



DERBY CITY COUNCIL

AREA PANEL 1
6 September 2006

Report of Cabinet Member, Planning and Transportation

Petition relating to Eardley Close

SUPPORTING INFORMATION

- 1.1 We have received a request from 21 Springfield Road for the provision of a vehicular crossover linking the highway to their rear garden from Eardley Close. The access however is currently physically blocked by a fence erected on the highway, together with some shrubs planted on the highway, by Mr and Mrs Warner of 15 Eardley Close. The placing of the fence and shrubs is considered to be an unlawful interference with the highway and despite requests the Warners are refusing to remove such.
- 1.2 A petition of 78 names has been submitted by the lead petitioner, Mrs. Warner. The petition requests the Council not to permit vehicular access to the rear garden of 21 Springfield Road; claims that Mr and Mrs Warner have maintained a strip of land adjacent to the rear garden of 21 Springfield Road for a number of years; disabled road markings have been placed in front of 15 Eardley Close.
- 1.3 Eardley Close is a cul-de-sac and is unusual in that beyond the turning area at the head of the cul-de-sac is a hard paved area. Mr and Mrs Warner's property is the last house on one side of the cul-de-sac and has vehicular access from the hard paved area. The rear gardens of 3 properties of Springfield Road, No.s 17, 19 and 21 back on to Eardley Close. The garden of No. 21 is on the side adjacent to 15 Eardley Close. See Plans A and B.
- 1.4 Highway adoption records show that the adopted highway of Eardley Close, includes the hard paved area and, directly abuts the rear gardens of the three properties in Springfield Road. The Council's Legal officers have advised that the owners of those 3 properties in Springfield Road have by law a right of access to the adopted highway of Eardley Close for the reasonable enjoyment of their properties. This, therefore entitles the owners of No 21 to have vehicle access to their property irrespective of whether a formalised vehicle crossover is provided. 19 Springfield Road already has vehicular access to its rear garden from Eardley Close, but the width of No.17's garden directly abutting the highway is insufficient for a vehicle to pass. No. 21 already has pedestrian access to its rear garden from Eardley Close. As with No. 19 there is sufficient room to enable a vehicle to obtain access.
- 1.5 In highway terms, Council officers see no reason why a request for a vehicular cross over should be refused. Mrs Warner claims that it would make it dangerous for people visiting her property, but it is not considered that one additional access would represent anything more than normal risk for any highway user. The Regeneration

and Community Department's Accident Investigation Officer has visited the site and does not feel that a vehicular access to No. 21 would create an unacceptable risk. As No. 21 would in any event have rights to access the highway then to refuse the construction of the access is simply likely to result in damage to the highway.

- 1.6 Although Mrs Warner claims that she has acquired rights over a strip of land in front of No 21's boundary on the basis that she has maintained such for a number of years, the Council's Legal officers have advised that this claim doesn't affect the status of the land as highway or the rights associated with such. As adopted highway, Mrs Warner would be unable to acquire any rights over the land. The owners of the subsoil, Derbyshire Estates, are in any event registered title holders so even if the land was not adopted highway, Mr and Mrs. Warner would still not be able to claim any rights over the land by way of adverse possession.
- 1.7 The road markings placed on the highway were placed at Mrs. Warner's request, and are intended as 'keep clear' signs. These are purely advisory rather than mandatory markings. They are not relevant to this matter as they would not restrict a vehicle driving over them to gain access to 21 Springfield Road's rear garden, just as Mr and Mrs Warner may drive over them to access their property.
- 1.8 The Council has a duty, as highway authority, to protect the highway for all highway users. To 'do nothing' is not an option, since 21 Springfield Road has applied for vehicular access to their property from the highway and at present, that access is being obstructed by the fence and shrubs. Unless Mr and Mrs Warner voluntarily remove the fence and shrubs, the Council will have to take appropriate action to secure their removal.

PROPOSED ACTION

- 2.1 To note that as Mr and Mrs Warner refuse to remove the fence and shrubs from the highway, the Council's Legal officers will be serving a notice on Mr and Mrs Warner under Section 143 of the Highways Act requiring the removal of the fence, and under Section 141 for removal of the shrubs.
- 2.2 To inform the lead petitioner, Mrs Warner, of the Council's intended action.

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Background papers:	None
List of appendices:	None