

# Agenda Item 5

East Area Planning Committee

5th March 2014

**Application Number:** 13/02542/VAR

**Decision Due by:** 16th January 2014

**Proposal:** Variation of conditions 11 (Parking Areas), 12 (part) (Bin and Cycle Stores), 13 (part) (Boundary Treatment), 16 (Management Plan for Common Areas) and 21 (Approved Plans) of planning permission 09/02329/FUL (Erection of two detached dwellings. Access, parking and landscaping (Land to rear of 6 and 7 Collinwood Close)) to allow discharge of conditions 11 and 16 post occupation of development and minor alterations to the siting of the two dwellings. (Amended Description)

**Site Address:** Land to the rear of 6 - 7 Collinwood Close. Site plan at **Appendix 1**

**Ward:** Quarry And Risinghurst

**Agent:** Mr David Rhys

**Applicant:** Mr Chic MacMahon

**Application Called in –** by Councillors –Sinclair, Clack, Price and Cook for the following reasons –neighbour and highway concerns

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## **Recommendation:**

APPLICATION BE APPROVED

For the following reasons:

- 1 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.
- 2 Officers have considered carefully all objections to these proposals. Officers have come to the view, for the detailed reasons set out in the officers report, that the objections do not amount, individually or cumulatively, to a reason for refusal and that all the issues that have been raised have been adequately addressed and the relevant bodies consulted.

subject to the following conditions, which have been imposed for the reasons stated:-

- 1 Development begun within time limit
- 2 Develop in accordance with approved plans
- 3 Materials
- 4 Landscape carried out by completion
- 5 No felling lopping cutting
- 6 Tree protection measures
- 7 Landscape hard surface design - tree root
- 8 Sustainable drainage scheme
- 9 Drainage Strategy
- 10 Parking Areas
- 11 Cycle and Bin Stores
- 12 Boundary Details
- 13 Bollards
- 14 Sustainable construction methods
- 15 Management plan for common areas
- 16 Biodiversity enhancement
- 17 Design - no additions to dwelling
- 18 Amenity no additional windows side,
- 19 Obscure glazing

**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

**Core Strategy**

**CS18\_** - Urb design, town character, historic env

**West End Area Action Plan**

**Barton AAP – Submission Document**

**Sites and Housing Plan**

**HP9\_** - Design, Character and Context

**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:**

08/01040/FUL - Erection of 3x2 storey detached dwellings. WDN 1st July 2008.

09/00649/FUL - Erection of two detached dwellings. Access, parking and landscaping (amended plan) (Land to rear of 6 and 7 Collinwood Close). PER 25th June 2009.

09/02329/FUL - Erection of two detached dwellings. Access, parking and landscaping (Land to rear of 6 and 7 Collinwood Close). PER 1st February 2010.

10/01319/CND - Details submitted in compliance with conditions 2,3,6,7,8,9,10,12,13,15 and 17 of planning permission 09/02329/FUL. PER 27th October 2010.

09/02329/NMA - Non material amendment to planning permission 09/02329/FUL involving ground floor cloakroom to be relocated in porch which requires porch to be enlarged. PER 18th July 2012.

12/02682/FUL - Erection of a single storey side extension to form a double garage (Plot No 2) adjacent to 6 Collinwood Close (amended description). WDN 28th November 2012.

12/02685/FUL - Erection of a single storey detached double garage (Plot No 1) adjacent to 6 Collinwood Close (amended description). WDN 28th November 2012.

12/02793/VAR - Variation of condition 5 (Trees) of planning permission 09/02329/FUL to allow removal of Norway Spruce labelled T7 on approved plan. APPRET .

12/03234/FUL - Erection of a single storey garage (Plot No 1) adjacent to 6 Collinwood Close (amended plans). WDN 20th June 2013.

12/03235/FUL - Erection of a single storey garage (Plot No 2) adjacent to 6 and 7 Collinwood Close (amended plans). WDN 20th June 2013.

09/02329/NMA2 - Non material amendment to planning permission 09/02329/FUL to add a condition allowing approved plans to be amended. (Amended Description). PER 1st August 2013.

**Representations Received:**

**2 Lindsay Drive (Abingdon):**

1. Purpose and Extent of the application

Conditions 12 and 13 should have been fulfilled prior to occupation and have not been; NMA2 wrongly referred to as it doesn't allow for any specific changes; applicant at fault for not complying with the original conditions

2. Delayed removal of No.6 extension

The D&AS states the kitchen at No. 6 currently located in the side extension so can't be removed whilst the current occupiers are living there. Any future residents will

have to cope without the side extension; no explanation of why the current occupants are especially deserving of a facility that is to be denied to all future occupants. There is scope to relocate kitchen to a new location whilst old kitchen remains which will aid transition rather than cause any unacceptable hardship. A Council should retain the option to prevent occupation of the second dwelling if conditions are not complied with. Extension removal is crucial to the parking situation otherwise it will have consequences for the on-street parking situation and associated neighbourhood amenity and safety. This application is delaying the removal and increasing the likelihood that it will never be done. Full parking is required as a matter of urgency due to the premature occupation of one of the new dwellings. Site is being used as a base for the family construction business and associated commercial vehicles. Domestic level of car parking provision is not enough for this site and its on-going commercial use.

### 3. Plan Accuracy

Consistently inaccurate plans. Applicant and agent have repeatedly deceived the council by misrepresenting the site and what they had already built in subsequent applications for additional changes, namely garages. Unclear how the boundaries have changed between the first survey and construction beginning and why. Unclear as to which site plan is accurate given that each plan varies the dimensions of the site. None of the plans make sense. It is not possible for a site that was so border line acceptable in terms of parking, access and amenity to actually have surplus land at the edges to 'gift' to neighbours and still have space to fit everything adequately within, and make space for the inevitable further garage applications.

### 8 Collinwood Close

Nothing has happened at the site since the withdrawal of the garage applications. From the design and access statement the occupier of Number 6 is hoping to occupy the house in plot 1, upon which the completion of the road and the demolition of the side extension on number 6 will be carried out, with the landscaping to follow. We are concerned that after a delay of 14 months already this may not happen within a reasonable time scale now.

As regards landscaping the plans show trees planted in front of plot 2, to improve privacy both ways, with number 8. The front of plot 2 has been set aside to lawn. We feel our privacy has been compromised as the trees have not yet been planted.

On the whole have found the site generally quiet and would like to see the completion of this development so it can be appreciated by the neighbourhood.

### **Statutory and Internal Consultees:**

Highways Authority: see below

### **Issues:**

Compliance with conditions  
Planning merits of proposed changes

## **Officers Assessment: Site Description**

1. The application site comprises an area of land to the rear of 6 and 7 Collinwood Close within Risinghurst. Risinghurst, a residential suburb, lies to the north east of the city centre between the A40 and A4142. Collinwood Close is characterised by semi-detached properties, built in the 1930's. The properties are pebble dashed rendered under concrete tiled roofs of a fairly uniform character. They have small front gardens to the front and decent sized rear gardens. No.s 6 and 7 Collinwood Close lie at the end of the close. Due to the layout of the close, these properties, along with numbers 8 and 9 have larger than average rear gardens.
2. Planning permission was granted 1st February 2010 for the erection of two detached dwellings with access, parking and landscaping. These properties have subsequently been built.

## **Proposal**

3. The application is seeking to vary conditions 11 (Parking Areas), 12 (in part) (Bin and Cycle Stores), 13 (in part) (Boundary Treatment), 16 (Management Plan for Common Areas) and 21 (Approved Plans) of planning permission 09/02329/FUL to allow compliance post occupation of development and minor alterations to the siting of the two dwellings.
4. If the committee is minded to grant planning permission for the variations to the conditions then it is important to note that the new permission will replace existing planning permission and any relevant conditions from the original planning permission will need to be re-imposed or amended to suit the current position as appropriate. In particular, where conditions had originally required the submission and approval of details and their subsequent implementation then a re-imposed condition, as in this case imposed after the development has commenced, would need to require implementation in accordance with either the originally approved or subsequently approved details.

## **Assessment**

5. Condition 11 states:

*No part of the development permitted shall be occupied until the areas for parking and manoeuvring of vehicles have been constructed and laid out in accordance with the approved plans and thereafter such areas shall be retained solely for such purposes.*

*Reason: In the interests of highway safety in accordance with policies CP1, CP9, CP10 and TR3 of the Adopted Oxford Local Plan 2001-2016.*

6. The Highway Authority initially objected to the application. In terms of this application they had serious concerns by allowing the parking/turning area to

be discharged post occupation of development, that there is a real risk that the parking/turning provision will be reduced and substandard and likely to lead to indiscriminate parking on-street once work has commenced and the dwellings are occupied. In order to make the car parking acceptable, they strongly recommend that the car parking and turning area are completed before commencement so as to lessen on-street parking pressures.

7. Clearly this was not possible as the development has commenced and this was put to the Highways Officer. In response as long as they don't lose the parking or the turning head then the Highway Authority has No Objection to the application given the parking pressure within the vicinity of the site and the parking and turning areas are acceptable as shown on the plans.
8. A time limit of four months is considered reasonable to require the areas for parking and manoeuvring of vehicles to be completed and laid out in accordance with the approved plans given the length of time the site has been under construction and the need to get the development completed.
9. The number and type of vehicles within the curtilage of a dwelling is not within planning control only the number of spaces.
10. Condition 12 states:

*No development permitted shall commence until details of the cycle parking areas and bin storage areas, including means of enclosure, have been submitted to, and approved in writing by, the Local Planning Authority. The development shall not be brought into use until the cycle parking areas, bin storage areas and means of enclosure have been provided within the site in accordance with the approved details and thereafter the areas shall be retained solely for the purpose of the parking of cycles and storage of bins.*

*Reason: To promote the use of cycles thereby reducing congestion on adjacent roads and to ensure adequate bin storage provision in accordance with policies CP1, CP9, CP10 and TR4 of the Adopted Oxford Local Plan 2001-2016.*

11. With regards to conditions 12 the details were approved under application 10/01319/CND on 20<sup>th</sup> October 2010. Whilst these details have been approved they should have been implemented on site prior to occupation. This has only happened. Therefore officers consider it essential to impose a planning condition to put a time limit on the completion of the works.
12. A time limit of three months is considered reasonable to require the cycle parking areas, bin storage areas and means of enclosure to be provided within the site given that the details have already been approved.
13. Condition 13 states:

*No development shall commence until a plan showing the means of enclosure for the new development, including details of the treatment of all the*

*boundaries of the site has been submitted to, and approved in writing by, the Local Planning Authority. No boundary height shall exceed a maximum height of 1.8m. The approved treatment of the site boundaries shall be completed before the development is occupied; to the satisfaction of the Local Planning Authority.*

*Reason: In the interests of visual appearance and to safeguard the privacy of the adjoining occupiers in accordance with policies CP1, CP6, CP7, CP8 CP11 and HS19 of the Adopted Oxford Local Plan 2001-2016.*

14. With regards to conditions 13 the details were approved under application 10/01319/CND on 20<sup>th</sup> October 2010. Whilst these details have been approved they should have been implemented on site prior to occupation. This has only happened in part therefore the requirements have only been partially met

15. Again a time limit of three months is considered reasonable to require the approved treatment of the site boundaries to be completed given the details have already been approved.

16. Condition 16 states:

*No occupation of any phase or part of the development shall occur until a management plan, including long term objectives, management responsibilities and maintenance schedules for all landscape and common areas, other than small, privately owned domestic gardens, has been submitted to, and approved in writing by, the Local Planning Authority. The management plan shall be carried out as approved.*

*Reason: In the interests of amenity and the appearance of the area in accordance with policies CP1, CP8, CP9, CP10 and HS20 of the Adopted Oxford Local Plan 2001-2016.*

17. A site management plan has been submitted along with a plan (**Appendix 2**) to show who will be maintaining which areas with each property being responsible for areas within their control. These areas are proposed to be integrated into the deeds of each properties which is possible as the applicant currently owns them. The driveway (grey area on the plan) will be the joint responsibility of the two new dwellings. An amended condition to require compliance with the plan is therefore required.

18. Condition 21 states:

*The development referred to shall be constructed strictly in complete accordance with the specifications in the application and the submitted plans.*

*Reason: To avoid doubt as no objection is raised only in respect of the deemed consent application as submitted and to ensure an acceptable development as indicated on the submitted drawings.*

19. This condition was added as a result of a non-material amendment application (ref.: 09/02329/NMA2) which allowed for a condition to be added to the permission to ensure the development was built in accordance with the approved plans. By adding the condition this allows for it to be varied and amended plans to be considered. Relevant government advice confirms that a condition can be added to a planning permission through a non-Material Amendment application.
20. The two dwellings have not been built in accordance with the plans approved under 09/02329/FUL; they have not been built in the correct location however the footprint has not changed. Both dwellings have been tilted on their axis in an anti-clockwise direction; plot two slightly more so than plot 1.
21. The change in position of the dwellings is not significant enough to alter the impact on the neighbouring properties in terms of overlooking, loss of privacy, overbearing or sense of enclosure. Tree Officers are satisfied that the construction of the existing dwellings has not significantly harmed the adjacent TPO trees and therefore have no objection to the approval of their siting under condition 21.
22. There have also been some changes to the elevations (the same changes apply to each dwelling). These include removal of three small windows in the east elevation; repositioning of the door in the east elevation; an additional window in the south (rear) elevation to serve the staircase; removal of two small windows in the west elevation and reconfiguration of the rooflights on the north (front) elevation.
23. These alterations are considered to be minor and will not harm the occupiers of the properties in terms of internal amenity and will not harm the neighbouring properties as there will be less windows and therefore a reduction in any potential overlooking or loss of privacy.

#### **Other**

24. A number of comments have been submitted as specified above. The following points address some of those comments.
25. Current legislation allows for applications to be submitted seeking permission for the development without complying with previously imposed conditions.
26. There is no condition requiring the removal of the extension at 6 Collinwood Close. However the requirement for the above conditions to be completed within four/three months will facilitate the removal of the extension because it is in the position of one of the approved car parking spaces.
27. The accuracy of the plans has been dealt with under the non-material amendment application (ref.: 09/02329/NMA2).



28. The letter of objection makes reference to the reasons why conditions were imposed on the previous planning permission. The minor changes to the approved scheme do not result in any material harm to issues of acknowledged importance and the development is therefore considered acceptable.
29. It is clearly disappointing that the development has not been carried out in accordance with the approved plans or some of the conditions originally imposed on the planning permission. The site has been subjected to scrutiny from third parties and from your officers in order to ensure that the development achieves the objectives envisaged by the original planning permission. However, whilst the failure to adhere to the approved plans and comply with the requirements of some of the conditions is regrettable and in no way condoned by the Council, the best way to ensure that the development achieves the objectives originally envisaged is to re-enforce the required conditions on implementing the approved details with a time limit. This is not enforcement action but will have the effect of providing the opportunity to take swift enforcement action through the service of a Breach of Condition Notice if the requirements of the recommended conditions are not met within the time limits contained within them. The Council's enforcement officers will monitor the site to check that the required works are carried out in time. Provided that the works are carried out the development will be acceptable on its planning merits.

**Conclusion:**

30. Committee is recommended to approve the application.

**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.

**Background Papers:**  
09/02329/FUL

**Contact Officer:** Lisa Green  
**Extension:** 2614  
**Date:** 24th February 2014

**13/02542/VAR Land to rear of 6 & 7 Collinwood Close**



Scale (printed to A4) 1:1,250  
0 10 20 30 40  
Metres

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Date: 24/02/2014



Plan Showing Management Responsibilities

