

# Agenda Item 5

## WEST AREA PLANNING COMMITTEE

9<sup>th</sup> March 2021

<b>Application number:</b>	20/02303/FUL		
<b>Decision due by</b>	11 December 2020		
<b>Extension of time</b>	To be agreed		
<b>Proposal</b>	Change of use of ground floor of Block C of the Wolvercote Paper Mill development from GP surgery and business use to residential use (Use Class C3) comprising 5 x 2 bedroom flats and 2 x 1 bedroom flats. Alterations to fenestration at ground floor. Insertion of 3no. doors to north elevation and 4no. doors to south elevation. (Amended plans and additional information)		
<b>Site address</b>	Peacock House, Baynhams Drive, Oxford (Block C of the Wolvercote Paper Mill development) – see <b>Appendix 1</b> for site plan		
<b>Ward</b>	Wolvercote		
<b>Case officer</b>	Nadia Robinson		
<b>Agent:</b>	N/A	<b>Applicant:</b>	Mrs Vikki Roe
<b>Reason at Committee</b>	More than five residential units		

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### 1. RECOMMENDATION

- 1.1. West Area Planning Committee is recommended to:
- 1.1.1. approve the application for the reasons given in the report, subject to the required planning conditions set out in section 12 of this report and grant planning permission, subject to:
  - the satisfactory completion of a legal agreement under section 106 of the Town and Country Planning Act 1990 and other enabling powers to secure the planning obligations set out in the recommended heads of terms which are set out in this report; and
- 1.1.2. agree to delegate authority to the Head of Planning Services to:
  - finalise the recommended conditions as set out in this report including such refinements, amendments, additions and/or deletions as the Head of Planning Services considers reasonably necessary; and
  - finalise the recommended legal agreement under section 106 of the Town and Country Planning Act 1990 and other enabling powers as set out in this report, including refining, adding to, amending and/or deleting the

obligations detailed in the heads of terms set out in this report (including to dovetail with and where appropriate, reinforce the final conditions and informatics to be attached to the planning permission) as the Head of Planning Services considers reasonably necessary; and

- complete the section 106 legal agreement referred to above and issue the planning permission.

## **2. EXECUTIVE SUMMARY**

2.1. The West Area Planning Committee on 19<sup>th</sup> January 2021 resolved to defer consideration of the application pending further information on the following:

- the CCG's current views on whether the space was needed for a GP practice and if so what factors were stopping its acquisition;
- evidence of:
  - rents (both proposed and those offered to interested renters) for GP surgery, commercial space, and community space;
  - evidence of marketing and discussions with both potential commercial and community occupiers, and exploration of possible alternative commercial and community uses.

2.2. The minutes of the West Area Planning Committee on 19<sup>th</sup> January 2021 are included in **Appendix 3** of this addendum report.

2.3. A copy of the officer's committee report to the West Area Planning Committee is included in **Appendix 2** of this addendum report. The report provided a full assessment of how the proposal would comply with the development plan as a whole. Sections of the original report which remain unchanged have not been duplicated within this addendum report.

2.4. Since the application was considered by the West Area Planning Committee and in accordance with the committee resolution, further information has been supplied by both the applicant and the CCG. The CCG have confirmed that they did not and still do not wish to pursue the site because it would not comply with their strategy, namely to only support new surgeries which would support at least 10,000 population with 5-6 FTE GPs. The applicant has submitted additional marketing information which sets out the nature of the discussions that were had with the CCG and summarising the enquires made about commercial and community uses.

## **3. LEGAL AGREEMENT**

3.1. This application is subject to a legal agreement to secure a two-bedroom flat within the block as socially rented affordable housing. This would either be one of the 2-bed flats proposed, or one of the existing 2-bed flats in the upper floors of the block which is currently a market unit. The agreement shall also require the unit to be constructed to the Category 2 standard as set out in the

Building Regulations Approved Document M4 in accordance with policy H10 (Accessible and adaptable homes).

3.2. This application seeks a change to the scheme approved under the outline consent (reference 13/01861/OUT) and reserved matters (reference 18/00966/RES). The outline consent was subject to a Section 106 legal agreement covering a number of points. The points are listed below, with that part of the legal agreement relevant to this application underlined:

*Obligations to Oxford City Council*

- Affordable Housing on site – 50%, integrated into the development as a whole;
- Public open space – minimum of 2.46ha including Duke's Meadow (recreation/play/wildlife habitats); informal open space and nature reserve along Mill Stream; 'green gateway' at site's entrance; walkway around reservoir; local area for play;
- Community facilities of at least 110 square metres;
- Habitat creation and protection plus maintenance – habitat suitable for reptiles in Duke's Meadow;
- GP surgery space – reasonable endeavours for two years to reach agreement on terms for transfer of GP surgery area to a GP partnership or the local health authority. If not, change of use to B1(c) light industrial use or D1 non-residential institutional space permitted. If the developer is unable to agree a transfer after 6 months, permission may be sought for C3 residential use.

*Obligations to Oxfordshire County Council*

- Traffic Regulation Order contribution for parking restrictions at the new mini roundabout (payable at commencement);
- Bus service contribution of £275,000 (index linked) to improve frequency and hour of operation roundabout (payable at commencement);
- Travel Plan monitoring – 5 years from first occupation (payable at commencement);
- Bus stop infrastructure contribution (including real time information display) for two stops on Godstow Road (payable at commencement);
- Highway works – mini-roundabout, access arrangements, bus shelter with seats that can take a real-time information display unit (i.e. ducting and cabling), plus commuted sum for maintenance.

3.3. Accordingly, the developer is seeking permission for a change to the GP surgery space to C3 residential use. In addition, the application seeks permission to change the use of the consented B1(c) space.

#### **4. COMMUNITY INFRASTRUCTURE LEVY (CIL)**

4.1. The proposal is liable for CIL. Although there is no increase in floor area, the use proposed is charged at a higher rate of CIL. The proposal would therefore be liable for the difference between the rate for D1/B1(c) and the rate for C3.

## 5. RELEVANT PLANNING POLICY

5.1. The relevant planning policies set out in the original committee report to the West Area Planning Committee on 19<sup>th</sup> January 2021 remain pertinent.

## 6. CONSULTATION RESPONSES

6.1. The committee report (**Appendix 2**) provides details of the public consultation that was undertaken with respect to the application prior to its consideration at the 19<sup>th</sup> January 2021 committee, and summarises all the responses received in relation to the application within **section 9** of that report.

6.2. The following responses have been received since 10<sup>th</sup> January 2020:

### **Statutory consultees**

#### Environment Agency

6.3. No objection to the proposals. Suggested a condition to ensure that finished floor levels would be no lower than 59.50m AOD.

### **Public representations**

6.4. 2 representations were received from local residents. In summary, the main points of objection were:

- The originally proposed facilities are needed.
- The Local Planning Authority should support the community.
- Local people feel 'let down'.
- The applicant did not make 'best efforts' to find tenants.

## 7. PLANNING MATERIAL CONSIDERATIONS

7.1. The committee report for the West Area Planning Committee on 19<sup>th</sup> January 2021 considers the material planning considerations and sets out the recommendation that planning permission should be granted for the proposal subject to conditions and the competition of a legal agreement to secure the matters referred to in section 3.1 of the report. A copy of the report is included within **Appendix 2** of this addendum report.

7.2. Officers noted the main issues that were raised through member questions and deliberations at committee on 19<sup>th</sup> January 2021. As a supplement to the original committee report, this addendum report seeks to clarify these issues which are as follows:

- a) Evidence of attempts to secure a transfer or tenant

- b) Evidence to secure a transfer to B1(c) or D1 uses; and
- c) The s106 cascade approach.

a. **Evidence of attempts to secure a transfer or tenant.**

*Transfer of GP surgery*

7.3. For context officers would like to draw attention to **paragraph 31** of the committee report for the outline consent (13/01861/OUT) (**Appendix 5**) which states:

*In respect of the doctor's surgery, whilst there has previously been interest in moving the existing 'satellite' surgery in Godstow Road onto the development site, at this stage, **there is no clear indication that the surgery or health authority have concluded to take this forward**. Further discussions will be needed between the developers who eventually purchase the site and the local doctor's practice and clinical groups to see whether this is the preferred option. However, in terms of any outline planning permission, a S106 should secure the development of surgery space. In the event that the doctor's practice chose not to relocate to the space provided, it is considered that the space should be used to create additional employment. The space could therefore be converted into further B1 (c) light industrial/office space, offering the potential for further local employment, or even into a small crèche. It is estimated that further B1(c) type businesses occupying this converted space, could employ in the region of a further 15-20 people, if the surgery does not come forward. Similarly, a crèche might employ 5-10 staff. The S106 can be used to secure this preference for conversion to B1(c) of [sic] crèche use of the surgery space provided, in the event that there is no occupation by a doctor's surgery within a set period of time, say 2 years from the completion of the surgery space.*

7.4. Furthermore, paragraph 32 goes on to state:

*If the surgery is relocated into the site, it will be a matter for the doctor's practice to fit out the surgery space to its requirements and at their costs.*

7.5. The current application (20/02303/FUL) sets out the efforts made to transfer the GP surgery area, and includes direct discussions with Summertown Heath Centre, which administers the existing Wolvercote GP surgery on Godstow Road and discussions with the Oxfordshire Clinical Commissioning Group (CCG). The premises were also marketed through the Savills healthcare premises specialist office.

7.6. Comments were made during the committee meeting on 19<sup>th</sup> January 2021 suggesting that the CCG did not understand the nature of these discussions and that the rental figures offered by the applicant were prohibitively expensive. Concerns were subsequently raised that the CCG were previously, or perhaps still would be, interested in the site which lead to members deferring the application to seek further clarification on this matter.

7.7. Following the committee meeting on 19<sup>th</sup> January 2021 officers have spoken directly to the CCG for confirmation of their stance. The CCG have confirmed the following:

- The CCG's Estates Strategy is to only support new surgeries which would support at least 10,000 population with 5-6 FTE GPs. This would not be the case for Wolvercote Paper Mill which would represent a smaller 'branch' surgery.
- The CCG would only accept smaller surgeries in "exceptional circumstances" i.e. in the case of the application site, if the site was fully fitted out and at a peppercorn rent as this would be cost neutral for them.
- As this was not what the CCG was being offered they did not wish to pursue the site.

7.8. As set out in the committee report at **Appendix 2**, while there is no requirement in the legal agreement for the GP surgery to be fitted out, officers note that the applicant offered the CCG a capital contribution towards fit-out to encourage an offer although this was not something the CCG wished to pursue as they anticipated future costs. The CCG and Savills have confirmed that the only specific rent that was discussed was a peppercorn rent (i.e. nil rent) for a 125 year lease of 405 sq m of shell and core building. Despite this, as the site would not be cost neutral, the CCG considered that agreeing to take on the surgery site would not be viable, or importantly, in line with their Estates Strategy.

7.9. It is important to note that delivering a fully fitted out surgery at a peppercorn rent was not a requirement of the s106 agreement, nor an expectation within the outline consent, and so would have only been deliverable if both parties had agreed this during their negotiations. The applicant has confirmed that this would have required significant additional investment over and above what was already provided.

7.10. Officers have confirmed that the CCG are not interested in taking over the surgery site for the reasons stated above. Officers also note the extended period of time over which negotiations took place (over 2 years) without any agreement being reached. For these reasons, officers concluded that reasonable endeavours were used to try to transfer the GP surgery area to a GP partnership or the local health authority.

**b. Evidence to secure a transfer to B1(c) or D1 uses**

7.11. The applicant has confirmed that the marketing of the B1(c) and D1 uses commenced 26th June 2019. This was run out of the Savills offices in both Oxford and London. Enquires for the space on both fronts were limited. 13 enquiries were made from the commencement of the marketing period to the end of 2020. Of these, only 4 enquires were notable. Officers note that none of the enquires received were from companies requiring B1 (c) light industrial use, rather they required B1 (a) B1(b), or D2 use. Officers acknowledge that the s106

agreement did not require the applicant to deliver uses outside of those specified within the agreement, namely B1(c) or D1.

7.12. In respect of the D1 space, there was also limited interest with two parties registering initial interest in the latter part of 2019. Upon further review with these parties, only one showed further interest – this comprised a father enquiring on behalf of his son (a doctor) in respect of setting up his own practice. This interest subsequently no longer exists. No further expressions of interest were or have subsequently been received.

7.13. Marketing was undertaken via the following routes:

- Lettings brochure posted on Savills website, Rightmove commercial and EG Property Link;
- Emails out to applicants in our system with ongoing searches matching the buildings criteria;
- Large lettings board at entrance to site.

7.14. No rent was quoted on the advertising details so that any interest could be discussed individually.

#### **c. The s106 cascade approach**

7.15. The principle of the change of use of the GP surgery is established in paragraph 6 of Schedule 2 of the S106 agreement, provided the cascade is complied with. The agreement requires the following of the developer:

- To use reasonable endeavours for 2 years to transfer the GP surgery area to a GP partnership or the local health authority; (*Tier One*)
- If it proves not possible to do so, to notify the Council and enclose such evidence of the attempts to do this as the Council reasonably requests;
- If permitted by the Council to do so, to develop the GP surgery area for uses within use classes B1(c) or D1; (*Tier Two*)
- If unable to transfer the GP surgery area for B1(c) or D1 uses within a period of 6 months, to notify the Council and then be permitted to make an application for use of the GP surgery space for C3 use.

7.16. Following discussions with the applicant and the submission of evidence consent was given by the Local Planning Authority (LPA) for the applicant to move from Tier One to Tier Two. Likewise, the applicant notified the LPA when the 6 month period of marketing for B1(c) or D1 uses ceased. Officers are also satisfied that the applicant has made reasonable endeavours to try to secure the site for B1(c) or D1 uses. As this was not possible the current application has been made to use the GP surgery space for C3 residential use.

7.17. Officers do not consider that it would be reasonable to require the applicant to revisit any of the tiers of the s106 agreement at this stage and, in any case,

consider that they have made all reasonable endeavours to try and transfer the site to a GP Practice and then for the alternative uses.

## **8. CONCLUSION**

- 8.1. The developer has complied with the requirements of the S106 agreement in relation to the approved GP surgery area. They have also continued discussions beyond the two-year period and discussed a number of potential options with the CCG. The evidence presented is clear and robust, officers have verified it through discussions with the CCG and therefore there is no reason to object to the change of use of the GP surgery. The developer has used reasonable endeavours and moved through the cascade in the S106 agreement and reached the stage of applying for planning permission to provide further residential units in a sustainable location.
- 8.2. It is disappointing that the space has not been transferred to a surgery as originally intended, but it is outside the powers of the LPA and the developer to require this. The legal agreement contemplates such a scenario and the developer has complied with its obligations.
- 8.3. With regard to the B1(c) unit, officers have considered the marketing evidence on its merits, as would be the case for any change of use application.
- 8.4. Officers would remind the committee of the NPPF requirement (paragraph 11) to approve development proposals that accord with an up-to-date development plan without delay. While there have been many requests for the decision to be delayed, to do so would be unreasonable because the developer has complied with the requirements of the legal agreement, and has advertised the B1(c) unit for a reasonable period of time.
- 8.5. It is recommended that the Committee resolve to grant planning permission for the development proposed subject to the satisfactory completion (under authority delegated to the Head of Planning Services) of a legal agreement under section 106 of the Town and Country Planning Act 1990 and other enabling powers to cover the matter referred to in section 3.1 of this report and also subject to the conditions in section 9 below.

## **9. CONDITIONS**

### **1. 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. Approved plans**

Subject to condition 6, 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 DH1 of the Oxford Local Plan 2036.

### **3. Materials as approved**

The materials to be used in the proposed development shall be as specified in the application hereby approved. There shall be no variation of these materials without the prior written consent of the Local Planning Authority.

Reason: To ensure that the development is visually satisfactory as required by policy DH1 of the Oxford Local Plan 2036.

### **4. Bin and bike storage**

Detailed drawings of the cycle storage demonstrating their usability and compliance with policy M5 of the Oxford Local Plan 2036 shall be submitted to and approved in writing by the local planning authority. Cycle storage in accordance with the approved details shall be installed prior to first occupation of the development and thereafter retained for the purposes of cycle parking. Bin storage in accordance with the approved plans shall be provided prior to first occupation of the development and thereafter retained for the purposes of bin storage.

Reason: in the interests of sustainable travel and visual amenity in accordance with policy M5 and DH7 of the Oxford Local Plan 2036.

### **5. Site management**

The development shall be managed in accordance with the site management plan approved under reference 18/00966/CND4 and with the details set out in the letter from RSK dated 15 October 2020 ref: 28924/L04 in relation to the external landscaped areas.

Reason: In the interests of amenity, the appearance of the area, parking management, to ensure the drainage system functions safely and effectively and does not increase flood risk, and to ensure that any ground and water contamination has been adequately addressed to ensure the safety of the development, the environment, and to ensure the site is suitable for the proposed use in accordance with policies DH1, M2, M3, RE3, RE4 and RE9 of the Oxford Local Plan 2036.

### **6. Internal storage**

Prior to commencement of the use hereby permitted, revised floor plans showing sufficient in-built storage in each unit to accord with the National Space Standard minimum requirements shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure future residents have sufficient storage space and to accord with policy H15 of the Oxford Local Plan 2036.

## **7. Land quality**

The existing ground gas membrane and sub-floor ventilation shall not be impacted or compromised in any way as a result of the development hereby approved.

Reason: To ensure that any ground and water contamination has been adequately addressed to ensure the safety of the development, the environment, and to ensure the site is suitable for the proposed use in accordance with policy RE9 of the Oxford Local Plan 2036.

## **8. Finished Floor Levels**

The finished floor levels of the approved residential units shall be no lower than 59.50m AOD.

Reason: To ensure that the development would not be at risk of flooding in accordance with policy RE3 of the Oxford Local Plan 2036.

## **10. APPENDICES**

- **Appendix 1 – Site location plan**
- **Appendix 2 – WAPC report 19th January 2021**
- **Appendix 3 – WAPC Minutes 19th January 2021**
- **Appendix 4 – Section 106 legal agreement for 13/01861/OUT**
- **Appendix 5 – WAPC report 15<sup>th</sup> October 2013 for 13/01861/OUT**

## **11. HUMAN RIGHTS ACT 1998**

- 11.1. 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.

## **12. SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

12.1. 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 grant planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community.

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