

Agenda Item

Bath & North East Somerset Council	
MEETING:	Development Control Committee
MEETING DATE:	29 April 2015
REPORT OF:	Lisa Bartlett, Divisional Director - Development
REPORT	ENFORCEMENT REPORT
ORIGINATOR	Richard Stott, Principal Planning/Enforcement Officer
TITLE:	43 Upper Oldfield Park, Bath, BA2 3LB
WARD:	Widcombe
AN OPEN PUBLIC ITEM	

SITE DESCRIPTION

The site comprises some 0.2 hectares on the south side of Upper Oldfield Park, adjoining a GP surgery/medical centre to the west and Hayesfield School buildings to the east.

The site has a residential land use and was formerly occupied by a two storey dwelling of inter-war age known as Oakford House.

Upper Oldfield Park is characterised by large four/five storey detached or semi-detached Victorian/early 20th Century villas set in large plots, but with some infill development, which includes the application site and the GP surgery next to it. To the south and west of the site the area is characterised by smaller, two storey Victorian/Edwardian terraced dwellings.

The site is within the Bath Conservation Area and World Heritage Site. The boundary of the Conservation Area runs along the Junction Road to the west of the site, directly adjacent to the GP surgery.

Following the grant of planning permission in January 2009 for the erection of 14no. residential apartments, works commenced on site in January 2012. The former two storey dwelling has been demolished, the unauthorised development appears externally, essentially complete.

RELEVANT HISTORY

- 14/04547/FUL - Erection of 14no. residential apartments with parking and shared grounds (Revised Proposal) (Retrospective) – At the meeting of the Development Control Committee on 8th April 2015 it was resolved to refuse planning permission subject to no new planning issues being raised during the period that the application is being advertised as a Departure from the Development Plan.
- 14/04229/NMA - Non-Material Amendment to application 07/02461/FUL. (Erection of 14no. residential apartments with parking and shared grounds (Revised Application)) – Approved 01.10.2014 – Note, the NMA simply converted the plans set out in a footnote to 07/02461/FUL into a plans list condition requiring the development to be built in accordance with the approved plans, the NMA did not confirm or approve any aspect of the works that have actually been carried out on site.
- 12/00387/CA - Demolition of existing dwelling on site - Consent
- 11/05409/COND - Discharge of conditions 2,4,5,11,12,14,15,17,20,21,22,23 of application 07/02461/FUL - Discharged
- 10/00294/FUL - Erection of 13 no residential apartments with parking and shared grounds (Resubmission) – Refused 11.06.2010
- 07/02461/FUL - Erection of 14no. residential apartments with parking and shared grounds (Revised Application) – Permitted 26.01.2009
- 07/00653/FUL - Erection of 13 no residential apartments with parking and shared grounds (Resubmission) – Refused 15.06.2007
- 06/02075/CA – Demolition of 43 Upper Oldfield Park – Consented 19.07.2006
- 06/02073/FUL - Erection of 14 No residential apartments and parking following demolition of existing dwelling – Refused 02.11.2006

BACKGROUND

Matters Which Appear To Be Breaches Of Planning Control

The development as constructed does not accord with the plans approved under planning permission 07/02461/FUL (Erection of 14no. residential apartments). The deviation from the approved plans is substantial and the building which has been constructed is essentially a different building to that which was permitted. This means that the development has been constructed without planning permission and is therefore unauthorised.

The Granting of Planning Permission

Planning permission was granted for the site on the 26th January 2009 under application reference 07/02461/FUL for the erection of 14no. residential apartments with parking and shared grounds.

In the approved application report, the Landscape Officer commented that the proposed development in comparison to the previously refused schemes:

“more sensitively reflects the roof pattern of the two adjacent pairs of villas further up the road” and as well as being of a similar height and proportions to the adjacent pairs of villas, the proposed development retained “similar gaps between and pitched roofs...[which] supports the rhythm of the buildings in this part of the road and the way they appear to step down, sensitively reflecting their position on a sloping road.” The Officer concluded that “the inclusion of a pitched roof effectively reduces the mass of the building at high level.” The views of the Landscape Officer were echoed by other consultees including the Conservation Officer who noted that “the pitched roof may be argued to increase the prominence of the roof, but...this reflects those used on adjacent properties”. The officer went on to state that “the projecting wings reflect the wings on the adjacent taller Villas and also set some distance back from the front elevation of the building which will help break up the bulk of the building.”

Turning to the officer report itself, this application was recommended for approval, and ultimately granted permission by the Development Control Committee on the basis that the *“revised proposal now reflects the architectural language, albeit it in a modern style, from both the front and rear, of much of the street, especially the buildings immediately to the east. This includes similarly proportioned elements, including the front facing bays, double gables and pitched slate roof. The previous application at this site was refused specifically because the building proposed a flat roof and it was considered that the lack of a pitched roof would result in the building appearing incongruous within its setting which would harm its surroundings and this part of the Bath Conservation Area and World Heritage Site. Whilst the pitched roof has resulted in an overall increase in height of the building compared to the previously refused scheme its overall size, bulk and mass is considered comparable with its immediate neighbour and would not have a detrimental impact on the streetscene or this part of the Bath Conservation Area and World Heritage Site. In essence the changes to the design are such that they are considered by Officers to overcome the reason for refusal on the previous application and the proposal is considered to be acceptable.”*

The Development as Built

Works commenced on site in January 2012 however it became apparent to the Council in mid-2014 when the development reached roof level that the building had not been built in accordance with the approved plans insofar as the building is now taller and wider than approved, lacks the recessed balcony elements on the side elevations at roof level (which had been integral to the design approach that allowed the Council to grant permission), and features a far more disjointed roofscape with additional fenestration. The deviations from the approved plans have been assessed on site by Officers.

During the course of the investigation into the background of this case since the breach of planning control came to light, two relevant issues have emerged. Firstly, the applicant's Building Regulations application, which was submitted to the Local Authority Building Control department in January 2012, detailed a building that is different to the scheme that gained planning

permission. Secondly, the applicant's architect wrote to the Planning Department in May 2013 seeking an informal view as to the possibility of making some amendments to the roof of the building in order to accommodate the lift room. The plans submitted did not show the building in its entirety, nonetheless the Case Officer at the time made it clear that Planning Permission would be required for the desired changes and requested that an application be submitted. However what has been built differs even further from the details that were submitted for informal consideration.

In summary, the development as constructed does not accord with the plans as approved under planning application 07/02461/FUL. The deviations are substantial and effectively a different building to that permitted has been constructed.

Breach of Condition or Unauthorised Development

In assessing this case Officers have considered whether the breach is that the building is unauthorised outright or whether the permission has been implemented but has failed to follow the approved plans and therefore is a breach of condition. It is the view of officers that what has been constructed on site is so different to what was approved that it is simply a different building without planning permission at all. Although the deviations from the plans may only be limited individually, cumulatively the changes add up to a new and thus unauthorised building. It is therefore concluded that the enforcement case against this development should be based on the fact that the development as carried out does not benefit from planning permission and is therefore unauthorised.

Status of the Previous Permission

The correct approach to considering whether a planning permission has been implemented involves looking at what has been built as a whole and reaching a judgment as a matter of fact and degree upon that whole as to whether or not the planning permission has been implemented.

In this case, where there are numerous material differences between the planning permission and what has been built, officers' view is that the 2009 planning permission was not in fact implemented, meaning that it has now expired. This means that it is not capable of implementation and does not provide a fall-back position.

Action Taken So Far

When the breach of planning control first came to light, the decision was taken by the Council to serve a Temporary Stop Notice (TSN) on the site in order to halt all works and give the Council the opportunity to consider the extent of the works undertaken which had not been confirmed at that stage and were not readily visible and to consider what the most appropriate course of action should be having regard to the relevant legislation, policy and government guidance. The Notice was served on the site on the 12th September 2012 and

stopped all works for a period of 28 days. The Developer complied with the requirements of the Notice and no further works took place during the course of the TSN.

The Council utilised the 28 day period allowed by the TSN to explore all options available in order to address the breach of planning control. As a result Officers were able to determine the relative scale of harm and establish the facts.

Meetings were also held with the developer, architect, planning agent, building contractor and quantity surveyor. Officers listened to the justification given for the deviation in the building – which in essence stemmed from the decision to build around a steel frame and incorporate additional acoustic insulation in the building – and highlighted the planning issues particularly in respect of the visual impact of the development and the impact on both the World Heritage Site and Conservation Area.

Negotiations also took place to secure amendments to the roof and ultimately the decision was taken that it would not be expedient to follow up the TSN with a full Stop Notice and Enforcement Notice.

It was considered, subject to various design amendments to the roof, that the applicant could exercise their rights under Section 73A in order to seek retrospective permission, allowing the Council the opportunity to conduct a full public consultation and seek the views of statutory consultees.

Current Situation

On the 14th October 2014 a full planning application was validated seeking retrospective permission for the works carried out.

During the consideration of the application, as the development was still ongoing, the Applicant took the opportunity to physically address within the construction of the building, a number of the concerns raised by Officers since the stop notice was served, namely changes to the roof extensions, removal of roof level dormers and reconfiguration of solar panels to improve the visual appearance of the roofscape of the building from public viewpoints.

These changes resulted in the submission of amended plans and it was on this basis that it was concluded by Officers that, overall, the development was acceptable. It was acknowledged that limited concerns remained in respect of some details of the building particularly at roof level, however, in the overall context of the site, its setting and the area as a whole, it was concluded on balance that the development preserved the Conservation Area and did not detrimentally harm the Outstanding Universal Value of the World Heritage Site or the street scene. Officers therefore recommended that retrospective permission was granted subject to the completion of a legal agreement and subject to conditions.

The application was considered by the Development Control Committee on 8 April 2014 where Members considered the Officer's views but took a different view and concluded that the application was unacceptable and resolved to refuse the application for the following reason:

The development, by reason of its excessive height, bulk and inappropriate design, incorporating enlargements of the side wings at fourth floor level, a predominance of flat roofed elements, and a cluttered roof, is incongruous in this prominent location and out of character within its prevailing context. The development is harmful to the character and appearance of the street scene, part of the Bath Conservation Area and to the setting of the wider World Heritage Site. The development is contrary to Policies BH.6, D.2 and D.4 of the Bath and North East Somerset Local Plan (including minerals and waste policies), 2007, which are saved Policies, contrary to Policies B4 and CP6 of the Bath & North East Somerset Core Strategy, 2014 and contrary to the National Planning Policy Framework, 2012

The application was subsequently refused on 17 April 2015.

As the Local Planning Authority have concluded that the development as built is unauthorised and harmful, enforcement action must be considered.

DECISION MAKING FRAMEWORK

In preparing this report, due consideration has been given to the following Policies, Guidance and Legislation:

The Core Strategy for Bath and North East Somerset was formally adopted by the Council on 10th July 2014. The Core Strategy now forms part of the statutory Development Plan and will be given full weight in the determination of planning applications. The Council's Development Plan now comprises:

- Bath & North East Somerset Core Strategy (July 2014)
- Saved Policies from the Bath & North East Somerset Local Plan (2007)
- Joint Waste Core Strategy

The following policies of the Core Strategy are relevant:

- Policy DW1 - District Wide Spatial Strategy
- Policy SD1 - Sustainable Development
- Policy B1 - Bath Spatial Strategy
- Policy B4 - World Heritage Site and its setting
- Policy CP6 - Environmental Quality
- Policy CP9 - Affordable Housing
- Policy CP10 - Housing Mix
- Policy CP2 - Sustainable Construction
- Policy CP3 - Renewable Energy
- Policy CP6 - Environmental Quality
- Policy CP7 - Green Infrastructure

- Policy CP13 - Infrastructure Provision

The following saved policies of the Bath and North East Local Plan, including minerals and waste policies, adopted October 2007 are also relevant:

- Policy SC.1: Settlement classification
- Policy SR.3: Provision of recreational facilities to meet the needs of new development
- Policy CF.3 Contributions from new development to community facilities
- Policy IMP.1 Planning Obligations
- Policy D.2: General design and public realm considerations
- Policy D.4: Townscape considerations
- Policy NE.4: Trees and woodlands
- Policy BH6: Development within the Conservation Area
- Policy T.24: General development control and access policy
- Policy T.26: On-site parking provision

SUPPLEMENTARY PLANNING GUIDANCE

- Planning Obligations SPD
- Sustainable Construction & Retrofitting SPD
- Bath & North East Somerset Council Green Space Strategy adopted March 2007
- Bath & North East Somerset Council Green Infrastructure Strategy adopted March 2013

LEGAL FRAMEWORK

- Town and Country Planning Act 1990 (as amended)
- Planning (Listed Buildings and Conservation Areas) Act 1990
- The Human Rights Act 1998
- The Equality Act 2010

There is a duty placed on the Council under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act to pay special attention to the preservation or enhancement of the character of the surrounding conservation area.

SUPPLEMENTARY PLANNING GUIDANCE

- Bath & North East Somerset Local Enforcement Plan, 2013
- City of Bath World Heritage Site Setting SPD, 2013

NATIONAL PLANNING POLICY FRAMEWORK, 2012

Full consideration has been given to the provisions and guidance set out in the NPPF particularly in respect of the provision of housing, issues relating to the Historic Environment and issues relating to Planning Enforcement.

NATIONAL PLANNING PRACTICE GUIDANCE, 2015

Full consideration has been given to the guidance set out in the NPPG in respect of taking enforcement action.

EXPEDIENCY OF ENFORCEMENT ACTION

The Policy Test

The LPA's view is that the development is contrary to policy as set out in the above reason for refusal.

The expediency of issuing an enforcement notice

In considering the appropriate course of action to remedy the breach of Planning Control, Officers have considered the guidance set out in the NPPG, particularly the following paragraphs:

1. (Para 003) Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations.
2. (Para 003 cont.) In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 207 where it states: *Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.*
3. (Para 005) Effective enforcement is important to: (i) tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area; (ii) maintain the integrity of the decision-making process; and (iii) help ensure that public acceptance of the decision-making process is maintained.

With regard to the expediency of enforcement action, the approach is set out in section 172 of the Town and Country Planning Act 1990, namely whether it is expedient to issue an enforcement notice, having regard to the provisions of the development plan and to any other material considerations.

The LPA is of the view that the development as built is contrary to the development plan policies referred to above and harmful to the character and appearance of the street scene, this part of the Bath Conservation Area and to the setting of the wider World Heritage Site. Members did not consider that there were any material considerations which outweighed the harm. As such, it is considered to be expedient to issue an enforcement notice.

Requirements of the Enforcement Notice

Because the LPA has concluded that the entire building is unauthorised, it follows that the notice should require demolition of the building and the restoration of the land to its condition before the breach took place. Even if it were possible for the notice to require something less than complete demolition (which is considered below), members must bear in mind the consequences of under-enforcing in this way which is set out in s173(11) of the TCPA 1990:

(11) Where—

(a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and

(b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

Lesser Measures

Notwithstanding s173(11), Officers have explored what alternative measures could be taken in order to resolve the breach of planning control without demolishing the building. Having met with the developer, however, it is clear that, to a large extent, the breach stems from the construction method used. The building has an internal steel frame and it is this which dictates the overall dimensions of the building.

The obstacle to altering the building to bring it in line with the previously approved plans is its steel frame which structurally supports the building as a whole. The developer's engineer has advised that it is structurally not possible to modify the steel frame without substantially demolishing what has already been built. Furthermore, the frame cannot be modified so as to address the most harmful element of the breach – the projecting sides at fourth floor level – without compromising the overall structural integrity of the building. Discussions with Building Control Officers confirm that the Local Planning Authority could not insist on changes to the building that would compromise the structural integrity and further confirm that it would be largely impossible to modify the steel frame without substantially demolishing the building.

Officers have therefore concluded that the only practical course of action available to remedy the breach is the total demolition of the building.

Officers recognise that this course of action is severe and will have significant financial implications for the developer; however, it would appear that there is no acceptable alternative solution.

Time for compliance with the Enforcement Notice

Officers suggest that 6 months is a reasonable timescale in which to demolish the building and restore the site.

HUMAN RIGHTS and EQUALITIES

It is considered that Article 1 of the First Protocol (peaceful enjoyment of possessions) of the European Convention on Human Rights may apply in this matter. However, those rights must be weighed against the public interest in preserving the character and appearance of the street scene and the Conservation Area. Given that the unauthorised works have been found to be harmful and contrary to the Development Plan and given that there are no material considerations which outweigh the harm, it is considered that Enforcement Action would be a proportionate interference in the wider public interest.

The Council has also considered its duties under the Equality Act 2010. This is an unauthorised development being undertaken by a commercial developer and it is not considered that enforcement action would discriminate against people with protected characteristics, nor would it breach the Council's public sector equality duty.

CONCLUSION

In light of the above report it is concluded that the Local Planning Authority should issue an Enforcement Notice accordingly.

RECOMMENDATION

Delegate authority to Officers to issue an enforcement notice requiring the demolition of the building and the restoration of the site within 6 months.