

East Area Planning Committee

9th October 2012

Application Number: 12/01608/VAR

Decision Due by: 22nd August 2012

Proposal: Application to remove conditions 7, 11, 15, 18 and 19 from planning permission 12/00077/FUL for a 2 bed dwelling

Site Address: 77-77a Sandfield Road, Headington (**site plan: appendix 1**)

Ward: Headington Ward

Agent: Mr Henry Venners

Applicant: Mr Z Jiang

Application called in by Councillors Wilkinson, Jones, Rundle, and Altaf-Khan on grounds that the site has a long planning history and the conditions to be varied were recommended by the East Area Planning Committee.

Recommendation:

The East Area Planning Committee is recommended to approve the variation of condition 7, 11, 18 and 19, but refuse the variation of condition 15 for the following reasons:

- 1 The principle of development has been established in granting planning permission under references 10/02781/FUL, 11/00051/FUL, and 12/00077/FUL on balance. It is considered that conditions 7, 11, 18, and 19 would not meet the tests set out within Circular 11/95 'Use of Planning Conditions' and can therefore be removed as they would not give rise to an unacceptable impact upon the character and appearance of the street scene or adjoining properties, the overall quality of the residential accommodation or highway safety. It is considered that condition 15 would meet the tests of Circular 11/95 as the current amenity space would be considered of an inadequate size for the residential dwelling it serves. The proposal would satisfy the National Planning Policy Framework and the policies of the Oxford Core Strategy 2026, Oxford Local Plan 2001-2016, and Oxford Local Plan 2001-2016.
- 2 In considering the application, officers have had specific regard to the comments of third parties and statutory bodies in relation to the application. However officers consider that these comments have not raised any material considerations that would warrant refusal of the applications, and any harm identified could be successfully mitigated by appropriately worded conditions.

- 3 The Council considers that the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity. Any material harm that the development would otherwise give rise to can be offset by the conditions imposed.

Conditions: (as per decision notice for 12/00077/FUL)

- 1 Develop in accordance with approved plans
- 2 Materials - matching
- 3 Details of boundary treatment
- 4 Landscaping to accord with plans
- 5 Car parking to accord with plans
- 6 Vision splays for parking areas
- 7 Refuse and cycle storage
- 8 Obscure Glazing for north-east bathroom
- 9 Design - no additions to dwelling
- 10 Restriction on use of loft in dwelling
- 11 No increase in height of extension
- 12 Retention of privet hedge on boundary
- 13 Increased width of garden for dwelling
- 14 Restriction on height of boundary treatment
- 15 Dividing wall of new house to be glazed

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
- CP11** - Landscape Design
- TR3** - Car Parking Standards
- TR4** - Pedestrian & Cycle Facilities
- HS19** - Privacy & Amenity
- HS20** - Local Residential Environment
- HS21** - Private Open Space

Core Strategy

- CS2_** - Previously developed and greenfield land
- CS9_** - Energy and natural resources
- CS18_** - Urban design, town character, historic environment
- CS23_** - Mix of housing

Sites and Housing Plan - Submission

- HP9_** - Design, Character and Context
- HP11_** - Low Carbon Homes
- 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

Relevant Site History:

10/02781/FUL - Alteration to front and rear elevation to include porch and rear patio door. Conversion of existing two storey side extension to self contained one bedroom house- provision of 3 car parking spaces to frontage plus cycle and storage for bins and provision of amenity space to rear: Approved

11/00051/FUL - Erection of part single storey, part two storey, extensions to the side and rear and single storey front extension. (Amended plans): Approved

11/02153/VAR - Variation of conditions 5 and 7 of planning permission 10/02781/FUL for extension and creation of one bedroomed house, to allow details of landscaping to be submitted following commencement of development, and car parking spaces to be laid out after occupation: Withdrawn

11/02155/VAR - Variation of conditions 5 and 10 of planning permission 11/00051/FUL for extension to front: Withdrawn

11/02243/FUL - Demolition of existing rear single storey extension and front porch, erection of single and two storey side and rear extension, front porch and alterations to roof, and subdivision to form 1 bed house. Provision of car parking: Withdrawn

11/02816/FUL - Demolition of existing rear single storey extension and front porch, erection of single and two storey side, front and rear extension, and alterations to roof, sub-division to form 2 bed house and provision of car parking. (Additional Information): Withdrawn

12/00077/FUL - Erection of single and two storey side, front and rear extensions and alteration to roof, sub-division to form two bedroom dwelling provision of parking to front (amendment to 11/02816/FUL): Approved

Representations Received:

Letters of comment have been received from the following addresses, and they are summarised below

- 69, 75,79, 90 Sandfield Road

- There has been a history of non-compliance with the approved schemes on this site
- The retrospective applications have been approved with carefully considered conditions
- The site has three parking spaces and there is public parking only 50 yards away
- If the properties were to get parking permits it would allow them to become Houses in Multiple Occupation

- It would increase parking stress in Sandfield Road
- There was an original parking bay outside the property which was removed in order to create the driveway. The permits would lead to visitors to these properties parking in other person(s) parking bays outside their properties
- Visitors can use the 2 hour parking spaces close by
- The site is near a bend in the road where additional parking may cause safety problems especially for cyclists
- The double driveway has caused problems in terms of health and safety from icy pavements to making access for wheelchairs and buggies difficult
- Planning permission was only granted for a 1 bed house and not a 2 bed
- The dwellinghouse is considerably larger than the original dwellinghouse
- The second room in the loft and associated staircase was provided without planning permission, with permission only granted if the space was not used for habitation
- The planning committee visited the property and agreed it was not fit for habitation
- A two-bed property would make parking worse, as there is only enough parking for a 1 bed house
- The garden is too small for a 1 bed and 2 bed house
- The extension was built larger in depth due to a drawing error.
- The extensions were built wider than approved and encroach onto the boundary with 79 Sandfield Road.
- The second bedroom could only be provided because the front wall of the single storey side extension to the front was pushed out further than approved
- The extension would have a major impact on 79 Sandfield Road, especially the front extension
- The applicant did not make a mistake with the parallel walls to the boundary with 79 Sandfield Road as the owner was fully aware of this from the outset
- The casement windows in the rooflights do look poor in comparison to proper rooflights and they do have a major visual impact especially in the side facing 75
- The development is not complete. The exterior wall on the boundary with 79 Sandfield Road remains unfinished.
- The applicant never entered into a party wall agreement with the adjoining property at 79 Sandfield Road

Statutory and Internal Consultees:

Oxfordshire County Council Highways Authority:

The previous planning application at this development site was assessed on its own merits. The Highways Authority advised that the units proposed under 12/00077/FUL be excluded from eligibility for residents' parking permits where the proposal resulted in an increase in the number of bedrooms and a loss of off-street parking for the existing dwelling. It was considered that the loss of off-street parking justified exclusion from parking permits where additional on-street parking pressure would be created within this CPZ.

The proposal also included the provision of 1 no. off street parking space for the new 2 bedroom dwelling. This is below the maximum parking standard for a 2 bedroom unit and it was considered that 1 no. off-street parking space would be acceptable in

this sustainable location. In view of this it was considered that the new unit should also be excluded from parking permits.

In the light of the application seeking permission to remove the condition to be allowed parking permits the previous highway comments have been reviewed and a further site visit has been carried out. On-street parking on Sandfield Road did not appear to be over-subscribed and therefore it would be difficult to sustain an objection to this request given the lack of observed on-street parking in the vicinity of 77-77A Sandfield Road.

Officers Assessment:

Site Location and Description:

1. The site is located on the north-eastern side of Sandfield Road in a residential area. The site is bordered by 79 Sandfield Road to the north-west; 75 Sandfield Road to the south-east; and the grounds of the John Radcliffe Hospital to the north-east (**site plan: appendix 1**)
2. The site comprises a two-storey dwellinghouse which is separated from the street by a front garden with an off-street parking area and large private garden to the rear. The original dwelling has been enlarged through a single-storey rear and single storey front extension.
3. A part single-storey and two-storey side extension has also been added to the original dwelling which provides a self-contained dwellinghouse with parking area to the front and individual private garden to the rear.

Proposal

4. In April 2012, the East Area Planning Committee resolved to grant permission for the erection of a single and two-storey side, front and rear extension, alterations to roof, and sub-division to form a 2 bed dwelling with provision of parking to front (amendment to 11/02816/FUL) under application 12/00077/FUL. A copy of the committee minutes and officers report can be found in **appendix 2** of this report.
5. This was granted subject to a number of conditions. The applicant considers that these conditions were not reasonably imposed and is seeking the removal and/or variation of the following:
 - Condition 7: Exclusion from Controlled Parking Zone
 - Condition 11: Use of roof space in 77a Sandfield Road for habitable room
 - Condition 15: Increased width of Garden for 77a Sandfield Road
 - Condition 18: Installation of set backs from 79 Sandfield Road
 - Condition 19: Replacement of casement windows in roof of rear extension
6. Circular 11/95 'Use of conditions in planning permission' sets out six tests for conditions imposed upon planning permissions. The circular makes clear that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. They should only be

imposed where they satisfy the six tests which are that they are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

7. The circular goes on to say that in considering whether a particular condition is necessary, Local Planning Authorities should ask whether planning permission would have been refused if that condition were not imposed.
8. Officers consider that the main determining issues in this case are whether the above-mentioned conditions are reasonable and meet the relevant tests set out within government guidance.

Condition 7:

The development hereby permitted shall not be occupied until the Order governing parking at the development (77 and 77A Sandfield Road) has been varied by the Oxfordshire County Council as highway authority to exclude the site, subject to this permission, from eligibility for resident's parking permits and residents' visitors' parking permits unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development does not generate a level of vehicular parking which would be prejudicial to highway safety, or cause parking stress in the immediate locality, in accordance with policies CP1, CP6, CP10 and TR13 of the Adopted Oxford Local Plan 2001-2016.

9. The scheme approved under 12/00077/FUL provided off-street parking provision for both dwellings, with 2 spaces for the original house and 1 space for the new unit. This was below the maximum parking standards set out in the Local Plan, but the level of parking was accepted as the site was in a sustainable location with on-street parking controls. A condition was then attached removing both properties entitlement to residents and visitors parking permits.
10. The applicant has stated that the application only sought to create a self-contained unit of accommodation in the side extension. The original dwellinghouse would have been eligible for both forms of parking permit, and therefore it is unreasonable to remove this eligibility when this dwelling is not materially larger and places no additional demand. The single dwelling subject to the application would not worsen the local parking situation or create a hazard. They go on to state that the controlled parking zone has reduced the parking pressures that used to exist within the street from hospital visitors parking in the road. The road and parking zone are meant for home owners and their visitors to park and denying permits would not meet the aims of the controlled parking zone.
11. The Local Highways Authority have confirmed that they requested that eligibility be removed as the proposal resulted in an increase in the number of bedrooms on site and a loss of off-street parking for the existing dwelling. They considered that the loss of off-street parking justified exclusion because it could place additional pressures on-street. At the same time, it was recognised that the level of off-street parking proposed within the scheme was below the maximum standards even if the sustainable location of the site supported a reduction in the standards. In

response to this application, the Local Highways Authority have conducted a further site visit and identified that on-street parking on Sandfield Road and within the vicinity of the site did not appear to be over-subscribed. Therefore they have no objection to the removal of the condition.

12. The emerging Sites and Housing Plan makes clear in Appendix 8 that parking standards should respond to site circumstances and existing capacity within the vicinity of the site. In the case of this application, it is clear that the off-street parking for both units is acceptable under the terms of local plan policies and the scheme would not have been refused on the basis of insufficient parking. In addition the Local Highways Authority have identified that there is capacity within the controlled zone to enable both properties to be eligible for permits. While the site is close to a bend in the road, the controlled parking zone means that there are designated parking bays throughout the street which would prevent ad-hoc parking from occurring in dangerous areas. As a result the condition would not be necessary and it would be difficult to maintain an objection to the condition being removed.
13. Therefore officers consider that the condition can be removed. The parking provision for the approved scheme would accord with parking standards as set out in Policy TR3 of the Oxford Local Plan 2001-2016 and Policy HP16 of the emerging Sites and Housing Plan.

Condition 11:

Notwithstanding the approved plans the development hereby approved excludes the bedroom in the roof space of No 77A Sandfield Road, the roof shall not be used for habitable accommodation hereafter without the prior written consent of the Local Planning Authority.

Reason: In the interest of the residential amenities of the future residents of No 77A Sandfield Road in accordance with policy CP1, CP10, HS11, HS19 and HS20 of the Oxford Local Plan 2001 - 2016 and policy HP12 of the Sites and Housing Development Planning Document (Proposed Submission Feb 2012)

14. The scheme which was approved under 12/00077/FUL was for the creation of a two-bedroom dwelling within the two-storey side extension. This was granted albeit with a condition that required the removal of the second bedroom within the roofspace. This condition effectively prevents the self-contained unit from being used as a two bedroom dwelling, which conflicts with the permission that was granted.
15. Having carried out an internal inspection of the property, it would provide a good sized dwellinghouse. The second bedroom in the loft space is of a suitable size and importantly has enough usable head height, light and ventilation for the proposed use. It has also satisfied building regulations. It would be no different to many other loft conversions within the area which have been created to provide additional habitable space for their properties. It is important to recognise that internal alterations, such as loft conversions, do not require planning permission where they are not creating a separate unit of accommodation.

16. The condition to prohibit the use of the loft for a habitable room would not therefore be necessary, relevant to planning, or relevant to the development permitted. The retrospective application sought the provision of a 2 bed house and was assessed under that context in terms of the quality of accommodation and parking provision. The use of the roofspace as a habitable room would not conflict with any of the policies within the Oxford Local Plan 2001-2016 or the emerging Sites and Housing Plan. More importantly the condition would not be enforceable as it would be impossible to detect any contravention unless internal inspections were regularly carried out on the property. Therefore the condition should be removed.

Condition 15:

Notwithstanding the approved plans prior to occupation of 77A Sandfield Road the rear garden of No 77A Sandfield Road shall be increased in width, details of which shall be submitted to and approved in writing by the Local Planning Authority and the garden shall be altered in strict accordance with those details prior to occupation and retained as such thereafter.

Reason: In the interest of residential amenity in accordance with policy CP1, CP10 and HS21 of the Oxford Local Plan 2001 - 2016.

17. The scheme approved under 12/00077/FUL included a private garden for the two-bedroom dwelling which measured approximately 14m x 3m. The condition required the width of the garden to be increased in order to improve the overall quality of the amenity space for the dwelling.

18. The applicant suggests that the width of the garden was determined by the subdivision of both properties. They accept that it is smaller than other nearby properties but consider it is not unreasonably small as it allows space for sitting out and drying clothes. There is also a nearby park which would provide additional space if children are present. They go on to state that there is no policy standard for garden width sizes within the development plan and therefore the condition has been unreasonably imposed.

19. Officers do not agree with the applicant's argument. Local Plan Policies HS20 and HS21 both require residential developments to have good quality external environments and adequate amenity spaces for future occupants. Policy HP13 of the emerging Sites and Housing Plan also states that 2 bedroom dwellings should have a private garden of adequate size and proportion for the proposed house. It also states that the location and context of the dwelling, the orientation of the space, and the overall shape and access to the space is material in considering the suitability of the space. Therefore it is incorrect to state that the development plan policies do not set standards for garden width sizes.

20. Although the officer's report for the approved scheme (12/00077/FUL) concluded that the size of the space would be acceptable, a site visit has been carried out in relation to this application to assess the overall size and quality of the space. In this regard, officers consider that the garden does feel narrow and small for the type of accommodation it serves. The requirement to increase the width would certainly improve the overall quality of the space without compromising the quality

of space for the original dwelling.

21. In this regard officers do not consider that condition is unreasonable and it should be retained in accordance with Policies CP10, HS20, and HS21 of the Oxford Local Plan and Policy HP13 of the emerging Sites and Housing Plan. The applicant has suggested that the garden width could be increased by 0.5m which would be an improvement however this could be improved further as part of the condition.

Condition 18:

Notwithstanding the approved plans the setbacks in the front and rear extensions adjacent to No 79 Sandfield Road shall be reinstated in strict accordance with the plans approved under planning permission 11/00051/FUL within 6 months from the date of this permission.

Reason: In the interest of the residential amenities of No 79 Sandfield Road in accordance with policy CP1, CP10 and HS19 of the Oxford Local Plan 2001 - 2016.

22. The recent application 12/00077/FUL requested retrospective permission for the extension which had not been built in accordance with the plans originally approved under 11/00051/FUL. The original permission for the side extension had the main range of the extension sited directly on the boundary with 79 Sandfield Road along with two small set backs of 200mm to the front and rear. The condition attached to the permission required these set backs to be reinstated.
23. The applicant has indicated that during the construction process there were concerns over the position of the boundary and as a result the boundary to the rear was not parallel with the house and the rear wall of the extension was therefore angled slightly away from the boundary resulting in a loss of the set back to the rear. The small set back on the front corner was lost in order to provide access to the stairs in order to meet the building regulations. They consider that the condition requiring the provision of these 200mm set backs would require an onerous level of building works, which would be unreasonable given the fact that their omission would not give rise to any visual harm or overbearing impact.
24. A site visit has been carried out from 79 Sandfield Road in order to assess the true situation on site. The main range of the two-storey side extension is sited directly on the boundary (as approved). The front extension does not have the approved set back, as it continues along the common boundary. At the rear, the extension has been set in slightly from the boundary 160mm. This set back is consistent from the point it starts until the end of the extension and it does not angle away as suggested by the applicant. During the consultation process concerns have been raised that the set back to the front was omitted largely to enable the creation of the staircase in order to facilitate the creation of the second bedroom in the roofspace. The reasons for the omission are not a material planning consideration, it is the harm caused to the adjoining property which needs to be assessed against development plan policies.

25. In terms of the rear of the two-storey extension, there is a 160mm set back from the boundary with 79 Sandfield Road. This is a difference of 40mm (4cm) from the 200mm required by the condition. Although this is obviously closer to the boundary, officers consider that it would not have a material impact upon the rear of the adjoining property or the study window in the rear elevation of this dwelling closest to the extension beyond that which has already been considered acceptable in the granting of planning permission 11/00051/FUL & 12/00077/FUL.
26. With respect the front extension, there is a kitchen window in the front elevation of 79 Sandfield Road. This is a bay window which faces directly out onto the frontage of the property. Although the omission of the 200mm set back would bring this part of the extension closer to the property, it would not have a material impact upon the amount of light and outlook from this kitchen window. Although the owner of 79 Sandfield Road has concerns about impact upon the side passage between houses, this is not considered a habitable space in the same fashion as a room within the dwellinghouse.
27. Therefore officers consider that the condition requiring the set backs to be provided should be removed as the extension as built would not have a material impact upon the residential amenities of the adjoining properties over and above that already considered acceptable under the previous permissions.

Condition 19:

Notwithstanding the approved plans the casement windows in the roof of the ground floor extension shall be replaced with made for purpose roof lights within 6 months from the date of this permission, details of which shall first be agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenity in accordance with policy CP1, CP8 and CP10 of the Oxford Local Plan 2001 - 2016.

28. The retrospective application 12/00077/FUL proposed rooflights in the single storey rear and side extension to the original dwellinghouse. However, casement windows were used rather than standard velux rooflights. Therefore the condition requested these be removed in the interests of visual amenity.
29. The applicant accepts that the rooflights are different from those conventionally used but then many of the houses in the area are different in style and have different window sizes and styles. They consider that the windows used on the property are generally of matching style and are sited to the rear of the building, which itself is not within a conservation area. They are a minor feature, and while they may not be to everyone's taste they are not an eyesore and their removal is unnecessary.
30. Having conducted a site visit, the windows do not look like conventional velux rooflights although they do match the other windows within the building and are set into the roof slope in a similar fashion to a rooflight. They are sited to the rear and side and so are not visible from the public realm, and as such it is difficult to suggest that they would have a significantly detrimental impact upon the character

and appearance of the building.

31. As such officers consider that it would not be reasonable to require these windows to be replaced by rooflights as the current windows do not cause material harm to the visual appearance of the building. The removal of the condition is justified.

Conclusion:

32. The principle of development has been established in granting planning permission under references 10/02781/FUL, 11/00051/FUL, and 12/00077/FUL. It is considered that there is a good case for conditions 7, 11, 18, and 19 to be removed as they would not give rise to an unacceptable impact upon the character and appearance of the street scene or adjoining properties, the overall quality of the residential accommodation or highway safety. It is considered that condition 15 would meet the tests of Circular 11/95 however as the current amenity space would be considered of an inadequate size for the residential dwelling it serves.

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.

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 grant planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Contact Officer: Andrew Murdoch

Extension: 2228

Date: 21st September 2012

This page is intentionally left blank