

Development Control Committee
UPDATE REPORT
8th April 2015

14/04547/FUL – 43 Upper Oldfield Park

Site Visit

A pre-committee site visit with Members was conducted on Monday 30th March. Members viewed the site in long range views from the north of the City from Sion Road, Lansdown where they were able to see the development in the wider setting of the Conservation Area and World Heritage Site. In addition the site was viewed in more detail at close range from Lower Oldfield Park, Upper Oldfield Park, and Junction Road (including the entrance to Second Avenue and outside Livingstone Terrace opposite the doctor's surgery).

Status of the Planning Permission / Fall Back

Since the publication of the main report, further case law has come to officers' attention which suggests that 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 differences between the planning permission and what has been built, officers' view is that the 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.

Notwithstanding, Members are advised that the planning history of the site is a material consideration and it is highly relevant that permission was granted previously and that the policy position against which that permission was granted has not changed in any material respect. As such, it is still correct to make a comparison between what was permitted and what has been constructed on site.

Conservation Officer's Consultation Response - Addendum

Following receipt of the advice from the legal team the Conservation Officer has issued the following addendum to the earlier consultation response:

"I am aware that further case law has come to light since I provided my last comments in respect of the revised drawings and legal advice has been provided to Officers in respect of whether or not the previous permission remains extant. The conclusion of the advice is that as there are substantial differences between the planning permission and what has been built, the original permission is no longer considered to have been implemented meaning that it has now expired.

In my previous consultation response (23rd March 2015) I stated that I was "*mindful that permission for a building of a very similar size and scale remains extant*" and

that “*this application, whilst treated on its own merits, cannot ignore the provisions of the extant permission*”.

In light of the legal advice that has now been provided I would like to clarify my position that, having previously considered this application in line with the provisions set out in the NPPF (paras 132 and 134), and in light of local policy (BH.6 of the Bath & North East Somerset Local Plan and CP6 of the Core Strategy), irrespective of whether there was an extant permission or not I remain of the view that the harm to the Conservation Area (in its totality) is less than substantial. My previous conclusion that, whilst there remains concern over aspects of the roof treatment overall much of the fabric of the Conservation Area would remain unaltered, therefore still stands.

For clarity and completeness, the history of this site (including the previous permission) is a material consideration to my assessment of the scheme. However I remain of the view that apart from the rooftop treatment the development as built is acceptable for reasons previously stated.”

Conservation Area / NPPF

In addition to para 134 NPPF (which is addressed on page 66 of the main report), members are also reminded of the importance of the advice in paragraph 132 NPPF which states:

“132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.”*

Members’ attention is drawn in particular to the advice that “great weight” should be given to the conservation of the Conservation Area as a heritage asset. As is set out in the main report, Officers conclude that whilst there are elements of the scheme that do harm the skyline appearance of the development, this harm is contained to the immediate short range views of the site and when viewed in the context of the Conservation Area as a whole, the totality of harm to the conservation asset is less than significant. Full consideration has been given to the provisions of NPPF para 132 and in concluding that there is “less than significant harm” the Local Planning Authority is required to consider the provisions of NPPF para 134; the assessment in line with para 134 is set out on page 66 of the main report and remains unchanged.

Local Representations

Additional letters of representation have been received from the Junction Road and Environs Residents Group since publishing the main report which raise queries about the views expressed and information contained within the report, in addition suggestions have been made in respect of the wording of certain conditions. Officers have considered the contents of the representation and are of the view that the issues are already satisfactorily covered within the main report.

Other Comments

In the main report the recommendation is to permit the development, this is incorrect and the recommendation is to delegate to permit.

Furthermore, as explained in the main report the application has been advertised as a departure to the Development Plan as it is considered to be contrary to Policy CP9 of the Core Strategy in that it is not providing any affordable housing provision.

The consultation period for the advertisement does not expire until 16 April 2015 which is after the application will have been considered by Members. Therefore the words 'subject to no new planning issues being raised' should be inserted with in part B of the recommendation.

Recommendation:

The recommendation should be amended to read:

Delegate to Permit

A Authorise the Planning and Environmental Law Manager to enter a Section 106 Agreement to secure the following:

The provision of parking space for the local car share club and membership of the aforementioned club for future residents on a lifetime basis at a ratio of two memberships per flat

B Wait for the consultation period for advertisement as a departure from the Development Plan to expire and, subject to no new planning issues being raised, then

C Authorise the Group Manager to PERMIT, subject to the following conditions: