

## PLANNING REVIEW COMMITTEE ADDENDUM REPORT

30th April 2019

<b>Application number:</b>	19/00249/FUL		
<b>Decision due by</b>	1st April 2019		
<b>Extension of time</b>	8th May 2019		
<b>Proposal</b>	Demolition of existing workshop (Use Class B1) to erect a two storey yoga workshop (Use Class D2). Provision of cycle spaces.(Amended description)		
<b>Site address</b>	16 East Street, Oxford, OX2 0AU		
<b>Ward</b>	Jericho And Osney Ward		
<b>Case officer</b>	Julia Drzewicka		
<b>Agent:</b>	Adrian James	<b>Applicant:</b>	Mr James Pritchard
<b>Reason at Committee</b>	The application has been called in to the Planning Review Committee by Councillors Pressel, Rowley, Chapman, Taylor, Kennedy, Fry, Simm, Iley-Williamson, Lygo, Henwood, Malik, Howlett, Djafari-Marbini, Corais because of concerns about the impact of the proposed development on the Conservation Area.		

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## 1. RECOMMENDATION

1.1. Planning Review Committee is recommended to:

1.1.1. **approve the application** for the reasons given in the report and subject to the required planning conditions set out in section 6 of this report and grant planning permission

1.1.2. **agree to delegate authority** to the Acting Head of Planning Services to:

- a) finalise the recommended conditions as set out in this report including such refinements, amendments, additions and/or deletions as the Acting Head of Planning Services considers reasonably necessary

## 2. EXECUTIVE SUMMARY

2.1. At the West Area Planning Committee on 9<sup>th</sup> April 2019 members resolved to grant planning permission for this application

2.2. The draft minutes of the West Area Planning Committee on 9<sup>th</sup> April 2019 are included in **Appendix 2** of this report.

- 2.3. The decision of the West Area Planning Committee has been called in to the Planning Review Committee by Councillors Pressel, Rowley, Chapman, Taylor, Kennedy, Fry, Simm, Iley-Williamson, Lygo, Henwood, Malik, Howlett, Djafari-Marbini, Corais for the following reason:
- a) The neighbours employed a barrister to advise them. It seems that the Council's planning lawyer's response is open to challenge on several points.
  - b) The Council's own Conservation Area Appraisal stresses that the current one-storey building "creates an important break in the uniformity of the street". The proposed new building would be two-storeys, as are all the nearby buildings, so it would not make this important visual break.
- 2.4. A copy of the officer's committee report to the West Area Planning Committee is included in **Appendix 1** of this report. The report provided a full assessment of how the proposal would accord with policies of the development plan when considered as a whole, and that the range of material considerations supported the grant of planning permission. The report includes a full assessment of how the scheme would accord with the aims and objectives of the National Planning Policy Framework (NPPF), in particular the assessment of the impact on the designated heritage asset and the detailed balancing exercise which outweighed the less than substantial harm to the Conservation Area.
- 2.5. In terms of the reasons listed within the call-in, officers would confirm that the City Council's Planning lawyer considered the Counsel's opinion which had been provided by one of the objectors and the issues in the opinion were addressed at the committee. This reason for the call-in does not specify in what ways it is considered that the Council Lawyer's view is open to challenge.
- 2.6. In regard to the impact of the proposals in conservation area, the officers paid special attention to the statutory test of preserving or enhancing the character and appearance of the Osney Town Conservation Area under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The officers assessed the impact on the Conservation Area and, in accordance with the statutory test, gave great weight and importance to the desirability of preserving the special character and appearance of the Osney Town Conservation Area as a designated heritage asset. It is considered that the less than substantial harm that would result from the loss of the existing building is justified and outweighed by the need to ensure a viable use for the site and the public benefits that would result, namely the continued use of the site in a business use, beneficial to the community and vitality of the area. The proposed replacement building is considered to be of an appropriate and high design quality that would not detract from the character and appearance of the Conservation Area. The proposal would comply with NPPF paragraphs 127, 193, 194 and 196. It has been concluded that the development would preserve the character and appearance of the conservation area, and so the proposal accords with section 72 of the Act.

- 2.7. In terms of issues relating to flooding, the application has been advertised as a departure from the development plan. The proposal is contrary to policy CS11 of the Core Strategy, however there is already an existing building on site which is a material planning consideration. The development also proposes a number of measures to mitigate the flood risk. Based on the proposed mitigation measures and the fact that there is an existing building on the site, it is considered that the proposed development would not lead to increased flood risk on or off site, subject to conditions and therefore the proposal is acceptable and, if permitted, it would not contravene the aims and objectives of this policy.
- 2.8. In terms of employment use, the preamble to policy CS28, at paragraph 8.1.15 states that “(...) where non-key employment sites may be poorly sited or unviable, there should be flexibility to allow for the loss of some sites to other uses”. The objective of policy CS28 is to safeguard employment opportunities. The proposed use of the site, although not a B1 use, would remain an employment generating site with no loss of employment. Therefore the purpose behind the policy would be fulfilled.
- 2.9. Given, the above points, it is considered that the proposal is an overall conformity with the development plan, and therefore, in accordance with Paragraph 11 of the NPPF, the proposal should be approved without delay.

### **3. CONSULTATION RESPONSES**

#### **Public representations**

- 3.1. The officers’ report (appendix 1) provides details of the public consultation that was undertaken with respect to the application. Since the publication of the 9 April 2019 West Area Planning Committee report, further representations were received and reported to committee; these are included in the minutes of the meeting and can be found in Appendix 2. Since 9 April 2019 one further representation was received objecting to the proposal and one further representation supporting the proposal.
- 3.2. The additional comments did not raise any further material planning considerations that had not already been considered as part of the original officer report.

### **4. RESPONSE TO CALL-IN ISSUES**

- 4.1. The committee report for West Area Planning Committee considered the material planning considerations and sets out why it is recommended that planning permission should be granted for the proposal. A copy of the report is included within appendix 1 of this addendum report.

4.2. The call-in was based on the following matters:

- The Council’s response to the Counsel’s opinion provided by one of the objectors; and

- The impact on the conservation area
- 4.3. Officers sought appropriate legal advice with regard to the Counsel's opinion before the application was considered by the West Area Planning Committee on 9 April 2019 and members were advised accordingly at the meeting. The issue in terms of the impact on the conservation area has been addressed in the officer's report (appendix 1) and is dealt with again in paragraph 2.6, 4.6-4.10 of this report.
  - 4.4. However, in light of the reasons for the call-in which concern the response to the Counsel's opinion and concerns in terms of design and impact on the conservation area, the following issues, which incorporate the Council's legal advice, are dealt with below in this report.
    - a) Ownership certificate
    - b) Impact on the conservation area
    - c) Flooding
    - d) Employment
    - e) Conclusion regarding the general conformity with the Development Plan

**a) Ownership Certificate**

- 4.5. The legal opinion made the point that the ownership certificate which had been submitted with the application was incorrect. The correct ownership certificate has now been submitted and the period for representations as a result of notice having now been served on the owner of the property expires on 29 April 2019.

**b) Impact on the Conservation Area and Design**

- 4.6. Paragraphs 5.2 to 5.4 and 10.9 to 10.17 of the West Area Planning Committee report cover design and impact on the Conservation Area.
- 4.7. The heritage significance of the building lies predominantly in its historic, evidential and communal value as representing and illustrating the former light industrial uses that operated in the area, and the development of the local community and small businesses in the latter half of the 20<sup>th</sup> century. The building is identified in the Osney Town Conservation Area Appraisal as an 'important break in the uniformity of the street scene'.
- 4.8. As stated in paragraph 10.17 of the West Area Planning Committee report on 9 April 2019 (appendix 1), pursuant to the statutory test in section 72 of the 1990 Act, great weight and importance was given to the desirability of preserving or enhancing character and appearance of the Conservation Area in applying the planning balance required by paragraph 196 of the National Planning Policy Framework (NPPF).

- 4.9. The Counsel's opinion suggests that the test and planning balance referred to in paragraph 196 of the NPPF when there is less than substantial harm may not apply due to the "total loss" of the building. As stated during the Committee meeting on the 9 April 2019, paragraph 196 of the NPPF was correctly applied. The building is an unlisted building in a Conservation Area. It is therefore the Conservation Area that is the designated heritage asset and not the building. When the NPPF talks in terms of "total loss" it is referring, when dealing with a Conservation Area, of the total loss of significance of the Conservation Area through the proposal. The demolition of this unlisted building which is not of any special architectural merit cannot be said to cause a total loss of significance of the Conservation Area. It is therefore appropriate to apply the test in paragraph 196 of the NPPF when the harm caused by the loss of this building is considered to be less than substantial. The Conservation Officer, who had visited the site, provided comments on the application and those comments were taken into account and incorporated into the report.
- 4.10. The assessment has been made that the less than substantial harm to the Conservation Area that would result from the loss of the existing building is justified and outweighed by the need to ensure a viable use for the site and the public benefits that would result, namely the continued use of the site in a business use, beneficial to the community and vitality of the area. As stated above, the significance of this building is that it creates an important break in the uniformity of the street scene. The proposal is two-storey in height, with a ridge height to match that of the terrace to the north, a two-storey rear asymmetrical roof element and lower single storey rear extension are proposed. The development would be set back from the front building line, it is considered that the proposed building would fit comfortably within the street and also maintain the visual gap in the uniformity of the residential terraces either side. The visual break in the streetscene would be further maintained through the elevation design and materials proposed for the building. The fenestration proportions reflect the domestic scale of the surrounding properties which would help to integrate the building into the streetscene. The proposed replacement building is considered to be of an appropriate and high design quality that would not detract from the character and appearance of the Conservation Area and the important break in the uniformity of the streetscene would be retained.

### **c) Flooding**

- 4.11. Paragraphs 10.31 to 10.35 of the West Area Planning Committee report cover flooding matters.
- 4.12. The application has been advertised as a departure from the local plan as policy CS11 of the Core Strategy states that planning permission will not be granted for any development in the functional flood plain (Flood Zone 3b) except water-compatible uses and essential infrastructure. As the site lies within Flood Zone 3b there is an in principle objection. However policy CS11 also states that development will not be permitted that will lead to increased flood risk elsewhere, or where the occupants will not be safe from flooding. The National Planning Policy Framework (NPPF) paragraph 163 states that

when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. An assessment has been made in terms of the impact of the proposal on flooding on and off site. The Environmental Agency as statutory consultee has not objected to the proposal. The Environmental Agency stated that the proposed development will only meet the NPPF requirements if a planning condition is included to reduce the risk of flooding to the proposed development and future occupants. As stated in the West Area Planning Committee report and this report, based on the proposed mitigation measures and the fact that there is already an existing building on the site, it is considered that the proposed development would not increase flood risk on or off site and therefore it is considered to be acceptable in terms of the requirements of paragraph 163 of the NPPF and, on balance, is acceptable in terms of the objectives of policy CS11 of the Core Strategy. A reason for refusal based on this policy would be difficult to sustain without the support of the Environment Agency.

#### **d) Employment**

- 4.13. Paragraphs 10.2 to 10.8 of the West Area Planning Committee report cover loss of B1 use.
- 4.14. As stated in this report and in the West Area Planning Committee report on 9 April 2019 the granting consent would not preclude the site from providing a level of employment as the proposed use would create employment opportunities. The proposed employment use would therefore continue to deliver economic development objectives by continuing to provide employment. Given the small scale of the site, its location and constraints, the proposed increase in number of employees, history of the site, the proposed yoga studio is on balance considered acceptable in terms of the requirements of policy CS28 of the Core Strategy. Paragraph 8.1.16 of the preamble to this policy specifically allows flexibility in applying the policy to non-key employment sites such as this which are poorly sited or unviable.
- 4.15. Additional condition is recommended to be imposed to further restrict any future change of use.

#### **5. CONCLUSION**

- 5.1. Having regards to the matters discussed in this report and the committee report to 9 April 2019 West Area Planning Committee (appendix 1), officers would make members aware that the starting point for the determination of this application is Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which makes it clear that proposals should be assessed in accordance with the development plan unless material considerations indicate otherwise.
- 5.2. The NPPF recognises the need to take decisions in accordance with Section 38(6) but also makes it clear that it is a material consideration in the determination of any planning application (paragraph 2). The main aim of the NPPF is to deliver sustainable development, with paragraph 11 the key principle for achieving this aim. The NPPF also goes on to state that

development plan policies should be given due weight depending on their consistency with the aims and objectives of the NPPF. The relevant development plan policies are considered to be consistent with the NPPF despite being adopted prior to the publication of the framework.

#### *Compliance with Development Plan Policies*

- 5.3. Therefore in conclusion it is necessary to consider the degree to which the proposal complies with the policies of the development plan as a whole and whether there are any material considerations, such as the NPPF, which are inconsistent with the result of the application of the development plan as a whole.
- 5.4. Although the requirements of policy CS28 of the Core Strategy are not, strictly speaking, fully complied with, employment opportunities would be provided through this change of use and therefore the proposal is considered to support the objectives of this policy.
- 5.5. Although the principle of the development in this location would be contrary to policy CS11 of the Core Strategy, mitigation measures are being proposed, the Environmental Agency as a statutory consultee has not objected to the proposal, there is already an existing building on the site and therefore the proposal, on balance, is considered to support the aims of this policy.
- 5.6. The application is consistent in all other respects, subject to conditions, with local and national planning policy.

#### *Material considerations*

- 5.7. The principal material considerations which arise are addressed below, and follow the analysis set out in earlier sections of this report.
- 5.8. National Planning Policy: The NPPF has a presumption in favour of sustainable development. NPPF paragraph 11 states that proposals that accord with the development plan should be approved without delay, or where the development plan is absent, silent, or relevant plans are out of date, granting permission unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole; or specific policies in the framework indicate development should be restricted.
- 5.9. Officers consider that the proposal would accord with the overall aims and objectives of the NPPF for the reasons set out within the report. Therefore in such circumstances, Paragraph 11 is clear that planning permission should be approved without delay. This is a significant material consideration in favour of the proposal.
- 5.10. Officers would advise members that having considered the application carefully, including all representations made with respect to the application, the proposal is considered to be acceptable in terms of the aims and objectives of the National Planning Policy Framework and relevant policies of the Oxford Core Strategy 2026 and Oxford Local Plan 2001-2016 as

explained above and when considered as a whole, and that there are no material considerations that would outweigh these policies.

- 5.11. Therefore it is recommended that the Committee resolve to grant planning permission for the development proposed subject to the conditions set out in section 6 of this report.

## **6. CONDITIONS**

### **1. Development begun within time limit**

The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.

Reason: In accordance with Section 91(1) of the Town and Country Planning Act 1990 as amended by the Planning Compulsory Purchase Act 2004.

### **2. Develop in accordance with approved plans**

The development permitted shall be constructed in complete accordance with the specifications in the application and approved plans listed below, unless otherwise agreed in writing by the local planning authority.

Reason: To avoid doubt and to ensure an acceptable development as indicated on the submitted drawings in accordance with policy CP1 of the Oxford Local Plan 2001-2016.

### **3. Materials**

The materials to be used for the door, wall and roof cladding and window reveals shall be as submitted with the application. The material sample for the window and door frames, and flood grating shall be submitted to and approved in writing by the Local Planning Authority. The approved material and colour for the window and frames and flood grating shall be thereafter used.

Reason: To ensure the satisfactory visual appearance of the new development in accordance with policies CP1, CP8 and HE7 of the Oxford Local Plan 2001-2016 and CS18 of the Oxford Core Strategy 2026.

### **4. Rooflights and solar panels**

Details of the colour finish of the rooflight frames and finished appearance of the solar panels shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be thereafter used.

Reason: To ensure the satisfactory visual appearance of the new development in accordance with policies CP1, CP8 and HE7 of the Oxford

Local Plan 2001-2016, CS18 of the Oxford Core Strategy 2026, HP9 of the Site and Housing Plan 2011-2026.

## **5. No demolition before rebuilding contract**

The building(s) shall not be demolished before a legally binding contract for the carrying out of the works of redevelopment of the site has been entered into and evidence of the contract has been produced to and agreed in writing by the Local Planning Authority, or in the absence of such a contract an alternative timescale for commencement of the development has been submitted to and agreed in writing by the Local Planning Authority.

Reason: To ensure that the premature demolition of the buildings does not take place to the detriment of the special character and appearance of the Conservation Area, in accordance with policies CP1 and HE7 of the Adopted Oxford Local Plan 2001-2016 and policy CS18 of the Oxford Core Strategy 2026.

## **6. Flood plan**

Prior to occupation/usage, a flood plan shall be submitted to and approved in writing by the Local Planning Authority. This should provide guidance owners/users as to what actions should be taken in the event of a flood, and after a flood to ensure it is safe to occupy/use the facility.

Reason: To manage flood risk in accordance with Policy CS11 and the NPPF.

## **7. Flood risk assessment**

The development shall be carried out in accordance with the submitted flood risk assessment (ref Flood Risk Assessment (FRA) Job No. X172008 dated January 2019 by AKS Ward Construction Consultants and the following mitigation measures it details:

1. The finished floor level of the ground floor admin area is 57.25m AOD. The entrance is floodable at a finished floor level of 56.65m AOD to allow for no loss of flood plain storage.
2. There shall be no raising of existing ground levels on the site.
3. Any walls or fencing constructed within or around the site shall be designed to be permeable to flood water.
4. There shall be no storage of any materials including soil within the 1% annual probability (1 in 100) flood extent with an appropriate allowance for climate change.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: In accordance with paragraph 163 of the National Planning Policy Framework (NPPF), to reduce the risk of flooding to the proposed development and future occupants.

## **8. Contamination**

Prior to the commencement of the development a phased risk assessment shall be carried out by a competent person in accordance with relevant British Standards and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR11) (or equivalent British Standards and Model Procedures if replaced). Each phase shall be submitted in writing and approved by the local planning authority.

Phase 1 shall incorporate a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model and preliminary risk assessment. If potential contamination is identified in Phase 1 then a Phase 2 investigation shall be undertaken.

Phase 2 shall include a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals.

Phase 3 requires that a remediation strategy, validation plan, and/or monitoring plan be submitted to and approved in writing by the local planning authority to ensure the site will be suitable for its proposed use.

Reason- To ensure that any ground and water contamination is identified and adequately addressed to ensure the site is suitable for the proposed use in accordance with the requirements of policy CP22 of the Oxford Local Plan 2001-2016.

## **9. Remedial works**

The development shall not be occupied until any approved remedial works have been carried out and a full validation report has been submitted to and approved in writing by the local planning authority.

Reason- To ensure that any ground and water contamination is identified and adequately addressed to ensure the site is suitable for the proposed use in accordance with the requirements of policy CP22 of the Oxford Local Plan 2001-2016.

## **10. Only yoga studio**

The building hereby approved, shall only be used as a yoga studio and for no other use within use Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting that Order with or without modification) unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the Local Planning Authority can properly consider any alternative use of the premises and to ensure that there is no long term loss of employment space within the City in accordance with policy CS28 of the Oxford Core Strategy 2026.

## **11. No changes to use without planning permission**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), the permitted building shall only be used as a yoga studio and for no other purpose.

Reason: To ensure that the Local Planning Authority can properly consider any alternative use of the premises and to ensure that there is no long term loss of employment space within the City in accordance with policy CS28 of the Oxford Core Strategy 2026.

### **INFORMATIVES :-**

- 1 The development hereby permitted is liable to pay the Community Infrastructure Levy. The Liability Notice issued by Oxford City Council will state the current chargeable amount. A revised Liability Notice will be issued if this amount changes. Anyone can formally assume liability to pay, but if no one does so then liability will rest with the landowner. There are certain legal requirements that must be complied with. For instance, whoever will pay the levy must submit an Assumption of Liability form and a Commencement Notice to Oxford City Council prior to commencement of development. For more information see: [www.oxford.gov.uk/CIL](http://www.oxford.gov.uk/CIL)
- 2 Your attention is drawn to the provisions of the Party Wall Act 1996. A copy of an explanatory booklet is available to download free of charge from the following website  
<http://www.communities.gov.uk/publications/planningandbuilding/partywall>
- 3 In accordance with guidance set out in the National Planning Policy Framework, the Council tries to work positively and proactively with applicants towards achieving sustainable development that accords with the Development Plan and national planning policy objectives. This includes the offer of pre-application advice and, where reasonable and appropriate, the opportunity to submit amended proposals as well as time for constructive discussions during the course of the determination of an application. However, development that is not sustainable and that fails to accord with the requirements of the Development Plan and/or relevant national policy guidance will normally be refused. The Council expects applicants and their agents to adopt a similarly proactive approach in pursuit of sustainable development.
- 4 Please note that the responsibility to properly address contaminated land issues, irrespective of any involvement by this Authority, lies with the owner/developer of the site.

## **12. APPENDICES**

- **Appendix 1** – West Area Planning Committee report (9 April 2019)
- **Appendix 2** – Draft minutes of the West Area Planning Committee (9 April 2019)

**13. HUMAN RIGHTS ACT 1998**

- a. Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to approve this application. They consider that the interference with the human rights of the applicant under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.

**14. SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

- a. 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.