

West Area Planning Committee

13th April 2021

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|----------------------------|--|-------------------|---------------|
| Application number: | 21/00142/FUL | | |
| Decision due by | 23rd March 2021 | | |
| Extension of time | 21st April 2021 | | |
| Proposal | Change of use of garden outbuilding to office (Use Class E (g)). | | |
| Site address | 75 Botley Road, Oxford, OX2 0EZ, – see Appendix 1 for site plan | | |
| Ward | Jericho And Osney Ward | | |
| Case officer | Tobias Fett | | |
| Agent: | Mrs Linda Lyzba | Applicant: | Nikolas Lyzba |
| Reason at Committee | This application is before the committee because it has been called in by Councillors Cook, Pressel, Kennedy, Tanner, Lygo and Fry | | |

1. RECOMMENDATION

1.1. West Area Planning 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 12 of this report and grant planning permission.

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
- issue the planning permission.

2. EXECUTIVE SUMMARY

2.1. This report considers an application for a change of use of an residential home office outbuilding to a non-residential office unit in use class E(g) with associated cycle storage.

2.2. The main considerations for this application revolve around the impact of the change of use on the residential amenities of the area, including traffic and flooding.

- 2.3. The change of use of the existing vacant unit is considered acceptable as the use would not be contrary to the character of the area, as required by the NPPF.
- 2.4. There is no detrimental impact on local amenities, but an improvement as there is a shortage of small scale office units that enable more sustainable communities.

3. LEGAL AGREEMENT

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

4. COMMUNITY INFRASTRUCTURE LEVY (CIL)

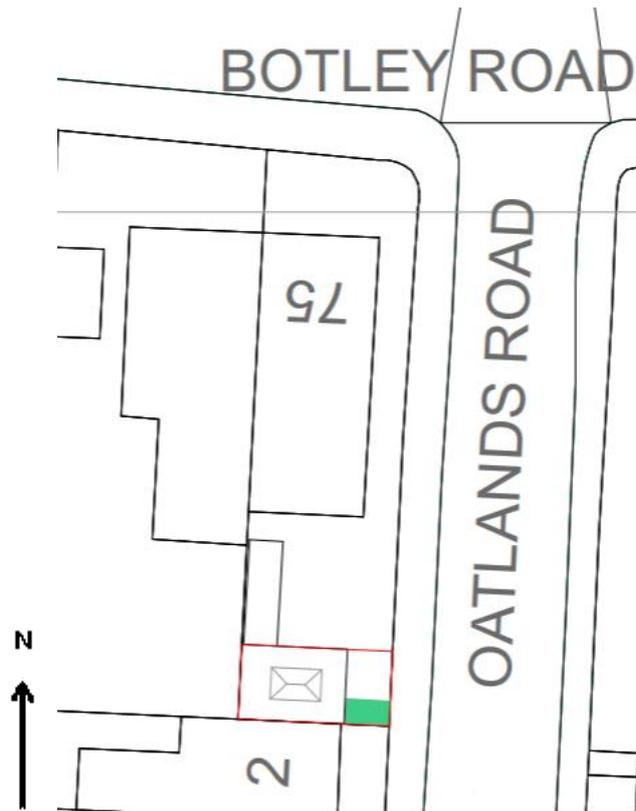
- 4.1. The proposal is not liable to CIL.

5. SITE AND SURROUNDINGS

- 5.1. The application site is 75 Botley Road which is on the southern side of Botley Road. It is on a prominent street corner with Oatlands Road, and opposite Binsey Lane.
- 5.2. 75 Botley Road was originally built as a semi-detached property but was converted into three one bedroom flats following a grant of planning permission in 2001.
- 5.3. The outbuilding that is the subject of this application is located at the entrance of Oatlands Road, set back from the road with a small front yard area in front of the building.
- 5.4. The outbuilding is located adjacent to 2 Oatlands Road, which is an end of terrace house forming part of a long row of Victorian houses set back from the pavement with small front yards, often accommodating bin or cycle storage. Despite being in close proximity to a major arterial road the application site's immediate context in Oatlands Road has a strongly residential and suburban character despite the fairly dense pattern of terraced housing and the fairly narrow road. Whilst there are a number other uses including retail and commercial buildings in close proximity to the application site on Botley Road it is important to note that Oatlands Road has only residential properties (reflecting the aforementioned established suburban character). The houses in Oatlands Road are a uniform type of Victorian red brick terrace houses with natural stone bay windows and slate roofs. The views along Oatlands Road towards the recreation ground beyond and mature vegetation contribute positively to the suburban characteristics of the streetscene.
- 5.5. The application property itself has a flat on the ground floor at the rear of No. 75, a flat that occupies the front of the ground floor and part of the first floor and a third flat that occupies parts of the first and all of the second floor.

Background

- 5.6. The application site is subject to recent planning permissions which are relevant when considering the context of this application.
- 5.7. Planning permission was granted in 2018 (reference 18/01562/FUL) to carry out improvements to the flats including the insertion of additional windows and the demolition of a garage at the rear so that larger car, cycle and refuse storage areas could be provided. During the course of that application other improvements to some shared outdoor amenity spaces were also approved. Planning permission was granted subject to conditions.
- 5.8. Conditions attached to planning permission (18/01562/FUL) required details to be submitted prior to the commencement of work. As a result of work commencing on the site prior to the approval of some of the details reserved by condition it was no longer possible to lawfully comply with all the conditions of the planning permission (18/01562/FUL). As a result, an application was made to vary conditions (reference 19/02782/VAR) relating to cycle parking and car parking areas associated with the original grant of planning permission for the improvements to the flats (18/01562/FUL). The variation application (19/02782/VAR) was approved.
- 5.9. In addition to the variation application two applications were submitted that related to the garage (that had been proposed to be removed as part of application 18/01562/FUL). One of these applications sought planning permission for the development of an office on the site of the garage (reference 19/01662/FUL); this application was withdrawn. A second application was made (reference 19/02104/FUL) that sought the development of an outbuilding connected with the occupation of the flats at No 75; this application was approved in February 2020. The outbuilding approved as a home office occupied the same amount of space as the garage.
- 5.10. The development of the home office on the site has been completed; along with the aforementioned improvements to the flats at No. 75. The building has an area of approximately 18m and a height of approximately 3m. The building was constructed of block with white render (the same as no. 75 Botley Road) with a flat roof and lantern style rooflight. The internal layout of the outbuilding contains a room which is indicatively shown to provide desk space and two separate small rooms containing shower and a WC. The entrance into the building is from a bay window that combines a door and opens onto a small front yard space.
- 5.11. The application site is not within a Conservation Area and would not impact on the setting of any listed buildings.
- 5.12. See block plan below (outbuilding is edged in red):



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Ordnance Survey 100019348

6. PROPOSAL

- 6.1. The application proposes the change of use of the residential garden office outbuilding to a standalone office unit within Use Class E(g) (an office in a residential area). The layout and external appearance of the building would be unaltered by the proposals which relate principally to the aforementioned change of use.
- 6.2. In association with the proposed change of use the application includes the provision of two bicycle parking spaces.

7. RELEVANT PLANNING HISTORY

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

01/00627/NF - Conversion of property from multi-occupation (5 bedsits) to 3 self-contained 1 bed flats. Provision of 3 parking spaces (including existing garage) accessed from Oatlands Road. (Amended Plans). PER 17th January 2002.

82/00540/U - use for multiple occupation for no more than five persons. PER 21st September 1982.

18/01562/FUL - Alterations to apartments' entrance doors, insertion of new rooflight openings, enlarged dormer window, demolition of existing garage and

provision of bin and bike storage facilities. (amended plans).. APPROVED 14th August 2018.

19/01662/FUL - Demolition of existing garage and erection of a single storey office building (Use Class B1a) and bin and cycle storage. Alterations to entrance doors, insertion of 2no. windows and alterations to 1no. window to east elevation. Formation of 3no. rooflights to east elevation, enlargement of dormer and replacement of 1no. dormer window to 1no. rooflight to south elevation. Formation of bin and cycle store to north elevation.. WITHDRAWN 8th July 2020.

19/02104/FUL - Demolition of existing garage, erection of a single storey outbuilding to be used as garden outbuilding/storage in conjunction with use of flats and erection of new bin and cycle stores. (amended description) (amended plans).. APPROVED 21st February 2020.

19/02782/VAR - Variation of conditions 4(Cycle Parking) and 6(Details of hard standing) of planning permission 18/01562/FUL(Alterations to apartments' entrance doors, insertion of new rooflight openings, enlarged dormer window, demolition of existing garage and provision of bin and bike storage facilities. To allow rewording of the conditions (amended plans) (amended description).. APPROVED 21st February 2020.

20/00726/VAR - Variation of condition 7 (Variation of local traffic order) of planning permission 19/02104/FUL (Demolition of existing garage, erection of a single storey outbuilding to be used as garden outbuilding/storage in conjunction with use of flats and erection of new bin and cycle stores. (amended description) (amended plans)) to allow to continue excluding eligibility to the flat 75A only.. APPROVED 14th May 2020.

8. RELEVANT PLANNING POLICY

8.1. The following policies are relevant to the application:

| Topic | National Planning Policy Framework | Local Plan | Other planning documents | Neighbourhood Plans: |
|--------|------------------------------------|---|--------------------------|----------------------|
| Design | 117-123, 124-132 | DH1 - High quality design and placemaking DH7 - External servicing features and stores | | |

| | | | | |
|---------------------------|-------------------------------|---|----------------------------------|--|
| Conservation/ Heritage | | | | |
| Housing | 59-76 | H14 - Privacy, daylight and sunlight | | |
| Commercial | 170-183 | E1 - Employment sites - intensify of uses V1 – Ensuring the vitality of centres | | |
| Natural environment | 91-101 | RE3 - Flood risk management RE4 - Sustainable and foul drainage, surface | | |
| Social and community | 102-111 | | | |
| Transport | 117-123 | M1 - Prioritising walking, cycling and public transport M4 - Provision of electric charging points M5 - Bicycle Parking | Parking Standards SPD | |
| Environmental | 117-121, 148- 165, 170-183 | S1 - Sustainable development RE1 - Sustainable design and construction RE2 - Efficient use of Land | Energy Statement TAN | |
| Miscellaneous | 7-12 | RE7 - Managing the impact of development | External Wall Insulation TAN, | |

9. CONSULTATION RESPONSES

9.1. Site notices were displayed around the application site on 4th February 2021.

Statutory and non-statutory consultees

Oxfordshire County Council (Highways)

9.2. The highways authority has no objection to this application. The location is within a CPZ and well connection to public transport network. Cycle storage details should be conditioned.

Public representations

9.3. Three (3) local people commented on this application from addresses in Oatlands Road.

9.4. In summary, the main points of objection (3 residents) were:

- Effect on character of area
- Effect on traffic
- On-street parking
- Parking provision
- Effect on adjoining properties
- Amount of development on site
- Effect on pollution
- Effect on privacy
- Local plan policies
- Noise and disturbance
- General dislike or support for proposal

Officer response

9.5. Officers have carefully considered the points raised in public consultation that will be dealt with in the officer report. There are some concerns about the planning history, the process and evolution of the proposal. The planning history has been stated in the relevant sections above and serves as important background to this application. Officers can only consider the application at hand on its own merits as an existing garden building and the impact of the proposed change of use.

10. PLANNING MATERIAL CONSIDERATIONS

10.1. Officers consider the determining issues to be:

- I. Principle of Development
- II. Impact on Neighbouring Amenity
- III. Transport and Highways
- IV. Flooding

I. Principle of Development

- 10.2. The existing and approved use for the outbuilding is uses incidental to the flats at 75 Botley Road. The applicant has confirmed that the existing flats have been offered the use of the office outbuilding but none of the occupiers have taken the outbuilding on and it has remained vacant.
- 10.3. Since the granting of planning permission in February 2020 for the outbuilding the government has introduced amendments to the Use Classes Order. One of the key changes to the use classes order has been the introduction of the 'E' Use class which replaces some commercial uses including the previous 'B1' use class which related to offices. These changes came about in September 2020. Whilst the introduction of the amended Use Classes Order brings about greater flexibility in terms of the uses of buildings (including those in commercial use) it also identifies subclasses within Class E, with Use Class E(g) including the following uses:
- (i) an office to carry out any operational or administrative functions,*
 - (ii) the research and development of products or processes, or*
 - (iii) any industrial process,*
- being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*
- 10.4. Planning permission is sought to change the use of the outbuilding from a use that is incidental to the enjoyment of the flats at 75 Botley Road to Use Class E(g) use as described above. Specifically, it is sought to use the building as an office. The applicant's agent has suggested in their planning statement that if planning permission is granted that a condition could be imposed that restricts the use of the building to a Use Class E(g) use only and precludes the use of the outbuilding for any other Use Class E use (which would prevent it from being used for a retail, café or medical use for example).
- 10.5. Having had regard to the above, Officers consider that essentially the only difference between the approved lawful use of the outbuilding (which was envisaged to be a home office) is that the tenants of the office would not be living at No. 75 Botley Road but would instead travel to the application site to work there. In all other respects the use of the outbuilding would not change.
- 10.6. The Council's adopted planning policy relating to office development is contained within Policy E1 of the Oxford Local Plan (2036). This policy principally seeks to retain existing employment sites and intensify uses on these sites. The Oxford Local Plan (2036) also allocates new sites for employment and mixed uses (that would include office development). The Oxford Local Plan (2036) is essentially silent on the development of new office accommodation outside of existing employment or allocated sites. As a result, when considering the acceptability of the proposals in planning terms officers have had regard to the National Planning Policy Framework. The principle of

development with regards to the proposed change of use is assessed on this basis below.

- 10.7. In terms of a new development within Use Class E(g), Policy V1 is relevant. This Policy aims to direct new town centre uses, including offices, to the city centre and district centres. This is to ensure the vitality of these centres. It also ensures that town centre uses, which are uses that people travel to, are accessible by walking, cycling and public transport. New town centre uses outside these areas should pass the sequential test. This location is highly accessible by these means. The nature of the proposed development means that it cannot be located elsewhere. The November 2013 Starter Unit Review Report produced by Oxford City Council states that there is no mention of the availability of small office premises in this area of the City which is not considered to have changed.
- 10.8. Officers have had regard to Paragraph 86 of the NPPF which requires that Local Planning Authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. In this case, the proposals for an office would be considered to be a main town centre use for the purposes of Paragraph 86 of the NPPF and this site is located outside of the existing centres that are identified in the Oxford Local Plan (2036); being the City Centre and District Centres (that include Cowley Centre, Summertown and others). Policy V1 of the Oxford Local Plan (2036) directs main town centre uses to existing centres:
- Proposals for development of town centre uses outside a centre must demonstrate compliance with the 'sequential test' (that is: development should be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered).'*
- 10.9. The application site is in an out of centre location. The planning statement that accompanies the application does not set out a sequential test relating to the availability of sequentially preferable centres for the development proposed; explaining why the development could not be located within an existing centre or on the edge of an existing centre. However, the submitted planning statement comprehensively argues that the proposals relate to an existing outbuilding that can lawfully be used as a home office and the only difference between the lawful use of the building and the use that is sought as part of this application would be that the tenants of the office would not be residing at No. 75 Botley Road but would travel to the site. This point has already been advanced by officers above; despite this it should be acknowledged that in the context of the locational criteria of office development as a main town centre use the proposals do not meet the requirements of Paragraph 86 of the NPPF and Policy V1 of the Oxford Local Plan (2036).
- 10.10. Paragraph 80 of the NPPF places significant weight on supporting the need for economic growth and productivity and opportunities for development. Officers have also considered the requirements of Paragraphs 117-118 of the NPPF which promotes more effective use of land; this is also reflected in Policy RE2 of the Oxford Local Plan (2036). Officers have had regard to the

aforementioned paragraph of the NPPF and Local Plan policies which would arguably add some support to the better use of the existing outbuilding that currently lies vacant and the opportunity to use the site in a more efficient way.

10.11. Further to the above, the application site lies within an area with excellent access to public transport being within half a mile of Oxford Railway Station and regular bus services on Botley Road. As a result, despite its presence in a residential road there are merits associated with considering an increased intensity of the use of the site which makes the proposals more acceptable in principle having had regard to the broad principles the Oxford Local Plan (2036) and the NPPF (specifically Policies S1 of the Local Plan and Paragraph 11 of the NPPF).

10.12. In conclusion, officers have had regard to the merits of the scale of the proposals representing a relatively small-scale change of use of an existing home office and incidental outbuilding into an office (Use Class E(g)). It is considered that whilst the proposals would fail to meet the criteria of Policy V1 of the Oxford Local Plan (2036) and Paragraph 86 of the NPPF the proposals represent a form of a sustainable development that would make more efficient use of the site and would be acceptable in this location having had regard to the close proximity to the railway station, accessibility to bus services and relatively close proximity to the City Centre. On balance, it is therefore considered that the proposals would be acceptable in principle having had regard to the policies in the Oxford Local Plan (2036) and NPPF when taken as a whole subject to the amenity impacts of the proposed use being carefully considered in the context of the use that is sought; these matters will be addressed in the following paragraphs of the report.

II. Impact on Neighbouring Amenity

Noise and Disturbance

10.13. Officers have had regard to the proposed use for an office having considered the context of the existing use of the building as a home office or incidental building. The proposed development would involve the office being used by people who do not live at No. 75 Botley Road (the three flats within the building). Given the size of the building it is unlikely that that a large number of people would be able to work inside the building and at most it would be occupied by a small company. Despite the small size and comparable small difference between the use sought and the existing lawful use of the building it is necessary to carefully examine the amenity impacts of the development in terms of likely noise and disturbance associated with the proposed use. If planning permission was granted then the majority of the noise and disturbance from the premises would likely arise from people arriving and leaving the building to work. It is important to consider that this building is directly adjacent to a residential property at No. 2 Oatlands Road (and is near to the houses in the immediate vicinity of the site including the flats at No. 75 Botley Road). It is acknowledged that there would be some impact on these properties as a result of people going to the building to work but given that the proposed development does not provide car parking and there is no on-site provision for car parking associated with these proposals then any people

arriving would likely be by foot or bike (possibly having accessed the wider area by public transport). As a result, it is unlikely that the proposals would give rise to any significant greater level of disturbance than the existing lawful use of the building as a home office.

- 10.14. Despite the acceptability of the use in the context of the above, officers have recommended a number of conditions to ensure that the use would not give rise to an unacceptable impact on neighbouring amenity in this residential location. Officers recommend that the use of the building on the site is restricted to Use Class E(g)(i) only, being *an office to carry out any operational or administrative function*. This would ensure that there would be no noise associated with the activity taking place at the application site. Officers have also recommended a condition that would restrict the opening hours of the office, this is commonplace on employment sites as it would ensure that there would not be activity taking place on the application site at times that would have a materially harmful impact on neighbouring amenity. Officers recommend that this condition should limit opening hours of the office from 7am until 10pm on Mondays to Sundays to prevent very early arrivals or late departures from the office that could disturb neighbouring occupiers.

Privacy

- 10.15. The application does not include any alterations to the existing small single storey structure. There is no overlooking from the existing structure, or loss of privacy to any neighbours due to the use or existence of the structure. Therefore there is no adverse impact from the existing use, or a proposed use within use class E(g).

Overbearing

- 10.16. The proposal does not include any physical changes to the outbuilding, and would therefore not be overbearing to nearby residents.

III. Transport and Highways

- 10.17. The proposed development would not provide car parking and as the site lies within Controlled Parking Zone (CPZ) there would be no eligibility for car parking permits (which are for residents only). As a result, the proposed development would not have an impact on car parking in Oatlands Road or adjacent roads around the application site. There is some public car parking approximately 300m from the site at the Oatlands Recreation Ground and there is the larger long-stay car parking provided at Seacourt Park and Ride that is less than half a mile from the application site. The adjacent car parking spaces at No. 75 Botley Road are available only for the occupiers of the flats.
- 10.18. The proposed development includes the provision of space for two pedal cycles. No details have been provided of the type of cycle stands to be provided; officers recommend a condition is included to ensure that suitable provision is made prior to the first use of the development if planning permission is granted. The provision of cycle parking exceeds the standards set out in Policy M5 of the Oxford Local Plan (2036).

IV. Flooding

10.19. The application is accompanied by a flood risk assessment that adequately reflects the site location in floodzone 3a. The existing use as a garden office (albeit vacant) is not less or more vulnerable than that of an office. The proposal would therefore not cause any more harm in terms of flooding and would therefore be acceptable, as it accords with policies RE3 of the OLP2036.

11. CONCLUSION

11.1. It is recommended that the Committee resolve to grant planning permission for the development proposed subject to the conditions set out in section 12 of the report.

11.2. Having regard 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 it clear that proposals should be assessed in accordance with the development plan unless material considerations indicate otherwise.

11.3. 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 Framework. The relevant development plan policies are considered to be consistent with the NPPF.

11.4. 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.

11.5. In summary, the proposed development would be an acceptable use having had regard to the policies as a whole. The proposal is suitable in terms of local planning policy and complies with the relevant policies of the Oxford Local Plan 2036.

11.6. Therefore officers consider that the development accords with the development plan as a whole.

Material considerations

11.7. The principal material considerations which arise are addressed above, and follow the analysis set out in earlier sections of this report.

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 there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
- 11.10. 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 granted without delay.
- 11.11. Officers would advise members that, having considered the application carefully, 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 Local Plan 2036 when considered as a whole. There are no material considerations that would outweigh these policies.
- 11.12. It is recommended that the Committee resolve to grant planning permission for the development proposed subject to the conditions outlined in section 12.

12. CONDITIONS

Time Limit

- 1 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.

Build in Accordance with Approved Plans

- 2 The development permitted shall be carried out 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.

No Change of Use

- 3 Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any Order revoking or enacting that Order) the use of the

premises shall be restricted to those uses falling within Use Class E(g)(i) only. There shall be no physical storage and sale of retail goods on the premises at any time.

Reason: To ensure residential amenities are protected and the residential character of the area is maintained in accordance with Policies S1, H14 and RE7 of the Oxford Local Plan 2036.

Hours of Use

- 4 The building shall only be used for the approved use between 7am and 10pm on Mondays to Sundays (inclusive) and shall not be used outside of those hours.

Reason: To ensure residential amenities are protected in accordance with S1, H14 and RE7 of the Oxford Local Plan 2036.

Cycle Parking Details

- 5 Before the use permitted is commenced details of the cycle parking areas, including means of enclosure, shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall not be brought into use until the cycle parking 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.

Reason: To promote the use of cycles thereby reducing congestion on adjacent roads in accordance with policies S1, DH1 and M5 of the Adopted Oxford Local Plan (2036).

13. APPENDICES

- **Appendix 1** – Site location plan

14. HUMAN RIGHTS ACT 1998

- 14.1. 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.

15. SECTION 17 OF THE CRIME AND DISORDER ACT 1998

- 15.1. 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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