

BATH AND NORTH EAST SOMERSET COUNCIL

Planning Committee

Date 3 June 2020

**OBSERVATIONS RECEIVED SINCE THE PREPARATION OF THE MAIN
AGENDA**

ITEMS FOR PLANNING PERMISSION

Item No.	Application No.	Address
001 & 002	19/03838/FUL 19/04772/FUL	Holborne Park Former Ministry of Defence Offices, Warminster Road, Bathwick, Bath

Additional representations

An additional letter of objection has been received from the Bath Preservation Trust. The main points raised are:

- The insufficient provision of affordable housing within an area of a designated affordable housing target of 40%, as specified within Policy CP9 of the Core Strategy and Placemaking Plan.
- The unwelcome overdevelopment of an already dense residential site.
- The piecemeal, disjointed submission of planning applications which does not suitably account for the overall coherence of the Holburne site and its contextual setting within the WHS and overlooking the Kennet & Avon Canal.
- The poor quality of submitted drawings, elevations, and predicted views.
- In specific relation to application 19/04772/FUL, the loss of the designated 'school site' to private residential development has resulted in the regretful loss of the potential to integrate public community facilities into the development's design.

The letter raises no significant new matters which have not already been considered in the committee report. However, for the benefit of members the following points are highlighted:

- The provision of affordable housing is covered in depth within the main agenda report and has been subject to an independent viability review in line with CP9 of the Core Strategy.

- The density of the currently approved development is approximately 54 dwellings per hectare. The density of the proposed development is 42 dwellings per hectare.
- The Landscape Officer and Conservation Officer have advised that application 19/03838/FUL is an improvement on the current approved scheme in terms of its impact upon landscape character, the World Heritage Site and the Conservation Area.

The comment summary from Historic England is also updated to read:

HISTORIC ENGLAND: Comments

The proposed revisions to that application will in some limited ways improve the overall streetscape of the site. However, they continue to raise concerns regarding the way that this site is developing. While some improvements have been made, as a whole they continue to have concerns regarding the potential impact the scheme will have on the Conservation Area and World Heritage Site.

Conditions

The following update is made to the recommended list of conditions.

ITEM 01 - 19/03838/FUL

6. Construction Management Plan (Bespoke Trigger)

The development hereby approved shall be undertaken in accordance with the Construction Management Plan approved in writing by the local planning authority by letter dated 18 January 2016 (Reference: 15/05486/COND). Within one month of the date of this permission a revised construction management plan shall be submitted to and approved in writing by the Local Planning Authority. The revised plan shall include details of the following:

1. Deliveries (including storage arrangements and timings);
2. Contractor parking;
3. Traffic management;
4. Working hours;
5. Site opening times;
6. Wheel wash facilities;
7. Site compound arrangements;
8. Measures for the control of dust;
9. Temporary arrangements for householder refuse and recycling collection during construction.

The construction of the development shall thereafter be undertaken in accordance with the approved details of the revised plan.

Reason: To protect the amenities of the occupants of adjacent residential properties, the adjoining canal and wider environment and to ensure the safe operation of the highway.

ITEM 02- 19/04772/FUL

2. Construction Management Plan (Bespoke Trigger)

The development hereby approved shall be undertaken in accordance with the Construction Management Plan approved in writing by the local planning authority by letter dated 18 January 2016 (Reference: 15/05486/COND). Within one month of the date of this permission a revised construction management plan shall be submitted to and approved in writing by the Local Planning Authority. The revised plan shall include details of the following:

1. Deliveries (including storage arrangements and timings);
2. Contractor parking;
3. Traffic management;
4. Working hours;
5. Site opening times;
6. Wheel wash facilities;
7. Site compound arrangements;
8. Measures for the control of dust;
9. Temporary arrangements for householder refuse and recycling collection during construction.

The construction of the development shall thereafter be undertaken in accordance with the approved details of the revised plan.

Reason: To protect the amenities of the occupants of adjacent residential properties, the adjoining canal and wider environment and to ensure the safe operation of the highway.

ITEM 03 19/04797/FUL 3 Scumbrum Lane, High Littleton

This application was deferred by members for a 'virtual' site visit at the 6th May Development Management Committee. A virtual site visit was carried out on the 26th May 2020.

The video prepared by Officers indicated the precise nature of the existing access path across the rear of this terrace of properties. The video showed just how restricted the rear shared access path is. At most the width is 1.07m from property wall to start of garden however is restricted in places to around 60cm because of the stepped rear accesses to the properties. Each property features at least 2 steps into the backdoor with the internal ground floor of the application set 60cm above external ground level. There is a step up from the garden of number 3 to number 2 and then two steps down from number 2 to number 1. Access to number 1 is via a staircase from the garden up onto a patio area. It is evident that the access at the rear of all these properties is not wheelchair friendly and access for the mobility impaired is already significantly

compromised. The new extension would not exacerbate the issue of access to the properties but would mean anyone using the rear path would need to manoeuvre around the extension

Following the site visit meeting members requested the following matters are clarified

Assessment of the Public Sector Equality Duty (“PSED”).

The Equality Act 2010 (“2010 Act”) under section 149 contains what is generally called the Public Sector Equality Duty (“PSED”). The 2010 Act identifies a number of ‘protected characteristics’, namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. The PSED aims to integrate consideration of equality and good relations into the regular business of public authorities; which will include where engaged decisions of the Council acting as local planning authority. Compliance with the PSED is a legal obligation and is intended to result in better informed decision-making and policy development. In exercising the planning functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the 2010 Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not.

With regard to planning application 19/04797/FUL for the erection of a single and two story rear extension at 3 Scumbrum Lane, the PSED has become relevant because ‘protected characteristics’ are or could be material to the decision being made. Therefore due regard to the PSED is considered necessary in taking any decision. The particular PSED issue for consideration with the planning judgment to be made is that there appears to be users of a protected characteristic who may be effected by the alteration or obstruction of the private access way across the rear of the terraced properties as a result of the proposed rear extension. It is important to bear in mind that the PSED duty does not by itself require the Council to achieve any particular outcome but it is incumbent on the Council to have due regard to the PSED in taking its planning decision. The PSED consequently would be a material planning consideration with the weight that should or must be given depending on the particular factors that it would be sensible for the Council to consider.

Information gathered from the site visit of the rear of these terraced properties shows the existing access is not wheelchair friendly and access for the mobility impaired is already significantly compromised. Officers consider the new extension would not exacerbate the issue of access to the properties but would mean anyone using the rear access would need to manoeuvre around the extension. Officers consider that if the PSED is engaged it should not be considered of sufficient weight in this application to refuse the planning application.

Whilst the PSED may be a material consideration in this application the protection of private rights such as a person’s private rights of access over

land is not a material consideration. Briefly stated the reason for that is the object of planning control is to restrict private development in the public interest and not in the private interest. Therefore it is not the proper function of planning decision making to protect private interests in land in the course of protecting the public interest by deciding whether planning permission is acceptable.

Clarification on the Civil/Property Law aspects surrounding the right of way have been requested by Members and although Officers must stress such aspects are not material to any planning decision Officers comment as follows. A 'Right of Way in Common' as is claimed to be affected by the proposed development is a private interest in property owned or occupied by someone else giving that person(s) with the benefit of the private interest the right to pass and repass over a particular way. The particular legal rights accrued will depend on the nature, extent and scope of the right granted or acquired. In short the law would summarise such a private right as an 'easement'. Interference with an easement where substantial may give rise to an action for private nuisance against the person responsible for such interference. A gate for example does not necessarily amount to an interference with a private right of way. What should be considered by the person affected is whether the gate in fact substantially interferes with the use of the easement granted or acquired. Again as stressed these are not planning considerations for Members.

Permitted Development Fall-Back Position

Committee members are advised that a legitimate 'fall back' positions must be considered in respect of all planning applications. 3 Scumbrum benefits from Permitted development (PD) rights relevant to a terraced residential property

Old maps and plans of the area indicate that the property benefitted from a lean-to extension which was there in 1943. Therefore, for the purposes of the GPDO the former lean-to would have been "original" and denotes the line of the "rear wall of the original dwellinghouse".

In 1998 planning permission was given for a two storey rear extension which brought the line of the rear of the property out, this was consistent with all properties along this terrace who have all made their houses wider by incorporating first floor additions above the line of the original lean-to projections. As stated above prior to 1998 the property featured a single storey lean-to rear extension housing an outside bathroom and kitchen. The 1998 approval did not extend the ground floor beyond the line of the rear of the original dwelling.

The 1998 building regulations application and site inspection notes indicate that the rear wall of the building was built above the existing wall rather than it being demolished and rebuilt. Therefore, this results in the applicant being able to extend by 3m off the current rear elevation under PD. Whilst the property has been extended to add a second floor above the former lean-to

the footprint did not increase. PD rights were not removed by the 1998 planning permission and are therefore, still intact.

The current proposal shows the rear elevation of the proposed dwelling extending 1m from the rear of the existing property (0.8m beyond the position of the original rear wall and projecting 0.2m beyond the line of the rear of number 2). The single storey rear extension then projects 2m from the rear elevation (i.e. the line of the original rear elevation). Therefore, it is considered that the only aspect of this application that actually requires planning permission is the 1m projection to facilitate the works at the first floor and this element of the scheme has a minimal impact on the access as this part of the proposal does not affect the line of the rear access. (It should be noted that if the first floor extension projected less than 82cm it could well be PD under Part 1, Class A.1(h) as, cumulatively with the works carried out in 1998 it would constitute an extension above single storey that does not project more than 3m from the original rear elevation and is not within 7m of a boundary opposite the rear elevation). The additional 18cm i.e. the element that projects beyond the rear line of number 2, is the element that exceeds the PD provisions and results in the whole scheme requiring planning permission. As the works are intended to be carried out concurrently it means the single storey element is captured by the application. The single storey element of the scheme could be PD as the proposed extension is 3.4m to ridge, 2.3m to eaves and does not project more than 3m from the original rear elevation thus complies with the Class A limitations of the 2015 GPDO.

Therefore, it must be noted that under permitted development rights the applicant can still facilitate an extension that obliterates the current line of access. The entire single storey element as proposed does not in its own right require permission and therefore, this fact represents a legitimate fall-back position and is thus a material consideration.

Clarification of orientation relative to shadow and sun.

Members have been advised that given the orientation of these properties (the rear is NNE facing) that in respect of number 2 there may be some overshadowing before 630am in midsummer but the rest of the day the proposed extension will not cast a shadow. On the same date, the rear of the property would be in direct sun from 0630-1000. From around 1000 onward the rear courtyard of number 2 would be overshadowed by the existing two storey rear extension at number 1 and is then in shadow for the rest of the day. The proposed will not contribute to loss of light or overshadowing to this property for the vast majority of the day.

Clarification of the existing fence line between numbers 2 and 3 - Members expressed concern that the position of the extension means that to ensure the access path can loop around the extension the path would need to be moved into the garden of number 2. Members have been advised that this is a civil issue between the relevant landowners. The plans show that whilst the extension will be entirely within the curtilage of number 3. An 800mm path runs on the northside of the extension but there is no space for a path to be

located on the southern side of the extension. There is insufficient width between the fence and side wall so the fence would be removed or else a gate would need to be inserted further down the fence line (i.e. in line with the rear of the extension).

Other Matters

The provision of a new gate would be a civil issue as it relates to means of access.

Bins - Members raised concern in respect of access for bins. The existing access is restricted in its width and levels. This situation will remain as existing albeit that the new path line will need to be followed.

PROW - This access path is not covered by the same powers controlling a PROW.

POLICY D6: Amenity of the Placemaking Plan states:

Development must provide for appropriate levels of amenity and must:

- a Allow existing and proposed development to achieve appropriate levels of privacy, outlook and natural light
- b Not cause significant harm to the amenities of existing or proposed occupiers of, or visitors to, residential or other sensitive premises by reason of loss of light, increased noise, smell, overlooking, traffic or other disturbance.
- c Allow for provision of adequate and usable private or communal amenity space and defensible space.
- d Include adequate storage and functional arrangements for refuse and recycling
- e Ensure communal refuse and recycling provision is appropriately designed, located and sized.

In respect of the wording of the policy the impact that the proposals may have on the access in terms of its line and width is not specifically referenced. The impact that the proposal may have would need to be seen to be unacceptable in terms of loss of light, increased noise, smell, overlooking, traffic or other disturbance. Therefore, in respect of the access paths line and width the proposal may result in limited inconvenience but is not considered to be contrary to Policy D6.

Additional Recommended Condition

5 No windows on side elevations (Compliance)

There shall be no additional windows or openings on the south and north elevations of the extensions hereby permitted.

Reason: To safeguard the amenities of adjoining occupiers from overlooking and loss of privacy in accordance with Policy D6 of the Bath and North East Somerset Placemaking Plan.

Further comments have been received from the applicants and structural engineer:

Additional applicant comments summary:

- There appears to be some confusion as to the scale of the proposed works
- The description of the development given by the Council differs from the description given by the agent
- Agent description on application form reads "Demolition of existing rear 2 storey annexe and re-building to the same footprint with an extension to the side of no.84 and rear single storey extension to no.85. The existing stone walling will be carefully removed for re-use, the properties are registered HMO's".
- Either way, the proposals are clearly illustrated on the plans/covering letter
- The "existing annexe" is part of the original house
- This is the rear part of the property which sticks out from the main bodies of the houses, over two floors
- This area has suffered badly from subsidence and needs to be rebuilt due to its condition; this will be on the original footprint
- No.84 is proposed a very small, single storey infill extension (1.2m wide x 5.5m deep = 6.6m²). This is a common extension in Oldfield Park.
- No.85 will remove a poorly built side extension (1.6m x 5.5m = 8.8m²), increasing garden size.
- No.85 are proposing to erect a single storey extension (11.2m²)
- Extensions are not overdevelopment and are modest compared to other extensions in the terrace
- No.78 has had an extension approved in addition to their infill extension totalling 25.8m². No.78 has also had a dormer recently approved.
- No.77 has also had permission for a dormer recently.
- Parking: Triangle North is just outside the permit zone and Rail commuters park here. Not all tenants have cars and generally use public transport (bus stop outside of house and train station to the rear) or lift share.
- Construction parking: The owners of 85 Triangle North own the adjacent industrial unit and this area will be used for construction parking and getting materials into/out of the site.

Statement from structural engineer:

To whom it may concern, the rear of the existing property at 84 and 85 Triangle north have been subject to excessive movement over 100mm in some areas and has placed the back of the properties at risk.

The insurance company have deemed the work too expensive for them to carry out, using underpinning systems, leaving both clients having to demolish the areas affected back to the original main wall, carry out repairs to the main wall and rebuild the two storey rear extension.

This only works if both properties carry out the work at the same time; both properties can improve thermal performance and improve foundations to modern standards; they can also use Bath Stone externally to maintain current appearance.