

**PLANNING ENFORCEMENT DECISIONS BY AN OFFICER**

<b>Site: 31 Queens Road Brentwood CM14 4HE</b>	<b>Decision by: Caroline McCaffrey Development Manager Team Leader</b>
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<b>Ward: Brentwood South</b>	<b>Parish Council (if appropriate)</b>
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**My decision is:** Issue and serve an Enforcement Notice in respect of all the breaches of planning control identified in the investigation.

When the Notice has been served, a copy shall be include in the statutory register under Section 188 Town and Country Planning Act 1990

The reasons for my decision are set out in the attached delegated report, after investigation of the evidence, site inspection, and having regard to the adopted Enforcement Plan

Details of any alternative options considered and rejected when making the decision, and consultation with Members and/or Parish Council : Delay and under-enforcement considered and rejected

**SIGNATURE OF DECISION MAKER:**

<b>Signed:</b>	<b>Date:</b>
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**Contact Officer: Richard Bates Enforcement Officer**

**DETAILS OF ANY CONFLICT OF INTERESTS OR DISPENSATIONS GIVEN:**

The Openness of Local Government Bodies Regulations 2014 require the following to be declared:

- *a record of any conflict of interest declared by any member who is consulted by the officer which relates to the decision*
- *in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service*

**Details of any Conflict of Interest:**

<b>Date decision published to website:</b>
<b>Implementation date:</b>

**Delegated Report for approval**

<u>Reference</u>	<u>Address</u>	<u>Ward</u>	<u>Parish</u>	<u>Page</u>
15/00018/NINA1	31 Queens Road Brentwood Essex CM14 4HE	Brentwood South		

**31 Queens Road Brentwood Essex CM14 4HE**  
**15/00018/NINA1**

**WARD** Brentwood South  
**PARISH**

**1. Breach**

**High.** The planning conditions on landscaping have been breached. The land shown as a landscaping area has been severed from the rest of the plot providing wholly insufficient amenity space for residents. Two yew trees retained under the approved landscaping plan have been felled and the private amenity garden has had a fence erected. This represents a material change of use of the original site. In addition, the approved garages have not been constructed in accordance with approved planning permission for which there have been complaints from adjoining neighbours

**2. Investigation**

Planning Permission was granted on the 11th October 2010 for the conversion of the existing property and a rear extension to create 6 x 2-bedroomed flats and rear garage parking of 6 garages including demolition of the previous double garage at the rear and formation of private amenity space comprising 263 square metres, in addition to a terraced area of 40 square metres.

The site area shown on the drawings was stated on the application form to comprise 890 square metres (0.089 hectare ).

A scheme of hard and soft landscaping for the site was approved on the 7th October 2013 (drawing 010/QR/CP/S/02) showing two yew trees retained at the boundary of the site with 7 Rose Valley.

A site visit in December 2014 followed complaints that the development was not being built in accordance with approved plans.

The plot had been subdivided by a fence, severing over 327 square metres of amenity space from the development, creating a separate planning unit in breach of the approved landscaping condition and constituting a material change of use of the site.

Car ports were being constructed rather than brick built garages.

The two yew trees which were to be retained at the boundary of the site with 7 Rose Valley had been removed.

A letter was sent to the owner advising that the consideration of possible enforcement action against the unauthorised breaches of planning control would be delayed for a period of 21 days and requested a fresh application to regularise the situation and to show what is currently being built and how it differs from the approved planning permission, and also what is proposed to be built, and in particular the changes to the overall size of the site area, communal garden and garages/car port area.

Investigation meanwhile showed that the owner sold the majority of the site on the 24th February 2014 to a developer and retained private amenity space of 327 sq metres in its ownership.

The Transfer included a covenant on the part of the purchaser to erect and maintain along the severed plot boundary a six foot high close-boarded wooden fence and thereafter to maintain the same.

On the 13th May 2014 the owner of the retained part of the amenity garden completed the purchase of 7 Rose Valley.

The legal representative of the developer states that there was a misunderstanding at the time of the sale of 31 Queens Road and the effect of the Planning Permission and its conditions were not appreciated.

The developer is now intending to purchase part of the amenity land retained by the Vendor and submit a Planning application.

### 3. Analysis of Planning Considerations and options

As a matter of fact and degree the subdivision of the approved development site is considered a material change of use in this case. The amenity space available for residents of the flats is inadequate, yew trees protected by the approved landscaping plan have been felled

While the new owner is stating an intention to purchase part of the amenity land retained, the breach of control involves the whole of both areas of land subdivided from the original planning unit .

The fence severing the two plots is in breach of the landscaping condition and should be removed, with the landscaping shown on the approved drawing being completed.

The development of the car ports instead of garages has attracted complaints from adjoining residents. The legal adviser to the new owner suggests that a planning application can resolve the breaches with the purchase of some of the severed land.

The Council's planning legal adviser considers that under enforcement is not expedient. To the extent of any under enforcement against existing breaches of planning control, planning permission would then be deemed to be granted by virtue of Section 173(11) of the Act. In the absence of a specific and acceptable scheme for approval, delay in taking enforcement action whether for land negotiations or for a retrospective planning application merely delays effective enforcement. The letter sent to the original owner, who has retained much of the garden has not been acknowledged other than by the new owner of the flats and severely reduced amenity space.

The Legal Adviser supports the issuing of an enforcement notice to remedy the breaches of planning control and is satisfied with the evidence and investigation.

### 3. Recommendation

That the Head of Planning authorise an enforcement notice to remedy the breaches of planning control. That notices are issued and served and copies filed on the statutory register of enforcement notices.

**GUIDANCE:**

**The Openness of Local Government Bodies Regulations 2014**

The Openness of Local Government Bodies Regulations 2014 require a written record to be made of any decision that has been delegated to an officer under a specific express authorisation, or under a general authorisation where the effect of the decision is to:

- grant a permission or licence;
- affect the rights of an individual; or
- award a contract or incur expenditure which, in either case, materially affects the Council's financial position.

This form must be used to record all such decisions, except when established processes would be duplicated in terms of recording decisions relating to the grant of a permission or licence (such as those currently used by Planning and Licensing).

The written record of the decision, together with any background papers, must be made available for inspection by members of the public as soon as reasonably practicable after the decision has been made:

- at all reasonable hours at the Civic Offices;
- on the Council's website,
- by such other means that the Council considers appropriate.

The written record of the decision must be retained and made available for public inspection for at least 6 years. Any background papers referred to by the decision-maker should be retained and made available for public inspection for at least 4 years. The relevant retention period will begin with the date on which the decision, to which the written record and any background papers relates, was made.

Nothing in the Regulations is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence, or, information that, in the opinion of the Monitoring Officer can be defined as exempt, as set out in Local Government Act 1972 as amended by the Access to Information Act 1985 and regulations.

*The decision should be followed as soon as practicable by the action taken so that the record posted on the web site does not generate additional work.*