

<b>APPLICATION NO.</b>	<u>P17/V1466/FUL</u>
<b>SITE</b>	18 Cumnor Hill, Oxford, OX2 9HA
<b>PARISH</b>	CUMNOR
<b>PROPOSAL</b>	Variation of Condition 2 of P16/V1994/RM to refer to an additional drawing 5376 02B. (Additional plan submitted 14 July 2017 and 26 April 2018) (Retrospective) Reserved Matters application following Outline permission P15/V1110/O for the access, appearance, landscaping, layout and scale of two dwellings.
<b>WARD MEMBER(S)</b>	Dudley Hoddinott Judy Roberts
<b>APPLICANT</b>	Keble Homes Limited
<b>OFFICER</b>	Hanna Zembrzycka-Kisiel

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## **RECOMMENDATION**

**It is recommended that the variation of condition application is approved subject to the following conditions:**

- 1. Approved plans.**
- 2. Retain existing hedgerow on boundaries.**

## **1.0 INTRODUCTION AND PROPOSAL**

- 1.1 This application comes to committee at the request of one of the local councillors, Judy Roberts. The application site is land to the rear of 18 Cumnor Hill where two detached houses have been built. To the north lie houses in Eynsham Road and to the east is a detached house, 9 Martins Close.
- 1.2 The application follows an enforcement investigation brought about by complaints from neighbours that the slab level of the houses and of the rear gardens had been raised above approved levels during construction. The enforcement investigation has concluded there is insufficient evidence to prove that the slab level of the houses has been materially raised but that the rear garden levels have been materially raised. Therefore, the current application seeks retrospective planning permission to amend the approved rear garden levels.
- 1.3 The applicants have submitted cross sections of the gardens to show the degree to which the land has been raised. This indicates the raised gardens have been contained by horizontal boards up to four deep, a height of up to 1.2m approximately.
- 1.4 The location of the application site is illustrated on the plan overleaf. It is also **attached** at Appendix 1 along with the submitted section plans.



## 2.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

2.1 A summary of the responses received to the current amended proposal is below. A full copy of all the comments made can be seen online at [www.whitehorsedc.gov.uk](http://www.whitehorsedc.gov.uk)

Cumnor Parish Council	<p>Object: Their objections and comments may be summarised as follows:</p> <p>Council's original and subsequent objections to this planning application and amendments still stand:</p> <ul style="list-style-type: none"><li>• Council objects to this application on the grounds that the land to the northern boundary of the rear gardens should follow the natural topography of the site, and not be artificially levelled to the detriment of the amenity of the houses behind in both overlooking and visual barrier;</li><li>• In addition, the application will create overbearing and un-neighbourly fences to the northern</li></ul>
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	<p>boundary. In the application, it is claimed the 2016 approvals showed a retaining structure constructed of timber sleepers at the rear of the site, with a 1.8m high wooden fence above;</p> <ul style="list-style-type: none"> <li>• This retaining wall has been constructed and is a metre high. It is not clear whether planning permission has been granted for this height;</li> <li>• If the fence which has been granted planning permission were to be erected on top of the retaining wall it would create a solid 2.8 metre high boundary treatment;</li> <li>• This in itself would be overbearing and un-neighbourly enough but when positioned only 4.3 metres from the kitchen window of no 9 Martin Close, 2.8 metres it would be totally unacceptable;</li> <li>• If instead, the fence were to be erected on the proposed ground level it would be 2.3 metres above neighbouring properties. This would still be an unacceptable height;</li> <li>• The solution to this problem is for the rear gardens to fall from the level of the proposed patios down to the existing levels at the northern boundary. A 1.8 metre high fence erected on original ground level behind the retaining wall along this boundary would be a reasonable and acceptable solution;</li> <li>• As the District Council is aware Council and residents have constantly raised concerns of building on Cumnor Hill, and the raising of ground levels could impact the water course and spring line, which could possibly result in potential flooding to the properties on the Eynsham Road;</li> <li>• The amendment has not addressed Council's previous comments submitted 20 June 2017 which still stand of. These comments are <b><u>attached</u></b> at Appendix 2.</li> </ul>
Local Ward Members	<p>Both Local Ward Councillors have submitted their objections. The comments can be summarised as follows:</p> <p>Cllr Emily Smith Botley and Sunningwell Ward</p> <ul style="list-style-type: none"> <li>• “I fully support the comments made by residents of 9 Martin Close and Cllr Roberts in relation to this retrospective application and ask that it be turned down. There are clear discrepancies about the land levels and having built on imported soil the developer has created sever harm in terms of overlooking and overcrowding of the near neighbours. The original land levels can be established by looking at the levels in surrounding gardens. This application must be turned down and</li> </ul>

	<p>the site put back to comply with the existing planning permission given (P16/V1994/RM). Despite advice from enforcement that building work should stop until this application was decided, the applicant seems to have ignored our officers".</p> <p><b>Cllr Judy Roberts</b></p> <ul style="list-style-type: none"> <li>• "I still object to the amended plans and all my previous comments still stand. I objected to P16/V1994/RM on the basis that the FFL of the buildings would cause severe harm to the surrounding residents, especially 9 Martins Close. I would dispute the original ground levels shown on the submitted amended document as being correct for before the developers turned up on site. These levels can be accurately measured by taking the soil levels in all the surrounding properties gardens. When the developers arrived on site they imported tons of soil and spread it over the rear of the site with the developers' vehicles lurching dangerously over Number 9 Martin Close property. I have included a photograph. I maintain the ground level shown in this amended document is after the soil had been added. It is totally unacceptable for a close boarded fence of 1.8 m which is approved in P16/V1994/RM to be added to the proposed rear garden heights in this application as it would totally exclude all light from the kitchen window in Number 9 Martin Close. A return to the exact measurements of P16/V1994/RM is legal but I still think causes harm. I object to any further deviations from the P16/V1994/RM approval as this causes severe harm and drainage consequences."</li> </ul>
Local residents	<p>Letters of objection have been received from 26 local addresses. The objections may be summarised as follows:</p> <ul style="list-style-type: none"> <li>• The garden levels have been raised contrary to the previous approval;</li> <li>• The houses have also been constructed on raised levels;</li> <li>• The 1.8m high fence constructed on the 1.m high supporting structure is unacceptable as it creates an overbearing and un-neighbourly barrier;</li> <li>• The design and appearance of the dwellings have been changed without appropriate approval and differ from the initial permission (ref. P15/V1110/O);</li> <li>• The original proposal was for two, two storey detached properties, not for two, three storey 'Georgian' houses;</li> <li>• The proposal causes harmful overlooking;</li> </ul>

	<ul style="list-style-type: none"> <li>• The scale and appearance are out of character;</li> <li>• The massing of the dwellings is overbearing;</li> <li>• Overdevelopment;</li> <li>• Loss of light and outlook/view to the kitchen window of no 9 Martin Close,</li> <li>• The construction of a 1m high retaining structure will have a harmful impact upon water courses and surface water flow;</li> <li>• The change in ground levels impacts the existing drainage and will cause flooding;</li> <li>• The constructed retaining structure does not meet building control requirements;</li> <li>• The most eastern boundary of the application site is not owned by the developer, but by the owners of 9 Martin Close</li> <li>• The internal layout of the houses has also been changed;</li> <li>• The developer kept building the houses, although the Enforcement Officer has served an enforcement notice;</li> <li>• Not every neighbour was consulted on this application;</li> <li>• The developer cut the trees down, before the TPO could have been organised by the neighbours;</li> <li>• The plans have no height annotations on them;</li> <li>• The submitted cross-section plans do not represent what has been built;</li> </ul>
Oxfordshire County Council (Highways)	No objections
Waste Management	No objections
Drainage Engineer	No objections

### 3.0 RELEVANT PLANNING HISTORY

VE17/28 - ()

Breach of conditions attached to planning permission P15/V1110/O.

VE17/158 - ()

Development not being undertaken in accordance with plans approved by planning permission P16/V1703/FUL (number of storeys).

P16/V1994/RM - Approved (07/10/2016)

Reserved Matters application following Outline permission P15/V1110/O for the access, appearance, landscaping, layout and scale of two dwellings.

[P16/V1703/FUL](#) - Refused (21/09/2016) - Appeal dismissed (15/03/2017)  
Detached dwelling with garaging

[P16/V1995/DIS](#) - Approved (14/09/2016)  
Discharge of conditions on application ref. P15/V1110/O Conditions: 5, 6 and 7  
-Surface water and foul waste drainage details

Outline application (access and layout only) for erection of two detached dwellings, with new access (land rear of 18 Cumnor Hill. Erection of replacement garage for 18 Cumnor Hill.

[P16/V0571/RM](#) - Approved (05/05/2016)  
Reserved Matters application following Outline permission P15/V1110/O for the appearance and scale of two dwellings.

[P15/V1110/O](#) - Approved (17/02/2016)  
Outline application (access and layout only) for erection of two detached dwellings, with new access (land rear of 18 Cumnor Hill. Erection of replacement garage for 18 Cumnor Hill.

### 3.2 Relevant History

This application only relates to the levels of the rear gardens of the houses. It does not relate to the houses themselves. Relatively minor changes were made to the design of the houses during construction. These changes were approved as a non-material amendment under application ref. P18/V0295/NM.

## 4.0 ENVIRONMENTAL IMPACT ASSESSMENT

- 4.1 The application involves a scale of development that is too small to require an EIA.

## 5.0 MAIN ISSUES

### Background

- 5.1 The outline planning permission ref. P15/V1110/O was granted for the construction of two detached dwellings in 2015. There was a subsequent Reserved Matters application for the access, appearance, landscaping, layout and scale approved in 2016.
- 5.2 The initial proposal showed the construction of a 0.3m high retention structure with a new close-boarded fence being constructed at the top along the north boundary of the application site with Eynsham Road. During construction this retaining structure was raised to approximately 1.2m in height and the level of the rear gardens raised accordingly. More recently, following the enforcement investigation and submission of the current application, there has been some lowering of the rear garden levels. Although the retention structure has not been lowered, the fence on top of it is only approximately 1.3m high. Revised section drawings have been submitted to show the current garden levels.
- 5.3 There have been continual, significant objections from local members, the Parish Council and neighbours regarding the design and slab levels of the

houses. There has been a long-running and detailed enforcement investigation. As committee is aware the departure of a development from approved plans is not in itself a reason to take enforcement action. Whilst departures are not condoned, government advice is that local planning authorities should work with developers when possible to achieve a new conditional planning permission, provided the resulting development is acceptable. Officers have continued negotiations with the developer on this basis. No enforcement notice has been served on the site.

- 5.4 Further to the enforcement investigation it is concluded that there is insufficient evidence to prove that the slab levels of the houses have been materially raised. Officers consider the size and detail of the houses does generally accord with the approved plans and the changes that have been made have been agreed as a non-material amendment to the original plans. Therefore, the current application seeks a retrospective planning permission to amend the approved rear garden levels only.
- 5.5 The applicants have justified the raising of the gardens to accommodate and to cover two pieces of drainage infrastructure:
  - A pre-existing sewer inspection chamber, and sewer, that the applicants argue was hidden by thick growth and not detected during the original site survey
  - The approved surface water drainage retention tank for the new houses, which needs to be at a set level to allow a fall to the existing storm water sewer that runs to the west of the site
- 5.6 Given the unanticipated location and level of the existing drainage chamber, the application site's topography (sloping down towards the north) and the area of impermeable surface being constructed on the application site, the applicants argue the drainage scheme would not work effectively if the original sloping ground levels had been kept unchanged.
- 5.7 The council's drainage engineer has confirmed that the change in garden levels will have no material effect on the performance of the surface water drainage scheme approved for the development (under planning application P16/V1995/DIS).
- 5.8 As such, the main issues to be considered under this application are the impact of the changed garden levels on the residential amenities of the neighbouring properties, and the impact on the visual appearance of the area.
- 5.9 **The Impact on Neighbours**  
The neighbours most affected by the change in garden levels are nos. 25, 27, 29, 31 and 33 Eynsham Road and no.9 Martins Close. Properties along Eynsham Road (Nos 25, 26, 27, 29, 31 and 33) are located approximately 56m away from the northern boundary of the application site.
- 5.10 Under the original planning permission, the applicant was allowed to erect a fence of up to 1.8 m high at the top of the initially proposed 0.3 m high retention

structure. This would have created a 2.1m height structure along the rear boundaries of the application site. Given that the retention structure has been increased from 0.3m to approximately 1.2m the total height of the structure measures approximately 2.5m. Given the length of the rear gardens and the difference in total height of the constructed structure by approximately 0.5 m, it is not considered that harm has been caused to the residential amenities of the properties along Eynsham Road in terms of overlooking, overshadowing or dominance. Objectors have argued that the bottom of the gardens are equally important to their amenities. However, the planning system seeks of offer maximum protection of amenity to that part of the rear garden closest to a house. Officers' experience is that it is considered unreasonable to impose, or to expect, the exact same standard of amenity across an entire rear garden, particularly a garden of the size that exists on each of the adjacent dwellings in Eynsham Road.

- 5.11 With respect to no. 9 Martins Close, the level of the rear garden on the application site close to the boundary has not been materially changed. Two existing lime trees are located here and these have been retained. The boundary itself is marked by a 1.8m high fence. A retaining structure up to approximately 1.2m in height has been built approximately 4.5m away from the side wall of no.9, on top of which is a post-and rail fence approximately 1.2m high and, inside this, a coniferous. From within the raised garden this hedge is approximately 1.8m high. Close to the new house there is a gap in this fence and hedge where there are steps down to the lower garden level.
- 5.12 There is a ground floor window on the side, west elevation of the 9 Martins Close, which serves a kitchen. It has been argued that the residential amenity of the residents of this property has been compromised as there is a loss of light and outlook, as well there is a potential that this window will be harmfully overlooked as the garden levels have been raised.
- 5.13 Although the window serves the kitchen, the kitchen is part of a larger room containing a dining area that is served by a window to the front of the house. This front window is not affected by the newly constructed houses nor by the raised garden levels. It is generally accepted that side-facing windows cannot be afforded the same degree of protection as windows that face to the front and rear. This is particularly the case if the side-facing window concerned is a secondary window to a room that also has a window that faces to the front or rear.
- 5.14 Each case has to be carefully assessed on its merits. In this case there is an existing 1.8m high close-boarded fence in front of the kitchen window. The amenity derived from the window is also affected by the two substantial lime trees and the presence of a garden shed in the garden of no.25 Eynsham Road. Given these existing factors, the change through the introduction of the retaining structure and fence/hedge 4.5m away is not considered sufficient to have caused harm to either the outlook from, or light into, the window.
- 5.15 With regard to overlooking, observations from within the site have shown that, due to the presence of the new mature hedge on top of the retaining structure,

together with the existing 1.8m high boundary fence on the boundary, there is no realistic potential for harmful overlooking into the window. The retaining structure is set approximately 4.5 m from the wall of no.9 and the ground then drops down to the pre-existing level near to the boundary. Here the existing boundary fence prevents harmful overlooking into either the kitchen window or the rear garden of no.9.

- 5.16 Given the fact that this secondary window is side facing, and that the retained garden is set approximately 4.5m away, officers consider that the impact on the amenities of the occupants of no.9 is not sufficient to warrant refusal of the application.

5.17 **The impact on the visual appearance of the area**

The locality is one where sloping land is prevalent and where the presence of retaining structures of some form would not be considered to be unusual in themselves. With regard to the northern boundary, facing gardens in Eynsham Road, given that the total height of the constructed retention structure and the fence at the top of it is approximately 0.5 m higher than it would have been if constructed as initially approved, it is not considered that the impact upon the visual appearance of the surrounding area is sufficient to amount to harm to residential character and appearance of the area.

## 6.0 CONCLUSION

- 6.1 This application has been considered in accordance with the development plan unless material considerations indicate otherwise. Further to a long-running and detailed enforcement investigation it was concluded that there is insufficient evidence to prove that the slab level of the houses has been materially raised.
- 6.3 The identified material changes to the approved scheme are the increase of the retaining structure and the change in the garden levels. However, as it has been outlined in the above report, these changes are not considered to be sufficient to cause harm either to neighbours' amenities or to the character and appearance of the area.
- 6.3 As such, it is considered in the Local Planning Authority's opinion, that the proposed changes which occurred during the construction process, although are be considered to be material, are not harmful to the residential amenities of the neighbouring properties nor to the appearance of the surrounding area.

## 7.0 POLICY & GUIDANCE

- 7.1 Vale of White Horse District Council Local Plan 2011  
The development plan for this area comprises the adopted Vale of White Horse local plan 2011. The following local plan policies relevant to this application were 'saved' by direction on 1 July 2009.

DC1 - Design

DC6 - Landscaping

DC9 - The Impact of Development on Neighbouring Uses

DC12 - Water Quality and Resources

7.2 Local Plan 2031 – Part 1

Core Policy 37	Design and local distinctiveness
Core Policy 40	Sustainable Design and Construction
Core Policy 42	Flood risk
Core Policy 44	Landscape

7.3 Supplementary Planning Guidance

- Design Guide – March 2015

7.4 National Planning Policy Framework (NPPF) – March 2012

7.5 National Planning Practice Guidance 2014 (NPPG)

7.6 Neighbourhood Plan

To date no application has been received for a neighbourhood planning designation area covering this site.

7.7 Environmental Impact

This proposal does not exceed 150 dwellings and the site area is under 5ha. Consequently, the proposal is beneath the thresholds set in Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015 and this proposal is not EIA development and there is no requirement under the Regulations to provide a screening opinion.

7.8 Other Relevant Legislation

- Planning (Listed Buildings and Conservation Areas Act) 1990
- Community & Infrastructure Levy Legislation Human Rights Act 1998
- Equality Act 2010
- Section 17 of the Crime and Disorder Act 1998
- Natural Environment and Rural Communities (NERC) Act 2006
- The Conservation of Habitats and Species Regulations 2010
- Localism Act (including New Homes Bonus)

7.9 Equalities Act 2010

In determining this planning application, the Council has regard to its equalities obligations including its obligations under section 149 of the Equality Act 2010. It is considered that no identified group will suffer discrimination as a result of the application.

Human Rights Act 1998

The provisions of Articles 1 and 8 of the Human Rights Act 1998 have been taken into account in the processing of the application. The impact on individuals has been balanced against the public interest and officers consider the recommendation to be proportionate in this regard.

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