

<b>APPLICATION NO.</b>	<a href="#">P13/V2385/HH</a>
<b>APPLICATION TYPE</b>	HOUSEHOLDER
<b>REGISTERED</b>	5.11.2013
<b>PARISH</b>	SUNNINGWELL
<b>WARD MEMBER(S)</b>	Elizabeth Miles Val Shaw
<b>APPLICANT</b>	Mr David Shorten
<b>SITE</b>	2 Woodlands Cottage Bayworth Lane Boars Hill Oxford, OX1 5DF
<b>PROPOSAL</b>	The relocation of an outbuilding following enforcement notice (As amended by plans accompanying email of 18 November 2013).
<b>AMENDMENTS</b>	None
<b>GRID REFERENCE</b>	449830/201742
<b>OFFICER</b>	Robert Cramp

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## 1.0 INTRODUCTION

- 1.1 This application has been submitted following enforcement action (VE11/025) to require the demolition of two residential outbuildings. The buildings were erected outside the residential curtilage of No.2 Woodlands Cottage at Boars Hill, in an adjoining woodland held in the same ownership. The council's enforcement notice requiring the demolition of the buildings was considered at a public inquiry and upheld at appeal. The buildings are now due to be demolished by 5 July 2014.
- 1.2 The current application now provides for the erection of a single outbuilding, entirely within the residential curtilage of the dwelling, to replace one of the buildings which is required to be demolished.
- 1.3 The application is referred to the planning committee for determination as the officer's recommendation differs from that of the parish council.

## 2.0 PROPOSAL

- 2.1 No.2 Woodlands Cottage is one of two semi-detached dwellings situated in an isolated woodland setting off the western side of Bayworth Lane, Boars Hill in the Oxford green belt. The property is adjoined to the east by No.1 Woodland Cottage, which is the only immediately adjoining neighbour. It is otherwise adjoined to the north and west by woodland, which is also owned by the applicant; and to the south by agricultural land.
- 2.2 The current application provides for the erection of an outbuilding within part of the residential curtilage of the property in the north east corner of the back garden. It is of single storey brick construction (4.6m wide x 8.4m long) with a pitched tile roof having a height of approximately 3.9m to the ridge. It is setback 2m from the common boundary with the neighbouring property to the east and approximately 1m from the woodland to the north, which is also owned by the applicant.
- 2.3 With the exception of a 1m setback from the rear boundary adjoining woodland to the north, the building otherwise complies in all respects with the requirements of the Class E, Part 1 of General Permitted Development Order (GPDO) for the erection of an ancillary building within the curtilage of a dwelling house.

## 3.0 SUMMARY OF CONSULTATIONS & REPRESENTATIONS

- 3.1 Sunningwell Parish Council **Recommends Refusal** for the following reasons:-
- harmful to openness and character of green belt;
  - privacy and overlooking of neighbour due to levels of land;
  - situated outside the curtilage of the property;
  - its use for playing music would give rise to unacceptable levels of noise in a woodland setting;
  - inappropriate development in a residential garden.
- 3.2 Countryside Officer **No Objection** – The proposed development is unlikely to have any significant ecological impacts.
- 3.3 Drainage Engineer **No Objection** – The drainage ditch would appear to be dry for most of the time but still capable of carrying water when wetter conditions prevail. It therefore constitutes a water course and is regulated by the Land Drainage Act 1991. As the proposed development is so close to the ditch a condition should be attached to any planning permission that the bed and bank of the ditch be retained as existing and kept clear of any obstructions.
- 3.4 5 x Neighbours **Object** for the following reasons:-
- inappropriate development in the green belt;
  - there are no very special circumstances that outweigh the harm to the green belt;
  - a similar building is already required to be demolished by an enforcement notice, which has been upheld on appeal;
  - the development is not within the curtilage of the dwelling;
  - the development is too large to fall within permitted development tolerances;
  - loss of views of the woodland;
  - a viable fallback position has not been established;
  - the building will be seen above the roof of the main dwelling when viewed from Bayworth;
  - impacts on neighbour in terms of light and noise;
  - overly prominent;
  - loss of trees;
  - development outside residential curtilage;
  - damage to trees;
  - proliferation of buildings including a garage and tree house;
  - Use of building for student accommodation or a separate house.

Note:- 3 of the 5 objections received were from (or on behalf of) the owners of the only adjoining property to the east. The other two objections were received from persons living in Bayworth (600m away) and Abingdon (4.5km away).

#### 4.0 RELEVANT PLANNING HISTORY

- 4.1 In February 2011 the council commenced an enforcement investigation (VE11/025) into the erection without planning permission of various outbuildings on land adjacent to 2 Woodland Cottage (but outside its residential curtilage). As a result of that investigation an enforcement notice was issued by the council on 29 June 2012 to require the demolition and removal of two outbuildings.
- 4.2 On 9 October 2012 the council refused an application for a certificate of lawfulness (P12/V1491/LDE) in respect of one of the unauthorised outbuildings.

4.3 On 5 July 2013 the Planning Inspectorate dismissed an appeal and upheld the enforcement notice requiring the demolition of the outbuildings from the woodland. The buildings are now due to be demolished by 5 July 2014. The current application now seeks planning permission for the erection of a single outbuilding within the residential curtilage of the property to replace one of the buildings that is required to be demolished.

## 5.0 POLICY & GUIDANCE

5.1 Vale of White Horse Local Plan 2011 policies;

DC1 - Design

GS3 - Development in the Oxford green belt

NE7 - The North Vale Corallian Ridge

H13 - Housing outside settlements

H14 - Sub-division of dwelling houses

5.2 National Planning Policy Framework (NPPF)

## 6.0 PLANNING CONSIDERATIONS

6.1 The matters relevant to the council's assessment of the current application are:

- the applicant's fallback position;
- the impact of the development on the green belt;
- the impact of the development on the countryside and the North Vale Corallian Ridge;
- the impact of the development on neighbour amenity; and
- other material considerations.

### Fallback Position

6.2 Under the provisions of the General Permitted Development Order (GPDO) Class E, Part 1, within the curtilage of a residential property it is possible to erect a building for purposes incidental to the enjoyment of that dwelling without the need for planning permission, provided that it:

- does not exceed 50% of total area of the curtilage;
- is not situated forward of the principal elevation of the dwelling;
- is no more than one storey;
- does not exceed 4m in height in the case of a dual-pitch roof;
- if it is within 2m of the curtilage boundary – it does not exceed 2.5m in height;
- does not exceed 2.5m to the eaves.

6.3 In planning terms, the owner's right to construct such a building within the curtilage of his property without the need for planning permission constitutes a 'fallback position'. This is a material consideration when assessing the relative merits of the current proposal. In this regard it is appropriate to ask, does the current proposal differ materially from the fallback position to a degree that would warrant the refusal of the planning application?

6.4 Unlike the two existing outbuildings, which were wrongly constructed outside the residential curtilage of the property and are now required to be demolished, the current application provides for a single outbuilding, which is entirely within the residential curtilage of the owner's property. This conclusion is based upon evidence that was considered at the public inquiry in connection with the enforcement notice that requires the demolition of the existing outbuildings. This evidence included a number of statements from a Mr Brian Dixey, who claims a personal association with the site covering a period of 72 years from 1932 to 2004. Mr Dixey's evidence clearly

establishes the northern boundary of the residential curtilage of No.2 Woodland Cottage as corresponding to the alignment of the drainage ditch to the rear of the site. In this regard the planning Inspector concluded that: “...as a matter of fact and degree the evidence points to the residential curtilage being as described by Mr Dixey”. This also generally corresponds to the alignment of the rear boundary of the objector’s property at No.1 Woodland Cottage.

- 6.5 The proposed development therefore complies in all respects with the relevant criteria under Class E, Part 1 of the GPDO with just one exception – it is built less than 2m from the rear boundary of the curtilage, although it exceeds 2.5m in height. If the same building was to be constructed just 1m forward of the proposed location it would not require planning permission.

Note:- Contrary to the views of the neighbouring objector the proposed outbuilding is of a size that falls well below the maximum threshold permitted under the GPDO (approximately 12% of the area of the curtilage is covered by buildings other than the original dwelling, compared to the maximum 50% allowed in the case of permitted development).

- 6.6 In your officer’s opinion, the extent to which the proposed development departs from the fallback position (with regard to the rear setback only) does not give rise to a material harm that would warrant a refusal of the current application. In this regard it should be noted that:

- the reduced 1m setback to the rear boundary is adjacent to a woodland which is also owned by the applicant and does not therefore give rise to any loss of amenity or materially change the character or appearance of the development;
- If the same building was constructed so as to comply fully with permitted development rights it would be 1m closer to the objector’s property.

- 6.7 The council’s assessment of the proposed development under each of the following headings should have similar regard to the fallback position.

**green belt**

- 6.8 The application site is situated within the Oxford green belt where there is a presumption against inappropriate development. Paragraph 79 of the NPPF explain that inappropriate development is by definition harmful to the green belt, and will only be permitted where the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other circumstances. Paragraph 89 clearly states that local planning authorities should regard the construction of new buildings as inappropriate development in the green belt.
- 6.9 Under Class E, Part 1 of the GPDO the applicant would be entitled (without planning permission) to construct within the curtilage of his property a building of identical size, dimension, character and appearance to the building for which planning permission is currently sought, albeit in slightly different position (the fallback position). He would be entitled to do this notwithstanding that the property is situated in the green belt. The extent to which the proposed development differs from the above fallback position does not result in a greater impact on the openness or character of the green belt than the above fallback position.
- 6.10 In the circumstances described above, the fallback position constitutes ‘very special circumstances’ justifying development in the green belt. The development therefore accords with policy GS3 of the local plan and government guidance contained in the NPPF relating to the protection of the green belt.

**Countryside and North Vale Corallian Ridge**

- 6.11 Unlike the two existing outbuildings, which were wrongly constructed outside the residential curtilage of the property and are now required to be demolished, the current application provides for an outbuilding, which is entirely within the established curtilage of the residential property and does not require the removal of any trees.
- 6.12 It is an ancillary building of domestic appearance on land which is already used for domestic purposes. It does not therefore have an adverse impact on the character or appearance of the countryside or the North Vale Corallian Ridge and therefore accords with policies GS2 and NE7 of the local plan.

**Neighbour Amenity**

- 6.13 The proposed building has only one window in the southern elevation which faces directly towards the back of the applicant's own dwelling. Views from the window towards the only neighbouring property to the southeast would be at an acute angle and at a distance of approximately 17m to the nearest window. This is unlikely to give rise to any significant loss of amenity to the neighbour in terms of privacy or light nuisance.
- 6.14 Again it is relevant that the applicant could under the Class E, Part 1 of the GPDO construct an identical building 1m forward of the proposed location without the need for planning permission. This would place the building 1m closer to the objector's property than the development for which planning permission is currently sought. The proposed development will therefore have no greater impact on the amenity of the neighbouring property than the applicant's fallback position.

**Other Material Considerations**

- 6.15 The land to the rear of the site rises significantly away from the principal dwelling (approx 3m). The proposed outbuilding will therefore sit prominently on an elevated platform in the back garden. The height of the development, however, will not exceed the highest part of the existing dwelling and, contrary to the concerns of one objector, will not be seen above the roof of the main dwelling from Bayworth.
- 6.16 Having regard to the size, height and the materials to be used in the construction of the proposed building; and the extent to which views of the existing property are obscured by fences and vegetation, the proposed development will not be prominently visible from Bayworth Lane or from any other public place.
- 6.17 The proposed building is intended to be used for purposes that are ancillary to the occupation of the existing dwelling and should not therefore give rise to any source of noise disturbance over and above that of the existing dwelling. There is no indication that the building is intended to be used either as a separate dwelling or as student accommodation as suggested by objectors, however, a condition can be placed on any permission to require that it be used only for purposes ancillary to the principal dwelling.
- 6.18 The existing woodland is not subject to a tree preservation order. Although the construction of the proposed outbuilding may require the removal of overhanging branches, it should not require the removal of existing trees. In this regard the countryside officer has raised no objection to the proposed development on the basis that it is unlikely to have any significant ecological impacts.
- 6.19 The loss of views of the woodland does not constitute a legitimate planning basis on which to refuse the application.

7.0 **CONCLUSION**

7.1 The proposed development will have no greater impact on the green belt, the countryside, the North Vale Corallian Ridge or neighbour amenity than a development that might otherwise be erected without the need for planning permission under permitted development rights (the fallback position).

8.0 **RECOMMENDATION**

8.1 **To grant planning permission**

1. Commencement 3 years - full planning permission;
2. Approved plans;
3. RE12 - ancillary accommodation (full);
4. Unique - surface water drainage;
5. MC1 - materials (details) (full).

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