



Kate Hollern MP
Constituency Office
Richmond Chambers
Richmond Terrace
Blackburn
BB1 7AS

Date: 22nd June 2020
Our Ref: G&D/10/20/0434
Your Ref: KH/KH44076DT
Please ask for:
Direct Dial: (01254) 585585
Email: planning@blackburn.gov.uk

Dear Kate,

Land to the rear of No.29 Greenhead Avenue, Blackburn – use of land as residential garden (ref: 10/20/0434)

I refer to your letter dated 9th June 2020, sent on behalf of your constituents who live on Greenhead Avenue, Welbeck Avenue and Furness Avenue in Little Harwood, regarding the above piece of land, of which a part is now subject to a formal planning application to change the use of the land into a private residential garden (ref: 10/20/0434).

I can confirm that the local planning authority has also received correspondence relating to the piece of land from local residents expressing a number of concerns/issues along with a letter/petition containing 48 signatures submitted to you on the 10th June 2020. With regard to the latter, can you please confirm that you wish for the Council to deal with this petition in accordance with the Council's adopted procedure relating to petitions? The issues/concerns raised by the residents can be summarised as follows:

- 1) The applicant, Mr Khan, claiming possession of the land
- 2) Japanese Knotweed present on the site
- 3) Assessment of the current planning application (ref: 10/20/0434)
- 4) Claims of anti-social behaviour and intimidation witnessed and experienced by local residents in relation to the applicant's conduct.

All of the above issues/concerns are being taken seriously by the Council, and officers from the relevant services, including Legal, Planning, Public Protection and Community Safety, met on the 11th June, to discuss the way forward in dealing with these issues. I will endeavour to deal with each issue in turn.

The applicant, Mr Khan claiming possession of the land:

For context, this issue was first brought to the attention of the Council's Planning Enforcement Team in March 2019. A Planning Enforcement Officer made a visit to the site in March 2019, accompanied by an officer from the Public Protection Team to ascertain the extent of the activity

carried out. During this visit, the officers explained to Mr Khan, that fencing off the land and progressing to use it as an extension to his residential curtilage, would amount to a breach of planning control which would be subject to the threat of enforcement action. Mr Khan was advised to submit a formal planning application to seek planning permission for change of use of the land to residential. A Planning Contravention Notice (PCN) was issued and served on Mr Khan by the Council in March 2019, requesting further information regarding the land uses and its future intended use. This was returned completed in the appropriate period of time.

The Planning Enforcement team continued to monitor the site, and on the 12th May 2020, a formal planning application was received. Should the application be refused, Planning Enforcement will review the situation and take appropriate action if a breach of planning control is identified.

With regards to Mr Khan claiming possession of the land, it is known that this land is unregistered and the Council understands that no one claiming to be the owner by virtue of holding title deeds to this land has ever come forward. This land is not owned by the Council nor has the Council ever had any legal interest in the land, therefore, it has even less of a legal right to possession of the land than the adjoining land owners. Therefore, the Council's statutory powers under environmental and planning laws (for instance) are the ones which are applicable in this situation. The local residents are strongly advised to seek their own independent legal advice in the matter. The Council is unable to advise individuals in relation to any private legal rights they may have in the matter.

Turning to the question raised *"Is the Council able to write to HM Land Registry objecting to a claim for adverse possession"*?

At the appropriate time, there is no reason why the Council could not write to the Land Registry to object. The strength of the Council's direct knowledge of the site in question will dictate how seriously the Land Registry will take the Council's views. The Land Registry will assess the information to ascertain whether the 12 year requirement for adverse possession is met. If the Land Registry believes both cases have merit they will generally try and mediate the matter formally but it could go to a form of land tribunal inquiry. At this point, the Council could assist in the inquiry process, subject to advice that confirmed the legitimacy of the Council to act.

Japanese Knotweed present on the site:

The Anti-social Behaviour, Crime and Policing Act 2014 allows local authorities to issue a Community Protection Warning (CPW) on a landowner where they are failing to manage Japanese Knotweed. In the event of non-compliance with the CPW a Community Protection Notice (CPN) can be issued. There can be penalties for failing to comply with a CPN, upon successful prosecution. An individual who is served with a CPN has the right to appeal.

Whilst the land has no legal owner, the Council's Environmental Protection Team (part of the Public Protection service), issued a CPW on Mr Khan on the 12th July 2019.

This CPW required Mr Khan, within 28 days, to submit a written program for control of the knotweed, for the Environmental Protection Team's approval. No such program was received by the Council. Mr Khan then appeared to leave the site and very little further activity occurred. With the land having no legal owner and little further activity then we were unable to escalate the CPW to the CPN stage.

In May 2020 it was brought to the Environmental Protection Team's attention that Mr Khan was working on clearing the site and his son had made a planning application regarding part of the land. As a result, the Environmental Protection Team have progressed to the next stage under the Anti-Social Behaviour Crime and Policing Act. A CPN was served on the 15th June 2020.

The Environmental Protection Team served the CPN on Mr Khan on the 15th June. This Notice gives Mr Khan a period of time to produce the Knotweed Management Plan. Mr Khan has been given 28 days but this is reliant upon a third party. We may allow some flexibility with this deadline if progress is made with an agreed Plan.

To also add to this Mr Khan has agreed to cease works on the site for the time being whilst this matter is progressed.

Noise Nuisance:

Recent correspondence has been received in relation to chickens now being present on the site. The chicken pen that has been erected is within the red edge boundary of the current planning application site, and will be assessed as part of this application. Environmental Protection have contacted Mr Khan on the 22nd June, and he confirmed there are four chickens and one young cockerel. Mr Khan claims he has kept them on the land for years. They have been temporarily absent whilst works have been carried out on the land. Noise issues around the chickens etc. can be investigated by the Environmental Protection Team. If anybody is affected by them please call 01254 267699 and we can advise further. We must stress it is not uncommon for people to keep chickens. We would need to assess any nuisance caused.

Assessment of the current planning application (ref: 10/20/0434)

The current planning application proposes a change of use of the land edged on the attached plan to the residential garden. To date, the local planning authority considers that no unauthorised development has occurred, as the land is currently not in domestic use. Although it is accepted that the land has been cleared of low level trees (which were not protected) and vegetation, including Japanese Knotweed, such works are beyond the remit of the local planning authority as the works do not require planning permission. It would appear the activity that has occurred is enabling works. In addition, the fence that has been erected does not require planning permission as it does not exceed 2 metres in height.

So far as the planning application is concerned, a formal decision will be reached in due course, following consultation with key stakeholders, and a detailed assessment of the proposal against relevant Development Plan policies. At the time of writing, 19 individual objections have been received from the local residents. The aforementioned Japanese Knotweed Management Plan will form part of the overall assessment of the application.

With reference to land ownership, the applicant Mr Khan has submitted a Certificate D with the application. This is a declaration that the land is beyond the applicant's ownership and is untitled. In accordance with the statutory provision, the relevant notice associated with the Certificate has been published in the local press, advertising the intention to develop the land and offering the opportunity for anybody with an undeclared ownership interest to come forward. The notice was duly publicised on the 18th May 2020. The application is, therefore, accepted as valid and can proceed to a formal decision.

A number of residents have referred to activity beyond the application site (as defined by the red edge boundary). I should advise that this is outside the scope of the assessment, and any activity relating to the removal of Japanese Knotweed is being addressed by the Council's Environmental Protection Team. The Planning Enforcement officer is also investigating what works have occurred on this adjacent piece of land, to ascertain whether development has occurred or there has been a material change of use of the land, which will require the benefit of planning permission.

Concerns have also been raised in terms of flood risk to the area, via a water stream located on this piece of land. I can confirm that the Council's Drainage Engineers are currently assessing the concerns raised, and will be discussing these both with the planning case officer and the applicant.

I can confirm that the planning case officer Nick Blackledge visited the site on the morning of 18th June with the Council's Drainage officer, Roger Lever. The application site was padlocked, though they were able to view the site and establish that the land was well drained. Although historic plans show a watercourse on the land, there is no evidence of it on the surface, nor was there any indication of significant surface flows after the heavy rainfall during the previous 48 hour period. There is a channel at the back of Nos. 3 and 5. This channel is cut off upstream by an outbuilding at No.7. The channel was full of rubbish and on the day visited there was a minute flow, which was probably ground water.

If the development is limited to garden (beds and lawn) and the access behind Nos 3- 21 remains gravel or soil then no new drainage problems are anticipated. However, if the area is paved / hard landscaped then a formal drainage system will be required. The application makes no mention of proposed surface materials. In the event of the planning application being granted planning permission, such works can be controlled through the removal of permitted development rights. In the event of any construction on the site, the original watercourse could be piped or culverted through on or close to the line of the former ditch.

Mr Blackledge visited the site again, on the morning of the 19th June with John Wood, Environmental Protection Officer. As previously explained, an invasive species consultant was present with reference to the Japanese Knotweed. Submission of a management / eradication plan is anticipated. In the event of the planning application being granted planning permission, implementation of the plan will be secured by condition.

The application is under assessment and a recommendation will be advanced in due course. Should the recommendation be for approval, the planning application will be presented to the next available meeting of the Planning & Highways Committee. In the meantime, Mr Khan has been advised to cease all work on site.

Claims of anti-social behaviour/intimidation witnessed / experienced by the local residents in relation to the applicant's conduct:

Reports have been received regarding incidents of anti-social behaviour involving a dispute over the parcel of land behind Greenhead Avenue. Such instances are taken seriously by the Council's Community Safety Team. Council officers met with Police colleagues on the 18th June 2020, to discuss ASB issues and next steps. Any individual identified as engaging in anti-social

or criminal behaviour will face action being taken against them, and the Community Safety Team may consider serving a CPW if the evidence supports such an action. Following the meeting with the Police, I understand the Police will contacting local residents this week to discuss their concerns.

I trust the above information is of assistance to you.

Yours sincerely,

A handwritten signature in black ink that reads "Martin Kelly". The signature is written in a cursive style with a large initial 'M' and 'K'.

Martin Kelly