

West Area Planning Committee

21st January 2021

Application number:	20/02938/FUL		
Decision due by	14th January 2021		
Extension of time	28th January 2020		
Proposal	Temporary installation of PV Solar Panels to front and rear roofslopes for 5 year period.		
Site address	45 Richmond Road, Oxford, OX1 2JJ, – see Appendix 1 for site plan		
Ward	Jericho And Osney Ward		
Case officer	James Paterson		
Agent:	Mr John Peters	Applicant:	Sir Christopher and Lady Ball
Reason at Committee	This application was called in by Councillors Pressel, Turner, Clarkson, Fry, Tanner and Kennedy following concerns that this application should be determined by councillors due to the number of comments received.		

1. RECOMMENDATION

1.1. West Area Planning Committee is recommended to:

1.1.1. **refuse the application** for the reasons given in paragraph 1.1.2 of this the report and delegate authority to the Head of Planning Services to:

- finalise the reasons for refusal including such refinements, amendments, additions and/or deletions as the Head of Planning Services considers reasonably necessary.

1.1.2. The recommended reasons for refusal is as follows:

1. The solar panels, by reason of their design, siting, size and projection above the original roof surface appear incongruous, obtrusive interventions that cover a substantial area of the building's roof slopes, a building that by virtue of its type makes a significant contribution to the special character and appearance of the Jericho Conservation Area. The design of the panels and the installation fails to comply with policies DH1 and DH3 of the Oxford Local Plan 2036 and paragraph 192 of the NPPF. The installation causes less than substantial harm to the architectural and historical significance of the heritage asset that is the Jericho Conservation Area. The harm has not been clearly or convincingly justified and therefore the proposal to retain the panels fails to comply with paragraph 194 of the NPPF. The proposal also fails to comply with policy 196

of the NPPF and would be contrary to policy DH3 of the Oxford Local Plan 2036 in that it offers insufficient public benefits to outweigh the high level of less than substantial harm that the solar panels cause and the solar panels are not required to retain the building in an optimum viable use.

2. The solar panels are considered to cause less-than-substantial harm to the significance of the Jericho Conservation Area and this harm is not outweighed by the public benefits attributed to the development which would be contrary to the requirements of Paragraph 196 of the NPPF and Policies DH1 and DH3 of the Oxford Local Plan 2036. The retention of these solar panels for a temporary period would not mitigate this identified less-than-substantial harm, which has been established as a result of their installation, and will not be altered over the lifetime of the temporary permission. In accordance with the advice set out within the National Planning Practice Guidance, there would be no justification to grant a temporary period to assess the effect of the development on the conservation area over this period given the effect of this harm will not change over the temporary period, and given it is clearly contrary to national and local plan planning policy, which is also not expected to change by the end of that period, and as concluded in the recent appeal decision.

3. EXECUTIVE SUMMARY

- 3.1. This report considers a retrospective planning application for the installation of fifteen solar panels on the northern and southern roofslopes of 45 Richmond Road for a period of five years.
- 3.2. The solar panels cover the majority of the roof slopes. The harm arising from this development due to their size, siting, design and projection from the roof slope, is that they appear as an obtrusive and incongruous addition to the building, cluttering and detracting from the character and appearance of the relatively simple historic roof. The panels also appear as an unexpected and consequently conspicuous intrusion on what is fundamentally a functional working building.
- 3.3. As a result, the development leads to less than substantial harm to the Jericho Conservation Area without sufficient public benefits to outweigh that harm. The Council has twice previously refused applications for the retention of the solar panels because of the harm to the Conservation Area. In July 2020 an Inspector agreed with the Council's conclusions about the harmful impact of the development:

Given the size and scale of the development within the context of the CA [Conservation Area] as a whole, I consider it causes less than substantial harm to the character and appearance of the CA...The development is associated with a private dwelling, therefore, saving money on energy is not a public benefit. I acknowledge the need to increase the use of renewable energy and to improve the energy efficiency of buildings. However, due to the scale of the development, the public benefits in terms of selling energy back to the national grid, reducing air pollution and the effects of global warming are

limited, and do not outweigh, the great weight that is required to be given, to harm caused to the significance of the designated heritage asset.

- 3.4. Officers consider that the proposal fails to accord with the policies of the development plan when considered as a whole and the range of material considerations support the refusal of planning permission.
- 3.5. The visual harm caused by the unauthorised installation of the solar panels is detrimental to the Jericho Conservation Area which is noted for its significant and historic roofscape. Great weight is placed on the significance of designated heritage assets. In addition to the requirements of national and local planning policies the Council has a statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the preservation or enhancement of the character or appearance of a conservation area.
- 3.6. The Council has afforded significance to the heritage value of Jericho through its designation as a Conservation Area in February 2011 and the introduction of an Article 4 Direction in March 2011 which specifically precludes the development of solar panels as permitted development. The development could not be carried out as permitted development because of the controls that the Council has put in place to protect the significance of the heritage asset; the presence of the solar panels erodes and harms the special qualities of the Conservation Area that the Council has previously sought to preserve.
- 3.7. The scheme also fails to accord with the aims and objectives of the National Planning Policy Framework. The proposal would not constitute sustainable development and given the lack of conformity with the development plan as a whole, the development proposal should be refused.

4. LEGAL AGREEMENT

- 4.1. This application is not subject to a legal agreement.

5. COMMUNITY INFRASTRUCTURE LEVY (CIL)

- 5.1. The proposal is not liable for CIL.

6. SITE AND SURROUNDINGS

- 6.1. 45 Richmond Road is a two storey, Victorian building faced in red brick and is a single pile building with a relatively narrow footprint over which spans a traditional, pitched, tiled roof. The building is different to the other more typical terraced houses that characterise Richmond Road, being set to the rear of the plots of Nos. 41-44 Richmond Road on that road, with its eastern gabled facade abutting Walton Lane, a narrow cobbled, secondary street that runs north from Richmond Road. Originally built as stables the building was subsequently converted to a warehouse, typical of a significant number of such buildings found within the conservation area that serviced the artisan business activity that thrived throughout this area in the C19 and first half of the C20 before being converted to a dwelling. The building therefore makes an

important contribution to the history of the area as well as being a particularly interesting building architecturally due to its type.

- 6.2. The application site falls within the Jericho Conservation Area and in an area that is covered by an Article 4 Direction, curtailing a number of permitted development rights in the interest of preserving the area's special architectural and historic interest. One of the key elements of the area's built character and appearance that the Article 4 seeks to preserve is its roofscape as this is considered to make an important contribution to the special character and appearance of the area and is specifically identified as being significant in the Jericho Conservation Area Designation Study (2010).
- 6.3. This part of the conservation area is characterised by the prominence of the roofs of the surrounding dwellings which together form part of the overriding historic roofscape of the area. This contributes to the significance of the conservation area and exhibits the qualities which the Article 4 Direction seeks to conserve. The solar panels which this application seeks temporary permission for are already in place and are clearly visible from Richmond Road and Walton Lane. Therefore the harm they give rise to, detailed in later sections of the report, is clearly visible as they are clearly detrimental to the special character of this part of the conservation area.
- 6.4. See block plan below:



7. PROPOSAL

- 7.1. The application seeks retrospective planning permission to retain fifteen PV Solar Panels spread across the front (south) and rear (north) roofscapes. Planning permission is required due to the Jericho Article 4 Direction removing the relevant permitted development rights to make roof modifications on houses in the Conservation Area. The historic and architectural interest of the

roofscape in Jericho is important to the significance of the Conservation Area as a designated heritage asset.

- 7.2. The Council has already refused two applications for this development under references 19/02641/FUL and 20/01938/FUL on the grounds that they would be harmful to the Conservation Area. The applicant lodged an appeal against the Council's decision to refuse permission for the original application (19/02641/FUL). This was dismissed by the inspector who upheld the Council's objections. There is no difference between this retrospective application and the recent previously refused schemes, which includes the one dismissed on appeal, with the exception that planning permission is now only sought for a five year period. It is considered that there is no material change which would lead to any justification to grant planning permission contrary to the conclusions of the Planning Inspector who dismissed the appeal and the Council's previous decisions.

8. RELEVANT PLANNING HISTORY

- 8.1. The table below sets out the relevant planning history for the application site:

19/02641/FUL - Installation of 15no. PV Solar Panels to front and rear roofslopes. (Retrospective). REFUSED 9th December 2019.

Appeal against decision 19/02641/FUL. Dismissed. July 2020.

20/01938/FUL - Installation of 15no. PV Solar Panels to front and rear roofslopes. (Retrospective). REFUSED 7th October 2020.

9. RELEVANT PLANNING POLICY

- 9.1. The following policies are relevant to the application:

Topic	National Planning Policy Framework	Local Plan	Other planning documents	Neighbourhood Plans:
Design	117-123, 124-132	DH1, H14, RE7		
Conservation/Heritage	184-202	DH3	Jericho Conservation Area Study, 2010 Historic England's Good Practice Advice Note 'Managing Significance in Decision-	

			Taking in the Historic Environment'	
			Draft Heritage and Climate Change Technical Advice Note	
Environmental	117-121, 148-165, 170-183	RE1, RE7		
Miscellaneous	7-12	S1		

10. CONSULTATION RESPONSES

10.1. Site notices were displayed around the application site on 26th November 2020 and an advertisement was published in The Oxford Times newspaper on 3rd December 2020.

Statutory consultees

10.2. None Received

Public representations

10.3. 43 local people commented on this application from addresses in Richmond Road, Walton Street, Walton Crescent, Walton Lane, Walton Well Road, Albert Street, Cranham Street, and Nelson Street. One amenity group, the Oxfordshire Architectural and Historical Society: Listed Buildings Sub-Committee, have also commented on the application.

10.4. In summary, the main points raised in favour of the application (38 residents) were:

- Environmental benefits of solar panels in the context of a climate emergency
- General support for proposal
- Panels are of good design
- Panels would not harm the conservation area or any harm would be outweighed by environmental benefits
- Panels would not be counter to the character of the area

10.5. It should be noted that the majority of comments in support of the applicant were sent to the Council by the applicant and were not submitted directly to the Council. This includes some comments which refer to one of the previous planning applications at this site where solar panels were sought and refused.

Notably 25 comments were produced by the applicant on 27th November 2020 which were labelled as being in reference to a previous application 20/01938/FUL. Because these comments have been submitted by an agent on behalf of the applicants then it is not possible to corroborate whether or not they have arisen specifically out of the public consultation for this application.

10.6. Objections were received from 5 residents and 1 amenity group (The Oxford Architectural and Historical Society). The majority of these comments were received from occupiers in the adjoining road and Jericho area (4 comments from addresses in Richmond Road and 1 from an address in Walton Street). In summary the comments were:

- Effect on adjoining properties
- Effect on character of area
- Local plan policies
- Fails to strike a successful balance between environmental and heritage issues
- Concerned about a precedent being set
- Insufficient evidence has been submitted demonstrating that less harmful methods of thermal efficiency or energy use could achieve the same benefit
- No significant change between this application and the previous two similar applications

Officer response

10.7. Officers have considered carefully the comments made in relation to these proposals. Officers have come to the view, for the detailed reasons set out in the officer's report, that the arguments made in support of the application do not amount, individually or cumulatively, to a justified reason for approval and that all the issues that have been raised have been adequately addressed and the relevant bodies consulted.

11. PLANNING MATERIAL CONSIDERATIONS

11.1. Officers consider the determining issues to be:

- i. Principle of Development
- ii. Design and Conservation Area
- iii. Sustainability
- iv. Neighbouring Amenity
- v. Temporary Permission
- vi. Other Matters

i. Principle of Development

- 11.2. Policy S1 of the Oxford Local Plan states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. This applies to paragraphs 10 and 11 of the NPPF which state that a presumption in favour of sustainable development is at the heart of national planning policy. The Council will work proactively with applicants to find solutions jointly which mean that applications for sustainable development can be approved where possible, and to secure development that improves the economic, social and environmental conditions in the area. Planning applications that accord with Oxford's Local Plan and national policy will be approved without delay, unless material considerations indicate otherwise.
- 11.3. Specifically, where this application is concerned, the Council shall support enhancements to people's homes where they accord with the identified requirements of local and national planning policy, in addition to the legislative requirements the Council is required to undertake. In this case, planning permission would be granted without delay subject to the acceptability of the design and heritage impact of the proposal in terms of Policies DH1 and DH2 of the Oxford Local Plan 2036, paragraphs 127 and 192-196 of the NPPF and the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposal must also not harm neighbouring occupiers' amenity, in accordance with Policies H14 and RE7 of the Oxford Local Plan 2036. Finally this proposal must accord with the sustainability criteria of Policy RE1 of the Oxford Local Plan 2036 in addition to paragraphs 153-154 of the NPPF.

ii. Design and Conservation Area

- 11.4. Paragraph 127 of the NPPF and Policy DH1 of the Oxford Local Plan 2036 states that planning permission will only be granted for development of high quality design that creates or enhances local distinctiveness. Proposals must be designed to meet the key design objectives and principles for delivering high quality development, set out in Appendix 6.1.
- 11.5. In relation to the historic environment, paragraph 184 of the NPPF requires proposals to be based upon an informed analysis of the significance of all affected heritage assets. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
- 11.6. Paragraph 192 of the NPPF states that in determining applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality in addition to the desirability of new development making a positive contribution to local character and distinctiveness must also be considered.
- 11.7. In considering the impact of a proposed development on the significance of a designated heritage asset, paragraph 193 of the NPPF states that great

weight should be given to the asset's conservation, and the more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 194 of the NPPF requires any harm to, or loss of, the significance of a designated heritage asset, from its alteration or destruction or from development within its setting, to be clearly and convincingly justified.

- 11.8. Where development would lead to less-than-substantial harm to the significance of a designated heritage asset, paragraph 196 of the NPPF requires that the identified harm should be weighed against any public benefits the proposed development may offer, including securing its optimum viable use.
- 11.9. Policy DH3 of the Oxford Local Plan 2036 states that planning permission will be granted for development that respects and draws inspiration from Oxford's unique historic environment (above and below ground), responding positively to the significance character and distinctiveness of the heritage asset and locality. For all planning decisions, great weight will be given to the conservation of that asset and to the setting of the asset, where it contributes to that significance or appreciation of that significance. Where a development proposal will lead to less-than-substantial harm to a designated heritage asset, this harm must be weighed against the public benefits of the proposal, which should be identified by the applicant.
- 11.10. The statutory duty of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 also requires local planning authorities to have special regard to the desirability of preserving or enhancing the character or appearance of any conservation area.

Context

- 11.11. The use of the site is interesting in that the building was originally erected for use as stables but was then used as a warehouse, until it was then converted to a dwellinghouse in the 1980s. This adds to the interest of the building in question as it serves as a reminder of the enterprising ethic of Jericho residents whereby artisan businesses were carried out and small workshops existed amongst the areas of residential dwellings.
- 11.12. 45 Richmond Road is set behind, to the north of the terraces of Richmond Road and abuts Walton Lane. The gap created in Richmond Road and the alignment and spacing of the building on Walton Lane permits clear views of the building and in particular its dominant roof slopes from both Richmond Road and Walton Lane. The principle elevation of the building facing towards Richmond Road, and the southern roofslope, are particularly evident in views from Richmond Road and Walton Lane. Although the northern roofslope is not as prominent in public views, it can still be seen from parts of Walton Lane. Both roofslopes are clearly visible from private spaces associated with nearby dwellings and their gardens. The building particularly stands out due to its distinct siting at variance to the typical urban grain or pattern of development

in the surrounding area. Therefore the solar panels make a distinct impact on both the character and the appearance of the conservation area.

Special Significance of the Designated Heritage Asset

11.13. It is also noted that the Jericho Conservation Area Designation Study, 2010, identifies unsympathetic alterations to the roofs of houses in the conservation area as detrimental to the special character of the conservation area. Furthermore, the installation of solar panels on the primary façade of buildings in conservation areas is generally discouraged due to their alien appearance in the context of the historic character of the area.

11.14. The application site is located within the 'Walton & Smiths Close' character area of the conservation area. The Jericho Conservation Area Designation Study identifies the varied and historic roofscape as an important characteristic of this area. While it is noted that roof repairs have taken place at the application site in recent years, this was sympathetically done and has preserved the character of the roof which continues to have a positive impact on the character of the surrounding conservation area. It is also noted that this part of the conservation area is defined by its gothic architecture, more typical of north Oxford, its use of traditional materials and its wide and spacious streets. These characteristics increase the impact of unsympathetic or non-traditional additions to buildings due to their increased visibility and contrast with the architectural language of the buildings.

Harm to Conservation Area

11.15. The solar panels, although they are of a relatively uniform appearance, cover the majority of the roof slopes, and due to their size, siting, design and projection from the roof slope, appear as an obtrusive and incongruous addition to the building, cluttering and detracting from the character and appearance of the relatively simple historic roof. The panels also appear as an unexpected and consequently conspicuous intrusion on what is fundamentally a functional working building. The impact of the solar panel installation is therefore considered to be harmful to the special interest of the building and consequently to the contribution that the building makes to the significance of the conservation area, in particular the character and appearance of this part of the conservation area. Officers consider that this development constitutes less-than-substantial harm to the significance of the heritage asset, the Jericho Conservation Area.

Appeal Decision

11.16. Officers have also afforded great weight to the Planning Inspectorate's decision to dismiss the appeal submitted by the applicant against one of the previous decisions by the Council to refuse an identical development proposal, 19/02641/FUL. Such a recent decision by an independent arbiter should be afforded great weight in determining this application.

- 11.17. In dismissing the appeal, the Inspector considered the impact of the development on the Conservation Area. The inspector stated in his decision letter (9 July 2020):
- 11.18. *“Paragraph 196 of the Framework confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.*
- 11.19. *Given the size and scale of the development within the context of the CA as a whole, I consider it causes less than substantial harm to the character and appearance of the CA. Nevertheless, any harm to the significance of a designated heritage asset should require clear and convincing justification and in accordance with paragraph 196 of the Framework, any harm should be weighed against the public benefits.*
- 11.20. *The development is associated with a private dwelling, therefore, saving money on energy is not a public benefit. I acknowledge the need to increase the use of renewable energy and to improve the energy efficiency of buildings. However, due to the scale of the development, the public benefits in terms of selling energy back to the national grid, reducing air pollution and the effects of global warming are limited, and do not outweigh, the great weight that is required to be given, to harm caused to the significance of the designated heritage asset.*
- 11.21. *Overall, the development fails to preserve or enhance the character or appearance of the CA. Therefore, it is contrary to Policies DH1 and DH3 of the Oxford Local Plan 2016 – 2036 (2020) and paragraphs 192 and 196 of the Framework. These policies, amongst other things, require development to respect and draw inspiration from Oxford’s unique historic environment and respond positively to the significance, character and distinctiveness of the locality.”*
- 11.22. The above conclusions drawn in relation to the impact of the development on the Jericho Conservation Area in the context of the NPPF (Paragraph 196) and the Council’s Policies (DH1 and DH3) are completely consistent with planning officers’ views on this application which seek planning permission for the same development, albeit on a temporary basis. A copy of the Inspector’s decision is available as Appendix 2 to this application.

Public benefits

- 11.23. Council heritage officers have advised that in order to fully accord with Historic England’s standing advice and best practice, the first point of consideration when seeking to improve the environmental impact and energy efficiency of the majority of historic buildings, in particular those in sensitive areas such as conservation areas or on listed buildings, is that of the existing building fabric; primarily the windows, doors, roofs and walls. Furthermore, paragraph 26 of Historic England’s Good Practice Advice Note ‘Managing Significance in Decision-Taking in the Historic Environment’ states that where development causes harm to a heritage asset, alternative means of delivering the

development benefits that would result in less harm to the heritage asset and therefore a more sustainable development should be explored, before proceeding to weigh benefits against any harm. The application makes no reference to work that may have taken place to upgrade the existing building fabric. This should form part of the evidence base and justification for further, more intrusive or harmful installations as is the case in this application for bulky solar panels which cover much of the roof. Without this evidence there is no clear and convincing justification for the solar panel installation, as required by Policy DH3 and paragraph 194 of the NPPF. Furthermore no justification has been given for the amount and location of the solar panels. The application also fails to consider that solar panels are available in many varieties, some of which would be far less harmful to the conservation area and may be sited in less harmful locations within the application site, should on-site electrical generation be found to be the best means of achieving the stated environmental benefit. These options should have been considered, ideally in pre-application discussions with Council officers, prior to the unlawful installation of solar panels. It is noted that this has not been considered despite two identical applications having been previously refused, and one dismissed at appeal (July 2020). The development is therefore considered to be contrary to Historic England's Standing advice as other, less harmful alternatives were not considered prior to the instalment of the panels nor at this application stage. This means that there is no clear and convincing justification for the identified harm to the conservation area.

- 11.24. The need to increase the use of renewable energy and improve the energy efficiency of historic buildings is acknowledged and supported by local plan policy. These considerations are afforded some weight. However, they do not amount to public benefits which would outweigh the great weight that is required to be given to the harm that would be caused to the significance of the designated heritage asset, in this case the Jericho Conservation Area. Planning officers consider that there is a small public benefit to the solar panels, in terms of the environmental and economic benefits identified by the applicant, although this benefit has been overstated in the submitted application. Indeed, reduction in the utility bills of the occupiers is not a public benefit, as stated by the applicant in the submission. However, the public benefit afforded by the development has also not been substantiated by the applicant as no technical information has been submitted; therefore the public benefit is not clear. In considering the test outlined in Paragraph 196 of the NPPF, and having regard to the Council's statutory duty under S72 of the Planning (Listed Building and Conservation Areas) Act 1990 and its own planning policies, it is considered that this public benefit is insufficient to outweigh the harm to the conservation area that has been identified.
- 11.25. Planning officers note that there has been disquiet during the public consultation as to why planning officers, and the Planning Inspectorate, have refused an application for solar panels in the context of the current climate crisis. The need for environmental improvements throughout new and existing developments is recognised and supported, such as through the policies of the new local plan. However, this need must be carefully weighed against the council's statutory duty to preserve and enhance the significance of designated heritage assets, as required by section 72(1) of the Planning

(Listed Buildings and Conservation Areas) Act 1990. In this case, as noted above, there is insufficient identified public benefit to offset the identified harm to the conservation area.

- 11.26. It is also noted that the public consultation and submissions by the applicant highlighted a number of other developments which include solar panels in conservation areas which have been allowed by the Council. Notwithstanding the fact that applications must be determined on their own merits, and therefore examples of solar panels from elsewhere across the city do not offer the precedent stated by the applicant, planning officers do not consider these identified instances are comparable to this case. A number of applications were in a different conservation area, with different characteristics and significance, while 1 and 2 Walton Lane are very contemporary in style with a small number of solar panels which are largely concealed from view, rather than dominating the roof. Furthermore, the example at 56 Nelson Street, within the Jericho Conservation Area, is also given as an example of precedent by the applicant. It should be noted that the planning application for the solar panels at this property (10/00759/FUL) was approved the year before the conservation area was designated and the associated Article 4 Direction implemented. The matters which were material in that planning decision were therefore vastly different to that of this application.
- 11.27. It should be noted that there is no valid permitted development fall-back position for the applicant in this case. In most cases, solar panels are allowed to be installed on the roofslopes of dwellinghouses as they constitute permitted development and fall within Class A of Part 14 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order, 2015, (as amended). However, solar panels are not permitted in Conservation Areas where they would front a highway. The majority of the solar panels in this case front Richmond Road or Walton Lane. In any case, the Jericho Article 4 Direction further curtails permitted development rights in relation to additions to the roof, amongst other things, and means that no solar panels may be installed anywhere on the roof of a dwellinghouse without planning permission, regardless of whether that roofslope fronts a highway. The Article 4 direction was implemented to protect the historic roofscape of the Jericho Conservation area. The addition of unsympathetic solar panels is contrary to this objective and undermines the justification for an Article 4 Direction.
- 11.28. The proposal is therefore unacceptable in terms of its design and impact on the conservation area and therefore fails to accord with Policies DH1 and DH3.
- 11.29. Regard has been paid to Paragraph 192 of the NPPF in reaching a decision. When applying the test outlined in Paragraph 196, it is considered that the proposal would cause less-than-substantial harm to the significance of the conservation area, which would not be outweighed by public benefits. Therefore, the proposals would be unacceptable in terms of their impact on this designated heritage asset.

11.30. Special attention has been paid to the statutory test of preserving or enhancing the character and appearance of the conservation area under Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, which it is accepted is a higher duty. It has been concluded that the development would fail to preserve the character and appearance of the Conservation Area, and so the proposal does not accord with Section 72(1) of the Act.

iii. Sustainability

11.31. Policy RE1 of the Oxford Local Plan 2036 states that planning permission will only be granted where it can be demonstrated that sustainable design and construction principles, set out in RE1, have been incorporated. It is expected that 25% of energy will be on-site renewables; water consumption must also meet the requirements of Building Regulations Part G2. An Energy Statement will be submitted to demonstrate compliance with this policy for new-build residential developments of five or more dwellings (other than householder applications) and new-build non-residential schemes over 1,000m². The Energy Statement will include details as to how the policy will be complied with and monitored.

11.32. Notwithstanding the heritage and design issues considered in earlier sections of this report, it is noted that the development proposal complies with the general sustainability principles outlined in Policy RE1. Specifically, in this case, the development proposal maximises the use of low carbon energy, although it is noted that the proposal does not make reference to maximising energy efficiency as part of its justification. However, on balance, this is considered acceptable when considering Policy RE1 in isolation.

11.33. Both national and local policy favours the inclusion of improvements to building fabric. Policy RE1 of the Oxford Local Plan 2036 and paragraphs 149-154 of the NPPF have a presumption in favour of improving the sustainability credentials of existing buildings and maximising the use and generation of low carbon energy. However, this presumption in favour of sustainable construction and design must be weighed against other considerations, including the design and heritage considerations any improvements may give rise to.

11.34. As referred to in an earlier section of this report, Historic England's advice in their Good Practice Advice Note 'Managing Significance in Decision-Taking in the Historic Environment' regarding improvements to buildings in conservation areas suggests that applicants should investigate whether there are other, less obtrusive, ways to achieve the same environmental benefits through less harmful means. This principle should be applied in this case in relation to the proposed solar panels. There is no evidence that has taken place either through seeking pre-application advice prior to unlawfully installing the panels or since. The submission has also provided insufficient evidence to identify what other forms of less obtrusive methods have been considered. The supporting documentation only assesses other forms of electrical generation, all of which would be unsuitable for this site. This is considered insufficient because the Council considers that potential environmental improvements

which could be made in this case are not limited to the generation of electricity and could include measures to improve thermal efficiency of the building's fabric, for example. Therefore, the applicant has failed to have regard to the fact that environmental benefits extend beyond energy generation on the site, which may not always be appropriate.

- 11.35. The proposal is acceptable in terms of sustainability, when considering Policy RE1 in isolation from other material matters.

iv. Neighbouring amenity

- 11.36. Policy H14 of the Oxford Local Plan 2036 states that planning permission will only be granted for new development that provides reasonable privacy, daylight and sunlight for occupants of both existing and new homes. Policy H14 sets out guidelines for assessing development in terms of whether it will allow adequate sunlight and daylight to habitable rooms of the neighbouring dwellings.
- 11.37. Policy RE7 of the Oxford Local Plan 2036 states that planning permission will only be granted for development that ensures that standards of amenity are protected. This includes the amenity of communities, occupiers and neighbours is protected in addition to not having unacceptable unaddressed transport impacts and provides mitigation measures where necessary.
- 11.38. The solar panels comply with the 25/45 degree access to light test, outlined in Policy H14, and therefore do not result in an unacceptable loss of light to neighbours. Likewise, the solar panels have not resulted in significant enlargement to the house and are therefore not overbearing. The solar panels have also not resulted in changes to the fenestration and are also, therefore, acceptable in terms of neighbours' privacy.
- 11.39. The proposed solar panels are visible from neighbours' dwellings and associated gardens. However the majority of neighbours are set away from the application site and the panels therefore do not unacceptably diminish their outlook in terms of their amenity and ability to have the quiet enjoyment of their properties. Where neighbours are set close to the application site, notably 15 Walton Lane, the height of the roof means that views of the solar panels from these neighbours are very acute and the panels are not readily noticeable to these neighbours. The panels therefore do not diminish their amenity to an unacceptable extent.
- 11.40. The proposal therefore has an acceptable impact on neighbours' amenity and thereby complies with Policies H14 and RE7.

v. Temporary Permission

- 11.41. The National Planning Practice Guidance states that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on an area or where it is expected that the planning circumstances will change in a particular way at the end of that period. The solar panels are in situ and so their effect can and have been

assessed as being harmful to the conservation area. The planning circumstances are not expected to change at the end of the 5 year period applied for and so there is no reason to justify granting a temporary permission in this case.

- 11.42. Planning officers note that this application seeks temporary planning permission for a period of five years. Officers consider that the proposal is unacceptable due to the harm the proposed solar panels cause to the special character of the conservation area and their poor quality design. Planning officers can see no robust clear and convincing justification as to why temporary permission should be granted in spite of this harm or any material consideration which would outweigh the identified harm due to the temporary nature of the proposed panels.

vi. Other Matters

- 11.43. It is important to note that the presence of the Article 4 direction means that solar panels cannot be installed on houses in the Conservation Area without planning permission. The introduction of the Article 4 direction in March 2011 was the subject of extensive consultation and public engagement. Unauthorised alterations to the historic roofscape of Jericho erode the significance of the Conservation Area and undermine the continued application of the Article 4 direction.
- 11.44. There is increasing public awareness about the issue of climate change, which is demonstrated by the Council's decision to declare a climate emergency. The Council's policies and requirements relating to reducing carbon emissions in the city and responding to climate change are an important part of that dialogue. It is considered that a reduction in carbon emissions and the improvement of the energy efficiency of buildings can be facilitated by a number of available measures, and not just through renewable energy installations. However, on planning matters the Council is required to consider national legislation and planning policy and weigh all these considerations together when determining a planning application. In this case, whilst the Council has considered the need to decrease carbon emissions from energy generation, the Council must also base its decisions around the requirements of national and local policy, specifically the NPPF and Oxford Local Plan 2036. It is considered for the reasons set out within the report, that the reduction of carbon emissions does not outweigh the specific national and local planning policy requirements in this case to carefully assess the harm caused by an unauthorised development to a designated heritage asset and the Council's statutory responsibility when determining planning applications that affect buildings in conservation areas to preserve or enhance that Conservation Area, a view already concluded by the Planning Inspector in the recent appeal decision.

12. CONCLUSION

- 12.1. On the basis of the matters discussed in the report, officers would make members aware that the starting point for the determination of this application is in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which makes it clear that proposals should be assessed in

accordance with the development plan unless material considerations indicate otherwise.

- 12.2. In the context of all proposals paragraph 11 of the NPPF requires that planning decisions apply a presumption in favour of sustainable development. This means approving development that accords with an up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 12.3. The application seeks retrospective planning permission for the retention of solar panels on the residential dwellinghouse at 45 Richmond Road for a temporary period of 5 years. While the proposal does not give rise to an unacceptable loss of neighbouring amenity, as per Policies H14 and RE7, and supports the general principles of sustainable construction, as set out in Policy RE1, the proposal is unacceptable in terms of design and the harm the panels cause to the Jericho Conservation Area, a designated heritage asset. This conclusion was supported by a planning inspector in relation to the retention of the same solar panels as recently as July 2020. The proposal therefore fails to accord with S72 of the Planning (Listed Building and Conservation Areas) Act 1990 which is a statutory duty and higher test when assessing development proposals which impact on conservation areas. The harm the proposal gives rise to through its poor design also is not justified or offset by any identified public benefit and is therefore contrary to paragraphs 192 and 196 of the NPPF and Policies DH1 and DH3 of the Oxford Local Plan 2036.
- 12.4. It is therefore recommended that the Committee resolve to refuse planning permission for the reasons given at paragraph 1.1.2 of this report with delegated authority being given to the Head of Planning services to finalise the wording of those reasons.

13. APPENDICES

- **Appendix 1** – Site location plan
- **Appendix 2** – Appeal Decision - 19/02641/FUL

14. HUMAN RIGHTS ACT 1998

- 14.1. 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.

15. SECTION 17 OF THE CRIME AND DISORDER ACT 1998

- 15.1. 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.