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## Appeal Decision

Site visit made on 5 November 2013

by **Robert Parker BSc (Hons) Dip TP MRTPI**

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

Decision date: 5 December 2013

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**Appeal Ref: APP/G3110/A/13/2201774**

**Land adjacent to 30A Union Street, Oxford OX4 1JP**

- 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 & Mrs R Popham-Covely against the decision of Oxford City Council.
  - The application Ref 12/03195/FUL, dated 11 December 2012, was refused by notice dated 22 January 2013.
  - The development proposed is the erection of a semi-detached dwelling adjacent to 30A Union Street, Oxford OX4 1JP.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this case are the impact of the proposed development on highway safety and the suitability of the appeal site for car-free housing, with particular reference to whether this could be properly controlled and enforced on an ongoing basis.

### Reasons

3. The appeal site comprises a disused parcel of land adjacent to 30A Union Street. The Council have described it as forming part of the side garden of No.30A but I noted from my site visit that it lies outside of the curtilage. The evidence suggests that it may have historically formed part of the rear garden to 22 Princes Street.
4. Access to the site is via a private unmade road onto Union Street. This access is shared by a number of properties. Although it falls within the red lined application site, the access is not within the appellants' ownership. I note that ownership certificate C was served as part of the planning application and that efforts were made to identify the owner(s) through a search of Land Registry records and publication of notices in the local press and on site.
5. Outline planning permission was sought in 2008 for a new dwelling on the appeal site. A subsequent appeal (APP/G3110/A/09/2104405) was dismissed on highway safety grounds. It is now argued that there have been material changes in circumstances since that appeal, most notably the current proposal being for car-free housing. The previously appealed scheme proposed a single parking space.

6. I have no reason to disagree with the previous Inspector's findings in relation to the safety of the access. Any additional use of this access, however small, would add unacceptably to the highway safety risks. The access is narrow without any defined footways, the turning area is constrained (notwithstanding the fact that the area has been resurfaced since the previous appeal and there has been a slight enlargement in the gravelled area) and there is an obstruction to visibility at the entrance caused by No.25 Union Street standing forward into the carriageway.
7. Evidence has been submitted by the appellants to show that the access is lightly trafficked. This corresponds with my observations whilst on site. Nevertheless, it does not change my opinion that any additional usage by vehicles would be inherently unsafe and create unnecessary risk.
8. It is clear that no-one has control over the access and the evidence from local residents is that people can and do park within the area. The appellants point to planting which has been carried out within the access to discourage parking and 'no parking' signs which have been erected to emphasise the private nature of the access. These measures may have helped to improve the use of the access but they do not change the fact that it is substandard, particularly in respect of turning and visibility onto Union Street.
9. It is common ground between the main parties that this is a sustainable location for new housing, with easy access to amenities on Cowley Road and frequent bus services to the city centre. The Council also accepts that this is an appropriate location for car-free development, provided that this can be satisfactorily controlled and enforced on an ongoing basis.
10. The proposal complies with policy HP16 of the Sites and Housing Plan 2011-2026 (adopted February 2013) (SHP) which states that car-free development will be granted in locations that have excellent access to public transport, are in a controlled parking zone (CPZ) and are within 800m of a supermarket or equivalent facility. The supporting text at paragraph 3.47 encourages car-free developments in appropriate locations, but requires applicants to submit evidence to show that the car-free status can be enforced on an ongoing basis.
11. Paragraph 3.43 of the SHP requires applicants to robustly demonstrate, in circumstances where no allocated parking is provided, that there is sufficient parking capacity on the existing street to accommodate the additional demand for parking, such that highway safety is not compromised. Exceptions to this may be made where the proposal is located within, and may be excluded from, a CPZ, or if the applicant can robustly demonstrate that the proposal will not result in any worsening in parking congestion.
12. The appellants have submitted evidence in the form of a parking survey in an attempt to show that there is sufficient on-street parking within the area to serve the development, without needing to exclude it from the CPZ. The survey shows a surplus of spaces over dwellings, with well in excess of one space per property.
13. The appellants point out that a public car park is available nearby and that a number of additional on-street spaces have been introduced since the last appeal. They also draw attention to Census data which shows that 42% of residents in the St Clements ward (within which the site lies) do not own a car.

This is significantly higher than the figures for Oxford as a whole, the region and the country.

14. The evidence is persuasive but ultimately the only means of knowing whether the CPZ has sufficient parking capacity is to compare the number of permits issued with the number of on-street parking spaces. Whilst this evidence is not before me, the County Council has stated that the CPZ is over-subscribed and as the permit issuing authority I must give its evidence greater weight than the appellants'.
15. The debate regarding on-street parking is largely immaterial because there is always the option of excluding development from the CPZ. The Council has routinely used Grampian style conditions in similar circumstances, to ensure that future occupiers are not entitled to parking permits. Such a condition could be worded to meet the tests contained in Circular 11/95.
16. However, and this point goes to the heart of the case, I do not consider that a condition would be effective unless the CPZ can be amended to incorporate the private access road. This would prevent future occupiers of the development and their visitors from parking in the private access road, as I have no doubt they would be tempted to do for convenience (even if it is only on a temporary or occasional basis). I concur with the Council that the private access road lies outside of the CPZ and that to include it would require an amendment to the traffic regulation order (TRO) governing Union Street.

### ***S106 Unilateral Undertaking***

17. The appellants have submitted a signed S106 unilateral undertaking (UU) in order to address the Council's concerns. However, this UU relates to land in unknown ownership and I am not satisfied that it binds all parties with an interest in the land, something which is fundamental to securing ongoing control and enforcement.
18. The UU requires the appellants to pay the costs of the TRO amendment process prior to commencement of development and also obliges them to supply to the County Council the results of an informal consultation with users of the private roadway on the introduction of measures prohibiting or restricting the waiting of vehicles in the private roadway. However, and this is highly relevant, the wording of the obligation would enable development to go ahead without providing any guarantee that the process of amending the TRO would be successful.
19. The process of amending a TRO involves formal consultation with local residents, which would include the occupiers of the properties fronting the private access road. There is a strong chance that residents would object, given that they would effectively be rescinding their right to park for free outside their homes. Instead they would have to purchase a parking permit at additional cost.
20. In fact, clause 3.1.4 of the UU states that if any amendment to the TRO being promoted by the County Council is not confirmed then a lockable bollard shall be installed to restrict access to the private access road. This may not be lawful on land outside of the appellants' ownership and control, and I daresay that it would also require the agreement of the other residents. There are no guarantees over whether this agreement would be forthcoming and the

practicalities of managing a lockable bollard when it provides access to several properties must be highly questionable. Enforcement by the Council would be virtually impossible.

21. The UU further makes provision for the erection of a street light within the access, on the corner of 29 Union Street, to deter criminal activity and improve pedestrian safety. Again, there is a question mark in my mind as to whether the appellants would be entitled to carry out these works on land outside of their ownership and control. However, setting this issue aside for a moment, I do not consider that the benefits of improved lighting would outweigh the harm to highway safety that would arise as a result of increased use of the access.
22. Under the final clause in the UU the appellants covenant that they shall not "cause or permit motor vehicles belonging to or visiting the dwelling ... to park on the private roadway". Whilst I can understand the logic, this clause would be difficult for the Council to monitor or enforce and it would have no effect in relation to service and delivery traffic (which according to the appellants' evidence would make up a large proportion of the daily vehicle movements).

### **Other Matters**

23. I note from the submissions that there is some suggestion of inconsistency and misleading evidence submitted on the part of the Council. The Highway Authority has clearly supported the scheme, and there is evidence to show that it has not objected to other proposals for the site. Regardless of the stance taken by the Highway Authority, I am required to consider the appeal on its merits and have arrived at my conclusions based upon the evidence before me, my observations whilst on site and professional judgement.

### **Conclusion**

24. In conclusion, whilst the site would be suitable for car-free housing, having regard to the criteria contained in policy HP16 of the adopted Sites and Housing Plan 2011-2026, the appellants have failed to provide a suitable and enforceable mechanism for preventing additional vehicular use of the private access road. Such additional use would inevitably follow if the development went ahead and this would be detrimental to highway safety, contrary to policy CP1 of the adopted Oxford Local Plan 2001-2016.
25. For the reasons given above I conclude that the appeal should be dismissed.

*Robert Parker*

INSPECTOR