

West Area Planning Committee

9th June 2020

Application number: 20/00616/VAR

Decision due by 30th April 2020

Extension of time 16th June 2020

Proposal Variation of condition 2 (Conservation Areas) and 13 (Privacy screen) of planning permission 19/00168/VAR (Variation of condition 2(Develop in accordance with approved plans) of planning permission 17/02109/FUL (Partial demolition of existing building, alteration and extension to create a new link, rear extension and provision of bin and cycle stores. Removal of trees and landscaping. (amended plans) to allow improvements to access, brickwork and circulation around the building.)) to lower the first floor terrace screens to 19 Bardwell Road.

Site address Bardwell Court , Bardwell Road, Oxford, OX2 6SX – see **Appendix 1** for site plan

Ward St Margaret's Ward

Case officer James Paterson

Agent: Mr Deon Ludeman **Applicant:** St John's College

Reason at Committee This application entails the agreeing of significant amendments to an application (17/02109/FUL) originally called into, and determined at, planning committee.

1. RECOMMENDATION

1.1. West Area Planning Committee is recommended to:

1.1.1. **Refuse the application** for the reasons given below and finalise the recommended reason for refusing the application as set out in this report including such refinements, amendments, additions and/or deletions as the Head of Planning Services considers reasonably necessary.

1. Having had regard to the views that would be possible into and out of the terraced area which the privacy screens in question serve as well as to the context of the site, the proposed development would introduce an unacceptable loss of privacy through overlooking between the first floor terraced area of Unit 2 at 19 Bardwell Road and neighbours. As a result of these impacts the proposed development has not been designed in a manner that would protect the residential amenities of the adjoining properties which would be contrary to Policy CP1 of the Oxford Local Plan

2. EXECUTIVE SUMMARY

- 2.1. This report considers the alterations to the privacy screens that were required as part of the extensions and alterations approved for Bardwell Court (reference 17/02109/FUL). The privacy screens were approved to be located to the rear at first floor level, screening the view from the terrace areas that form the amenity spaces for the first floor flats. This application deals specifically with changes to one of the flats and the privacy screens serving the terrace, Unit 2 at 19 Bardwell Road. The alterations would include the lowering of the screens to 1.1m in height from the 1.8m. Whilst this is a relatively small part of the overall scheme it was a significant point of discussion at planning committee when the item was considered and the provision of the privacy screens was raised by numerous interested parties at the time that planning permission was granted.
- 2.2. Officers consider that lowering the height of the screens would cause an unacceptable loss of privacy for neighbouring occupiers and are therefore recommending that the proposed amendment should be refused.

3. LEGAL AGREEMENT

- 3.1. This application is not subject to a legal agreement.

4. COMMUNITY INFRASTRUCTURE LEVY (CIL)

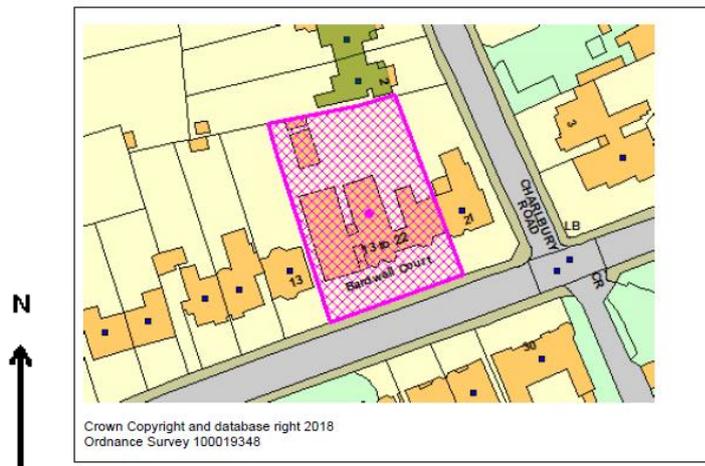
- 4.1. The proposal is not liable for CIL.

5. SITE AND SURROUNDINGS

- 5.1. The site is located within North Oxford and is within the North Oxford Victorian Suburb Conservation Area. The area is characterised by larger properties (detached and semi-detached) usually with large front and rear gardens. Properties in the area are predominately in use as family homes and the area has a residential character.
- 5.2. To the rear of the site there are listed buildings at Nos. 2-4 Charlbury Road (immediately to the north of the application site) and No. 2 Northmoor Road (which lies approximately 60m north-west of the application site). Nos. 2-4 Charlbury Road and No. 2 Northmoor Road are all Grade II Listed Buildings. As a result of mature vegetation, existing boundaries and the substantial lengths of rear gardens these listed buildings are not particularly visible from the application site or its immediate surroundings. There is a view of the rear aspect of application site from Charlbury Road where No. 2-4 Charlbury Road are also visible; though there is a high wall along the boundary of No. 21 Bardwell Road which limits the view of the garden of the application site.
- 5.3. The generous front and rear gardens of properties contributes positively to the appearance of the area with mature vegetation in front gardens and glimpses of trees in rear gardens being a particularly important feature of this part of the

Conservation Area. Although some properties have clearly been altered and extended, the original division of plots, in most cases delineated by low boundary walls in front gardens, is apparent in the streetscene. The low boundary treatments at the front of the properties is particularly important in terms of providing a characteristically spacious feel to the streetscene.

- 5.4. Planning permission was granted in 2017 to extend and substantially alter the flats at the Bardwell Court. Work was commenced in 2018 and is not yet complete
- 5.5. See block plan below:



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Ordnance Survey 100019348

6. PROPOSAL

- 6.1. The application proposes to alter the approved privacy screens located to the rear at first floor level of 19 Bardwell Road. These screens would serve a flat, Unit 2 at 19 Bardwell Road. The alterations would include the lowering of the screens to the sides of the terrace to 1.1m in height from the 1.8m previously approved at committee. There would be no change in materials to the screens which would remain of Cedar construction.
- 6.2. It is understood that this application has been forthcoming at the behest of a neighbour, 21 Charlbury Road, who suggested that privacy screens at 1.8m would limit the daylight received by their conservatory.

7. RELEVANT PLANNING HISTORY

- 7.1. The table below sets out the relevant planning history for the application site:

57/06034/A_H - Conversion and alterations of one flat into two. PER 28th May 1957.

61/10251/A_H - Store shed, cycle shelters and coal store.. PER 10th January 1961.

77/00284/AH_H - Conversion of existing 1 flat into 3 self-contained flats.. PER 16th June 1977.

17/02109/FUL - Partial demolition of existing building, alteration and extension to create a new link, rear extension and provision of bin and cycle stores. Removal of trees and landscaping. (amended plans). PER 19th December 2017.

17/02109/CND - Details submitted in compliance of conditions 3(Materials - samples), 5(Landscape Plan Required), 9(Biodiversity Enhancement), 11(Cycle Storage), 12(Drainage), 13(Privacy Screening) and 14(External Lighting) of planning permission 17/02109/FUL.. PER 18th December 2018.

17/02109/NMA - Non-Material Amendment of planning permission 17/02109/FUL to allow improvement to access and circulation around the building, comply with building regulations and improve the natural light received to a number of rooms.. REF 12th September 2018.

19/00168/VAR - Variation of condition 2(Develop in accordance with approved plans) of planning permission 17/02109/FUL (Partial demolition of existing building, alteration and extension to create a new link, rear extension and provision of bin and cycle stores. Removal of trees and landscaping. (amended plans) to allow improvements to access, brickwork and circulation around the building.. PER 27th March 2019.

17/02109/NMA2 - Non-material amendment to planning permission 17/02109/FUL to allow reduction of height to side screens to terraced on first floor.. WDN 3rd January 2020.

19/00168/NMA - Non-material amendment to variation application 19/00168/VAR to allow reduction of height to side screens to terraced on first floor.. REF 3rd January 2020.

20/00701/FUL - Installation of iron railings and gates.. PCO .

8. RELEVANT PLANNING POLICY

8.1. The following policies are relevant to the application:

Topic	National Planning Policy Framework	Local Plan	Core Strategy	Sites and Housing Plan	Emerging Local Plan	Summertown and St Margaret's Neighbourhood Plan:	Other Planning Documents
Design	8, 11, 128, 129, 130	CP1, CP6, CP8, CP10	CS18	HP9, HP14	H14, DH1	HOS2, HOS3	
Conservation/Heritage	189, 192, 193, 196	HE3, HE7			DH3		North Oxford Victorian Suburb

							Conservation Area Appraisal
Miscellaneous	47, 48			MP1			

9. CONSULTATION RESPONSES

9.1. Site notices were displayed around the application site on 16th March and an advertisement was published in The Oxford Times newspaper on 26th March 2020.

Statutory and non-statutory consultees

9.2. No comments were received

Public representations

9.3. No local people commented on this application.

10. PLANNING MATERIAL CONSIDERATIONS

10.1. Officers consider the determining issues to be:

- i. Design
- ii. Conservation Area
- iii. Listed Buildings
- iv. Neighbouring amenity

i. Design

10.2. Policy CP1 of the Oxford Local Plan 2001-2016 states that a development must show a high standard of design, including landscape treatment, that respects the character and appearance of the area; and the materials used must be of a quality appropriate to the nature of the development, the site and its surroundings. CS18 of the Core Strategy states that planning permission will be granted for development that demonstrates high-quality urban design through responding appropriately to the site and its surroundings; creating a strong sense of place; and contributing to an attractive public realm. Policy HP9 of the Sites and Housing Plan states that planning permission will only be granted for residential development that responds to the overall character of the area, including its built and natural features.

10.3. The proposal entails a minor alteration to the terrace of one of the flats. The lowering of the privacy screen would have a very low visual impact and would not unbalance the appearance or proportions of the rear elevation of Bardwell Court. The screens would remain of high quality design and its materiality would continue to form a congruent addition to the area, as the screens would

still be of Cedar wood construction, as originally approved. The terrace in question would also not be readily perceptible from the public realm.

- 10.4. Having regard to the above it is considered that the proposal would be of acceptable design and would accord with the relevant policies.

ii. Conservation Area

- 10.5. Policy HE7 of the Oxford Local Plan 2001-2016 states that planning permission will only be granted for development that preserves or enhances the special character and appearance of the conservation areas or their setting. Furthermore, planning permission will not be granted for proposals involving the substantial demolition of a building or structure that contributes to the special interest of the conservation areas.
- 10.6. This part of the North Oxford Victorian Suburb Conservation Area largely draws its significance from the large late Victorian villas surrounding the application site, their generous front and rear gardens and their general form, materiality and aesthetic.
- 10.7. The proposed amendment in height to the privacy screen would not be readily perceptible to public views within the conservation area and would be so minor in nature that it would not impact the enjoyment of private views within the backland area around Bardwell Court. The proposal would therefore not give rise to harm to the identified significance of conservation area
- 10.8. Based on the above, it is considered that the development proposal would not result in harm to the special character of the conservation area and would therefore comply with Policy HE7.
- 10.9. Regard has been paid to paragraphs 192 and 193 of the NPPF and the need to give great weight to the conservation of the designated heritage asset in reaching a decision. When applying the test outlined in paragraph 196, it is considered that the proposal would cause no harm to the significance of the conservation area. Therefore, the proposals would be acceptable in terms of their impact on this designated heritage asset.
- 10.10. Special attention has been paid to the statutory test of preserving or enhancing the character and appearance of the conservation area under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which it is accepted is a higher duty. 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.

iii. Listed Buildings

- 10.11. Policy HE3 of the Oxford Local Plan 2001-2016 states that planning permission will only be granted for development which is appropriate in terms of its scale and location, and which uses materials and colours that respect the character of the surroundings, and have due regard to the setting of any listed building.

- 10.12. The site is surrounded by a number of listed buildings, of varying significance. The only listed building that would be impacted by this development proposal would be 2 Charlbury Road. The significance of this listed building is primarily the result of its architectural merit. The proposed reduced privacy screen would not be visible while viewing 2 Charlbury Road from the public realm and the change would not be readily perceptible to views from 2 Charlbury Road. Therefore the proposal would not impact the significance of the listed building.
- 10.13. It is considered that the development proposal would cause no harm to the special character of the listed building. The proposal would thereby comply with Policy HE3.
- 10.14. Regard has been paid to paragraphs 192 and 193 of the NPPF and the need to give great weight to the conservation of the designated heritage assets in reaching a decision. When applying the test outlined in paragraph 196, it is considered that the proposal would cause no harm to the significance of the listed building. Therefore, the proposals would be acceptable in terms of its impact on this designated heritage asset.
- 10.15. Special attention has been paid to the statutory test of preserving the listed building or its setting under section 66 of the Planning (Listed Building and Conservation Areas) Act 1990, which it is accepted is a higher duty. It has been concluded that the development would preserve the setting of the listed building and so the proposal accords with section 66 of the Act.

iv. Neighbouring Amenity

- 10.16. Policy HP14 of the Sites and Housing Plan states that planning permission will not be granted for development that has an overbearing effect on existing homes, and will only be granted for new residential development that provides reasonable privacy and daylight for the occupants of both existing and new homes. Policy HP14 of the Sites and Housing Plan sets out guidelines for assessing development in terms of whether it will allow adequate sunlight and daylight to habitable rooms of the neighbouring dwellings.

Daylight

- 10.17. Given that the proposal is for privacy screens at a reduced height, it stands to reason that the proposal would enhance the amount of daylight received by neighbours to the west and east to a degree. However, the height of the privacy screens in question as approved, 1.8m, were considered by the planning committee in the original decision to not materially reduce the amount of light received by neighbouring occupiers, having considered the fact that the terrace is set a fair distance away from the east boundary and is of a fairly modest height and away from neighbours' windows to the west. Therefore while the reduced height would likely improve the amount of daylight received by neighbours, planning officers consider that this would likely be extremely minor.

Overbearing

10.18. The privacy screens as approved at 1.8m were not considered by the committee to give rise to unacceptable overbearing to neighbours, given their modest height and being set away from neighbours' boundaries, windows and amenity spaces. The proposed reduction in height would therefore have an acceptable impact in this regard.

Privacy

10.19. Views between the proposed terraced area in question and properties to the front and rear would not be materially affected by the proposed changes to the privacy screens. There would therefore not be additional privacy impacts to these neighbours.

10.20. In terms of the flats to the east and dwellinghouse to the west, the reduction in height of the privacy screens to 1.1m in height would essentially render them redundant as views would be readily possible for users of the terraced area over the screens. The terraced area, and its users, would also be more visible to neighbours.

10.21. With regard to 21 Charlbury Road, it is considered that the reduction in height to the privacy screens would allow for an unacceptable degree of interlooking between the terraced area of Unit 2, 19 Bardwell Road, and the internal rooms of 21 Charlbury Road. This would result in an unacceptable loss of privacy to the occupiers of both dwellings. Furthermore it is noted that the reduction in height of the screens would allow for wide sweeping views of the amenity space of 21 Charlbury Road by users of the terraced area. This would prevent the quiet enjoyment by the occupiers of 21 Charlbury Road of their rear amenity space.

10.22. The flats to the east, which form part of the application site at Bardwell Court, would also have their privacy impinged upon. This would be due to the fact that the reduction in height of the western privacy screen would allow views of their internal habitable rooms and privacy amenity space. This loss of privacy would cause an unacceptable loss of amenity to these neighbours.

10.23. It is noted that this application has been made at the request of a neighbouring occupier due to concerns over a loss of daylight. Planning officers consider that the small benefit to the daylight received by the neighbouring occupier would not offset the high loss of privacy to this neighbour and surrounded dwellings. Furthermore, policy HP14 protects the amenity of current and future occupiers; the fact that the loss of privacy would be most acute to 21 Charlbury Road and this occupier supports the application is therefore immaterial as the amenity of future occupiers of this dwellinghouse would be unacceptably impacted.

10.24. It should also be noted that the planning committee at which the original application was decided considered that the privacy screens, at a height of at least 1.8m, were fundamental to the acceptability of the scheme. Planning officers therefore recommend refusal for the sake of consistency with the Council's previous consideration, given that no new material consideration has arisen since the previous planning decision.

10.25. Having considered the above, planning officers consider that the development proposal would give rise to an unacceptable loss of privacy to neighbours and would not accord with Policy HP14 in this regard.

11. CONCLUSION

11.1. Having regards to the matters discussed in the report, officers would make members aware that the starting point for the determination of this application is in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which makes clear that proposals should be assessed in accordance with the development plan unless material considerations indicate otherwise.

11.2. The NPPF recognises the need to take decisions in accordance with Section 38 (6) but also makes 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 Framework. The relevant development plan policies are considered to be consistent with the NPPF despite being adopted prior to the publication of the framework.

11.3. Therefore it would be 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.

11.4. In summary, the proposed development would result in an unacceptable change to the site. The design of the proposal is suitable in design and heritage terms and complies with policies CP1, CP8, CP10, HE3 and HE7 of the Oxford Local Plan 2001-2016, HP9 of the Sites and Housing Plan and CS18 of the Core Strategy and DH1 and DH3 of the emerging Oxford Local Plan 2036. The proposal, however, would result in unacceptable harm to neighbouring amenity and is not compliant with HP14 of the Sites and Housing Plan and H14 of the emerging Oxford Local Plan.

11.5. Therefore officers consider that the development fails to accord with the development plan as a whole.

11.6. *Material consideration*

11.7. The principal material considerations which arise are addressed below, and follow the analysis set out in earlier sections of this report. This analysis concludes, as per paragraph 11.4, with the privacy implications arising from the proposed development resulting in the application being recommended for refusal.

11.8. National Planning Policy: the NPPF has a presumption in favour of sustainable development.

- 11.9. 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.
- 11.10. Officers consider that the proposal would fail to 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 refused without delay.
- 11.11. Officers would advise members that, having considered the application carefully, the proposal is considered to be unacceptable 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, and the emerging Local Plan 2036, when considered as a whole, and that there are no material considerations that would outweigh these policies.
- 11.12. Therefore it is recommended that the Committee resolve to refuse planning permission for the development proposed for the reason set out in Section 12 of this report.

12. APPENDICES

- **Appendix 1 – Block plan**

13. HUMAN RIGHTS ACT 1998

- 13.1. Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to refuse 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

- 14.1. 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 refuse planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community.