

**APPENDIX 7 Vale District Council's performance 1 January 2020 to 31 December 2020 – quality of decisions – non-major appeals allowed (overturned)**

To accompany Table 6

<b>Application Reference</b>	<b>Site Address</b>	<b>Description of Development</b>	<b>Decision Process</b>	<b>Appeal Process</b>	<b>Appeal Decision</b>	<b>Costs</b>
<a href="#">P19/V2179/HH</a>	7 Berens Road, Shrivenham	Shelter and charging point for electric vehicle	Delegated refusal	Written representations	Appeal allowed 23 March 2020	N/A
<a href="#">P19/V1280/HH</a>	2 Coks Road Shrivenham	First floor side extension and single storey rear extension and new pitched roof to store	Delegated refusal	Written representations	Appeal allowed 23 June 2020	N/A
<a href="#">P18/V1949/FUL</a>	Land at Plot 5, Reading Road Harwell	Proposed replacement of the 6-bed (347sqm) dwelling known as Holloway House approved on Plot 5 (Approval Ref: P17/V3134/RM) with two smaller 4-bed dwelling	Delegated refusal	Written representations	Appeal allowed 25 June 2020	N/A

		houses of identical cumulative size and referred to as Barrow House - Plot 5A (158sqm) and Chilbrook House - Plot 5B (189sqm)				
<a href="#">P18/V1704/FUL</a>	J Curtis and Sons Ltd Thrupp Lane Radley Abingdon	Variation of condition 1 - to allow permitted use of buildings A, C, D, F and G for a further period of 5 years on application ref P03/V1226/FUL. Variation of condition 1 of Approval P87/V1143/FUL (RAD/57/15) to allow the permitted uses of buildings A, C, D, F & G for a further 8-year period	Delegated refusal	Written representations	Appeal allowed 18 November 2020	N/A

<a href="#">P20/V0490/LDE</a>	Youlbury Cottage White Barn Sandy Lane Boars Hill	Lawful development certificate for the existing use of the land as residential curtilage	Delegated refusal	Written representations	Appeal allowed 29 December 2020	N/A
<a href="#">P19/V1512/FUL</a>	5 Toynbee Close, North Hinksey	Erection of a new building containing 2no. x 2-bedroom flats to the rear of 5 Toynbee Close, demolition of car port and outbuilding to facilitate access from Toynbee Close with provision of parking with bin and cycle stores. Demolition of existing dwellinghouse and erection of a 2-storey building containing 1no. x 3-bedroom flat and 2no. x 1-bedroom flats with provision of	Committee overturn	Written representations	Appeal allowed 15 September 2020	N/A

		parking with bin and cycles stores				
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## Appeal Decision

Site visit made on 25 February 2020

**by JP Longmuir BA (Hons) DipUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 March 2020**

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**Appeal Ref: APP/V3120/D/20/3244525**

**7 Berens Road, Shrivenham, Swindon SN6 8EG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Andrew Rudge against the decision of Vale of White Horse District Council.
  - The application Ref P19/V2179/HH dated 28 August 2019, was refused by notice dated 5 November 2019.
  - The development is a shelter and charging point for electric vehicle.
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### Decision

1. The appeal is allowed, and planning permission is granted for a shelter and charging point for electric vehicle at 7 Berens Road, Shrivenham, Oxon SN6 8EG in accordance with the terms of the application, Ref P19/V2179/HH, dated 28 August 2019, and the plans submitted with it.

### Procedural Matters

2. The shelter has been erected for about a year. The submitted plans appear to broadly reflect the development, but in any event any discrepancies are a matter for the Council. I have considered the appeal on the basis of the plans submitted.

### Main Issue

3. The main issue is the effect on the character and appearance of the area.

### Reasons

#### *Character and appearance*

4. The site is part of a housing estate built in the 1970s. There is some consistency, particularly in the use of materials, although this is slightly diluted by several solar panels and rooflights.
5. Berens Road has a curving alignment but straightens out in the vicinity of the appeal site before joining Charlbury Road. There are some slight variations in the consistency of design along this corner as the siting, form and footprint of the dwellings are arranged to follow the curve. Several offshoot cul-de-sacs also have subtle variations in their house design. Whilst there is most consistency in the immediate vicinity of the appeal site, this is short lived and wains towards Charlbury Road which has a variety of styles.

6. Both parties describe the shelter as a cantilever structure. Two posts provide a metal frame which supports a curved transparent roof. Consequently, the structure is small and simple, which does not compete with the surrounding architecture, and therefore the consistency in the character of Berens Road is not jeopardised. The houses adjacent to the appeal site have open frontages but that is not the situation throughout Berens Road.
7. The particular construction allows views through, underneath and around, which maintains the sense of openness to the driveway. It also does not obstruct the main views along Berens Road. This is not a solid construction which could have created enclosure and threatened the sense of openness.
8. The shelter is over part of the front drive of this detached house, just in front of an integral garage. In such a domestic setting a shelter is not out of place, being seen in conjunction with the driveway.
9. The metal work is dark grey which gives a subdued appearance. Similarly, the roof, being transparent, does not compete with the dwelling. The materials are functional and lightweight which reflect the purpose and nature of the structure. There is a lamp post directly outside the curtilage, which is taller and in a more conspicuous shade of light green.
10. The structure covers the space taken up by the electric car. The structure is not unduly large and appears subservient to the host dwelling.
11. Core policy CP37 of the Vale of White Horse Local Plan 2031 Part 1, December 2016, promotes good design and local distinctiveness. The Shrivenham Neighbourhood Plan, Referendum Version 2020, includes policies H1 and D1 which promote good design. They also require development to be in accordance with the Village Character Assessment, and the Surrounding Berens Road (VCA) Character Assessment which highlights the consistency in the townscape. The Council has also forwarded policies HE2 and HE3 of the Neighbourhood Plan which were not part of the reason for refusal. The former, in part (b) promotes soft landscaping, and the latter refers to existing vegetation and the need to consider landscape impact. Paragraph 127 of the National Planning Policy Framework also requires good design.
12. The proposal respects the characteristics of the area, in particular its general consistency and openness, and accordingly does not conflict with the above policies. Similarly, there is no need for new landscaping.
13. I therefore conclude that the development does not harm the character and appearance of the area.

### **Other Matters**

14. The Surrounding Berens Road Character Assessment also states that there are listed buildings in the neighbourhood. However, given their respective distances from the appeal site, I am satisfied that no harm to the setting of these designated heritage assets arises.

### **Conditions**

15. As the development has been carried out, and I have found no harm, there is no need for any conditions.

### **Conclusion**

16. For the above reasons, I conclude the proposal is not harmful and the appeal should be allowed.

*John Longmuir*

INSPECTOR



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## Appeal Decision

Site visit made on 23 June 2020

by **Helen O'Connor LLB MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

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**Appeal Ref: APP/V3120/D/19/3241309**

**2 Coxs Road, Shrivenham, Swindon SN6 8EL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Coffey against the decision of Vale of White Horse District Council.
  - The application Ref P19/V1280/HH, dated 17 May 2019, was refused by notice dated 30 August 2019.
  - The development proposed is a first floor side extension and single storey rear extension and new pitched roof to store.
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### Decision

1. The appeal is allowed and planning permission is granted for a first floor side extension and single storey rear extension and new pitched roof to store at 2 Coxs Road, Shrivenham, Swindon SN6 8EL in accordance with the terms of the application, Ref P19/V1280/HH, dated 17 May 2019, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan – drawing no. A362/P01 Rev 0; As Proposed Plans and Block Plan – drawing no. A362/P02 Rev A and As Proposed Elevations – drawing no. A362/P03.
  - 3) The external surfaces of the development hereby permitted shall be constructed in materials that match those used on the main dwelling at 2 Coxs Road, Shrivenham.
  - 4) Notwithstanding the provisions of Class A of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or the equivalent provisions of any order revoking and re-enacting that Order), the garage accommodation forming part of the development shall be retained for parking motor vehicles at all times and shall not be adapted to be used for any other purpose, without the prior grant of planning permission.

### Procedural Matters

2. Since the Council made its decision the Shrivenham Neighbourhood Plan 2018-2031, Submission Version, June 2019 (NP) has undergone examination and the examiner concluded that the NP meets all the necessary legal requirements.

The Council agreed that the NP should proceed to referendum, but the original date set has had to be postponed due to the Covid-19 pandemic. Recent changes to Planning Practice Guidance (Paragraph: 107 Reference ID: 41-107-20200513) state that in these circumstances, the NP can be given significant weight in decision-making, so far as the plan is material to the application. Both parties have been given the opportunity to comment on the NP as part of the appeal process. Therefore, I am satisfied that neither will be prejudiced by my consideration of it where relevant to my determination.

### **Main Issue**

3. The main issue is the effect of the proposal on the character and appearance of the area.

### **Reasons**

4. Coxs Road and Berens Road predominantly comprise detached dwellings built in the latter half of the 20<sup>th</sup> century, that are mostly set within regularly spaced rectangular plots. Although there is some variety in the house type and detailing, there is coherence derived from the open frontages, use of materials and arrangement of dwellings which generally front onto the road. Taken together, this results in a pleasant, spacious sub-urban character to the area.
5. The appeal property is a detached dwelling at the corner of Berens Road and Coxs Road. It is similar to other houses in the vicinity in that the widest part of the building forms the principal elevation which has an open aspect, and the use of reconstituted stone. No.2 also has a single storey double garage to the side which projects slightly forward of the main part of the house. When combined with the proportions of the main windows and garage door, this gives a horizontal emphasis to the front elevation. Overall, the appearance of the property conforms with, and positively contributes towards, the spacious ordered character of the area.
6. The proposal includes single storey extensions as well as a side extension over the garage that would provide additional accommodation. There is no dispute between the parties that the single storey additions would be in keeping with the character of the area and I have little basis to disagree. Therefore, the area of dispute principally relates to the first floor side extension.
7. The proposed first floor extension would be level with the existing roof ridge and eaves and would utilise matching materials. Accordingly, as it would respect the existing building lines and simple roof form it would read as a natural continuation and horizontal emphasis of the existing dwelling.
8. Furthermore, some factors are employed to provide a level of articulation in the front elevation. Firstly, the first floor façade would be set back from the front elevation of the garage and would utilise smaller more closely spaced windows. Secondly, the position of the chimney stack would denote where the roof ridge had been extended. Thirdly, the scale of the extension is reasonably modest in comparison to the main dwelling. In combination, these measures would suitably integrate with the characteristics of the dwelling but safeguard against overwhelming its appearance. They would help distinguish the extension from the original main part of the dwelling thereby preserving the proportions of the building overall.

9. This is reinforced by the examples seen at 10 Berens Road and 3 Youghal Close, and the former can be seen from the appeal site. These properties appear to originally have been a similar house type to the appeal dwelling. Both have first floor extensions to the side which, although not identical to the proposal, are similar in form and massing. These examples demonstrate that such first floor extensions respect the main dwelling, integrate well into the street scene and are visually attractive.
10. I have had regard to the principles for household extensions in the Vale of White Horse Design Guide, Supplementary Planning Document, 2015 (SPD). Principle DG109 specifically relates to side extensions. This advises that such extensions should generally be set back from the front of the house and notes that this can be particularly important on symmetrical properties or identical semi-detached properties. It is not shown that either of those specific circumstances apply in this case. Furthermore, the existing single storey garage structure is already forward of the main body of the house. Therefore, setting the façade back at first floor level is a reasonable response in these circumstances. Additionally, the proposal would comply with the advice that two storey extensions should generally be constructed with the same angle of pitch as the existing roof.
11. The SPD further states that extensions that close an important gap within the street scene or lead to a terracing effect will not be accepted. The evidence does not show, given that a reasonable gap would remain between 2 and 4 Coxs Road, that the proposal would have a terracing effect. Moreover, as the extension would be on the eastern side of the building aligning with development further into Coxs Road, the general open and spacious character of the street scene at the corner of Coxs Road and Berens Road would remain. Overall, the proposal would accord with the advice in the SPD in relation to side extensions.
12. The Council highlight that the appeal site is at a prominent corner location and so the development would be visible in the public domain. Be that as it may, given that I find the proposal would respond positively to the site and its surroundings, it follows that this would not result in harm to its character and appearance. My attention is drawn to paragraph 130 of the National Planning Policy Framework which generally stipulates that permission should be refused for development of poor design. However, this also states that where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development.
13. Accordingly, I find that the proposal would not be harmful to the character and appearance of the area and on that basis, there would be no conflict with Core Policy 37 of the Vale of White Horse District Council, Local Plan 2031, Part 1, Strategic Sites and Policies, December 2016 (LP). This policy requires new development to achieve high quality design and sets out criteria including that it should be visually attractive and respond positively to the site and its surroundings. Furthermore, the proposal would comply with policy D1b of the NP which in view of its stage of preparation attracts significant weight. This, amongst other things, requires new development to achieve high quality design which respects the scale and appearance of the existing built environment.

## Conditions

14. The three year period in which the planning permission may be implemented is a statutory requirement but I also consider that it is necessary to specify the plans that are approved and that the development shall be undertaken in accordance with these, as this provides certainty.
15. A condition requiring that the external materials match those on the original house is also necessary given their importance to the overall quality of the design and local distinctiveness.
16. The Council also suggest a condition<sup>1</sup> to ensure that the double garage should be retained for parking motor vehicles in order to retain adequate on-site parking provision in the interests of highway safety and to accord with Core Policy 35 (CP35) of the LP. However, the Highway Authority states that the existing driveway, which provides two parking spaces is the minimum requirement for the property<sup>2</sup>. Moreover, policy CP35 of the LP generally seeks to promote sustainable modes of transport rather than parking for motor vehicles. Nevertheless, I have given significant weight to emerging policy P1b of the NP which recommends 4 parking spaces for a 4 bedroom dwelling in order to ensure that all new development should be self-contained in terms of parking. In the explanatory text, Berens Road is cited as an example of where parking has caused traffic and safety problems. Therefore, given the proximity of the appeal site to Berens Road, I have imposed the suggested condition.

## Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed.

*Helen O'Connor*

Inspector

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<sup>1</sup> Appeal questionnaire, question 11d

<sup>2</sup> Local Highway Authority Consultation dated 3.7.19



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## Appeal Decision

Site visit made on 23 June 2020

by **Helen O'Connor LLB MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 June 2020

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**Appeal Ref: APP/V3120/W/19/3240852**

**Land at Plot 5, Reading Road, Harwell, Didcot OX11 0LW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Daniel Ede of Ede Homes against the decision of Vale of White Horse District Council.
  - The application Ref P18/V1949/FUL, dated 31 July 2018, was refused by notice dated 19 June 2019.
  - The development proposed is the replacement of the 6-bed (347sqm) dwelling known as Holloway House approved on plot 5 (Approval Ref P17/V3134/RM) with two smaller 4-bed dwelling houses of identical cumulative size and referred to as Barrow House – Plot 5A (158sqm) and Chilbrook House – Plot 5B (189sqm).
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### Decision

1. The appeal is allowed and planning permission is granted for the replacement of the 6-bed (347sqm) dwelling known as Holloway House approved on plot 5 (Approval Ref P17/V3134/RM) with two smaller 4-bed dwelling houses of identical cumulative size and referred to as Barrow House – Plot 5A (158sqm) and Chilbrook House – Plot 5B (189sqm) at Land at Plot 5, Reading Road, Harwell, Didcot OX11 0LW in accordance with the terms of the application, Ref P18/V1949/FUL, dated 31 July 2018, subject to the conditions set out in the attached schedule.

### Procedural matters and background

2. Since the Council made its decision the Vale of White Horse District Council Local Plan 2031, Part 2, Detailed Policies and Additional Sites (LP2) has been adopted in October 2019. This replaces saved policies in the Vale of White Horse Local Plan 2011, July 2006 and forms part of the development plan together with the Vale of White Horse District Council Local Plan 2031, Part 1, Strategic Sites and Policies, December 2016 (LP1). No development plan policies are cited on the decision notice. Furthermore, both parties have had the opportunity to refer to the LP2 as part of the appeal process. Therefore, I am satisfied that neither party would be prejudiced by this change in policy circumstances.
3. Outline planning permission (reference P15/V1074/O) was granted on land at Reading Road for 16 dwellings, followed by permission for reserved matters (reference P17/V3134/RM). At the time of my visit construction was well underway on this residential development. The appeal proposal concerns the area denoted as plot 5 in that development, which permitted a detached 6-

bedroom house. Notwithstanding the references to the planning history in the description of development and the Council's appeal questionnaire<sup>1</sup>, the application before me is not a reserved matters application made under the outline permission. Rather, it is a full planning application for two houses, and I have determined the proposal on this basis.

### **Main Issue**

4. The main issue is whether the proposal is suitable having regard to the planning history, and local and national planning policies.

### **Reasons**

5. Planning Practice Guidance (PPG)<sup>2</sup> recognises that new issues may arise after planning permission has been granted, which require modification of the approved proposals. However, where such modifications are fundamental or substantial, a new planning application will need to be submitted rather than seeking a non-material amendment or an application to vary the conditions on the existing permission. The Council consider that the outline and reserved matters permission set the number of dwellings at the wider development site at Reading Road at 16 and that an amendment to increase that number would be a fundamental change that would require a new planning application.
6. The submitted information indicates that the appeal proposal was made in full, albeit that it only pertained to part of the land consented under the 16 dwelling scheme. Therefore, it accords with the PPG advice that a new planning application should be submitted. Given that it is a standalone application for two dwellings to be determined on its own planning merits, it is not constrained by the parameters of the outline consent. It follows that the case law to which I am referred<sup>3</sup>, relating to the variation of conditions under an outline permission is of little weight in these circumstances.
7. There is no dispute between the parties of the existence of a permission for a 6 bedroom house upon the appeal site that arises from the outline and reserved matters consents already referred to. Accordingly, irrespective of the outcome of this decision, such a dwelling may be constructed and, in the event that this appeal fails, given that construction is underway on the wider development site, it is reasonable to suppose the appellant would be likely to do so. As such, this is a fall-back position of considerable weight and relevance to the proposal before me.
8. By substituting the consented dwelling with a standalone proposal for two dwellings, a total of 17 dwellings would result on the wider development site overall. Based on the evidence before me, there would be no procedural obstacle to such an outcome. Moreover, the Council have not explained how any planning harm would result as a consequence of the modest increase in density or change in housing mix by reference to development plan policies. Furthermore, Core Policy 23 of the LP1 requires a minimum density of 30 dwellings per hectare on new housing developments and states that higher densities will be encouraged in locations where it will result in the optimum use of land.

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<sup>1</sup> Question 4, Appeal Questionnaire indicates the appeal relates to an application for reserved matters

<sup>2</sup> Paragraph 001, Reference ID 17a-001-20140306

<sup>3</sup> Appendix 6 of Appellant's Statement of Case - R (on the application of Wet Finishing Works Limited) v Taunton Deane Borough Council 2017 EWHC 1837 (Admin)

9. This is consistent with the general approach advocated in the National Planning Policy Framework (the Framework), with paragraph 122 stipulating that planning decisions should support development that makes efficient use of land. In comparison to the fall-back position for plot 5, by providing two smaller units, the proposal would make more effective use of the land in addressing housing supply.
10. The Council does not raise other substantive concerns regarding the planning merits of the proposal, rather their concern appears to be that the two houses proposed might proceed in isolation and in advance of the remaining land consented under the outline and reserved matters permissions<sup>4</sup>. Since the Council took its decision, significant progress on the construction of the dwellings adjacent to the appeal site has taken place. Therefore, even if I were to accept the Council's assertion that two dwellings in isolation would have been an unacceptable form of development, such an outcome is most unlikely and therefore, attracts limited weight.
11. The refusal reason on the decision notice states that the proposal would require a variation to the section 106 contribution calculations. I understand this to be a reference to a section 106 agreement associated with the outline permission reference P15/V1074/O. I have not been provided with a copy of that agreement and so have no information before me as to the planning obligations it required, nor whether its terms would cover subsequent planning applications on the land to which it pertained. Therefore, based on the limited evidence before me, it is not shown that the appeal proposal would be subject to the terms of an existing section 106 agreement.
12. Paragraph 56 of the Framework indicates that planning obligations must only be sought where they meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Accordingly, planning obligations must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. No evidence is provided to demonstrate that the proposal for two dwellings requires any planning obligations to mitigate against its impacts in order to make it acceptable in planning terms. Neither is it shown that the proposal would provide a means to circumvent or reduce specific existing planning obligations.
13. Moreover, the Council have a Community Infrastructure Levy (CIL) charging regime in operation<sup>5</sup>. Although the matter of CIL liability lies outside of the scope of my determination, this suggests that there is a mechanism in place to generally address the funding of infrastructure arising from new development in the district.
14. Therefore, based on the evidence before me, I have no basis to find other than that the proposal would be suitable having regard to the planning history, and local and national planning policies.

#### *Other matters*

15. The site falls within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). Paragraph 172 of the Framework stipulates that great weight should be given to conserving and enhancing the landscape and scenic beauty

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<sup>4</sup> Paragraph 6.1 Council Delegated Report

<sup>5</sup> Council Final comments dated 3 March 2020

of AONBs. It further states that planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. I have had regard to the concerns raised by a local resident that increasing the density at the appeal site, when taken together with the already consented residential development would constitute a major development that should be prevented. Nevertheless, the proposal for two dwellings does not of itself constitute a major proposal, and it would substitute an existing approved large detached dwelling with a similar floorspace. Although there would be changes to the form of the buildings, in comparison to the previously approved dwelling, these would be modest. As a result, the context and its relationship to the surrounding scenic qualities of the AONB would not be altered in any meaningful way. Accordingly, the proposal would conserve the scenic beauty of the AONB.

16. I have also taken account of the objection raised by Harwell Parish Council who mention that extra traffic might result as a consequence of the proposal. Nevertheless, given the modest nature of the proposal, and in comparison to the fall-back position, any increase in traffic is not likely to have a significant impact. This is reinforced by the comments of the local highway authority<sup>6</sup> who raised no objection to the proposal. As such this matter attracts limited weight.

### **Conditions**

17. I have had regard to the conditions suggested by the Council and considered them against the six tests set out in paragraph 55 of the Framework. The three year period in which the planning permission may be implemented is a statutory requirement but I also consider that it is necessary to specify the plans that are approved and that the development shall be undertaken in accordance with these, as this provides certainty. However, I have clarified that the composite plan drawing for garages and car ports is approved only in relation to the double garage details for Barrow House.
18. A condition requiring the external materials to be as indicated or as agreed is necessary given the need to integrate with and maintain the design quality of the surrounding residential development.
19. The evidence indicates that some provision for biodiversity enhancements was made for the 6 bedroom house already approved at Plot 5. I accept it is necessary to ensure that at least an equivalent level of provision is secured for the appeal proposal and have had regard to the detailed suggestion of the Countryside Officer in imposing such a condition.
20. Given the context of recent major development, I accept that broad details of a foul and surface water drainage scheme should be established. However, as no specific concerns are raised by the Senior Flood Risk Engineer there is no compelling reason why this must be established prior to the commencement of any development. I have therefore amalgamated and revised the wording as the PPG states that it is good practice to keep the number of conditions to a minimum and that pre-commencement conditions should only be used where there is a clear justification.

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<sup>6</sup> Local Highway Authority Consultation response dated 30.8.18

21. Details of the parking arrangements are shown on the submitted plans and therefore, it is only necessary to require their provision before the dwellings are occupied.

**Conclusion**

22. For the reasons given above I conclude that the appeal should be allowed.

*Helen O'Connor*

Inspector

### **Schedule of Conditions (6 conditions)**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 775 L01 Rev A; Site Layout 755 P01 Rev B; Barrow House (Plot 5a) Plans and Elevations 775 P100; Chilbrook House (Plot 5b) Plans and Elevations 775 P101; Boundary Treatments 755 P02 Rev A; Parking and Refuse 755 P03 Rev A and Garages and Carports Plans and Elevations 679 P110 (only in relation to details of double garage for plot 5a, Barrow House).
- 3) The exterior of the development hereby permitted shall only be constructed in the materials specified on the plans hereby approved or in materials which shall previously have been approved in writing by the local planning authority.
- 4) No dwelling shall be occupied until:
  1. A bird nest box, such as the Schwegler 1SP, has been provided on the southern elevation of the garage associated with the dwelling shown on plan as Barrow House. The exact position of the box shall be informed by a suitably qualified ecologist and installed in accordance with best practice guidance.
  2. An integral bat box, such as the Habibat 001, has been provided on the south eastern rear elevation of the dwelling shown on plan as Chilbrook House. The exact position of the box shall be informed by a suitably qualified ecologist and installed in accordance with best practice guidance.

This condition will be discharged through the receipt of a letter from the project ecologist providing evidence and confirming that the biodiversity enhancements have been provided in accordance with this condition.
- 5) No dwelling shall be occupied until a foul and surface water drainage scheme has been implemented in accordance with a scheme previously approved in writing by the local planning authority.
- 6) No dwelling shall be occupied until the car parking spaces, turning spaces and cycle parking provision have been provided in accordance with drawing reference 755 P03 A. For the avoidance of doubt the garage for Plot 5a shall be in accordance with the double garage plan and elevations shown on drawing 679 P110. Thereafter, the car parking spaces and cycle parking provision shall be kept available for this use.



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## Appeal Decision

Site visit made on 10 November 2020

by **Brian Cook BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 November 2020

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**Appeal Ref: APP/V3120/W/20/3253584**

**J Curtis and Sons Ltd, Thrupp Lane, Radley, Abingdon OX14 3NG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by J Curtis and Sons Ltd against the decision of Vale of White Horse District Council.
  - The application Ref P18/V1704/FUL, dated 4 July 2018, was refused by notice dated 4 December 2019.
  - The application sought planning permission for Variation of condition 1 attached to planning permission 03/01126/FUL to allow permitted use of buildings A, C, D, F and G for a further period of 5 years (from the date of this application) without complying with a condition attached to planning permission Ref 03/01126/FUL, dated 28 August 2003.
  - The condition in dispute is No 1 which states that: the uses hereby permitted shall cease on or before 31 August 2011 or immediately following the substantial completion of the extraction of sand and/or gravel on land in the applicants' control which lies adjacent to the application site, whichever is the sooner.
  - The reason given for the condition is: to accord with the terms of the planning application, as amended, and to preserve the openness and amenity of this part of the Oxford Green Belt in the longer term.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of buildings A, C, D, F and G to business purposes at J Curtis and Sons Ltd, Thrupp Lane, Radley, Abingdon OX14 3NG in accordance with the terms of the application, Ref P18/V1704/FUL, dated 4 July 2018, and the plans submitted with it, subject to the following conditions.
  - 1) The use hereby permitted shall be for a limited period being the period of 5 years from the date of this decision.
  - 2) The premises shall be used for purposes within Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

### Procedural and preliminary matters

2. The summary details set out above are taken from the documents submitted by the parties to the appeal. The application was made on the Council's form for an application 'for removal or variation of a condition following grant of planning permission. Town and Country Planning Act 1990. Planning (Listed

- Buildings and Conservation Areas) Act 1990'. Although this is the commonly used term for an application under s73 of the Act, the statute (s73(1)) applies the section to 'applications...for planning permission for the development of land without complying with the conditions subject to which a previous planning permission was granted.'
3. The effect of a successful application under s73 is the creation of a new planning permission subject to different condition(s) while the original remains extant. It is for the applicant/appellant to choose which to implement.
  4. In this case, the original decision dates from December 1992 when, on appeal, enforcement notices were quashed, planning permissions granted and s78 appeals allowed. It appears from the subsequent decision by the Council that the relevant permission is that granted in respect of application RAD/57/15<sup>1</sup> (the 1992 permission). It concerns buildings A, C, D, F and G. While permission was granted in each case for the use of the building by the then named occupier, the only conditions were condition 1 (requiring the use to cease on or before 10 years from the decision date) and condition 2 which limits the use of the buildings to purposes within Class B1. Although the appellants also refer to a building E, I can find no other reference to this building and do not consider that further.
  5. By virtue of condition 1 of the 1992 permission the use of the buildings should have ceased on 10 December 2002. On 28 August 2003 the Council granted planning permission<sup>2</sup> (the 2003 permission) for 'variation of condition 1 of Approval RAD/57/15 to allow the permitted uses of buildings A, C, D, F and G for a further 8 year period.' This was subject to one condition only which stated that 'the uses...shall cease on or before 31 August 2011 or immediately following the substantial completion of the extraction of sand and/or gravel on land...adjacent to the application site, whichever is the sooner.'
  6. While the 2003 permission would appear to have been approved pursuant to s73 of the Act, by the date of its approval, the 1992 permission had lapsed. By the date of consent, the 2003 permission was therefore the only extant permission.
  7. The 2003 permission lapsed in August 2011. As the Council notes, the continued use of the buildings for various commercial purposes represents a breach of planning control which is vulnerable to enforcement action. Equally clear is that in July 2018 when the appeal application was made, there was no extant planning permission. The appeal application, made under s73 of the Act, is therefore misconceived.
  8. In dealing with this appeal I shall therefore treat the application as one made under s73A(2)(b) of the Act, namely for permission for development carried out before the date of the application by virtue of non-compliance with the one condition to which the 2003 permission was subject.
  9. That leaves the question of how to describe the development for which retrospective permission is sought. Given the way the Council determined the 2003 permission, the development allowed is not described. It does however refer to the 'permitted uses of buildings A, C, D, F and G'. These uses are set out in the 1992 permission although the buildings are described by reference to

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<sup>1</sup> Appeal T/APP/V3120/A/91/197081

<sup>2</sup> 03/01126/FUL

their former and/or current occupiers rather than by letter and by reference to the activities then taking place in each.

10. However, only Building A is still occupied now as it was in 1992. To describe the development in the same terms as in 1992 would not, in my view, be sufficiently clear. The buildings to which the application relates are clearly shown by letter on the application plan. In all the circumstances of this appeal I consider it reasonable to describe the development for which retrospective planning permission is sought as 'the change of use of buildings A, C, D, F and G to business purposes.'

### **Main Issues**

11. The appeal site is within the Oxford Green Belt. The main issues for my determination of this appeal are therefore:
- (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (Framework) and any relevant development plan policies.
  - (b) The effect on the openness of the Green Belt.
  - (c) The effect of the development on users of Thrupp Lane with regard to highway safety and recreation; and
  - (d) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

### **Reasons**

#### ***Whether the proposal would be inappropriate development in the Green Belt***

12. The planning history of the site is set out fully in both the Council's report to Committee dated 4 December 2019 and in the 1992 permission appeal decision letter. In short, the buildings that are the subject of this appeal were erected in association with a mineral planning permission dating back to 1954 under the permitted development rights then available.
13. The 1954 planning permission has not been submitted in evidence. However, the material condition is that which states:
- "All plant, buildings, foundations and machinery shall be removed from the site by the operator at such time as the Local Planning Authority, after consultation with the operator, is satisfied that they are no longer required for the purpose of working gravel".
14. It appears that the buildings have not been used in association with the permitted gravel extraction for a period of at least 45 years. The commercial uses have been subject to planning permissions granted over the years by the Council. In respect of the subject buildings, those planning permissions are the ones granted in 1992 (on appeal) and in 2003.
15. Although the non-mineral uses of the buildings are subject to planning control by the Council, it seems to me that it is the mineral planning authority, Oxfordshire County Council, that is responsible for the future of the buildings themselves. It has the power to require their removal in accordance with the condition of the 1954 planning permission set out above once it is satisfied,

- having consulted the mineral operator, that the buildings are no longer required for the purpose of mineral working.
16. As I understand it, the County Council has resolved that mineral working at the site has permanently ceased. In accordance with the provisions of the statute and guidance relating to the review of old mineral permissions I understand that the County Council has a duty to serve a Prohibition Order in such circumstances.
  17. It has previously done so in respect of the site in 2012. However, this Order was quashed on appeal. Although the County Council has resolved to serve a further Order, a planning application has been submitted which it has concluded may be new evidence of an intention to work the mineral in the relevant site. By virtue of a decision of the County Council Planning and Regulation Committee on 1 June 2020, the Order has not been served and a decision to do so will be made once the new planning application has been validated and, as necessary, determined. I have no evidence that either has occurred.
  18. My understanding therefore is that the future of the buildings is yet to be resolved. For the purpose of my determination of this appeal I must therefore treat them as buildings erected in accordance with a mineral planning permission for the purpose of mineral working but which are now used for non-mineral purposes. In other words, the appeal application is for the re-use of buildings in the Green Belt.
  19. Such development is addressed by Core Policy 13 (CP13) of the Vale of White Horse Local Plan 2031 Part 1-December 2016 (LP). The wording of CP13 seems to me generally consistent with Framework paragraphs 143 to 147. However, the wording of Framework paragraph 146 (d) (which is the same as 2012 Framework paragraph 90 with which the LP would have been found to be consistent) and the relevant part of CP13 differ slightly.
  20. Framework paragraph 146 sets out a closed list of those forms of development which are not inappropriate development in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Form of development (d) is the reuse of buildings provided that the buildings are of permanent and substantial construction (emphasis added). The same wording for this form of development was used in paragraph 90 of the Framework published in 2012.
  21. CP13 includes the same closed list as paragraph 90 of the 2012 Framework and states that these forms of development are not inappropriate in the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within the Green Belt. The list includes the re-use of buildings '...provided that they are permanent and of substantial construction' (emphasis added).
  22. I am not aware of any caselaw on the interpretation of Framework paragraph 146 (d) nor is it referred to in either the Planning Practice Guidance or the commentary in the Encyclopedia of Planning Law and Practice. The appellants have not argued that CP13 is inconsistent with the Framework and that, in accordance with Framework paragraph 213, the latter should therefore be given greater weight. Nevertheless, in my view, the phrasing of CP13 gives it a meaning different to that of the Framework and makes the policy inconsistent

- with it. I therefore conclude that CP13 cannot attract full weight in accordance with Framework paragraph 213.
23. If I am wrong in that assessment and CP13 should, in fact, bear the same meaning as Framework paragraph 146 (d) full weight should be given to CP13 in accordance with Framework paragraph 213. In either case, it is, in effect, the Framework phrasing that must be applied.
  24. The Framework and CP13 if consistent with it therefore require three considerations. First, are the buildings of permanent and substantial construction? Second, what is the effect of their use on the openness of the Green Belt? Third, what is the effect of their use on the purposes of including land within the Green Belt? These are addressed in turn.
  25. The Council describes the buildings as being temporary 'by definition' rather than permanent in nature. That is correct in the sense that they have a finite life given the wording of the quoted condition of the 1954 mineral planning permission. However, the Framework and CP13 if consistent with it requires a different assessment, namely whether they are of permanent and substantial construction. I therefore disagree with the Council's interpretation of the meaning of 'permanent' in Framework paragraph 146 (d) although it may be a correct interpretation of CP13. I have explained above why, in that case, I do not believe CP13 to be consistent with the Framework.
  26. Building A is a blockwork structure with a corrugated dual pitch roof with a number of almost full-height openings in the front elevation housing roller shutters. It was occupied by R P Cherry and Sons Ltd, as it was in 1992. Building G is of similar construction, size and design. At the date of my site inspection it was vacant.
  27. Buildings C, F and D are, respectively, the westerly, central and easterly bays of a single blockwork building also under a corrugated roof. There is a small extension to the side of Building C. All were occupied at the date of my site inspection although, in each case, by a different occupier to that recorded in 1992. I do not believe the user, Andy's Autos Ltd, identified for Buildings C, F and D in paragraph 1.3 of the appellants' transport appraisal (TA) is correct.
  28. There is no material difference between the buildings today and the description given of them in the 1992 permission appeal decision letter. The evidence strongly suggests that they have been in existence for at least 28 years and, from other paragraphs in the same decision letter, for considerably longer. My fact and degree judgement is that each of the buildings that are the subject of this appeal are of permanent and substantial construction.
  29. I turn now to the effect on openness. Whatever the outcome of this appeal, the buildings will remain until their future is resolved by the County Council. The presence of the buildings affects the openness of the Green Belt but the reuse of the buildings themselves can have no further effect, either negative or positive. However, the associated use of the areas of hardstanding in front of buildings A and G could.
  30. The appeal buildings lie within a larger industrial estate at the end of Thrupp Lane. Not subject of this appeal application are a number of small buildings and a small yard to the west of Building C and to the south of the Building G yard. In front of Buildings C, F and D is a small area for vehicle parking, the

use of which has no material effect on the openness of the Green Belt.

Opposite these buildings is the vehicular access to a concrete plant operated by Tarmac which covers an extensive area. To the east and north of Building D is the even more extensive yard and large buildings associated with Terrafirma Roadways.

31. At the time of my site inspection, the yard in front of Building A was used for vehicle parking. As noted above, Building G was vacant and the yard thus largely unused. How it may be used going forward would depend on any future occupier. In the context of the area as a whole and the continued uses of the other extensive open areas, these two yards are quite modest in extent. In my judgement, their use has and would have a very limited effect on the overall openness of this part of the Green Belt.
32. Finally, while the Council contends that the appeal proposal would conflict with the purposes of including land within the Green Belt it does not say which of the five set out in Framework paragraph 134 would be compromised.
33. In my judgement the only one of relevance would be (c), to assist in safeguarding the countryside from encroachment. If the appeal was dismissed the other businesses discussed above would remain as would Buildings A, G, C, F and D. I believe the appellants are correct in saying that there is nothing in the condition of the 1954 planning permission that could require the hardstandings to be removed although they may be as part of any restoration scheme. It seems to me therefore that the only practical effect of denying planning permission would be to remove the vehicle parking use of the hardstandings associated with Buildings A and G. I do not consider this would have any material effect on the extent to which this area of countryside is already encroached upon by development.
34. To conclude on this main issue, having regard to the Framework and CP13 to the extent that it is consistent with it, I consider the development that is the subject of this appeal to be not inappropriate development in the Green Belt.
35. Having considered the effect of the development on the openness of the Green Belt in coming to my decision on main issue (a) it is unnecessary to consider the matter again under main issue (b). In addition, having concluded that the development is not inappropriate development in the Green Belt, main issue (d), the Green Belt balance to establish whether or not very special circumstances exist, does not require to be considered.

***The effect of the development on users of Thrupp Lane with regard to highway safety and recreation***

36. Thrupp Lane runs generally south from its junction with Radley Road. At its northern end it is two-way and subject to a 30mph speed restriction. However, over much of its length it is single-track with informal passing places and subject to the national speed limit. Much of the Lane is more or less straight with good forward visibility. There are however three 90-degree bends at regular intervals. Together with the reduced width, the geometry of the highway has a limiting effect on traffic speed. Up to a point around the road junction just beyond the entrance to the H Tuckwell & Sons Ltd quarry it is a public highway. It is however in what appeared to me to be in a generally poor state of repair with an uneven surface and failing verges in many places. Beyond and running adjacent to Thrupp Lake, it is a private road giving access

- to the appeal buildings and the other development referred to under my first main issue.
37. Many of those making representations to the Planning Inspectorate have drawn attention to the comment by the Inspector in the previous 1992 appeal that '...it is incontrovertible that Thrupp Lane is of inadequate width to cater satisfactorily for the mixture of light and heavy traffic that uses it'. In my view that certainly remains the case now. However, in my experience, this is not uncommon in country areas where quarries have operated, as here, from the 1950s or earlier; a time when the vehicles serving them were much smaller than those doing so today.
38. It is also clear from the many representations received that the conflict between those using the Lane for recreation and those using it for access to the various commercial premises is a matter of great concern to the local community. The Lane is well used for recreation by walkers and runners and became part of the Sustrans National Cycletrack Network Route 5 (NCN5) in 2002, interestingly before the Council granted the 2003 permission extending the use of the buildings subject of this appeal for a further eight years.
39. This matter is considered in the Radley Neighbourhood Plan 2018-2031 (NP), which was adopted in 2018, where the Radley Lakes Area is discussed in section 4.6. The appeal site lies on the edge of but within the area defined on NP Map 7 and the appeal must be assessed against NP policy PP.8. The policy applies only within the area shown on NP Map 7 and does not apply to the whole length of Thrupp Lane.
40. The potential for nature conservation and quiet recreation in this area has increasingly been recognised since the approach to quarry restoration changed from one of backfilling with pulverised fuel ash from Didcot power station to allow a return to agriculture to one of restoration for nature conservation. However, a fair reading of the strategy set out in NP 4.6.2 is that realising this potential is the end goal to be achieved through a gradual process as the various mineral planning permissions expire and mineral working ceases. A new access solution which removes the current conflicts between recreational users and HGV traffic is said to be the key to unlocking this potential.
41. NP Community Action CA.11 sets out what the new access solution should be. In short, it requires the provision of a new road leading westwards and the closure of Thrupp Lane to vehicular traffic at a point to the north of the H Tuckwell & Sons Ltd quarry. The NP recognises that such a scheme can only be achieved by the Parish Council through cooperative working with all the local authorities and the relevant landowners.
42. NP policy PP.8 addresses three types of development. I agree with the Parish Council that it is only the final paragraph of the policy that applies and then only the second bullet. This says that development will be supported only if it meets the five criteria set out earlier in the policy and it is served by a suitable and safe access route that avoids conflicts between vehicles accessing the site and pedestrians and cyclists accessing the wider area.
43. Turning first to the five criteria, I have already concluded in considering the first main issue that the development would comply with CP13 (criterion 1) if consistent with the Framework. No evidence has been submitted to suggest that the appeal development would cause any detriment to the wider landscape

(criterion 2) or the integrity of the local ecology (criterion 4), nor has the Council raised any issue in respect of LP policy CP42, flood risk (criterion 3). Criterion 5 requires appropriate transport mitigation to be included. In my view that is embraced by the second bullet set out in the paragraph above. Subject to conclusions on that, I consider that the appeal proposal meets the five criteria of NP policy PP.8.

44. There are in fact two parts to the second bullet. First, the access route must be suitable and safe and, second, it must avoid the conflicts set out.
45. Dealing first with 'suitable and safe', the appellants have submitted a TA which has been reviewed by the Highway Authority. The TA estimates that bringing the uses of the buildings to a halt would reduce traffic on the public road section of Thrupp Lane by around 25-30%<sup>3</sup>. This would represent an absolute reduction in traffic levels. However, given both the other users of the road (which include the additional users of the industrial estate within which the appeal buildings lie, the Tarmac concrete plant and the quarry operated by H Tuckwell & Sons Ltd) and the nature of the traffic that would be removed (mostly cars and light goods vehicles), the TA asserts that there would be no material change in the character of the traffic on the Lane as the majority of the HGV traffic would be retained.
46. Taking the geometry of the Lane and its limiting effect on traffic speed into account, the Highway Authority raised no objection to the appeal proposal on highway safety grounds. Furthermore, there is no evidence that any form of weight restriction on Thrupp Lane has been imposed or considered. I acknowledge that this is a matter of great concern to those making representations, but I have no other professionally prepared technical evidence to lead me to disagree with the assessment of the responsible authority. I appreciate that the local community consider that a number of accidents have been caused along the Lane but neither the appellant nor the Highway Authority draw my attention to any formal accident data.
47. There is therefore no evidence from the Highway Authority to lead me to conclude that the access route as a whole is anything other than suitable and safe.
48. I now turn to the second part of the bullet. In doing so, it is necessary to understand the nature of the vehicle/recreational user conflicts that are occurring along Thrupp Lane. In considering this matter it is important therefore to draw a distinction between the effect of traffic arising from the appeal buildings and that arising from other quarry and commercial activities which use the public highway for vehicle access.
49. The traffic survey submitted by the Parish Council explicitly states that the survey points were chosen to distinguish between traffic from the Tarmac and the Tuckwell sites alone; neither are subject of this appeal. It recognises that this would omit traffic '...using only the top part of Thrupp Lane, but this was not the main focus of interest.' Furthermore, in the photographs submitted by local residents it is clear that many of the large vehicles shown as being responsible for the issues raised are in the company livery of Tarmac or other

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<sup>3</sup> I note that this calculation is disputed by the Friends of Radley Lakes. However, as explained in the 'procedural and preliminary matters' above, the application is for permission for development already carried out. The traffic is already being generated and the approach in the TA therefore seems reasonable and is, in any event, not challenged by the Highway Authority.

well-known regional aggregates companies. The HGV movements from Terrafirma are also specifically referred to. None of these operations are the subject of this appeal and there is no reason to believe that its outcome will materially affect the issues identified.

50. There is therefore very little evidence substantiated by survey data of actual vehicle/recreational user conflicts being caused on Thrupp Lane by vehicles using the appeal buildings although there are references in the representations made to issues arising from vehicles accessing Building A.
51. To summarise, the appeal development is served by a suitable and safe access route and there is no evidence that the appeal proposal will materially affect, one way or the other, the vehicle/recreational user conflicts that already exist. I do not therefore consider transport mitigation measures to be appropriate or necessary and thus find no conflict with criterion 5. There is therefore no conflict with the final paragraph of NP policy PP.8 and thus no conflict on this issue with NP policy PP.8 as a whole.

### **Conditions**

52. In considering the conditions that should be imposed on the planning permission that I shall grant I have had regard to the advice in the Planning Practice Guidance.
53. The appellants only ever sought a planning permission for a further period of five years. In the event of the appeal being allowed, the Council has suggested such a period be imposed by condition. In the particular circumstances of the area, which include the need to resolve the position with the mineral planning permissions, when and how the appeal site may be restored and when progress can be made on achieving the aspirations and strategy set out in the NP for the Radley Lakes Area, such a condition is entirely appropriate and necessary.
54. Although the Council has not suggested it, I also believe a condition is required to control the uses to which the buildings may be put. Such a condition was imposed on the 1992 permission but it was lost given the form in which the Council issued the 2003 permission. Nevertheless, as the appellant at least has approached this matter as if the 1992 permission was, in essence, being renewed for a second time, it is appropriate to reimpose it now in a form that recognises the changes made to the Town and Country Planning (Use Classes) Order 1987 as amended since 1992 and the current advice on restricting changes within a Class set out in the Planning Practice Guidance.

### **Conclusion**

55. For the reasons given above I conclude that the appeal should be allowed.

*Brian Cook*

Inspector



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## Appeal Decision

Site visit made on 15 December 2020

**by Andy Harwood CMS MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 December 2020**

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### **Appeal Ref: APP/V3120/X/20/3252127**

### **Youlbury Cottage, White Barn, Sandy Lane, Boars Hill, Oxford OX1 5HH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Ashley Trice against the decision of Vale of White Horse District Council.
  - The application Ref P20/V0490/LDE, dated 19 February 2020, was refused by notice dated 30 April 2020.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is described as "land to the east of the property coloured pink on the picture".
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### **Decision**

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

### **Preliminary Matters**

2. I am normally obliged to use the description of development as included on the application form although that describes the location and not the development that the appellant wishes to establish the lawfulness of. The Council re-described the application on the decision notice as "Lawful Development Certificate for the existing use of the land as residential curtilage". That however does not describe something for which a certificate can be sought because "curtilage" is not a use of land and it is not an act of development for which S191(1) can be applied to.
3. The application refers in section 6 in relation to why the LDC should be granted to "the land has been used as a garden since 2001". It is clear from this and the representations that the appellant, the Council and other parties have understood that the appeal relates to whether the use of the land as domestic garden in connection with the residential occupation of Youlbury Cottage is lawful. The main parties were written to in order to confirm the correct description of the development and I have used this on the certificate.
4. For the purposes of the Act uses are lawful at any time if, under s191(2)(a) no enforcement action may be taken in respect of them whether because they did not involve development or require planning permission or because the time for enforcement action has expired for any other reason. The application results from an enforcement investigation relating to the construction of a shed to the south-east of the dwelling. However, it has been confirmed that at the date of

the application no enforcement notice was in force and so there is not a contravention of S191(2)(b) that would prevent the issue of a LDC. I have not gone on to consider the lawfulness or otherwise of the shed which is therefore a separate matter.

### **Main Issues**

5. I will constrain my consideration to whether the use for of the land as domestic garden in connection with the residential occupation of Youlbury Cottage was lawful on the date of the application. I am required to determine whether the Council's decision to refuse the application was well founded. However, there are a number of matters of relevance to the consideration of that.
6. The term 'curtilage' does not relate to a use of land being derived from conveyancing law and any building may have a curtilage regardless of the use of that building. If however, the land is within the curtilage of a 'dwellinghouse' then by reason of S55(2)(d) of the Act, "the use of any buildings or other land within the curtilage...for any purpose incidental to the enjoyment of the dwellinghouse as such", is excluded from the definition of development within S55(1).
7. There is no dispute that Youlbury Cottage is a dwellinghouse. It is first of all necessary to consider whether the areas shaded in pink on one of the plans submitted with the application, along with undisputed areas, fall within the curtilage of that dwellinghouse. If so, the use of those areas for purposes incidental to the residential occupation of that dwellinghouse would not constitute development and would therefore be lawful.
8. If I do not consider that the use is lawful on that basis, it would be necessary to go on to determine whether the use of the land beyond the curtilage as domestic garden would have constituted the making of a material change in the use of that land. If so, having regard to the time limits under S171B(3) of the 1990 Act, it would then be necessary to consider whether that use had continued for a period of 10 years prior to the date of the application. The material date for that would be 19 February 2010.
9. The onus is upon the appellant to demonstrate their case on the balance of probability. The evidence does not need to be corroborated independently in order to be accepted but it must be sufficiently precise and unambiguous.

### **Reasons**

10. The Council has referred to a number of legal authorities regarding the concept of curtilage. I would generally agree with their assessment of the basic legal principles. It has been generally held that for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building. However, in *Skerritts of Nottingham*<sup>1</sup> the Court of Appeal held that previous cases including *Dyer*<sup>2</sup>, "went further than it was necessary to go in expressing the view that the curtilage of a building must always be small, or that the notion of smallness is inherent in the expression". Case law overall has established that it is primarily a matter of fact and degree for the decision maker to decide what weight should be given to each of the relevant factors which are, (i) the

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<sup>1</sup> *Skerritts of Nottingham Ltd v SSETR (No.1)* [2000] EWCA Civ 60, [2001] JPL 1025

<sup>2</sup> *Dyer v Dorset CC* [1988] 3 WLR 213

physical layout of the building and land; (ii) ownership past and present; and (iii) use or function past and present.

11. Youlbury Cottage is one of a pair of semi-detached dwellings, along with Gardener's Cottage, within a cluster of dwellings in an attractive wooded setting. At rear of the dwelling there is a modest, lawned garden separated from Gardener's Cottage by a low picket fence which also defines the rear boundary with a track that runs between the property and the nearest building to the south-west, 'Whitebarn'. The lawn continues on to the south and there is an incomplete line of planting along with more mature hedging and trees. That line may approximate to an apparent line indicated on the application plan but does not provide any substantial barrier. The lawn continues past this line of planting and into the first area that the appeal relates to, the area shaded pink on one of the submitted plans that lies to the south-east of the dwellinghouse (the 'south-eastern' area).
12. The south-eastern area is on slightly raised land relative to the more formal lawn. It contains some mature trees, semi-formalised planted beds, some informal surfacing of what appears to be mulched chippings in places mixed with gravel as well as an informal grassed area in front of a large outbuilding with decking, climbing play-equipment and a log-store. This is enclosed by a mixture of lap-fencing and lower log-walling on the side adjoined by 'Agents Cottage' with the stacked-log walling continuing around the south-eastern boundary. On the other side of the south-eastern land, the ground level drops off distinctly to a lower track. From the appeal site, I could see what looked like old stone banks retaining land on the other side of that track which I am told is on land that is a part of the former Victorian pleasure garden.
13. The other area of land that is in dispute in this appeal is a roughly triangular shaped area to the north-east (the 'north-eastern' area) of Youlbury Cottage towards Agent's Cottage and which is currently used as part of the access, parking and vehicle circulation area on the approach to the front of the dwellinghouse. This is accessed from the area in front of the cottage by a gravel track but also from the side and rear via the lawn. The gravel track also leads along the north-eastern boundary through to the south-eastern area.
14. On entering the north-eastern area from the wider estate land it is clear that the parking area is closely associated with the dwellinghouse and that it is a private area. Visitors approaching would be apparent to people within the dwellinghouse. When I visited, I could also see that the substantial play equipment and domestic paraphernalia strewn around the south-eastern area support the uncontested position that all of the land including the large outbuilding, is presently used for purposes incidental to the occupation of Youlbury Cottage. Both of the areas of land are enclosed as one with the dwellinghouse and are closely related to it in my view. That close relationship to the dwellinghouse is due in part to the degree of enclosure and consequent separation from adjoining land but also the way in which the land is largely visible from the building and area immediately surrounding it.
15. Both areas of land have previously been in the same ownership as the adjoining Gardener's Cottage and along with other dwellings in this cluster would have originally been part of the wider Youlbury House Estate. From what I could see from within the appeal site as well as upon approach along the

shared driveway, the land within the remaining estate is now distinctly separate from any of the gardens around this and nearby dwellings.

16. There is some limited evidence such as the historic maps submitted by interested parties, to indicate that the south-eastern area may in the past have been more wooded in nature than at present. The boundaries shown on the historic maps also indicate that there may have been some separation from the areas immediately around the cottages previously, such as when the whole area was in single ownership. Over time that appears to have been eroded including at some point prior to 2016 the connection of both areas of land to Gardener's Cottage rather than Youlbury Cottage. There is also some evidence that is limited in any detail about a track across the south-eastern land as well as its use as what seems to have been a low-key garden area. However, there has been a significant change in circumstances by reason of the estate selling off individual dwellings and the land around them.
17. Looking in the round on the basis of the evidence submitted as a whole including what I saw, I am satisfied that the physical layout of the dwellinghouse and the land are closely and intimately linked. There is, as part of that, connectivity between all of the land, both that which is undisputedly part of the curtilage as well as the disputed areas. Ownership has varied and, in the case of the south-eastern land, possibly the function has also changed when there was a significant change in circumstances across the former estate. However, even when in different use and ownership, the south-eastern land is so closely related to the dwellinghouse that I do not consider this overrides the other aspects of the judgement that I need to make. There is a dispute over the position of a fence on the ground between Youlbury Cottage, Gardener's Cottage and Agent's Cottage but even if neighbours have a right to access or take ownership of a small portion of the land, this does not make a significant difference to my overall consideration.
18. All of the land was at the time of the application and when I carried out my site visit, used for purposes incidental to the dwellinghouse. All of the land has an intimate relationship with the dwellinghouse and is in the same ownership. As a matter of fact and degree I am satisfied on the balance of probability, that the land currently forms part of the curtilage of the dwellinghouse. The use of land within the curtilage of the dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse does not, given the provisions of s55(2)(d), involve development of the land. Consequently, the use of land as domestic garden is lawful. It is therefore unnecessary for me to consider whether the use as domestic garden has involved a material change in the use of the land or for how long that use has continued.

## **Conclusion**

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use for of the land as domestic garden in connection with the residential occupation of Youlbury Cottage, was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*A Harwood*

INSPECTOR



## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 19 February 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The land is within the curtilage of the dwellinghouse. Under S55(2)(d) of the Town and Country Planning Act 1990, the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such, does not involve the development of land. By virtue of s191(2)(a) of the 1990 Act, the use of land as domestic garden is therefore lawful.

Signed

*A Harwood*

Inspector

Date: 29 December 2020

Reference: APP/V3120/X/20/3252127

### **First Schedule**

The use of the land as domestic garden in connection with the residential occupation of Youlbury Cottage.

### **Second Schedule**

Land at Youlbury Cottage, White Barn, Sandy Lane, Boars Hill, Oxford OX1 5HH

## NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 29 December 2020

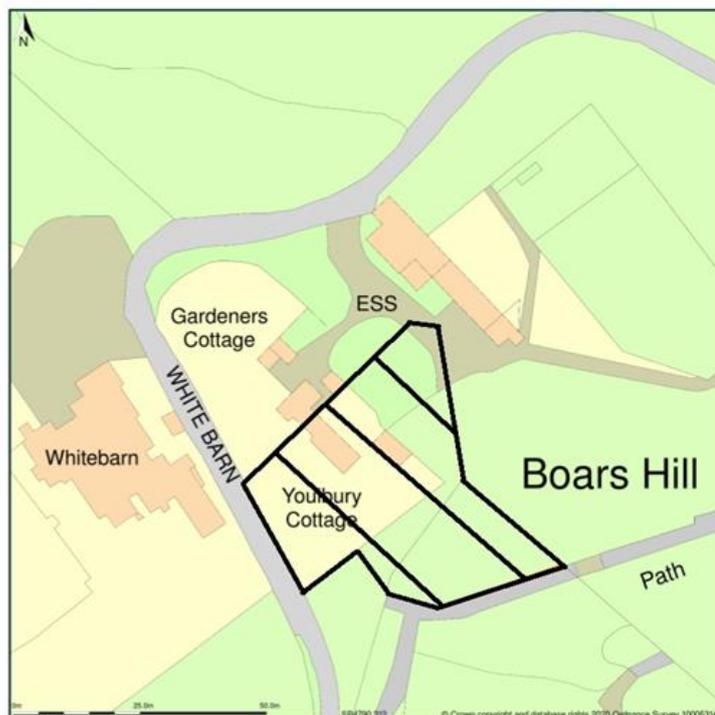
by **Andy Harwood CMS MSc MRTPI**

**Land at: Youlbury Cottage, White Barn, Sandy Lane, Boars Hill, Oxford OX1 5HH**

**Reference: APP/V3120/X/20/3252127**

Scale: Not to scale

Youlbury Cottage White Barn, Sandy Lane, Boars Hill, Oxford, Oxfordshire, OX1 5HH



Site Plan shows area bounded by: 447831.17, 203055.6, 447972.6, 203197.02 (at a scale of 1:1250), OSGridRef: SP4790 312. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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## Appeal Decision

Site visit made on 18 August 2020

by **David Murray** BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

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**Appeal Ref: APP/V3210/W/20/3251366.**

**5 Toynbee Close, North Hinksey, Oxford, OX2 9HW.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Toynbee Close Development Ltd and 5 Toynbee Close Ltd. against the decision of Vale of the White Horse District Council.
  - The application Ref. P19/V1512/FUL, dated 19 June 2019, was refused by notice dated 6 December 2019.
  - The development proposed is the erection of a new building containing 2 no. x 2 bedroom flats to the rear of 5 Toynbee Close, demolition of car port and outbuilding to facilitate access from Toynbee Close with provision of parking with bin and cycle stores. Demolition of existing dwellinghouse and erection of a 2 storey building containing 1no. x 3 bedroom flat and 2no. x 1 bedroom flats with provision of parking with bin and cycles stores.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the erection of a new building containing 2no. x 2 bedroom flats to the rear of 5 Toynbee Close, demolition of car port and outbuilding to facilitate access from Toynbee Close with provision of parking with bin and cycle stores. Demolition of existing dwellinghouse and erection of a 2 storey building containing 1no. x 3 bedroom flat and 2no. x 1 bedroom flats with provision of parking with bin and cycles stores at 5 Toynbee Close, North Hinksey, Oxford, OX2 9HW, in accordance with the terms of the application, Ref P19/V1512/FUL, dated 19 June 2019, and the plans submitted with it as amended, subject to the conditions set out in the attached Schedule.

### Main Issues

2. The main issues are:
  - the effect of the proposed development on the character and appearance of the area, with particular emphasis on the design of the new buildings; and
  - the effect on the living conditions of the occupiers of neighbouring properties by loss of privacy from being overlooked.

### Reasons

#### *Background*

3. The appeal site comprises a bungalow and its large garden which lie at the eastern end of Toynbee Close, a short cul-de-sac, in a mainly residential area

of Botley a suburb to Oxford. It is proposed to demolish the existing bungalow and erect a new detached two storey building comprising two 2-bed flats at the rear (northern) end of the site (the rear development) and also erect a new two storey building mostly over the footprint of the existing bungalow which would accommodate three flats (a three bed flat on the ground floor and 2 one-bed flats on the first floor. The submitted layout shows 7 parking spaces – 4 near the centre of the site fronting an extended driveway, and three on raised ground at the front of the site with access directly off Toynbee Close.

4. The appellant advises that planning permission has been granted for the erection of a new dwelling on the rear part of the site under ref. P16/V3039/FUL, together with a more recent permission for a flatted development under the ref. P20/V0301/FUL. These separate permissions over a similar part of the site are referred to by the appellant as a 'fallback' position which can be implemented, nevertheless the appeal scheme must be assessed on its individual planning merits.

*Effect on character and appearance*

5. In considering this issue I have had regard to the Council's North Hinksey Parish Character Assessment (January 2018) and particularly the Elms Rise Estate Character Area. The assessment describes the general character as a classic suburban character of two storey pyramid roofed semi-detached houses set back with green front gardens. The assessment recognises the high degree of consistency in architectural uniformity although it describes the Hutchcombe Road area (to which Toynbee Close lies off) as having a less uniform character and represents a transition to the lower density development at Cumnor Rise, and that here there is a greater mix of one and two storey houses and materials. I have also had regard to the emerging North Hinksey Village Neighbourhood Development Plan (NHVNDP) as modified and pending prior to referendum, although this is not yet part of the development plan.
6. At my site visit I noted the topography of the local part of North Hinksey is undulating and Toynbee Close slopes away from Hutchcombe Road before rising again at its eastern end. The level of Toynbee Close outside the appeal site is therefore at a higher level than the slab/floor level of the existing bungalow. There is also a slope running north-south so the rear part of the appeal site garden slopes downwards towards the rear of properties in Cope Close. The appeal site and surrounding gardens tend to be well landscaped with trees and shrubs although I noted at the visit that there is evidence of trees having been felled at the appeal site. Some mature trees in adjacent gardens overhang the site.
7. In terms of the local townscape the general character of the area is formed by mainly two storey properties both detached and semi-detached although in Toynbee Close there is also a pair of bungalows between the houses as well as the bungalow on the appeal site. The architecture of the area is therefore quite varied although most properties, whether single or two storeys, have some form of traditional pitched roof.
8. Dealing with the proposed new building on the front part of the site, this is proposed to have a contemporary form with the building broken up into a series of flat roof 'boxes' by different materials, roof heights and widths. On

the face of it the building would contrast markedly with the other properties in the Close, however, the actual effect is not likely to be materially harmful to the local townscape. The two storey form of the building, with a flat roof as an integral part of the design, would not appear over bulky alongside the neighbouring house (no.4) which is two storey plus the pitched roof and thus would be higher. On the eastern side the new property would be alongside trees/shrubs which enclose a parking area and the rear gardens of houses in Maple Close. Therefore, in visual terms the new building would only be read as part of the western end of the Close and its position at the end of this cul-de-sac limits the degree to which it affects the public realm. Moreover, the palette of materials proposed would not be dissimilar to the varied buff brick colour, brown vertical tile hanging and grey/brown roof tile that exist locally.

9. Taking the general range of materials, topography and position in the street scene into account, I find that the flat roof design of the building would not be an unduly obtrusive or alien feature in the street scene or would be visually inappropriate. It would not harm the general character of the area as described in the character assessment.
10. In terms of the proposed front parking spaces, these will be level with the road at the end of the Close, as opposed to driveways sloping down to the properties as per the other houses, but the parking area has to be seen in the context of the larger parking area at the end of the cul-de-sac. I find that the visual impact of this parking area in the street scene would be limited and not prominent or out of place as the Council alleges.
11. Turning to the building on the rearward part of the site, at the site visit I noted that this area was well contained at the moment by mature landscaping in most of the adjoining gardens. Further, because of the length of the garden a building here would not be read in conjunction with the frontage housing development in any of the existing Closes.
12. I find that the proposed rearward building would reasonably assimilate with its surroundings. The fact that the Council have already permitted a building in this location of similar design and scale adds weight to this conclusion.
13. I have also had regard to the general advice on 'achieving well-designed places' in the NPPF. Paragraph 127 (c) advises that planning decisions should ensure new development is sympathetic to local character and history, including the surrounding built environment, while not preventing or discouraging appropriate innovation or change (such as increased densities).
14. Overall, I find that the design and scale of both buildings proposed and the related aspects of the development would result in an innovative and visually attractive form of development which establishes a distinct identity in itself and is visually appropriate to fit in with the surroundings of the site and the wider area. The proposal accords with the requirements of Policy CP37 of the Vale of the White Horse Local Plan (VWHLP) Part 1, and respects local character as per Policy HS1 of the emerging NHVNDP.

### *Effect on living conditions*

15. This issue is concerned with overlooking from windows and a balcony/terrace particularly at first floor level, and whether these would result in a loss of privacy and amenity for the occupiers of existing and the new properties and thus have a significant adverse effect as referred to in Policy 23.
16. Dealing with the rearward building first, the building has been designed with its main aspect facing south 'up' the site. Other windows at first floor level on the south elevation are shown to be glazed with obscure glass while the bedroom window on the west elevation faces a mature tree screen. The Council's main concern is the introduction of a first floor terrace facing south. This would look over the proposed flat roof of the new building mainly towards the garden and parking area, and oblique views to the east would be visually restricted by the proposed opaque glass screen. The provision and retention of this can be required by condition.
17. Although there could be some additional overlooking from the terrace when compared to that arising from the full width bedroom window in the permitted 'fallback' scheme, views towards the gardens of adjoining properties would be limited because of the degree of landscape screening which exists and the topography of the land.
18. Turning to the forward building, again the design here is for the main aspect to be north-south with minor flank windows glazed with obscure glass. The exception to this layout is the corner window to the front facing first floor flat. I considered the position of this at the site visit and noted that the front wall of the garage of the adjoining property (No.4) would be about the same distance from the road as the corner window. However, this adjacent property does not have any existing windows in the east facing flank other than a roof light to the garage. The proposed corner living room window would therefore face towards a blank wall rather than directly into this neighbouring property or its private amenity space, and to the public realm where a degree of overlooking has to be expected.
19. I conclude on this issue that the proposal would not materially harm the living conditions of neighbours by resulting in overlooking and loss of privacy and there is no conflict with the provisions of Policy 23 in terms of ensuring that a new development does not have a significant adverse effect on living conditions or residential amenity of the occupiers of neighbouring properties.

### *Other matters*

20. In addition to the above issues, local residents are concerned about the increase in the density of development and resulting activity on site and also raise objections in terms of noise impact and light and traffic pollution. However, dealing with the latter first, I note that the highway authority did not raise objection to the increased level of traffic generation on Toynbee Close from one bungalow to 5 flats and it appeared to me that the nature of this part of the highway is adequate for the use proposed. Moreover, it has not been demonstrated that there is a local air pollution problem or that the degree of additional traffic would make this materially worse, or that the frequency of vehicle movement would harm residential amenity. The

proposal would give rise to more residential activity on site and may result in more light stemming from the properties, but the proposed development has to be considered in the context of the site being within a suburban residential area and the increase in noise or light emissions would not be materially out of place. I am therefore not able to give significant weight on these objections.

### *Planning balance*

21. Bringing together my conclusions on the main issues I have found that the proposed housing scheme would reasonably fit in with the surroundings of the site and although a contemporary form of design is proposed this would not be harmful to the general residential character of the area. I am also satisfied that with appropriate conditions to control overlooking from upper floor windows and an aspect from the terrace in the rearward building, the proposal would not result in a level of overlooking which would have a significant adverse effect on the living conditions or amenity of the occupiers of neighbouring properties. For the reasons given, I find that the proposal is in accordance the relevant provisions of the development plan.
22. This position has to be balanced with the other adverse effects but these are limited and not of such weight as to outweigh the positive aspects of the development.
23. I have also taken account of the national guidance in the NPPF to achieve well designed places and make effective use of land. I find that the proposal meets the balance of guidance when the NPPF is read as a whole and the proposal should be regarded as 'sustainable development' which the NPPF seeks to achieve.
24. Overall, as the proposal accords with the development plan and the other material considerations do not outweigh this, the scheme should be permitted

### *Conditions*

25. In terms of conditions the Council recommended 15 which I will consider under the same numbering. Moreover, where the conditions are 'pre-commencement' ones, the appellant's agent was given the opportunity to comment on them prior to the decision.
26. In addition to the condition on the commencement of the development (no.1) a condition specifying the plans that are approved (no.2) is necessary in the interest of clarity and the development must be carried out in accordance with these plans to maintain the appearance of the area. To ensure that the development is carried out in an appropriate manner further details are necessary of the existing and proposed ground levels (no.3); measures for the protection of trees that are to be retained (no.4); details of external materials (no.8) and boundary treatment (no.9); as well as a scheme for new landscaping (no.5).
27. In order to ensure the residential scheme has proper drainage to avoid pollution or flooding, further details of the means of disposal of surface and foul water are needed and the approved scheme must be implemented (no.6 & 7). I will therefore impose these conditions. The submission and agreement of further details of refuse storage and recycling (no.10) is

necessary to avoid pollution and in the interests of amenity and I will impose this along with conditions to ensure the implementation of the cycle parking facilities (no.11) and new access arrangements and vehicle parking facilities (no.12) in the interests of highway safety and sustainable transport. Finally, conditions to ensure that specific windows are non-opening below eye level and glazed with obscure glass (no.13 and 14) are reasonable and necessary to prevent overlooking of neighbouring properties and I will also impose no.15 for a similar reason to require the provision of a side screen, although I will amend this to also allow the erection of a solid wall 1.8m high in the light of an alternative scheme permitted by the Council.

### **Conclusions**

28. For the reasons given above I conclude that the appeal should be allowed.

*David Murray*

INSPECTOR

### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the details shown on the following approved plans, A-02-100 Rev B, A-04-100, A05-101 Rev A, A-05-103 Rev B, A-03-100 Rev A, A-03-102 Rev B, A-03-300 Rev A and A-02-100 Rev B, except as controlled or modified by conditions of this permission.
- 3) Prior to the commencement of development detailed plans showing the existing and proposed ground levels of the site together with the slab, finished floor and ridge levels of the proposed development, relative to a fixed datum point on adjoining land outside of the application site, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
- 4) Prior to the commencement of any site works or operations relating to the development hereby permitted, an arboricultural method statement to ensure the satisfactory protection of retained trees during the construction period shall be submitted to and approved in writing by the Local Planning Authority. Written approval must be obtained prior to commencement of any site works including demolition. The matters to be encompassed within the arboricultural method statement shall include the following:-
  - (i) A specification for the pruning of, or tree surgery to, trees to be retained in order to prevent accidental damage by construction activities;
  - (ii) The specification of the location, materials and means of construction of temporary protective fencing and/or ground protection in the vicinity of trees to be retained, in accordance with the recommendations of BS 5837 'Trees in relation to design, demolition and construction' and details of the timing and duration of its erection;
  - (iii) The definition of areas for the storage or stockpiling of materials, temporary on-site parking, site offices and huts, mixing of cement or concrete, and fuel storage;
  - (iv) The means of demolition of any existing site structures, and of the reinstatement of the area currently occupied thereby;
  - (v) The specification of the routing and means of installation of drainage or any underground services in the vicinity of retained trees;
  - (vi) The details and method of construction of any other structures such as boundary walls in the vicinity of retained trees and how these relate to existing ground levels;
  - (vii) Details of the materials and method of construction of any roadway, parking, pathway or other surfacing within the root protection area (RPA), which is to be of a 'no dig' construction method in accordance with the principles of

Arboricultural Practice Note 12 "Through the Trees to Development", and in accordance with current industry best practice; and as appropriate for the type of roadway required in relation to its usage

- (viii) Provision the supervision of ANY works within the RPA of trees to be retained, and for the monitoring of continuing compliance with the protective measures specified, by an appropriately qualified arboricultural consultant, to be appointed at the developer's expense and notified to the Local Planning Authority, prior to the commencement of development; and provision for the regular reporting of continued compliance or any departure there from to the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details with the agreed measures being kept in place during the entire course of development.
- 5) Prior to the commencement of the development hereby permitted a scheme for the landscaping of the site, including the planting of live trees and shrubs and the treatment of the access road and hard standings, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented prior to the first occupation and thereafter be maintained in accordance with the approved scheme. In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub or equivalent number of trees or shrubs, as the case may be, of a species first approved by the Local Planning Authority, shall be planted and properly maintained in a position or positions first approved in writing by the Local Planning Authority.
  - 6) Prior to the commencement of development, a full foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, position and construction of the drainage scheme, all coupled with calculations to evidence this.
  - 7) Prior to the commencement of development, a full surface water drainage scheme, including details of the size, position and construction of drainage works, shall be submitted to, and approved in writing by, the Local Planning Authority. The drainage scheme shall be designed to accommodate a 1 in 100 year storm + 40% Climate Change and will be implemented in accordance with the approved details prior to the commencement of the development hereby approved.
  - 8) Prior to the construction of the buildings hereby approved above foundation slab level, a photographic schedule of all materials to be used in the external construction and finishes of the development (including bin and cycle stores) hereby permitted shall be submitted to and approved in writing by the Local Planning Authority.
  - 9) Notwithstanding any details shown on the approved drawings, the site's internal and external boundaries shall be enclosed in accordance with a detailed scheme and programme of implementation which shall first have been submitted to and approved in writing by the Local Planning

Authority. The programme shall ensure that the approved boundary treatments for each dwelling are completed prior to the occupation of that dwelling, and the approved boundary treatments for the whole site are completed prior to the occupation of the first dwelling.

- 10) Prior to the occupation of any dwelling, provision shall be made for storing domestic refuse and recycling materials for that dwelling in accordance with the approved plans. Thereafter, the approved refuse and recycling materials storage facilities scheme shall be permanently retained.
- 11) Cycle parking facilities shall be provided prior to the occupation of the development hereby approved in accordance with the details shown on drawing A-02-100 rev B & A-03-300 rev A. Thereafter, the cycle parking shall be retained as approved.
- 12) Prior to the use or occupation of the new development, the new vehicular access, parking area/spaces and turning space shall be constructed and the visibility splays provided in accordance with the details shown on approved drawing number A-02-100 Rev B. The parking and turning areas shall be constructed to prevent surface water discharging onto the highway. Thereafter, the parking and turning areas shall be kept permanently free of any obstruction to such use, and the visibility splays shall be permanently maintained free from obstruction to vision.
- 13) The two first floor windows in the east and west side elevation of the front building hereby permitted (labelled 'high level obscure glazing' on drawing A-03-100 rev A) shall be glazed in obscure glass with a minimum of level 3 obscurity, and shall be fixed shut with the exception of a top hung openable fanlight, prior to the first occupation of the building and shall be retained as such thereafter.
- 14) The three first floor windows in the north elevation of the rear building hereby permitted shall be glazed in obscure glass with a minimum of level 3 obscurity, and shall be fixed shut with the exception of a top hung openable fanlight, prior to the first occupation of the accommodation and it shall be retained as such thereafter.
- 15) The east balcony elevation of the rear building hereby permitted shall be screened by the erection of either an obscure glass screen or a solid brick wall, 1.8m in height, prior to the first occupation of the accommodation and the screen/wall shall be retained as such thereafter.