

Report to Area Plans Sub-Committee South

Date of meeting: 18 April 2018



**Epping Forest
District Council**

Subject: 49 Manor Road, Chigwell – Land Raising

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Democratic Services: Jackie Leither (01992 564243)

Recommendation:

That the action taken in response to an enforcement investigation of land raising in the rear garden of 49 Manor Road, Chigwell, be noted.

Report Detail:

Background

As requested at Plans South on 24 January 18 a report on the enforcement investigation to land raising in the rear garden of No 49 Manor Road is hereby submitted.

Members are requested to note and agree the Officers conclusions on the expediency and proportionality of the action taken.

The Site

No 49 Manor Road is a detached dwelling house in an urban area of Chigwell which is characterised by large single dwelling houses on spacious plots. Over the last few years the original house has been largely removed and remodelled to its current form. Numerous applications have been received regarding these alterations, many of which have been retrospective, and some are still ongoing and are subject to ongoing assessment by Planning Officers which will be reported to Plans South. This has been a complex and at times, frustrating site to deal with and there has been considerable enforcement involvement on the site.

The rear garden originally sloped down gently from the eastern boundary to the western boundary (with No 47) and the garden of No 47 is lower than that of No 49. The owner of No47 has raised a number of complaints about the site.

It should be noted that a number of conifers were removed from the rear garden in 2015 but these were **NOT** covered by a TPO. Although the Tree Section did investigate the matter no offences under the Planning Acts were revealed.

As part of the ongoing works to refurbish the house and site the rear garden has been remodelled, trees cut down, the height of the land along a strip along the western boundary adjacent with the rear garden of No 47 has been raised and a pool building and a shed erected along the southern boundary (and in the case of the shed on the boundary with No 49).

This report does not cover any issues with the main house. This has been investigated separately, including officers taking measurements on site which were compared with the relevant plans and found to be accurate.

Planning Applications & Enforcement Investigations

There is a live enforcement investigation under ENF/0022/16 re the unauthorised works at the site. This investigation follows the Councils policies as laid down in the Local Enforcement Plan.

A planning application – EPF/0537/16 - was made for the land raising and refused by Plans South in January 2017. The subsequent enforcement action is the subject of this report. The pool building was erected under permitted development and does not require planning permission.

The Shed does require planning permission, as it is over 2.5m high and within 2 metres of the boundary, an application for which has been submitted – EPF/2877/17

It is noted that it is not an offence to make retrospective applications and these must be treated on their own planning merits. The fact that it is retrospective is not a justification for refusing an application. The assessment of an application must be made on the planning merits of that application compared to National and Local Planning Policies.

A PA for raising the land was refused on 04 Jan 17 by Plans South – EPF/0537/16

A PA is under consideration of the shed – EPF/2877/17

The Land Raising

The planning application for the land raising was considered at Plans South in January 2017 and refused for the following reasons:

1. The application appears to misrepresent the extent of land raising carried out at the application site. It appears the land raising carried out is over a larger area than indicated in some of the application drawings and that the increase in levels adjacent to 47 Manor Road is significantly more than the 400mm indicated. Moreover, the development carried out appears to also include the erection of a retaining wall and the erection of an outbuilding. By reason of its height in relation to land levels at 47 Manor Road and its proximity to the site boundary with 47 Manor Road the development as a whole is likely to result in excessive overlooking of the rear garden of 47 Manor Road and appear excessively overbearing when seen from that rear garden. The trees in the rear garden adjacent to the works carried out cannot be relied upon as permanent mitigation of the harm to the living conditions of 47 Manor Road. As a consequence, the proposed development is likely to cause significant harm to the living conditions of 47 Manor Road contrary to Local Plan and Alterations policy DBE9 which is consistent with the National Planning Policy Framework.

Way forward:

Members considered restoring land levels to the levels prior to the commencement of the development and removal associated works that are either required for the land raising operations or rely upon them, including a retaining wall and part of an out building, is likely to address the objections raised.

It is noted that no enforcement action was requested, as recorded in the minutes of the meeting, by Plans South when the Planning Application for these works refused. However, Officers continued their investigations on site. A summary of the investigations and the Enforcement conclusions are below.

It is also the case that the Planning Sub Committees do not have the delegated authority under the Constitution to authorise enforcement action; this function appears to be completely delegated to officers. Any request by the Committee for enforcement action would need to be referred up to DDMC. This advice has been confirmed by the Democratic Services Section.

The Photographic Evidence

The house and rear garden was photographed in 2014 by Planning Officers and a Tree Officer, and 2015/6/7 by Planning and Enforcement Officers. Relevant photos are:

Photo 1 shows the 2014 original area of the rear garden on the back boundary with No 47 (on the western boundary). Note the fence panels are still in situ in 2017 and were a useful reference to the land raising carried out. There are three horizontal battens visible on each panel giving a rough height of each third of the fence as 566mm as it is a 1.7m fence with photo 7 confirms this height.



Photo 2 shows the 2014 western boundary with No 47 looking back to the houses and the now removed swimming pool. Note that the large tree and fence, which are still in situ, and the uneven and rising level of the land, which rises to the south west (i.e. the corner where the wooden shed is).



Photo 3 shows the 2014 rear garden to the left of the tree shown in photo 2 and the elevations of No 49 and No 47 and the removed swimming pool in No 49. Note the rise of land to the left (south) of the picture and the land levels relative to the fence.



Photo 4 shows the 2014 rear garden of no 47 looking to the south-eastern corner of his garden (which would be the south western corner of No 49 where the shed now is). Note the height of the gravel boards and the land rising to the south eastern corner covering the gravel boards (if installed).



Photo 5 shows the 2017 rear garden looking towards the new house showing the original fence, the breeze block retaining wall. If this is compared against **photo 2 and 3** it's clear that the current land level is close or identical, to that of the 2014 garden, although it has been made more level than the original garden.



Photo 6 shows the 2017 rear garden south west corner showing the pool building to the left and shed subject of the planning application centre re and the original fence to the right. The retaining wall is clear. Note the black pipe in front of the shed which is visible in **photo 7 & 8** with the measuring stick.



Photo 7 shows the 2017 long view of the measurement of the land and it is clear that the land has not been raised by 1.2m.



Photo 8 shows the 2017 close in measurement of the land in the south western corner of No 49. The horizontal batten on the fence panel is the 3rd batten from the top of the fence (i.e. the batten nearest the ground). This shows the land raising is around 800mm in this area as the land is below the other piece of wood in the picture.



Photo 9 shows the overall view of the rear garden in February 2018, with new fencing erected along the western boundary with No 47.



Conclusion

It is a fact that the land has been raised along the western boundary of No 49 very roughly from the left of tree visible in photo 2 to the rear (southern) boundary along the boundary in a narrow strip due to the original height and undulation of the garden as it rose to the south. The area is minimal in width due to the ground undulations of the garden in this area and the height of the raising varies from around 400mm along most of the length to 800mm on the area of land that the shed is on, and as an estimate averages about 566mm (or half a metre). This is calculated from the photos, measuring stick and horizontal fence battens. The area of land raising is highest on the section boundary where the shed has been erected.

It is noted that the pool house (which was referred to in the reason for refusal of the 2016 planning application) is permitted development. Its height is measured from the highest part of the adjacent land, which in this case is on the eastern boundary with No 51 Manor Road – i.e. the opposite side of the garden.

It was the case that no enforcement action was requested in the minutes by Plans South when the Planning Application for these works was considered on 04 Jan 17 in EPF/0537/16. It is also the case that Plan Sub Committees do not have delegated authority to authorise enforcement action. Officers continued their investigations on site. After the decision the applicant made it clear he was going to appeal the decision, but in spite of several chasing conversations no appeal was made.

After further site visits and evidence gathering as evidenced above the decision was made that the land raising was not sufficient to justify further enforcement action. This decision was made in accordance with national and local policies (the Councils Local Enforcement Plan) after careful assessment of the facts revealed by the continuing investigation.

These were the prior existing land levels on either side of the fence at the end of the garden, including the fact that the garden of No 47 has always been lower than that of No 49, and that the garden of No 49 was originally undulating and sloping. The evidence was that the land raising carried out was not as high or as significant as the reasons for refusal alleged on the information then before the Committee. In the professional opinion of officers the land raising which has occurred does not cause significant harm in terms of overlooking as the area of garden which has the potential to be overlooked is at the far end of No 47 rear garden and there is no direct overlooking of the rear elevation of No 47. It is also the case that it is not unusual for the rear gardens of properties to be overlooked by neighbours from rear elevations or due to different land levels, and some degree of overlooking is the norm especially in highly developed urban area such as this location.

When considering if enforcement action is justified it is the case that the planning system does not exist to punish wrong doers. It is mandated to consider what harm has been caused, and if it is caused whether it is proportionate and expedient to take enforcement action to remove the harm or reduce its impact. These principles are laid out in national Policy and the adopted Local Enforcement Plan. In this case whilst the land has been raised the investigation shows that it is not as high as previously alleged and the harm caused is, in the professional opinion of officers is not sufficient as to justify the service of an enforcement notice, which would stand up to scrutiny in an appeal.

The shed does require planning permission and this is ongoing. Should permission be refused enforcement action can be taken if considered proportionate and expedient.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

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or if no direct contact can be made please email:

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