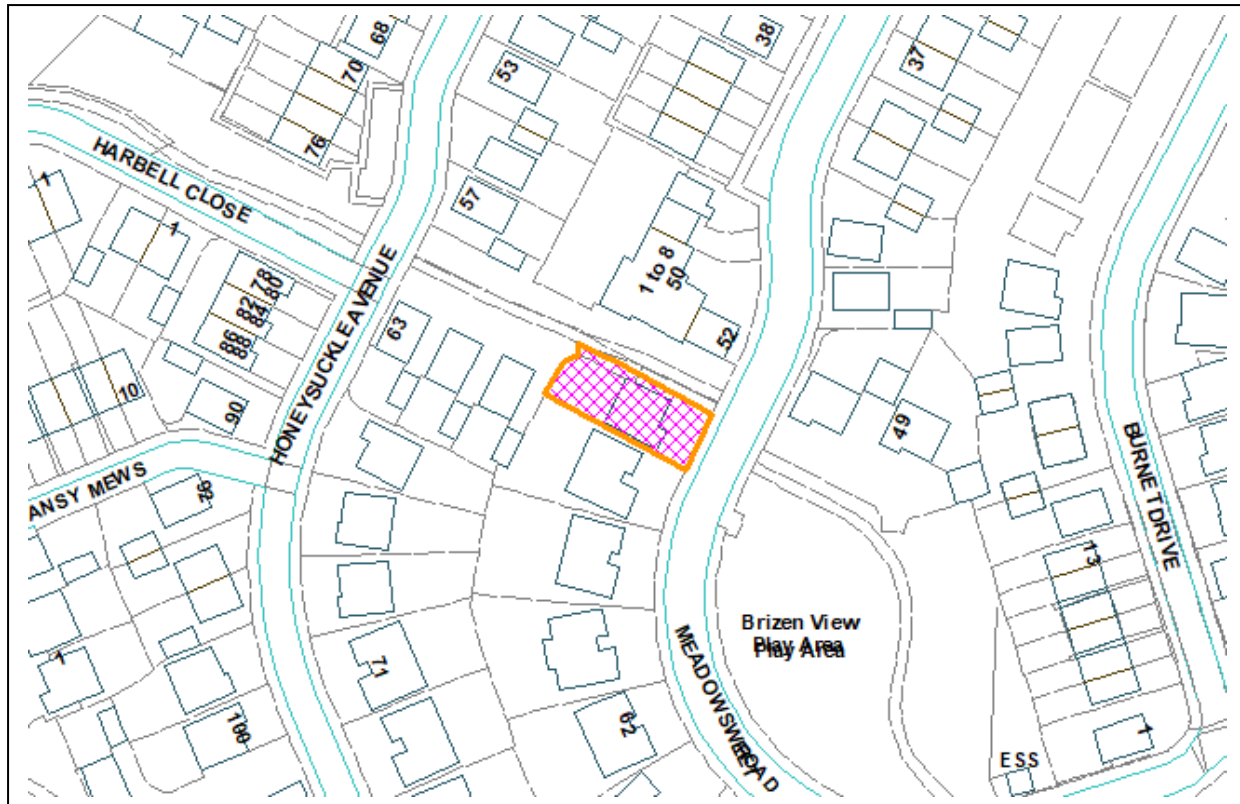


## Planning Committee

<b>Date</b>	17 January 2023
<b>Case Officer</b>	Joe Gibbons
<b>Application No.</b>	22/00807/FUL
<b>Site Location</b>	54 Meadowsweet Road, Shurdington
<b>Proposal</b>	Change of use from open space to residential garden land and erection of 1.8m high close boarded timber fence (retrospective)
<b>Ward</b>	Shurdington
<b>Parish</b>	Shurdington
<b>Appendices</b>	Existing and Proposed Block & Location Plan Photos of site x3 Landscaping plan R.0337_09-2J of 16/00168/CONDIS Strategic Landscape Master Plan R.0337_07G of 16/00168/CONDIS
<b>Reason for Referral to Committee</b>	Called in for Committee determination by Councillor Surman to assess the impact of the extended fence on the wider area.
<b>Recommendation</b>	Refuse

### Site Location



## 1. The Proposal

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Full application details are available to view online at:

<http://publicaccess.tewkesbury.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=REUE0DQDKX600>

- 1.1 The application seeks permission for change of use from open space to residential garden land and the retention of a 1.8m high close boarded timber fence.

## 2. Site Description

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- 2.1 The application relates to a piece of land along the northern side elevation of No.54 Meadowsweet Road.

## 3. Relevant Planning History

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Application Number	Proposal	Decision	Decision Date
14/00838/FUL	Full application for residential development comprising 377 dwellings, including access and associated infrastructure.	PER	26.04.2016

## 4. Consultation Responses

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Full copies of all the consultation responses are available online at

<https://publicaccess.tewkesbury.gov.uk/online-applications/>.

- 4.1 Parish Council – No comments received.
- 4.2 Building Control – No comments received.

## 5. Third Party Comments/Observations

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Full copies of all the representation responses are available online at

<https://publicaccess.tewkesbury.gov.uk/online-applications/>.

- 5.1 The application has been publicised through the posting of neighbour notification letters for a period of at least 21 days.
- 5.2 7 letters of representation have been received making the following comments;

### **Support**

- Shrubs previously in place of the fence attracted litter and dog poo bags. Since erection of fencing, there have been zero cases of dog poo bags left there, and almost no litter.
- The landscape has not been changed in anyway; if at all it looks better.
- No overshadowing effects or loss of privacy.
- Fence provides security and privacy for the owners.
- Area enclosed by fencing has planning permission to be used as private garden.

## **Objection**

- When fence was erected, it had a negative impact on the residents whose properties are adjacent to it.
- Prior to erection of fence there was an open border which contained shrubs and bushes.
- Fence is an eyesore and looks out of place within the confines of the walkway and the rest of the estate.

## **6. Relevant Planning Policies and Considerations**

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### **6.1 Statutory Duty**

Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise

The following planning guidance and policies are relevant to the consideration of this application:

### **6.2 National guidance**

National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG)

### **6.3 Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) – Adopted 11 December 2017**

- Policy SD4 (Design Requirements)
- Policy SD14 (Health and Environmental Quality)

### **6.4 Tewkesbury Borough Local Plan to 2011-2031 (TBLP) – Adopted 8 June 2022**

None

### **6.5 Neighbourhood Plan**

None

## **7. Policy Context**

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**7.1** Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the Development Plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.

**7.2** The Development Plan currently comprises the Joint Core Strategy (JCS) (2017), saved policies of the Tewkesbury Borough Local Plan to 2011-2031 (June 2022) (TBLP), and a number of 'made' Neighbourhood Development Plans.

**7.3** The relevant policies are set out in the appropriate sections of this report.

**7.4** Other material policy considerations include national planning guidance contained within the National Planning Policy Framework 2021 and its associated Planning Practice Guidance (PPG), the National Design Guide (NDG) and National Model Design Code.

## **8. Evaluation**

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### **Design**

- 8.1** JCS Policy SD4 of the Joint Core Strategy sets out requirements for high quality.
- 8.2** Policy SD14 of the JCS requires that new development must cause no harm to local amenity including the amenity of neighboring occupants.
- 8.3** Section 12 of the National Planning Policy Framework (NPPF) states at paragraph 126 that 'Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities'. Paragraph 130 states 'Planning policies and decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development and are visually attractive because of good architecture, layout and appropriate and effective landscaping'.
- 8.4** The application proposes to change the use of open space to residential garden. The area of land to be incorporated into the residential curtilage of No.54 is to the north of the plot, illustrated by a dotted line on the site plan to represent the fencing. This land is shown as a landscaped area on the Soft Landscape Proposed Sheet 2 of 5, drawing reference R.0337\_09-2J, permitted as part of a condition discharge application, reference 16/00168/CONDIS, linked to planning permission reference 14/00838/FUL which approved the residential estate. Also submitted with this application was plan R.0337\_07G, a strategic landscape masterplan which illustrated the landscaping across the entire development site of the estate.
- 8.5** This plan indicates shrub / herbaceous planting was to be implemented along the northern boundary of the site up to the rear elevation of the dwelling where the remainder of the land associated with No.54 on this boundary, and subject to this application, was to be an area of amenity grass.
- 8.6** The proposed timber fencing installed, for which permission is being sought through this application, is located on the northern boundary, wrapping around to the western boundary where it adjoins to the existing red brick boundary wall of No.54 and measures approximately 15.8m in length and 1.8m in height. The fencing adjoins existing fencing located on the northern elevation of No.54 and replaces shrub / herbaceous planting.
- 8.7** The fencing adjoins the footpath leading from Meadowsweet Road to Honeysuckle Avenue and is highly visible as the property forms a corner plot of the development. The dwellings surrounding the development have open frontages, including No.54, set back from the highway, this is represented across the wider housing estate. The land immediately opposite No.54 is public open space, Meadowsweet Road Playground, and this together with the open frontages, provides an open and pleasing character within the estate.
- 8.8** The application site already features an existing red brick boundary wall which marks the rear garden of the dwelling. Boundary treatments surrounding the application site generally consist of red brick walling, not timber fencing, which is commonly separated from footpaths or the highway via a buffer of soft landscaping / grassed areas contributing positively to the appearance and character of the street scene.

- 8.9** The land subject to this application forms part of the path, 'green link' which is illustrated on strategic landscape masterplan of the previous application, which runs from the Meadowsweet Road Playground on the east of the estate to a smaller play area on the west of the estate. The design and layout of the estate and this path in particular would have been considered during the design and decision making process of the original 14/00838/FUL permission. The path and its layout would have been purposely designed to create an open feeling within a built up, developed urban area. This is emphasised as No.54 and the adjacent flats to the north of the property are separated by a strip of open green amenity space featuring young trees.
- 8.10** Open space is a characteristic of the path with built development separated from the path via a buffer of grass and other planting. This helps to deliver a green corridor which adds to the overall quality of the area over the lifetime of the development, contributing to public open space and creating a better place in which to live, whilst providing a functional purpose of use by pedestrians.
- 8.11** The proposed fencing creates an invasive hard barrier, eroding the open space. The fencing would result in an incongruous feature by way of its extent and encroachment towards the footpath which invades into the open space, having a detrimental impact on the green link, failing to respect the general open character and pattern of the street scene.
- 8.12** Whilst the development would not result in loss of light upon or overshadow of neighbouring occupants, as stated above, the proposal erodes the open feel of the area, effecting visual amenity.
- 8.13** The proposal would not be of an appropriate design and would not be in keeping with the character and appearance of the property and wider street scene. The proposed development results in a loss of amenity grass area which was visually attractive and would have contributed to the level of amenity enjoyed by the public as it would have contributed to overall visual quality of the area. Therefore, the proposal would not have an acceptable impact on the character of the surrounding area and result in harm to the street scene and public amenity. As such the proposal would fail to comply with the requirements of Policies SD4 & SD14 of the JCS and Section 12, paragraphs 126 & 130 of the NPPF.

### **Other Matters**

- 8.14** The applicant has stated that there has been no change of use as the title deeds demonstrated that the land beyond the red brick wall is already within the owner's control and was therefore, already residential garden. However, whilst the land is owned by the applicants as demonstrated on the Land Registry documentation, this does not provide a right for the land to lawfully be used as residential curtilage and therefore not as residential garden.
- 8.15** The erection of the fencing represents operational development which facilitates and is integral to the change of use the land to residential garden and therefore falls to be assessed against the application for a change of use. Should the application be refused, and enforcement action considered expedient, the fencing could properly be enforced against having regard to the principle established within the case of *Murfit v Secretary of State for the Environment and East Cambridgeshire DC* (1980).

- 8.16** Whilst there is no statutory definition of the word ‘curtilage’, the courts have previously ruled upon the meaning of the word on several occasions. The leading authority on this issue is *Sinclair-Lockhart’s Trustees V Central Land board* (1950) 1 P. & C.R. 195, where it was held that;
- 8.17** “The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way”.
- 8.18** The rear and front gardens are both clearly pieces of land which, whilst not being completely enclosed, serve the purpose of the house in a necessary or useful way, the rear garden more obviously marked as it is enclosed by red brick walling. The land in question subject to this application was originally purposed to be used as an area of amenity grass and so it was clear that the land was never intended to be used as private garden amenity space.
- 8.19** The land, whilst belonging to the Applicants was not used for the comfortable enjoyment of the house and the land was not necessary or useful in a way which would serve the house which differs to the obvious use of the front and rear gardens. As such, as the land is not within the curtilage of the dwelling and is now used for the purpose of residential garden, there has been an unauthorised material change of use of land.
- 8.20** The change of use of the land is acceptable in principle, however this is heavily dependent upon an acceptable proposal incorporating natural boundary treatment which would retain the green corridor characteristic and positively contribute to the visual amenity of the area, the current proposal fails to incorporate this aspect.

## **9. Conclusion**

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- 9.1** By virtue of the fencing forming an integral part of the change of use of land to residential garden, the proposal is not of an appropriate design or in keeping with the character and appearance of the property and would not have an acceptable impact on the character of the surrounding area.
- 9.2** Furthermore, the proposal does not represent high quality development and fails to protect and improve environmental quality, representing unacceptable harm to local amenity.

## **10. Recommendation**

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- 10.1** It is considered that the proposal would fail to accord with relevant policies as outlined above. Therefore, it is recommended that planning permission be **refused** for the following reasons:

## **11. Reasons**

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- 1 The proposed development results in the introduction of an incongruous feature, which by reason of its extent and encroachment towards the footpath and erosion of the open space, is harmful to the character and appearance of the street scene and results in the loss of visually attractive open space which contributes to the level of amenity enjoyed by the public and therefore conflicts with Policies SD4 & SD14 of The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) - Adopted 11 December 2017 and the advice contained in the National Planning Policy Framework.

## **12. Informatives**

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- 1 In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner offering pre-application advice, detailed published guidance to assist the applicant and published to the council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding. However, as a consequence of the clear conflict with Development Plan Policy no direct negotiation during the consideration of the application has taken place.