

**Item No. 11a****SCHEDULE B**

<b>APPLICATION NUMBER</b>	<b>CB/11/04291/FULL</b>
<b>LOCATION</b>	<b>177 Cemetery Road, Houghton Regis, Dunstable, LU5 5DF</b>
<b>PROPOSAL</b>	<b>Resubmission of CB/11/03337/FULL - Proposed boundary fencing repositioning</b>
<b>PARISH</b>	<b>Houghton Regis</b>
<b>WARD</b>	<b>Houghton Hall</b>
<b>WARD COUNCILLORS</b>	<b>Cllrs Mrs Goodchild &amp; Jones</b>
<b>CASE OFFICER</b>	<b>Donna Lavender</b>
<b>DATE REGISTERED</b>	<b>02 December 2011</b>
<b>EXPIRY DATE</b>	<b>27 January 2012</b>
<b>APPLICANT</b>	<b>Mr &amp; Mrs Alexander</b>
<b>AGENT</b>	<b>J M Bygate Designs Ltd</b>
<b>REASON FOR COMMITTEE TO DETERMINE</b>	<b>Deferred application via previous Committee held on 14th March 2012, for the investigation of a Legal Agreement</b>
<b>RECOMMENDED DECISION</b>	<b>Full Application - Granted</b>

**Site Location:**

The application site consists of semi-detached dwellinghouse located on a corner plot of Cemetery Road in the town of Houghton Regis. The site is flanked to the north by 175 Cemetery Road and to the east by 179 Cemetery Road.

**The Application:**

Permission is sought for the enclosure of part of an area of amenity land to the side of the property to provide additional garden space. The amenity land is mainly covered in Laurel hedging and trees whilst an adjoining area has been covered with hardstanding which had been previously used for parking. The 1.65 metre high existing boundary fence is proposed to be moved outwards 1.88 metres and replaced by 1.8 metre high fencing enclosing an area of 1.8 metres in width by 6 metres in depth. The remaining 4.3 metres width of amenity land to the road would be retained, including a Rowan tree and Laurel planting.

This application was recently deferred by the Planning Committee on 14th March 2012, to investigate the possibility surrounding a legal agreement which could be signed by the applicant which would ensure that the fence panels would be relocated in the event of the sale of their home in the future.

**RELEVANT POLICIES:****National Policies (PPG & PPS)**

PPS1 (Delivering Sustainable Development)

**Regional Spatial Strategy  
East of England Plan (May 2008)**

ENV7 (Quality in the Built Environment)  
SS1 (Achieving Sustainable Development)

**Bedfordshire Structure Plan 2011**

None

**South Bedfordshire Local Plan Review Policies**

BE8 (Design Considerations)  
R12 (Recreation Open Space)

**Supplementary Planning Guidance**

Central Bedfordshire Design Guide: A Guide for Development 2010

**Planning History**

SB/TP/81/0503 - Outline permission for the erection of houses on Land off Cemetery Road.  
SB/TP/81/1170 - Approval of Reserved Matters for residential development of 98 houses, 22 flats and 3 bungalows.  
CB/11/03337/FULL - Refusal of boundary fencing repositioning.

**Representations:  
(Parish & Neighbours)**

Town Council	Houghton Regis Town Council (14/12/11) - Objects on the grounds that the land to be enclosed is thought to be classified as amenity land.
Neighbours	Verbal objection from occupiers of 179 Cemetery Road, H/regis, further to their written objection on the previous planning application - Objects on grounds that: <ul style="list-style-type: none"><li>• The land is classed as amenity land</li><li>• The alterations would detrimentally affect an existing mature tree</li></ul>

**Consultations/Publicity responses**

1. CBC Trees and Landscape Officer (30/12/11) -	Objects to the granting of permission due to the fact that the fence position would cut through the middle of a Rowan tree within the existing municipal amenity land.  Further comments received on 07/02/12 in response to revised plans - Objection withdrawn due to relocation of the fence, subject to the imposition of conditions.
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## **Determining Issues**

The main considerations of the application are:

- 1. Principle of Development**
- 2. Affect on the Residential Amenity**
- 3. Landscape Considerations**

## **Considerations**

### **1. Principle of Development**

Policy R12 of the South Bedfordshire Local Plan Review states that planning permission will not normally be given for the development of amenity space, but exceptions would be considered where the new use is essential for the improvement, enhancement or enlargement of an existing area and where only a small part would be lost. The determination of this application should therefore be based on balancing the need to preserve amenity land against development, with any positive impact upon the residential amenity enjoyed by the applicants and any long term enhancement that could follow from the changed management of an area of amenity land.

A previous planning application was applied for and refused under planning reference CB/11/03337/FULL, which proposed to enclose a larger proportion of the amenity land and the existing Rowan tree. The application was refused as it was considered that the amount of land proposed to be enclosed would detrimentally affect the character of the streetscene and would likely set a precedent that the Authority would be unlikely to be able to resist similar developments.

The proposal herein would result in the enclosure of a smaller portion of amenity land measuring only 1.8 metres in width by 6 metres in depth and would not result in the enclosure of the existing mature Rowan tree. The proposal would also entail the reinstate most of the Laurel hedging that was once removed from the amenity land to provide hardstanding for a car parking space. It is considered that whilst the enclosure would reduce the area of amenity land and thereby potentially reduce the visual amenity function of the land, the proposed replacement Laurel hedging would seek to enhance the amenity land which would not be enclosed by reinstating the type of planting which is well established in the locality. The planting would also seek to mitigate the impact of the relocated fence panels and the relocation would allow for the Rowan tree to be retained, which contributes to the amenity function within the locality.

### **2. Affect on the Residential Amenity**

Due to the siting of the proposed fence, there would unlikely be an adverse impact on the occupiers of the adjacent dwellinghouse in terms of loss of light or overshadowing.

### **3. Landscape Considerations**

Objections were previously received on the recently refused planning application, in relation to the potential loss of the mature Rowan tree. The Rowan tree was planted as part of the original landscape scheme provided for the benefit of the whole estate and therefore its retention is essential in retaining the established landscape setting.

The original plans would have meant the loss of this tree however revised plans have been received which will ensure the retention of this tree and the Tree and Landscape Officer has therefore withdrawn his objection, subject to the imposition of conditions in relation to the trees retention.

#### **4. Other Issues**

##### Precedent

Planning permission was refused for the previous planning permission, as it was considered that the amount of land proposed to be enclosed and the high boundary fencing would not only detract from the character of the streetscene but would also set a harmful precedent, which would make it difficult for the Planning Authority to resist similar developments.

The amount of land now proposed to be enclosed is much smaller and there are few opportunities within the streetscene whereby this enclosure could be replicated exactly. The proposed landscaping on a part of the amenity land which is currently hardstanding, would make a positive contribution to the character of the streetscene, by reinforcing the Laurel hedging which is prevalent within the area. The applicant has also demonstrated special circumstances for their reasoning in requiring this land to be enclosed which relates to the additional requirement for garden space for their disabled child. We are therefore satisfied that any permission to enclose a portion of land would not set a harmful precedent.

##### Legal Agreements

Further to the request of the Planning Committee, investigations into the possibility of a legal agreement which could be entered into by the applicant has been undertaken. The applicant has stressed the importance of a timely decision on this application due to the needs of her disabled son and has felt the need to agree to such a legal agreement, due to time constraints. However, the applicant clearly considers there is no option to this 'compromise', and feels it to be absurd, and without precedent for other situations such as a loft conversion and emphasises the considerable costs involved in moving the fence twice.

Whilst the applicant has demonstrated the special circumstances of her child's need as a reason for the acceptability of the amenity lands enclosure it was previously considered by officers that whilst these circumstances could have been considered to be special, this was not the reason for the original recommendation of approval. Thus, the special circumstances case surrounding the recommendation for approval of this enclosure of land was in relation to the improvement and enhancement of the street scene by the re-instatement of laurel hedging and landscaping that has long since disappeared, due to the construction of the hardstanding. It is considered that the requirement for a legal agreement which is personal to the applicant for the reinstatement of the fence panels in their original location on the future sale of the property is in planning terms unreasonable, particularly given the costs of reinstatement and that the impact on the enclosure of this land would be seen to have been considered acceptable for potentially a lengthy period of years. The application is therefore again recommended for approval without an Agreement.

## **Recommendation**

That Planning Permission be GRANTED subject to the following:

- 1 The development shall begin not later than three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Consent is only being granted in recognition that the Rowan tree, as marked for retention on the "Proposed Floor Plan, Elevation and Site Plans" (Drawing 203-PL-010 Rev.C), shall be successfully retained without incurring any damage due to abrasion, cutting, scraping, nailing or excavation of the trunk or buttress roots during the course of construction and installation of the fence and fence posts. Any pruning of the branches of this tree shall only be undertaken with the written approval of the Local Planning Authority, both during the course of development and for a period of 5 years after completion of development.

Reason: To ensure the successful retention of the Rowan tree, which was planted as part of the original landscape scheme provided for the benefit of the whole estate, in order to mitigate against the loss of open-plan landscaping caused by this development, by maintaining the health, stability, natural appearance and visual amenity of this tree, still being retained in the remaining area of open -plan landscaping.

- 3 The planting and landscaping scheme shown on approved Drawing No. 203-PL-010 Rev C shall be implemented by the end of the full planting season immediately following the completion and first use of the development (a full planting season shall mean the period from October to March). The trees, shrubs and grass shall subsequently be maintained for a period of five years from the date of planting and any which die or are destroyed during this period shall be replaced during the next planting season and maintained until satisfactorily established.

Reason: To ensure a satisfactory standard of landscaping.  
(Policy BE8 S.B.L.P.R)

- 4 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers CBC/001, CBC/002, 203-SU-001 & 203-PL-010 Rev C.

Reason: For the avoidance of doubt.

## **Reasons for Granting**

The enclosure of part of the amenity land would not have a detrimental impact on the character of the area or an adverse impact on the residential amenity of neighbouring properties and is acceptable in terms of highway safety therefore by reason of its site, design and location, is in conformity with Policies R12 & BE8 of the South

Bedfordshire Local Plan Review 2004 and Policy ENV7 in the East of England Plan (May 2008) and Planning Policy Statement 1 (2005). It is further in conformity with the technical guidance Design in Central Bedfordshire, a Guide for Development, 2010.

### Notes to Applicant

1. In accordance with Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the Council hereby certify that the proposal as hereby approved conforms with the relevant policies of the Development Plan comprising of the Regional Spatial Strategy for the East of England (the East of England Plan and the Milton Keynes and South Midlands Sub-Regional Strategy), Bedfordshire Structure Plan 2011 and the South Bedfordshire Local Plan Review and material considerations do not indicate otherwise. The policies which refer are as follows:

**East of England Plan (May 2008)**

ENV7 (Quality of the Built Environment)

SS1 (Achieving Sustainable Development)

**South Bedfordshire Local Plan Review**

BE8 (Design Considerations)

R12 (Recreation Open Space)

2. In accordance with Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the reason for any condition above relates to the Policies as referred to in the Regional Spatial Strategy (RSS), Bedfordshire Structure Plan 2011 (BSP) and the South Bedfordshire Local Plan Review (SBLPR).
3. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval which is necessary must be obtained from the appropriate authority.
4. Please note that the unnumbered drawings submitted in connection with this application have been given unique numbers by the Local Planning Authority. The numbers can be sourced by examining the plans on the View a Planning Application pages of the Council's website [www.centralbedfordshire.gov.uk](http://www.centralbedfordshire.gov.uk).

### DECISION

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