



Appeal Decisions

Site visit made on 16 November 2012

by Stephen Roscoe BEng MSc CEng MICE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 January 2013

Appeal A Ref: APP/G3110/A/12/2179978

**Land to the Rear of 82, 84 & 86 Windmill Road, Headington, Oxford
OX3 7BX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Neil Gorton, Haseley Homes Ltd against the decision of Oxford City Council.
 - The application Ref 12/00660/FUL, dated 27 February 2012, was refused by notice dated 8 June 2012.
 - The development proposed is the construction of 2 three bedroomed dwellings and 1 two bedroomed dwelling in a terraced block with bin and cycle stores.
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Appeal B Ref: APP/G3110/A/12/2180583

**Land to the Rear of 82, 84 & 86 Windmill Road, Headington, Oxford
OX3 7BX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Neil Gorton, Haseley Homes Ltd against the decision of Oxford City Council.
 - The application Ref 11/02994/FUL, dated 17 November 2011, was refused by notice dated 11 January 2012.
 - The development proposed is the construction of 2 three bedroomed dwellings, 2 two bedroomed flats and 1 one bedroomed flat in a terraced block with bin and cycle stores.
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Procedural Matters

1. The appeal site is situated within the Headington Central Residents Parking Zone. It has the benefit of planning permission for 3 two bedroomed dwellings in a terraced block, on a car free basis with eligibility for residents' parking permits withdrawn by planning condition. The permitted scheme does not include any off-street parking. The permission is readily capable of implementation and is therefore a realistic fallback position in relation to the above appeals.
2. A second floor study in the dwelling under Appeal A described as having two bedrooms would be capable of occupation as a bedroom. This dwelling has therefore been considered to have three bedrooms in the assessment of the issues in these appeals.

Decision

3. Appeal A is allowed and planning permission granted for the construction of 2 three bedroomed dwellings and 1 two bedroomed dwelling in a terraced block
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with bin and cycle stores at Land to the Rear of 82, 84 & 86 Windmill Road, Headington, Oxford OX3 7BX in accordance with the terms of the application, Ref 12/00660/FUL, dated 27 February 2012, and subject to the conditions listed at the end of this decision.

4. Appeal B is dismissed.

Application for Costs

5. An application for costs in relation to Appeal A was made by the appellant against the Council. This application is the subject of a separate decision.

Main Issues

6. The main issues in these cases are:
- i) whether the proposal under Appeal A would have severe effect on highway safety in Norton Close;
 - ii) the effect of the proposal under Appeal B on the living conditions of nearby existing occupiers in relation to privacy;
 - iii) whether the proposal under Appeal B would provide adequate private open amenity space for its future occupiers; and
 - iv) the effect of the proposal under Appeal B on the character and appearance of the surrounding area.

Reasons

Highway Safety

7. The pedestrian accesses for the proposed dwellings under Appeal A would be from Norton Close. On-street parking in the close appears to be restricted to permit spaces, with much of the close having double yellow line restrictions. At the time of the site visit, there was some evidence of parking on some of the footways of the close. The close leads to blocks of garages which appear to be associated with the housing in the close.
8. The proposal would include the use of two of these garage plots, one for the occupiers of each of the two dwellings described as having three bedrooms. On one of these plots, the garage has been demolished and, on the other, the vehicle door has been removed and the opening widened. Both of these alterations serve to improve the accessibility of the parking provided. Although they are not lit, both the garage plots provide proper parking accommodation in accordance with Local Plan¹ (LP) Saved Policy CP.10. The third dwelling would not have the benefit of any local on or off-street parking.
9. The Highway Authority has not objected to the proposal, despite the parking spaces being smaller than its general requirements², and has advised that visitor permits would be available for the dwellings. Furthermore, the appeal site is situated in a sustainable urban location and the fallback proposal relates to a car free development comprising 3 two bedroomed dwellings. In view of the existence of the fallback position, the two proposed parking spaces and the availability of visitor parking permits, the proposal would provide appropriate

¹ Oxford Local Plan: 11 November 2005

² Oxfordshire County Council: Transport for New Developments: Parking Standards for New Residential Developments

and acceptable parking. This would accord with LP Saved Policies CP.1, CP.6 and TR.3, and the proposal thus would not have an adverse impact on highway safety due to any additional on-street parking. Furthermore, the proposal would not have a severe cumulative residual impact in conflict with the more stringent test in the National Planning Policy Framework.

10. The proposal would result in the increased use of Norton Close. The close however already serves many dwellings, and the three additional dwellings proposed, together with the two parking spaces, would not have any material effect on highway conditions within the close
11. I therefore conclude that the proposal under Appeal A would not have a severe effect on highway safety in Norton Close. I further conclude that it thus would not conflict with Local Plan Saved Policies CP.1, CP.6, CP.10 and TR.3 or the National Planning Policy Framework.

Existing Occupiers' Living Conditions

12. The rear boundary of the appeal site generally adjoins the rear boundaries of the gardens of Nos 29 to 32 Mattock Close. The proposed dwellings under Appeal B would include extensive rear glazing at second floor level. The second floor flat would also have the benefit of a rear balcony which would be accessed from the living/kitchen/diner and have a southerly aspect. The balcony would be the only outdoor amenity space for the flat, be well accessed and possess a sunny aspect. It therefore would be likely to be well used.
13. The balcony would directly face the rear elevations of the dwellings in Mattock Close. Views would be possible from the balcony into the rear gardens of Nos 29 to 32, including into their more sensitive areas directly to the rear of the houses. Intervening vegetation, which provides some partial screening, could be removed in the future and therefore cannot be relied upon. The appellant's position is that distance between the rear elevations of the proposed dwellings and the rear elevations of the houses in Mattock Close would lie just within the limit of the Council's standard of acceptability. As a result of the above factors however, the proposal would not adequately protect or safeguard the privacy of nearby occupiers in Mattock Close as required by LP Saved Policies HS.19 and CP.10.
14. The proposal under the fallback position would include three first floor balconies which would be accessed from bedrooms. As a consequence of the positive attributes of the appeal balcony, it would however be likely to be much more used than the three first floor balconies of the fallback proposal. The appeal balcony would also be at a higher level than the balconies of the fallback position, leading to a greater degree of overlooking. The existence of the fallback position would not therefore offset the harm from the appeal proposal in this regard. There are other examples of overlooking in the area around the appeal site, but their presence would not be a justifiable reason to allow more.
15. I therefore conclude that the proposal under Appeal B would have a harmful effect on the living conditions of nearby existing occupiers in relation to privacy and that it would thus conflict with Local Plan Saved Policies HS.19 and CP.10.

Future Occupiers' Living Conditions

16. The lengths of the rear gardens of the proposed two and three bedroomed dwellings under Appeal B, from the living room french doors to the rear boundary, would be 10m. This would include a small covered area immediately outside the french doors, which would be permanently open to the garden, would occupy the width of the dwelling and would be likely to be used as part of the garden. It should therefore be included in the garden length. Furthermore, bin and cycle storage would be provided outside the rear gardens, effectively increasing the space provided within the gardens. As a consequence of all of these factors, the rear gardens would provide sufficient private open amenity space.
17. The private open amenity space to be provided for the occupiers of the second floor flat would comprise the balcony. The one bedroomed flat would be unlikely to be used for family accommodation, and the balcony would have good access from the living/kitchen/diner, have a sunny southerly aspect and be of a size sufficient for sitting out. The balcony would therefore provide sufficient private open amenity space of a satisfactory quality in accordance with LP Saved Policy HS.21. Indeed, this policy suggests that private amenity space can be provided in the form of balconies.
18. The Council's Explanatory Practice Note³ on the matter also explains that, for one and two bedroomed upper floor flats, amenity space can be provided in the form of small balconies or ground level shared amenity space. In this particular case, the Council is concerned that there would be no space for the drying of clothes for the single one bedroomed flat. This would not however be sufficient reason to dismiss the appeal on the basis of the living conditions of future occupiers.
19. I therefore conclude that the proposal under Appeal B would provide adequate private open amenity space for its future occupiers and that it thus would not conflict with Local Plan Saved Policy HS.21.

Character and Appearance

20. The appeal site has no public frontage and limited public visibility, being much screened by the surrounding buildings. The buildings around the site exhibit a variety of styles and sizes and include a prominent commercial building which directly backs onto the kerb line of Norton Close not far from the appeal site.
21. The gable wall of the proposed dwellings under Appeal B would be the element of the building most visible from the close. The wall would be similar, in terms of height and extent, to that of the adjacent dwellings, Nos 22 and 23 Norton Close. In many views from the close however, the ridge of the roof of the proposed dwellings would appear to be lower than that of Nos 22 and 23, due to perspective. The proposed dwellings would therefore create a stepped appearance between the height of the roof at Nos 22 and 23 and that of the lower roof at No 21 Norton Close to the other side of the site.
22. The scale of the proposed dwellings would therefore be equivalent to, and have an appropriate visual relationship with, the surrounding area in accordance with LP Saved Policies CP.6 and CP.8. The scale would also be similar to that

³ Oxford City Council: Private Open Amenity Space – An Explanatory Practice Note: 9 June 2008

proposed under the fallback position, and this adds weight to the acceptability of the proposal.

23. The visible gable wall would also respect the gable vernacular at Nos 21, 22 and 23. The proposal would therefore respect the area's character and appearance, maintain the streetscape and create a successful living environment as required by LP Saved Policies CP.1, CP.10 and CP.9. In addition, the proposed urban design would also be appropriate in respect of its surroundings in accordance with Core Strategy⁴ (CS) Policy CS18.
24. The length of the proposed terrace would be greater than that at Nos 19 to 21 Norton Close, and the front to rear elevation depth of Nos 22 and 23. The additional length however would be screened by the surrounding buildings and would not be harmful. The front elevation would include a tower feature. Whilst this would add some interest to the elevation, it would have little public visibility and no material effect on the surrounding area.
25. The proposed dormers would dominate the rear elevation, visually taking it to three storeys. Generally however, they would only be visible in private views and, with fewer receptors, this would reduce the weight of any impact of them on the character and appearance of the surrounding area. The rear dormers would therefore be no reason to dismiss the appeal.
26. I therefore conclude that the proposal under Appeal B would not have a harmful effect on the character and appearance of the surrounding area. I further conclude that it thus would not conflict with Local Plan Saved Policies CP.1, CP.6, CP.8, CP.9 and CP.10 or Core Strategy Policy CS18.

Other Matters

27. The dwellings under Appeals A and B would be situated in reasonably close pedestrian proximity to the carriageway of Norton Close. The emergency services have not objected to the proposals, and poor emergency access would be no reason to dismiss the appeals. There is also no evidence to suggest that the proposals would conflict with the LP 45° code of practice guidelines for the assessment of impact on daylight, sunlight and outlook.
28. The appellant has suggested that the area suffers from a declining supply of housing land. There is no reasoned evidence that this is the case but, if it was, the proposal under Appeal B would not reflect the community's needs in terms of the living conditions of the occupiers of Nos 29 to 32 Mattock Close. This would conflict with the social role of sustainable development, and the housing land supply situation would be no reason to allow the appeal.

Unilateral Undertakings

29. The appellant has provided Unilateral Undertakings (UUs), both dated 19 September 2012, in respect of both proposals. These would provide for contributions towards the cost of amending a Traffic Regulation Order (TRO) to exclude the site from eligibility for residents' parking permits. The need for the exclusions would result from the impacts of the proposals, and the contributions would be necessary to secure compliance with LP Saved Policies CP.1, CP.6 and TR.3. The undertakings therefore meet the three statutory

⁴ Oxford Core Strategy: 14 March 2011

tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Conditions

30. Under Appeal A, conditions would be necessary in relation to external materials, landscaping and a tree survey to protect the character and appearance of the surrounding area. Conditions would be required in respect of cycle parking and design and construction methods in the interests of sustainable development. Refuse storage and contaminated land conditions would be necessary to protect the living conditions of future occupiers and window restrictions in relation to existing occupiers. Conditions to prevent occupation before the TRO is amended and in respect of parking would be necessary in the interests of highway safety.
31. Otherwise than as set out in this decision and conditions, it would be necessary that the development should be undertaken in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. It would also be necessary to amend the conditions suggested by the Council in the interests of precision and enforceability.
32. The Council has suggested a condition to withdraw permitted development rights in respect of the enlargement or alteration of the proposed dwellings and the provision of buildings or enclosures within their curtilages. The circumstances of the proposal under Appeal A would not however be sufficiently exceptional to require such a response to prevent harm, and such a condition would therefore not be necessary. The Council has also suggested conditions to regulate soft landscaping and the provision of cycle storage. The landscaping and storage are however sufficiently detailed on the submitted plans, and the conditions would therefore be unnecessary.

Conclusions

33. Whilst no harm has been identified under Appeal B in relation to the living conditions of future occupiers or the character and appearance of the surrounding area, this would not outweigh the harm to the living conditions of existing occupiers. Having also taken into account all other matters raised, none carry sufficient weight to alter the decisions. I therefore conclude that Appeal A should be allowed and Appeal B dismissed.

Stephen Roscoe

INSPECTOR

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

1052 P200	Location and Block Plan
1052 P201	Site Plan – As Existing
1052 P202	Elevations 1 – As Existing
1052 P203	Elevations 2 – As Existing
1052 P214	Ground Floor Plan – As Proposed
1052 P215	First Floor Plan – As Proposed
1052 P216	Second Floor Plan – As Proposed
1052 P217	Roof Plan – As Proposed
1052 P218	Elevations 1 – As Proposed
1052 P219	Elevations 2 – As Proposed
1052 P220	Landscape Plan - As Proposed
- 3) Notwithstanding Condition 2, no development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding Condition 2, no development shall take place until construction details for facilities in the bin storage area have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details. The bin storage facilities shall be provided before the building is occupied and thereafter retained.
- 5) Notwithstanding Condition 2, no development shall take place until full details of hard landscape works have been submitted to, and approved in writing by, the local planning authority, and these works shall be carried out as approved. These details shall include the treatment of paved areas, and the hard landscaping shall be provided before the building is occupied.
- 6) Notwithstanding Condition 2, no development shall take place until a survey of existing trees on the site has been submitted to, and approved in writing by, the local planning authority. The survey shall include the sizes and species of trees and indicate those which are to be removed and those to be retained. Development shall be carried out in accordance with the approved survey.
- 7) Notwithstanding Condition 2, no development shall take place until details setting out how sustainable design and construction methods will be incorporated into the development hereby permitted, so as to optimise energy efficiency and minimise carbon emissions, have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved

details, and the building shall not be occupied until the approved details have been incorporated into the development.

- 8) No development shall take place until a desk study has been carried out and submitted to, and approved in writing by, the local planning authority. The study shall include: a site walk over; the identification of previous site uses and potential contaminants that might reasonably be expected given those uses; and a risk assessment. If any contamination is identified during the study, no development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to, and approved in writing by, the local planning authority. The site investigation shall be designed using the information from the desk study and shall enable:
- i) a risk assessment to be undertaken relating to ground and surface waters on and off site that may be affected;
 - ii) the refinement of a conceptual model; and
 - iii) a statement to be prepared detailing any remediation measures, including the minimisation of impact on ground and surface waters.

The results of the site investigation shall be submitted to, and approved in writing by, the local planning authority before development commences. If any contamination is found during the site investigation, remediation measures to render the site suitable for the development hereby permitted shall be submitted to, and approved in writing by, the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

- 9) The dwellings hereby permitted shall not be occupied until the Traffic Regulation Order governing parking in Norton Close has been varied to exclude the site from eligibility for residents parking permits, unless otherwise agreed in writing by the local planning authority.
- 10) The bicycle storage facilities shown on Drg No 1052 P220 shall be provided before the building is occupied and thereafter retained.
- 11) All planting shown on Drg No 1052 P220 shall be carried out no later than during the first planting season following the occupation of the building.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows, other than those expressly authorised by this permission, shall be constructed on any elevations of the building hereby permitted.
- 13) The two garage plots within the site shall not be used for any purpose other than the parking of vehicles in connection with the 2 three bedroomed dwellings hereby permitted.

Conditions End