

East Area Planning Committee

6th November 2013

Application Number: 13/01796/FUL

Decision Due by: 11th September 2013

Proposal: Change of use from dwellinghouse (use class C3) to HMO (use class C4) (retrospective)

Site Address: 34 Mill Lane, Marston, Oxford

Ward: Marston

Agent: N/A

Applicant: Mr Cowell

Application called in by Councillor Clarkson supported by Councillors Price, Fry and Lloyd-Shogbesan.

Recommendation:

APPLICATION BE REFUSED

For the following reasons:

1. The use of the property as two self-contained flats would be unacceptable by virtue of the loss of a family dwelling. In addition the existing dwelling is below the threshold of 110 square metres in area which is the minimum permissible for subdivisions. As such the proposal is contrary to Policy CS23 of the adopted Core Strategy and the Balance of Dwellings Supplementary Planning Document.
2. The development does not provide an adequate level of private amenity space for use by the occupiers of the first floor unit, which would have a detrimental impact upon the living conditions of the current and future occupiers of this dwelling. This is contrary to policy HP13 of the Sites and Housing Plan 2013.
3. The ground and first floor flats do not provide an adequate level of good quality living accommodation which would have a detrimental impact upon the living conditions of the current and future occupiers of this dwelling. This is contrary to Policy HP12 of the Sites and Housing Plan 2013.

Main Local Plan Policies:

Oxford Local Plan 2001-2016
CP1 - Development Proposals

CP6 - Efficient Use of Land & Density
CP8 - Design Development to Relate to its Context
CP10 - Siting Development to Meet Functional Needs
HE7 - Conservation Areas

Core Strategy

CS18_ - Urban design, town character, historic environment
CS23 – Mix of Housing

Sites and Housing Plan

HP7 – Houses in Multiple Occupancy
HP9_ - Design, Character and Context
HP12 – Indoor Space
HP13 – Outdoor Space
HP14_ - Privacy and Daylight
HP15_ - Residential cycle parking
HP16_ - Residential car parking

Other Material Considerations:

National Planning Policy Framework
Balance of Dwellings Supplementary Planning Document
Good Practice Guide on HMO Amenities and Facilities

This application is close to or affecting the setting of the Marston Conservation Area

Relevant Site History:

06/02529/FUL - Retention of existing bungalow. Conversion of existing dwelling into 2 flats. – REF

08/00125/FUL - Sub-division of existing house to provide 2x1 bed flats. Retention of existing bungalow in rear garden as separate 1 bed dwelling –REF

Representations Received:

None

Statutory and Internal Consultees:

Old Marston Parish Council

Objections:

- Size of each flat is very small.
- Concerns about car parking

Issues:

- Principle (HMO)
- Use
- Design and layout
- Impact on Neighbours
- Amenity space and living conditions

Officers Assessment:
Site Location and Description

1. 34 Mill Lane is a semi-detached property in Old Marston. The application site extends to some 373m². The property is set back from the road with an existing area of lawn and car parking at the front. There is an existing rear garden amenity space of approximately 64m². At the end of the rear garden there is a fenced off area which is not accessible from the garden; this is the site of a former bungalow.
2. 34 Mill Lane is currently in use as two self-contained one bedroom flats. Each flat has its own kitchen and bathroom facilities. There is an adjoining garage and store at ground level which provides communal storage for bikes as well as providing appliances for laundry.
3. The existing use of the property as two one bedroom flats is unauthorised and is the subject of an extant enforcement notice (12/00394/ENF). The enforcement notice requires the existing use to cease and the kitchen and cooking facilities to be removed from the first floor flat. To clarify, the enforcement notice requires the property to revert to its lawful use as a dwellinghouse (use class C3)The enforcement notice was the subject of an appeal and public inquiry. The appeal was dismissed and the enforcement notice upheld.

The Proposal

4. Planning permission is sought for a change of use to a House in Multiple Occupancy (HMO) (use class C4) with two kitchens and two bathrooms. The proposed floor plans are unchanged from the existing layout of the property.
5. Despite the proposed use of the property being a House in Multiple Occupancy it is the view of Officers' that **the proposed use and layout would in fact constitute two self-contained flats**. This use would be identical to the existing unauthorised use of the property and would also be at odds with the requirements of the extant enforcement notice. As such it is important that the application is treated as being for the retention of the unauthorised use as two self-contained flats rather than as an application for the use of the property as a small HMO. If planning permission is granted for the proposal it will effectively regularise the proposed layout and, in default, regularise the retention of the two unauthorised flats. This would undermine the Council's position of resisting the subdivision of the property and its ability to take enforcement action. This would be contrary to the conclusions of the Inspector who had upheld the Council's enforcement action and the requirements of the enforcement notice.
6. Planning permission has been refused for the subdivision of 34 Mill Lane into two flats on two previous occasions (06/02529/FUL and 08/00125/FUL). In both cases, the layouts shown in those applications are

very similar to those shown in this application.

7. There are no physical changes proposed to the property as part of the application.

Principle

8. The proposed change of use of the property to a C4 HMO should be assessed against the requirements of Policy HP7 of the Sites and Housing Plan (2013). One requirement Policy HP7 relates to the proportion of HMOs in the vicinity of the site; in this respect the proposal would be acceptable as it meets this requirement of the policy and would not lead to an unacceptable concentration of HMOs.
9. In addition to the above consideration Policy HP7 also requires that the proposals comply with the Council's Good Practice Guide on HMO Amenities and Facilities. The Good Practice Guide on HMO Amenities and Facilities suggests that occupants of an HMO where there are 1-5 people can share a kitchen. On this basis there is no requirement for a second kitchen; as has been proposed for this application.
10. The proposed use of the property as an HMO would fail some of the criteria set out in The Good Practice Guide on HMO Amenities and Facilities and could therefore be argued to be contrary to Policy HP7. The size of the bedrooms shown on the proposed plans would be unacceptable as a separate living room is not provided (only kitchen/dining rooms on each floor).
11. Despite the above, the principle of the development should be seen in the context of what planning permission is being sought for having had regard to the floor plans and proposed layout. In reality, planning permission is sought for two self-contained flats as each floor of the proposed HMO would benefit from all the facilities required for day to day living. There is no physical separation between the two flats at present and the proposed plans reflect the existing use and layout. Despite this lack of physical separation the use of the property would in fact constitute a subdivided property where each floor is occupied on an independent basis.
12. On the above basis the planning permission sought is unacceptable. The conversion of a property of less than 110m² into two or more flats is contrary to the Balance of Dwellings Supplementary Planning Document and Policy CS23 of the Oxford Core Strategy (2011). This policy seeks to address the loss of family dwellings as there has been a significant rise in the subdivision of larger houses to the detriment of Oxford's range of housing. In this way the development is unacceptable in principle.

Design and Living Conditions

13. The proposed change of use would regularise an existing unauthorised subdivision; the proposed design and internal layout of the unauthorised

flats provide inadequate living conditions that are contrary to policies set out in the Sites and Housing Plan (2013). Policy HP12 of the Sites and Housing Plan (2013) require that an indoor living space of 39m² be provided in each single dwelling; the proposed ground floor and first floor flats at 34 Mill Lane fall well short of these requirements (being approximately 28.1m² and 25.9m² respectively).

14. Objections have been raised by Old Marston Parish Council in relation to the very small size of the existing flats.
15. The change of use of the property has resulted in a deficiency of amenity space for the occupiers of the first floor flat which is contrary to Policy HP13 of the Sites and Housing Plan. A shared amenity space and garden exists at the rear of the property which is accessible for both the first and ground floor tenants. However, there is an existing patio and French doors from the ground floor flat bedroom which provides access to the shared amenity space. If the amenity space was used by the first floor tenant it would give rise to an awkward and impractical arrangement which would likely be to the detriment of the ground floor tenant's privacy. It should also be noted that the first floor occupiers would have to exit the property through the front door and go through the shared store area in order to access rear amenity space. On the basis of these points it is not considered that the usability of the shared amenity space by both sets of tenants would be acceptable; in reality it is likely that the space could only be practically used by the tenants of the ground floor. In this way, the existing and proposed layout is contrary to Policy HP13 of the Sites and Housing Plan (2013).
16. As there are no physical changes proposed to the property as part of the development proposed it would not have a detrimental impact on the character and appearance of the streetscene or setting of the Marston Conservation Area.

Car and Cycle Parking

17. The car parking arrangements for the property are unchanged in these proposals from the existing arrangements on the site. There are currently two car parking spaces at the front of the property which appears to be adequate for the existing flats. There is also cycle parking provision within the existing store; this is secure, covered and accessible for both tenants. On this basis the development would meet the requirements of Policies HP15 and HP16 of the Sites and Housing Plan (2013).

Conclusion

18. Despite the application description suggesting that the proposed use of the property is for an HMO the proposals would in fact give rise to two self-contained flats. The property is currently already in use as two self-contained flats and this has been the subject of enforcement action by the Council and a public inquiry. The subdivision of the property is

unacceptable in principle and in terms of its design, layout and the living conditions it provides to occupiers. The development is contrary to adopted policies and would fail to meet the requirements of the Council's Good Practice Guide on HMO Amenities and Facilities.

19. If planning permission were granted for the proposed change of use it would supersede the requirements of an extant enforcement notice. This would significantly undermine the Council's enforcement action and the lengthy work that has been carried out in relation to enforcement at the property and the appeal.

20. On the above basis, the recommendation is that the application be refused.

Human Rights Act 1998

Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to refuse this application. They consider that the interference with the human rights of the applicant under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to refuse planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Background Papers:

13/01796/FUL

12/00394/ENF (Enforcement Notice)

Contact Officer: Robert Fowler

Extension: 2104

Date: 18th September 2013

Appendix 1

34 Mill Lane, Marston, Oxford, 3/01796/FUL



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Ordnance Survey 100019348

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