

West Area Planning Committee

5 January 2016

Application Number: 14/01441/FUL

Decision Due by: 18th September 2014

Proposal: Demolition of various structures on an application site including former garages and workshops. Erection of 23 residential units (consisting of 13 x 3 bed and 1 x 4 bed house, plus 5 x 1 bed and 4 x 2 bed flats), together with new community centre, restaurant, boatyard, public square, winding hole and public bridge across the Oxford Canal. Demolition of existing rear extension and erection of two storey extension to Vicarage at 15 St. Barnabas Street and ramped access to church entrance. (Amended plans)

Site Address: Land At Jericho Canal Side Oxford

Ward: Jericho And Osney Ward

Agent: Haworth Tompkins Ltd

Applicant: Cheer Team Corporation Ltd

Addendum Report

West Area Planning Committee on 15th February 2014 determined to approve the proposal subject to agreement of the S106 agreement and requested Officers to report back to Committee on three items:

1. Officers were asked to negotiate with the applicant to seek a reduction in the height of the chandlery to mitigate the impact of excessive overshadowing and overbearing to the gardens of 7 and 9 Coombe Road;
2. to arrange a meeting between St Barnabas Parochial Church Council and the Canal and River Trust to discuss the bridge location; and
3. Report the draft S106 agreement for Committee to approve

The original Officer's reports to Committee dated 10th January (main) and 15th February (addendum) 2015 are appended at **Appendix Ai** and **ii** respectively. Minutes of the meeting of 15th February can be found at Appendix 1.

This further Addendum report is in two sections:

Section 1 deals with:

1. Amended plans submitted in relation to the Boatyard element of the proposal and impact on No.9 Coombe Road; and

2. Update following a meeting with the Canal and River Trust and the St Barnabas Parochial Church, the JWT, the Applicant and Architect to discuss the Church's concerns regarding the location of the bridge at the southern end and allay their concerns regarding use of the new public open space.

Section 2 deals with the S106 agreement.

Summary of Overall Recommendations:

1. Officers recommend that West Area Planning Committee approve the amended plans submitted in relation to the Boatyard,
2. It is recommended that Committee considers the potential impact to trees and heritage assets arising from a second bridge at the northern end of the site and on balance agree the principle of a second bridge to the north of the site, as shown on the submitted plans, secured via the S106 but subject to a separate planning application in due course; and
3. It is recommended that Committee endorses the recommendations set out in Section 2 and instructs officers to issue a fresh draft S106 on that basis with the further instruction to report to the Chair and Vice-Chair of the Committee within four weeks of the issue of that draft as to ongoing progress.

Section 1:

Officer Assessment:

Boatyard

1. The original officer report to committee is appended at Appendix A and paragraph 54 refers.
2. Following committee, the applicant met with Officers, The JWT and Boaters to discuss the impact of the new boat yard on No. 9 Combe Road and in relation to the requirements of the boat yard element itself.
3. Subsequently the architects submitted amended plans which show a reduced height of the building to the rear adjacent to No. 9 Combe Road.
4. The height of the building is reduced from approximately 4m high to 3m (1m) to the rear boundary with No.9 with a cat slide roof. It has a box dormer window in it to allow the internal staircase enough headroom up to the first floor. The JWT and boaters still consider the uses within the boatyard critical to its success (chandlery/ overnight stay accommodation/ laundry) and this proposal would still allow them to retain the uses, albeit smaller in size.
5. It is considered that the amended plans would reduce the overbearing impact of the building to No.9 Combe Road. Offices therefore recommend that the amended plans be accepted and approved by committee.

The Bridge and the Public Open Space

6. The Committee's direction for Officer's to meet with the Canal and River Trust (CRT) and the Parochial Church (PC) to discuss the location of the bridge at the southern end came about from their letter of comment. In broad terms this stated that they would be supportive of the proposed development if their concerns regarding the location of the bridge at the southern end of the site could be allayed. They believe that without a bridge directly crossing over to the public open space (POS), that this space would become unused and desolate.
7. A meeting was held between the PC, CRT, JWT, Applicant, Architects, and Officers to discuss why the bridge was located to the south, and issues surrounding why an at grade bridge could not be located to the POS. The Architects offered solutions to aid wayfinding into the site from the bridge, including hard landscaping treatment, elevational treatment of the restaurant on the corner of the POS and suggestions as to how advertising could also assist. However, the PC was not convinced and remained steadfast in its view that the bridge needed to be located at the northern end to the POS, and furthermore stated it would not agree to its land being included in this space and therefore the development.
8. In response, the Applicant has proposed to construct a second simpler steel and timber fixed bridge to the POS, in addition to the at grade bridge, as shown on the plan at **Appendix B**. The Applicant would construct and maintain this bridge and it would land on land currently wholly owned by the CRT. Further consultation has resulted between all parties. The CRT stipulated that the bridge would have to oversail the towpath to ensure all canal users (e.g. horse drawn boats) could use it, as shown, and has confirmed that the principle is acceptable in the location shown. The Church has also confirmed that they are very happy with a second bridge solution in the location shown and this now alleviates their earlier concerns and fears regarding the proposed development. The JWT were also consulted on this proposal and have also confirmed they are supportive of a second bridge.
9. The proposal of this second bridge would be the subject of a further planning application, necessitated by the fact it would land outside the current application boundary. In order to ensure its delivery, it is proposed that a restrictive occupancy clause be included within the S106, which means that the private housing could not be occupied until it is constructed. The S106 would also deal with future maintenance which would be as for the POS. Section 2 of this Addendum deals with this matter further.
10. Whilst acceptable in principle to the CRT and supported by the Church, the position of a second bridge in this location would have an impact on the trees in this strip of land between the canal and the Castle Mill Stream and the character and appearance of the CA. At this stage it is only the location that is being considered, and detailed design and positioning would be considered under the new application. However, the Applicant has submitted an Arboricultural report

and method statement specifically in relation to this in order to access the likely impact.

11. The second bridge would require the removal of two trees, a field maple T26, and cherry tree T30. The cherry is in very poor condition (BS5837:2012 U category) and the field maple is a relatively small tree that is not significant within the tree belt between the canal and Castle Mill Stream. It is proposed to plant 3 no. field maple and 1 no. alder to mitigate their loss so that public amenity in the area will not be significantly harmed by these losses.
12. However, the proposals also require the foundations of the second bridge to be constructed within the Root Protection Areas (RPA as defined by BS5837:2012) of several retained trees of greater significance; these are 5 no. field maples T27, T28, T31, T32 and T33. 4 of these field maple trees will also need to be pruned to lift their crowns to 6 metres above ground level to provide adequate head clearance for the bridge.
13. A RPA is the minimum rooting area that BS5837:2012 recommends should be protected around a tree to ensure it remains viable. RPAs should usually be protected as Construction Exclusion Zones (CEZs) to avoid damage to roots that are likely to be important to the continued health and safety of the trees. Consequently there is a high risk that the trees will be damaged during construction of the bridge.
14. To minimise the impact of the bridge on retained trees the project arboriculturalist has recommended that the foundations of the bridge uses a piling system. Tree protection measures and working procedures which are appropriate to minimise root damage as far as possible are recommended within an Arboricultural Method Statement. Decompaction of soil within the RPAs of retained tree is recommended following construction to further mitigate potentially harmful impacts.
15. However, the Tree Officer remains concerned that there remains a significant risk that the retained trees will be damaged during construction of the bridge and that this might affect their future viability; for example, if large diameter woody roots are encountered within the construction area and have to be cut trees might have to be removed for safety during construction. However, additional new trees could be planted, subject to the agreement of the land owner (CRT), between the bridge and Castle Mill Stream if it becomes necessary to remove any of the trees currently shown as retained and this would help to mitigate the local impacts. This would be for the Applicant to agree with the CRT in advance of any application for the bridge.
16. This is a sensitive area and given their importance to the appearance and character of the Jericho Conservation Area and the function they perform in screening Jericho from the railway to the west, the significance of the belt of trees which grow between the canal and Castle Mill Stream is much greater than the low quality and value (BS 5837:2012 C category) categorisation of individual trees in the arboricultural report would suggest. The recent tree works along the railway line in connection with the current railway works has already changed the

far side of the Castle Mill Stream and altered views to and out of the site, although new trees have been planted.

17. It is acknowledged that the risk of loss of more trees, whilst individually not significant, as a group may be more significant and as a result adversely impact on the tree belt in the towpath corridor between the Castle Mill Stream and the Canal. This in turn may also be viewed as having an adverse impact on the Conservation Area at this point resulting from a gap in the tree belt. However, it is considered that, whilst the risk is that there would an adverse impact, the wider benefits to the public from the overall development, and that of the additional bridge itself, could be considered to outweigh that potential impact. Furthermore, should the CRT be agreeable, suitable conditions attached to any future planning approval of the bridge could secure additional mitigating tree planting and mitigation measures to minimise risk during construction.
18. In terms of impact of the setting of the listed St Barnabas Church and the Canal itself, it is considered that a simpler steel and wooden bridge fixed bridge would not be harmful to their setting or character and appearance, subject to a suitable design. Officers raise no objection in respect of this issue.
19. It is therefore recommended that Committee should consider the potential impact on the trees along the corridor and the Conservation Area, and weigh in the balance potential harm and the benefits of the development as a whole. On balance Officers recommended that Committee agree the principle of a second fixed bridge in the northern location (as shown in Appendix B) and that it be incorporated into the S106 accordingly requiring a new detailed planning application and restricting occupancy of the private housing until such time as it is constructed, and securing maintenance thereafter.

Section 2: Planning Obligations Update Report

20. The 15 February meeting of West Area Planning Committee requested a further report to agree the full completed legal agreement. The relevant minute is at Appendix 1
21. The issued draft is at Appendix 2. It follows the Local Planning Authority's Affordable Housing and Planning Obligations Supplementary Planning Document adopted on 11 September 2013. The Jericho Wharf Trust (JWT) provided an annotated copy raising a number of issues (Appendix 3). The Applicant provided a suite of documents including a tracked changes version of the issue draft (Appendix 4-1) with the remaining document supplied on behalf of the Applicant being at Appendices 4-1 to 4-7).
22. The JWT subsequently commented upon the material provided by the Applicant (Appendix 5).
23. There have been extensive ongoing discussions between the Applicant and various other bodies including the JWT, the Canal and River Trust (CRT) and the Parochial Church Council. The Applicant's view as to the outcome of those

discussions is at Appendix 6. The latest communication (concerning bridge provision) is from the Applicant and at Appendix 7.

24. The Draft and Issues Raised

25. The following addresses the comments of the Applicant and the JWT upon the issued draft. It takes the JWT points (and the Applicant's where they overlap) first and then the Applicant's points. Reference to making changes are to making changes from the draft issued by the Local Planning Authority.

26. Parties – The JWT has queried whether it (and CRT) should be parties. The basic structure of the draft is to prevent development and/or occupation of the beneficial development on the Applicant's land until a variety of works, not all of which are under the Applicant's control, are provided. Details of what is to be provided, when it is to be provided by reference to the beneficial development, and subsequent maintenance are required with enforcement via the beneficial development. The example advanced by JWT (the canal works at schedule 3 paragraph 6) follows that model. Including other parties and seeking to impose positive obligations of the land of those other parties is not necessary and would be likely to complicate the matter. It could also commit the Applicant's to reaching an agreement with a party which might not be necessary to deliver the planning obligations. No change is recommended to the approach.

27. Draft Planning Permission – JWT suggests it be attached and the Applicant's amendments provide for that and for the (majority of) the deed creating planning obligations to be conditional upon that. Again it is unnecessary and can create problems. Any difference from the draft permission attached and that issued could give rise to arguments as to whether or not the planning obligations could ever be enforced. It also complicates matters should there be a subsequent application to develop subject to different planning conditions. This provision would require either a new agreement or a variation which might otherwise not be required. It is not necessary as the obligations are subject to their own triggers by reference to the carrying out of the development. Again the canal works at schedule 3 paragraph 6 are a good example. No change is recommended to the approach.

28. Indexation of the £150,000 to be paid to the purchaser of the Community Centre Land – this is sought by JWT. The purpose of indexation is to ensure that a figure calculated by reference to an actual cost at a particular date remains valid at some future date when the actual payment is made. As this payment does not appear to be such a payment (and there was nothing in the Applicant's offer to suggest it) no change is recommended. N.B. The note at Appendix 6 states that the Applicant is prepared to make that payment at the date of execution of the planning agreement. That would require a change at schedule 3 paragraph 8.4.8 (deletion and separate up front requirement to make the payment subject to the obligation to use it only for the development of the Community Centre Development). There is obvious scope for further disagreement between the Applicant and JWT as to the terms of that use description (and presumably the circumstances in which refund might be required). There is also the need, from the perspective of the Local Planning Authority, to ensure that the £150 000 goes

with the land – i.e. what happens if the land does not end up with JWT. It is recommended that the original approach be retained but modified such that the requirement to pay the £150,000 falls away if the money has been paid and the transfer is to JWT.

29. Land to be bound by the obligations (schedule 1) – The first JWT point is perfectly valid (title had not been seen at the time the draft was issued) and has been addressed by the Applicant. The second JWT point is a replication of the “Parties” point.
30. The Restaurant (schedule 3 paragraph 2) – JWT query the location and the Applicant seeks deletion. The location is to be identified on a plan to be annexed. The requirement was an explicit imposition of WAPC. N.B. The requirement should have been explicitly applicable only after the commencement of development. Subject to that, no change is recommended.
31. The Bridge(s) (schedule 3 paragraph 4) – JWT (quite correctly highlight the issue of deliverability). The Applicant seeks amendments allowing for a different type of bridge in a different location. As the recent communications make clear, the bridge provision has evolved since the previous WAPC meeting and, subject to committee’s satisfaction as to the current proposals it is recommended that the draft be amended to reflect that.
32. Public Open Space (schedule 3 paragraph 5) – The points JWT raise are, in substance, again the “Parties” point. The Applicant sought some minor alterations which are not considered to be necessary. N.B. Requirements upon the Local Planning Authority to act “reasonably” are intrinsically unnecessary and if imposed as sought would prejudice enforceability as they invite disagreements as to what is and is not reasonable and would be determined ultimately by a body which is not a “competent planning authority”. No change is recommended.
33. Canal Works (schedule 3 paragraph 6) – The JWT point is again the “Parties” point. The Applicant seeks deletion of its ongoing maintenance and protection arrangements. This is presumably a land control issue. It is recommended that the ongoing obligation be retained but amended to explicitly allow for the Applicant to procure that ongoing maintenance and protection.
34. Community Centre / Boatyard (schedule 3 paragraph 8) – It appears that the Applicant has agreed to freehold transfer save where to avoid a flying freehold where a 999 year lease is suggested. That appears unobjectionable as long as the issues raised by JWT (Appendix 5) are addressed. Similarly a 12 month window for accepting the land appears to be agreed between the Applicant and JWT. There seems to confusion as to whether or not the Council requires the building of the boatyard. The eighth City Council planning obligation requirement does require it. A specific obligation enforceable by the Local Planning Authority should be added. It is recommended that schedule 3 paragraph 8 be amended to reflect these. It is not recommended that transfer and lease documentation be appended. This is not necessary from the perspective of the Local Planning Authority and could rise to the “Parties” issues.

35. The remaining issues are those raised by the Applicant.
36. Form generally – The Applicant has sought to change the form of the draft. The draft issued accords with the SPD (which includes a model and, in the absence of any demonstration why that form is defective no change in form is recommended.
37. Definitions – There is nothing to add to the above.
38. Construction of this Agreement – Again this is essentially a form point and no change from the Local Planning Authority’s usual form is recommended.
39. Statutory Authority – As above. No change is recommended.
40. Conditionality – As the obligations are drafted by reference to the development (again see schedule 3 paragraph 6 as an example) this is not necessary. The comments as to annexing a draft of the planning permission apply here. Inclusion also generates concerns as to which provisions would be excluded and take immediate effect. No change is recommended.
41. Owner’s Obligations – Pure form. No change is recommended.
42. The City Council’s Covenants – This relates to a requirement that the Applicant wishes to impose upon the Local Planning Authority to give confirmation of planning obligation compliance. Developers are perfectly capable of keeping their own records and no change is recommended.
43. Miscellaneous – These so far as they are new provisions rather than rearranged provisions from the Local Planning Authority’s draft, are “boiler plating” provisions that many developers will seek regardless of the particular circumstances. The Local Planning Authority decided which such provisions should be included in the context of its SPD and, in the absence of reasoning to include different provisions, would not normally depart from the SPD,
44. The local land charge provisions should not be there as s106 itself requires registration and does not provide for cancellation. It is not possible to contract either in or out.
45. The “reasonableness” provision has already been addressed.
46. The quashing, revoking &c provision could result in the 106 ceasing to apply if the planning permission was modified by the removal of one square metre of site area.
47. The “expiry” point doesn’t work as the Applicant is seeking an amended definition of Commencement of Development such that the permission can be implemented (and kept capable of completion indefinitely) without Commencement of Development as defined in the Applicant’s amendments to the planning obligations.

48. Planning obligations are enforceable against the original person entering into the obligations and their successors in title to the land. Ordinarily the Local Planning Authority would not accept the release that the Applicant seeks on disposal of the land without some particular justification. None has been provided and this is precisely the type of development where such a release would be particularly difficult to justify.
49. Exemptions for dwellings prejudice the enforceability of the planning obligations especially where dwellings are the significant part of the development value. Obviously they are incompatible with ongoing obligations upon dwellings such as the affordable housing requirements.
50. Automatic provision for the planning obligations to be overridden by a subsequent grant of permission can give rise to unexpected consequences. For example a s73 permission under the Applicant's drafting would cause all of the planning obligations to fail. It is far preferable for any required change to planning obligations to be positively considered in the context of the grant of a subsequent planning permission
51. Accordingly no change is recommended.
52. The same comments apply to the other changes sought prior to the schedules. The only issue on which further comment is made is the general dispute resolution clause. The Local Planning Authority would normally only accept such a provision if specifically justified and would not easily surrender its role as local planning authority to a third party. In this instance there has been no justification. No change is recommended.
53. Affordable Housing (schedule 2) – The Local Planning Authority's draft followed the SPD. It is therefore recommended that no changes be made either in form or concerning the additional exemptions sought the effect of which is to lose affordable housing stock.
54. Overall Recommendation
55. It is recommended that Committee endorses the recommendations set out above and instructs officers to issue a fresh draft on that basis with the further instruction to report to the Chair and Vice-Chair of the Committee within four weeks of the issue of that draft as to ongoing progress.

Contact Officer Section 1: Felicity Byrne
Contact Officer Section 2: Michael Morgan

Date: 23rd December 2015

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