

Report of: Head of City Development.

To: West Area Planning Committee, 7th February 2013.

Title of Report: Student Accommodation at Castle Mill, Roger Dudman Way.

Purpose of Report: This report seeks to review the current position in respect of planning permission 11/02881/FUL for graduate student accommodation at Castle Mill, Roger Dudman Way following the petition to Council on 17th December 2012. The report to Council as attached as **Appendix A**. The development is currently under construction.

Key Decision: No.

Portfolio Holder: Colin Cook.

Scrutiny Responsibility: Environment.

Motion from Council of 17th December 2012.

To note the widespread concern about the impact of the development of postgraduate student accommodation at Roger Dudman Way on views from Port Meadow, but that a fully valid planning permission is held by the University. Council also notes that the extensive level of consultation with public and statutory bodies, as set out in sections 4 and 5 of the report from the Head of City Development fully met the requirements of the Council's procedures, and that the University also undertook consultation through a public exhibition.

As detailed in the further report from officers, the conditions attached to the granting of the planning permission relating to planting and screening are currently being determined, as are some amendments to the physical appearance of the flats. Council therefore determines to ask the Head of City Development to bring forward as soon as possible in the New Year a report to the West Area Planning Committee setting out any general lessons that need to be learned from the handling of this application and an assessment of the scope for further measures that are possible and that would contribute in the long and short term to mitigate the impact on the views looking south from Port Meadow.

Planning History to the Site.

1. The first planning application to relate to the Roger Dudman Way site, 93/00906/NOY, was made in 1993 when an outline application was submitted for 20,680 sq m of floorspace on 2, 3 and 4 floors for student accommodation plus training facilities for the Oxford University Officer

Training Corps (OUOTC). At that time the site was generally known as North End Yard and consisted of former railway operational land. It had no allocation in the informally adopted Local Plan of the day. In the event the application was withdrawn before being brought forward for determination with the OUOTC eventually being relocated from its then home in Manor Road to Falklands House, Oxpens Road.

2. The site subsequently became allocated for student accommodation and for a youth hostel in the 1991 - 2001 Local Plan adopted in September 1997. Although no application was ever made for a youth hostel on the site, shortly afterwards an application was made for one as 00/00778/NF on an unallocated site to the south at the junction with Botley Road. Permission was granted there for the 200 bed hostel for the YHA which was implemented and opened about 2003.
3. On the allocated site an outline application was submitted early in 1997 under reference 97/00342/NOY for 87 x 2 bed flats (not exceeding 6,500 sq m) and student accommodation (not exceeding 14,100 sq m) plus 40 car parking spaces. The outline application was submitted in similar terms to the previous one but with the residential element replacing the proposed OUOTC accommodation. Outline permission was not granted until 2000 however by which time a full planning application had also been made by Persimmon Homes for the 87 flats under reference 98/01583/NFY. Both applications were granted permission on the same day, 9th August 2000 and were accompanied by a S.106 agreement which secured, amongst other things, a cycle route through to Walton Well Road. The 87 flats were built out shortly after the grant of permission as Venneit Close. It was one of the first low car ownership residential developments in the City with only 13 car parking spaces being provided.
4. Subsequently the University made a Reserved Matters application for its site under reference 02/00989/RES. This sought permission for 517 graduate student study rooms in 3 and 4 storey blocks of accommodation with 27 car parking spaces. Permission was granted on 16th July 2002. Only the first phase was built out however, though the cycle route through to Walton Well Road was created and brought into public use, but for daylight hours only. The off - site enabling works and ramp from the car park at Walton Well Road to Walton Well Road itself was funded from the contribution previously secured. South of Venneit Close further permissions have been granted for 14 flats at Thames Wharf under reference 03/01874/FUL and 48 student study rooms under 06/01157/FUL. The flats have been constructed and occupied for several years, whilst the student accommodation is currently under construction.

Submitted Planning Application.

5. The University development under construction on site was submitted late in 2011 as application 11/02881/FUL. Since the gaining of planning permission for Castle Mill under 02/00989/RES the current Local Plan had

been adopted in 2005 allocating the site specifically for University student accommodation.

6. The application, submitted in November 2011, sought permission for 312 graduate study rooms and “flats” in 8 blocks on 4 and 5 levels, together with 360 cycle parking spaces. In combination with Phase 1 the combined development would eventually house some 439 student units of accommodation, all of them for postgraduates. In the pre application discussions the University had indicated it did not wish to build out the remaining phases of the extant permission as it did not fully meet its needs; it wished to make full use of the site; and it was conscious that the University was at or in excess of the threshold figure of 3000 students living on the open housing market referred to in Core Strategy policy CS.25, and wished to make inroads into that figure. Upon submission officers became aware that the development was larger than the extant permission but had not had full information to hand in relation to its impact at the pre application stage. For its part the University wished to progress the proposals in order, it hoped, that if permission was forthcoming it could be constructed and available for occupation for the Autumn 2013 term.
7. Whilst similar in many respects to the extant permission the current proposals differ in some respects. The extant permission had proposed 5 U shaped blocks of student accommodation, of which only the first was built out as Phase 1. All the east - west elements were to be constructed on 4 levels, with the north - south elements on 3 levels. An open area was retained central to the site but with the northernmost block of accommodation drawn just 4.5m from the northern boundary of the site.
8. In the current development 8 blocks of accommodation are indicated with 3 pairs linked by “gatehouses” in a similar U shaped form. The accommodation would be on 4 levels rising to 5 levels for the east - west blocks and 4 levels for the 2 remaining north - south blocks. The linking “gatehouses” would be on 3 levels, but with the northernmost block of accommodation drawn away from the northern boundary by some 20.5m.
9. In both cases the development would be visible to an extent through the tree coverage from Port Meadow, especially during the winter months and / or following pollarding of the crack willows along the Willow Walk footpath.

Public Consultation.

10. On receipt of the planning application normal consultation procedures were undertaken, involving consulting statutory bodies, erecting site notices, (6 in this case), and placing an advertisement in the local press. These procedures are referred to in more detail at paragraphs 4 to 6 of the report to Council, **Appendix A**.
11. In addition prior to the submission of the planning application the University had undertaken its own consultation procedures, inviting various

local groups etc to a manned exhibition held at Castle Mill on 25th October 2011. Attached as **Appendix B** is a listing produced by the applicant's agent of those parties consulted.

12. The outcome of the public consultation exercises was reported in the officers report to West Area Planning Committee attached now as **Appendix C**.
13. In relation to the extant 2002 permission consultation procedures at that time involved letters to interested parties and individuals. A full listing of those consulted is attached as **Appendix D**. In the event some 10 letters of comment were received from the Oxford Civic Society, Oxford Preservation Trust, Railtrack Great Western, Thames Trains, Oxford Urban Wildlife Group, Southern Electric, English Nature, Turbo Ted's Nursery, Thames Valley Police and Councillor Fooks. Of these 3 responded with no objection, no comment or that they did not wish to comment, whilst one was concerned about the possible oppressive impact and possible loss of light to the Cripsey Road Allotments. Of the remainder none forwarded comments relating to the development's built form or raised objections of principle. Rather in the main the comments received related to parking and access issues or to matters of detail.

Determination of Planning Application.

14. Following submission of the 2011 planning application amendments were sought to the proposals, reducing its overall height by some 1.5m with funding also secured for off site planting. The officers' report to West Area Planning Committee of 15th February 2012 reproduced as **Appendix C** referred at some length to the matter of its built form and visual impacts, including views from Port Meadow. Paragraphs 7 to 18 of that report in particular referred to these issues and concluded by indicating that a judgement had to be made by members of the committee:

"...as to whether the degree of change to the views and landscape setting in this direction which would result from the proposed development is sufficient to warrant refusal of planning permission, taking into account other benefits and objectives to be weighed in the balance. Certainly it is not the case that the development would be entirely hidden from view from Port Meadow or that there would be no impact from the development on the landscape setting and on public views. Rather officers have come to a conclusion, on balance, that with the mitigation described in place then in similar fashion to the extant permission the impact is not such that taken in context with the benefits of the development in provided much needed purpose built student accommodation at an allocated site that planning permission should be denied."

15. In the event the planning application was approved on a vote of 8 to 1. The Notice of Planning Permission is attached as **Appendix E**.

Mitigation

16. In order to in part mitigate the development whilst recognizing that the development would not be hidden in views from Port Meadow and elsewhere, at the application stage the roof design had been altered to indicate a “valley” feature, thus reducing its height by approximately 1.5m. In addition a condition was imposed requiring the submission of details of the materials to be utilized in the development. As originally proposed the intention had been that the roof would consist of a standing seam aluminium structure to match the first phase of Castle Mill. Officers felt this was too strident however and negotiated a darker colour accordingly. Similarly it had been intended that the elevations would be faced predominately of a white self coloured render system. However this was amended so that the same colour was not used throughout, but various shades of Onyx grey used plus charcoal grey brickwork or plinths, glazed curtain walling and cladding in a western red cedar finish.
17. In addition a financial contribution of £10,000 was secured towards off - site planting. A survey of existing the existing tree coverage was also undertaken by my Tree Officer on 15th January 2012 of that part of Willow Walk in the field of view when looking from the path across Port Meadow towards the development, (ie from the car park at its eastern end to the point further west where the stream turns sharply north marked by a culverted bridge). This indicated the presence of approximately 40 hawthorn, 22 crack willow, one mature holm oak, one early mature ash and one alder.
18. The survey revealed:
- 20 of the crack willows have been pollarded to a height of about 3.5m, probably within the last 3 years. A normal pollard cycle would be 10 -15 years, so these trees would need to be cut again in the next 7 -12 years. These trees are currently about 5m tall and might become 8 metres tall before being pollarded again. The 2 other crack willows which have not been pollarded are currently about 7m tall, and will themselves be required to be pollarded at some point.
 - The hawthorns are between 3 and 5m tall. These do not require pollarding, but their potential for further vertical growth is quite limited, and might be expected to increase in height by perhaps a metre or so over the next 10 years.
 - The early mature ash tree is currently about 7m tall. Being a young tree it has potential to grow to 10 -15m height.
 - The holm oak, (an unusual species for this location), provides the most effective screening of existing trees being an evergreen. It is 8 -10m tall and being a mature tree will not grow much taller in the future.
 - The alder is the remnant of a tree only. Its top has snapped out at about 3m above ground level, so that all that remains is the lower part of the stem and a single branch. It is an interesting structure with habitat value but it contributes little in terms of screening.

- To the south of the Castle Mill Stream at this point the majority of the trees within the Cripsey Road Allotments site are also crack willows which have been pollarded to about 3.5m above ground level. However, these trees have not been pollarded so recently and so will require re-pollarding sooner within 5 years or so. There are also some unpollarded willows, some birch and a spruce within the allotments site.
19. The new planting is proposed to consist of up to 97 separate trees made up primarily of native black poplar, crack willow, white birch, field maple and hawthorn. It is hoped these can be planted in the current planting season along the southern edge of Port Meadow along the line of the Willow Walk footpath north of the Castle Mill Stream. The native black poplars can be expected to reach 15 - 20m in height at maturity, so will be much taller and broader than the current tree coverage. These and the other smaller trees which would not be required to be pollarded will in time be more effective and sustainable than the existing tree coverage. A location plan for the intended planting will be available at committee.
 20. The planting would be concentrated along the eastern section of Willow walk along the line of the existing footpath. Some planting is also envisaged around the Walton Well Road public car park, whilst the possibility of planting to the south of the Castle Mill Stream along the northern edge of the Cripsey Road Allotments is also being investigated.

Current Position.

21. At the time of writing the development is well advanced on site and planning officers have continued their dialogue with the applicant on imposed conditions in line with normal practice. The planning permission imposed some 22 conditions in all, listed in the Notice of Permission attached as **Appendix E**. Of these 10 imposed ongoing requirements whilst the remaining 12 required details to be submitted and approved. Of these 12 conditions details in compliance with nos. 3 (materials); 11 (noise attenuation); 12 (vibration); 15 (drainage); 20 (construction management); and 21 (construction travel arrangements) have been submitted and approved.
22. The matters still requiring details to be formally submitted and agreed relate to conditions 5 (on - site landscaping); 7 (landscape management); 13 (CCTV provision); 16 (ground contamination); 18 (management of on - site badger sett); and 22 (public art). In relation to these the dialogue is continuing. The University's appointed agent is currently finalising the details and agreement has been reached these will be submitted by or on 15th February 2013.
23. As work has continued on site Enforcement Officers have also inspected the site to ascertain if there is any variation in the heights of

buildings compared to the approved drawings. The building technique employed for the development includes the construction of structural elements off site, allowing building work to progress rapidly. To these elements external, finishes are applied accordingly. As such measurements taken on site revealed only very minor variations of a few centimetres from the approved drawings, within the tolerances which can reasonably be allowed in the production of planning drawings.

Available Planning Powers.

24. There is no evidence that the development is being constructed other than in compliance with the planning permission, or that any other breach of planning control has taken place. In these circumstances there are limited courses of action available to the Council as local planning authority to effect changes to the development, even if it were expedient to do so. The Council does nevertheless have the power of revocation or modification to a planning permission previously granted where it is considered expedient. An order requires confirmation by the Secretary of State unless all owners, occupiers and those likely to be affected have given notification that they do not object. If confirmation by the Secretary of State is required the procedure would be similar to that for a planning appeal. The Council would be required to pay the costs of a successful objector unless there are exceptional circumstances. Unreasonable behaviour on the part of the Council could also lead to an award of costs in favour of a successful objector. Should an order take effect (regardless of whether the Secretary of State's confirmation is required) compensation is payable. This is on the basis of abortive work and any other costs directly attributable to the order including loss of income, the cost of subsequent physical works to the development and loss in land value. In this case this could amount to a seven figure sum.
25. The Council also has power to make an order requiring discontinuance of use or alteration or removal of buildings or works where it appears to be expedient in the interests of the proper planning of the Council's area (including the interests of amenity). An order may include a grant of planning permission. Orders require confirmation by the Secretary of State. The procedure for confirmation is similar to that for revocation orders as is the costs situation where confirmation is opposed. Again compensation is available. This is on the basis of loss of land value, and disturbance in the use of the land including costs of compliance with the order.
26. Although it is not considered applicable in this case, in the event that a breach of planning permission can be demonstrated to have occurred and it is expedient to take action, enforcement action is possible but is not automatic. It is a discretionary power of the Council. Failure to properly consider whether enforcement action should be taken could exceptionally be judicially reviewable and can amount to maladministration. Similarly a failure to seek a retrospective planning application to regularise the

position in appropriate cases can also amount to maladministration. National policy as to when, and how, enforcement action should be undertaken is currently minimal. The recent National Planning Policy Framework (NPPF) contains a single paragraph noting the importance of effective enforcement of planning control to maintaining public confidence in the planning system. It notes that action is discretionary, suggesting a proportionate response to suspected breaches. Action should not be taken solely to regularise acceptable development nor weight attached to the fact of development having already taken place, or to non planning considerations

27. In issuing an enforcement notice failure to comply with the requirements of the notice is a criminal offence and gives rise to a power to execute works in default. An enforcement notice will specify steps for compliance with timescales for those steps to be undertaken. The steps may address physical works and or uses and can seek either remedy of the breach or alleviation of injury to amenity. The timescales for steps to be taken are specified by periods of time from the date that the notice takes effect. The grounds of appeal are wide including contending that planning permission should be granted. If it is decided on appeal that the notice was unreasonably issued the appellant's costs of appealing may be awarded against the Council regardless of the outcome of the appeal.
28. If a breach of planning control consists of a breach of a condition then a breach of condition notice may be served imposing requirements for the purpose of securing compliance with the conditions. There is no right of appeal to the Secretary of State and Circular guidance advises that these notices be used only in straightforward matters so as to prevent protracted litigation.
29. Where the Council considers it expedient that an activity (including ongoing building) which an enforcement notice would prohibit should cease sooner than required by the notice, then a stop notice may be served. However a stop notice can only be served where there is also an enforcement notice, and an enforcement notice can only be issued where there appears to be a breach of planning control. A stop notice cannot require remedial works such as the removal of a building. A stop notice can take effect three days after the date of service, or if there are special reasons it can take effect sooner. Contravention of a stop notice is an offence (even where the related enforcement notice is subject to appeal). The validity of a stop notice may be challenged as a defence to prosecution or by judicial review. If the enforcement notice is withdrawn or quashed (other than on the basis that planning permission should be or is granted) or varied such that the activity is no longer prohibited by the enforcement notice, then compensation is payable. Similarly the withdrawal of a stop notice gives rise to compensation.
30. Injunctions may be sought to restrain breaches of planning control. The court has a broad discretion as to whether or not to grant an injunction and upon what terms, which could for example include a requirement that

should it subsequently be established that there was in fact no breach of planning control, then the Council compensates for any losses. Injunctions are considered to be particularly severe which must be borne in mind when considering proportionality.

Summary and Conclusions.

31. The land at Roger Dudman Way subject to this report has been allocated in successive planning documents for the use now under construction within the context of a longstanding commitment to intensively develop this brownfield site. On receipt of the planning application for student accommodation the local planning authority's current consultation procedures were undertaken, and a full and detailed report brought before the Council's West Area Planning Committee for determination where the planning application was determined by a clear majority of 8 votes to 1. In coming to its decision committee also took into consideration other factors such as the policy objective of accommodating no more than 3000 of the University's students in open market housing.
32. The report to committee included views of Oxford from the Port Meadow "View Cone" at Wolvercote so that officers' recommendation could be understood and members in turn weigh in the balance any positive and negative impacts with an understanding of the heritage significance of the view. The report clearly indicated that the development would not be screened from view from Port Meadow, though the intended mitigation would assist in the development sitting more comfortably within its wider context. Rather in this view it would sit between a line of trees and greenery set along the edge of Willow Walk in front of it and a second line of trees and greenery along the eastern side of the railway line set behind it. Attached as **Appendix F** is an image submitted with the planning application which indicated the intended position of the development compared to the extant 2002 planning permission. This constituted a suitable representation of the intended development to assist committee in coming to its decision on the application. Also attached is an image taken on 24th January 2013. These and other images will be displayed at committee.
33. The way in which Port Meadow is experienced has evolved and changed over the years with views of industrial buildings along the "canal corridor" at W. Lucys, Aristotle Lane Industrial Estate and Unipart being replaced by successive housing developments built out in the 1990s and 2000s. These recent developments are also in part visible through the tree coverage and greenery especially during winter months, whilst housing developments at the Wolvercote end of Port Meadow at Rowland Close and Meadow Prospect are fully in view.
34. In summary, in my opinion it is relevant to bear in mind that views from Port Meadow are dynamic rather than static, changing with the amount of tree coverage and general greenery to its periphery; with the seasons; with the time of day; and over periods of time. The open and historic grazed

common of Port Meadow plays an important part in the character of the view, providing an historic green setting to the city. The line of trees along the Oxford canal and a variety of more ornamental trees in the gardens of North Oxford reinforce this green setting, from which the “dreaming spires” emerge, seen against the open skyline. The trees have grown since the 1960s when the view was first identified in planning documents however so that they now screen more of the buildings in the historic core than previously. To this extent views are different now to those experienced in previous decades with part of the significance of Port Meadow being this juxtaposition of changing city to relatively unchanged floodplain.

35. Views will also change as the viewer moves across the Port Meadow, successively bringing features into view, whilst others disappear. All the while the viewer is reminded that Port Meadow exists not as open countryside but as part of the city, to its east and north close up to urban features - residential suburbs, railway line and canal. *(In the wider context a study funded by English Heritage and managed jointly by the City Council and Oxford Preservation Trust is under way to identify the heritage values which the views of Oxford from its “View Cones” hold. A further stage in the project still to be funded would seek to develop a methodology to articulate the impact of changes to the landscape and built environment on Oxford’s unique circumstances).*
36. As indicated previously in this report, there is no evidence of a breach of planning permission having occurred, or that committee made its decision other than following consideration of all the material circumstances of the case. Nevertheless if it were expedient to do so, revocation of the planning permission could be considered, though it is likely the Secretary of State would be very reluctant to revoke a valid planning permission other than in the most exceptional circumstances. If it were, then substantial compensation would follow amounting to perhaps a seven figure sum. In any event it would not prevent the University from seeking a fresh planning permission on the site with rights of appeal if it failed.
37. Whilst officers are satisfied that correct procedures were adopted in this case and that committee came to its decision in a rational fashion bearing in mind all the material circumstances, nevertheless it is appropriate in the light of the scale of public comment since construction commenced to review such procedures. The planning application process is much more than notification of the receipt of a new planning application and it is important therefore for officers, elected members, applicants and third parties to be mindful of:
- the importance of positive engagement with stakeholders and interested parties at both pre application and planning application stages;
 - the need to understand the characteristics of a site, including the identification of positive and negative features to inform the design process and assessment of its impact;
 - the challenges Oxford faces in meeting the development needs of its communities in an environment which holds many physical constraints,

yet sustaining the very qualities from which the city gains its reputation, (physical, economic, academic); and

- the need to maintain a close dialogue with applicants post permission to address any new issues as they arise.

38. I consider that all these steps have been taken in this instance and even with hindsight I do not consider that there are any other steps that could have been undertaken which would have reached a different outcome and planning decision. Nevertheless the purpose of this report is to invite members of the West Area Planning Committee to make their judgement on this question.

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