

**Development Control**  
Salisbury District Council, 61 Wyndham Road,  
Salisbury, Wiltshire SP1 3AH

**officer to contact:** Carolyn Easter  
**direct line:** 01722 434570

**email:** ceaster@salisbury.gov.uk

**web:** www.salisbury.gov.uk

# Report

**Report subject:** Land at 18 Harnwood Road, Salisbury, SP2 8DB

**Report to:** City Area Committee

**Date:** 1<sup>st</sup> September 2005

**Author:** Carolyn Easter

---

### Report Summary:

To consider the expediency of enforcement proceedings in relation to:

- 1 – Operational Development comprising the raising of land levels and construction of a retaining wall materially altering the landform, without the benefit of planning permission.

### Introduction:

In February 2005, it was reported to the Council that groundworks were taking place at the above address. This commenced with the construction of a block retaining wall, followed by significant works using hired in plant to move soil from the higher (southern) end of the garden towards the lower (northern) side, to create a level space. This was finished off with the importation of 30 tonnes of topsoil and the laying of turf.

Additionally, although the 2 metre closeboard boundary fence was retained, the existing screen of trees to the side and rear of the property were removed.

The overall effect was to create an increase of land level in the order of 1 metre on the southern edge of the garden

An initial approach to the owner, on 16<sup>th</sup> February advised her that the works were beyond those which would constitute permitted development and as such were unauthorised. An invitation was extended to submit a planning application to regularise the works. Her emailed response on 21<sup>st</sup> February identified that she was unwilling to submit such an application and challenged our opinion that the works were unauthorised.

A Planning Contravention Notice was served on Mrs Cochrane, the joint owner of the property, on 19<sup>th</sup> April 2005. This was completed and returned via her solicitor on 11<sup>th</sup> May 2005.



Awarded in:  
Housing Services  
Waste and Recycling Services



Since that time, a great number of communications have passed between the Council, Mrs Cochrane and her representatives, and to date no planning application has been received in respect of this matter. Nor does Mrs Cochrane concede that such an application is required. It has been explained that an application could be an opportunity to overcome objections, such as the overlooking, and to rectify these by means of conditions as appropriate.

A Planning Application – reference S/2005/1020 - was submitted in respect of a new house on the site as it is Mrs Cochrane's intention to demolish the existing dwelling and replace it. This application has been assessed independently of the issue surrounding the matters in the garden and as such has had no bearing on this issue.

This report was originally scheduled to be on the agenda for the August City Area Committee meeting, but following information from Mrs Cochrane's solicitor that she intended to address the principal objection – overlooking – by means of appropriate planting, The Local Planning Authority offered to defer the report in order that such a scheme may be prepared. The Council's Arboricultural Officer put forward his recommendations on what would be considered acceptable and these were forwarded to Mrs Cochrane's solicitor along with The Local Planning Authority advice that any planting scheme would require to be formalised by means of a Unilateral Undertaking protecting the retention and future maintenance of the screen.

On 18<sup>th</sup> August, The Local Planning Authority received via Mrs Cochrane's solicitor a vague scheme of planting proposals. The Council Arboricultural Officer's opinion is that the information presented does not provide sufficient detail to make a decision. In addition, such planting as was proposed would not form an effective screen for at least 5 years, when the initial offer from Mrs Cochrane, agreed by the Council, was that the plants should be mature enough to form an immediate screen – approximately 6-8 feet in height. Further, Mrs Cochrane's solicitor considers that an undertaking is not necessary, but the Council wish this as an integral part of the scheme in order to maintain future control.

### **Site and surroundings:**

Harnwood Road is approximately half a mile south of Salisbury City Centre and has clear and uninterrupted views of Salisbury Cathedral. It is a residential area of large, detached dwellings.

Number 18 is set in a plot measuring approximately 55m x 25m at the widest point. The area is steeply sloping and the land falls away to the north and east. As a result, 18 Harnwood Road stands on higher ground than number 20, to the north, and also considerably above the properties located on Bishop's Drive to the east.

### **Planning history**

2005/1020    Replacement Dwelling and Attached Garage    Approved 18/07/05  
No other history

### **Planning policies:**

Policy G2(vi) of the replacement Salisbury District Local Plan is relevant in this case – development should avoid unduly disturbing, interfering, conflicting or overlooking adjoining dwellings to the detriment of existing occupiers.

### **Considerations:**

#### Nature of the Breach

Due to the scale and magnitude of the works which have altered the landform of approximately 75% of the rear garden of the property and raised the land level significantly, on a fact and degree basis it would appear that development has taken place. These operations are not “de minimus” and are beyond the scope of permitted development.

### Effect on Neighbouring Amenities

The properties immediately adjacent to the site – number 20 Harnwood Road and number 21 Bishops Drive – stand on a lower ground level to the site and as a result have both suffered a loss in privacy following these groundworks. 21 Bishops Drive is particularly affected due to the dwelling being ‘split level’ with the living accommodation being at the top. As a result, it is possible to look directly into the living room of number 21 Bishops Drive whilst standing in the garden of number 18 Harnwood Road. Prior to the work, there could have been a small degree of overlook into 21 Bishops Drive from the side garden of 18 Harnwood Road. This was, however, from a distance of around 40-50 metres and was mitigated by the screen of trees at the end of the garden of 18 Harnwood Road. There was no previous overlooking into the garden of 20 Harnwood Road.

The works have therefore resulted in a serious erosion of privacy for the adjoining dwellings to the north and east as the resultant fence height was no more than one metre above the level of the ground when the works were complete.

The groundworks undertaken and their resultant effect on neighbours is therefore contrary to policy G2(vi) of the adopted Replacement Salisbury District Local Plan in that it causes serious overlooking of adjoining dwellings to the detriment of existing occupiers.

### **PPG 18**

PPG 18 favours informal discussions to resolve matters without recourse to formal enforcement action. However, the failure of negotiations to resolve matters should not hamper or delay formal enforcement action in cases where unacceptable harm to amenity is being caused.

It should be noted that since this matter was first brought to our attention, informal negotiations have taken place with the owner in an attempt to regularise matters at the site without the necessity for formal enforcement action. However, these negotiations have not resolved the breach and as the breach of planning control continues causing the harm identified above, it is considered, having full regard to the above guidance, that formal enforcement action to remedy the harm to amenity caused should therefore not be further delayed.

### **Human Rights**

Enforcement action will interfere with the owner’s right to enjoyment of their home & family life under Article 8 of the Human Rights Act.

Enforcement action would be considered lawful if the public interest outweighed that of the individual concerned and would be justified only if any interference in the Human Rights of the individual was considered proportionate to the breach. In this case, based on the information available it is considered that there will be interference in the owner’s Article 8 rights, as enforcement action will affect his right to enjoyment of his home. The Committee must also consider the neighbours’ article 8 rights as the privacy of the neighbours is seriously eroded. Failure to take action could also amount to an interference in the neighbours’ rights and this must be balanced against the owner’s rights. However, such interference is considered justified and proportionate, having regard to the harm to the environment and neighbour amenity identified above which would occur if the breach were allowed to continue.

Furthermore it is considered that the steps required to remedy the breach is proportionate to the seriousness; under-enforcement would not remedy the harm caused by the breach. The compliance period specified is also considered proportionate to the breach in Human Rights terms in that it allows sufficient time to remedy the breach that has occurred. A longer compliance period would simply lengthen the period that the breach continues without any justification.

## **Conclusions**

The development described above has caused significant harm to the adjoining properties. The Council has unsuccessfully attempted to negotiate with the owner to remedy the situation and it is considered expedient that enforcement action should now be taken to secure reinstatement of the land to its former levels.

**Recommendation:** That the Head of Legal & Property Services be authorised to issue an Enforcement Notice under the Town and Country Planning Act 1990 (as amended) and serve it on the appropriate person(s).

### **Alleging the following breach of planning control:**

Operational Development comprising the raising of land levels and construction of a retaining wall materially altering the landform, without the benefit of planning permission

### **Requiring the following steps to be taken: -**

1. Restoration of the land to its levels and contours before the development described in the breach took place. (For the avoidance of doubt, in relation to evidence as to the level of the land before development took place, photographs taken by Mrs Cochrane were submitted by her on 11<sup>th</sup> May 2005 along with the response to the Planning Contravention Notice. These photographs are referred to in the answer to Question 12 – copies attached with the notice)
2. Permanent removal from the land of the soil and spoil arising from the restoration of the land to its contours and profiles before the development described in the Notice took place.

### **Reasons for serving the Notice: -**

1. The retention of the raised levels of the land over the level before development took place is seriously detrimental to the residential amenity enjoyed by adjoining properties in conflict with policy G2 (vi) of the adopted replacement Salisbury District Local Plan by reason of the serious overlooking and loss of privacy arising from the works.

### **Time For Compliance: -**

1. **One Month**
2. **One Month.**

### **Implications:**

- **Financial:** None at this time.
- **Legal:** Detailed in the report.
- **Environmental implications:** Detailed in the report.
- **Council's Core Values:** Protecting the environment; fairness and quality.
- **Wards Affected:** Harnham.
- **Human Rights:** Detailed within the report.