

PURLEY ON THAMES 12/02485 Pins Ref 2191770	1107 Oxford Road, Tilehurst Mr R McCarthy	Certificate of lawful use garden area incidental to the dwelling house within which works to create a sunken garden landscape feature have taken place.	Delegated Refusal	Dismissed 31.12.13
PURLEY ON THAMES 11/00534 Pins Ref 2196064	1107 Oxford Road, Tilehurst Mr R McCarthy	Change of use of amenity land to residential purposes	Enforcement	Dismissed 31.12.13

With regard to the LDC appeal, the issues considered by the Inspector were whether the use of this land as garden area incidental to the residential use of no. 1107 was lawful because it formed part of the curtilage of no. 1107, and whether the works carried out to create the sunken garden landscape feature were lawful because they did not amount to a building, engineering or other operation and so did not fall within the definition of development.

The overall conclusions of the Inspector were that the land between the shared driveway and Oxford Road did not at the time of the application form part of the curtilage of no. 1107 Oxford Road and therefore the provision in section 55(2)(d) (*which provides that the use of land within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse as such shall not be taken to involve development of land*), did not at that time apply to that land so as to make its use as a garden lawful. The Inspector also considered that the land did not have a lawful use as a garden or for residential purposes. The Inspector also concluded that the works to create a sunken garden landscape feature amounted to an engineering operation for which planning permission would be required. Consequently, neither the use as a garden nor the creation of the sunken garden landscape feature were, at the time of the application, lawful. The Inspector thus concluded that the Council's refusal to grant the certificate was well-founded and that the appeal should fail.

With regard to the enforcement notice appeal, the enforcement notice was appealed on grounds (c) (*that the matters do not constitute a breach of planning control*), (a) (*that planning permission ought to be granted*) and (f) (*that the steps required to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control*).

The appeal on ground (c) failed since the Inspector concluded that the land is not now, and was not at the time the notice was issued, within the curtilage of the dwellinghouse and its use for residential purposes therefore involves development. The Inspector also considered that there is no evidence that the residential use of the land, or its use for the parking of cars, is lawful for any other reason.

The main issue in the appeal on ground (a) was the effect of the development on the character and appearance of the surrounding area. The Inspector noted the land was in a "Semi Rural (Very Low Density) character area as identified in the Council's SPD Quality Design. The Inspector also agreed with the assessment within the Purley on Thames Village Plan which identifies the tree-lined approach along the Oxford Road as an important feature emphasising the separateness and rural nature of the parish. The Inspector considered that the land contributes significantly to the visual attractiveness of the area and forms an undeveloped buffer between the dwellings and the road. The Inspector also considered that the loss of trees and the creation of a parking area have significantly diluted the semi-rural feel of this part of Oxford Road and that the character of the land itself has changed significantly from quasi-woodland to a domestic garden at odds with the woodland character of this part of the road. The Inspector felt that any more intensive residential use would further dilute and harm the character and appearance of the area. Furthermore, the Inspector considered that if the change of use were to be permitted, it would be difficult for the Council to resist applications to change the use of other parts of the land between Oxford Road and the shared driveway which would add to the harm already caused by the change of use of the appeal site, further undermining the semi-rural and undeveloped character of the area. The Inspector concluded that the development enforced against has caused significant harm to the character and appearance of the area and that the appeal on ground (a) therefore fails.

The appeal on ground (f) also failed since the Inspector considered the requirements of the notice to be quite clear and that the appellant is in the best position to know what items have been brought onto the land in connection with its residential use, and to know therefore what items should be removed.

Overall the enforcement notice appeal did not succeed and the notice was upheld and planning permission refused to be granted on the deemed application.