

SUBJECT **COMMITTEE SITE VISIT REPORTS** **ITEM 7**
19 MARCH 2008
Attendance – Verbally updated at Committee

REPORT OF Head of Planning & Building Control

APPLICATION NO.	P06/E0855/RET
APPLICATION TYPE	RETROSPECTIVE
REGISTERED	16.08.2006
PARISH	ASTON ROWANT
WARD MEMBER(S)	Mrs Dorothy Brown
APPLICANT	Mr C M S Ostwald
SITE	Woodside, Aston Hill Aston Rowant
PROPOSAL	Erection of one two storey dwelling with terraced balconies and basement entrance and WC as clarified by drawing number 559/P9/C1 and further amended by drawing numbers 599/P2/E,P3/D,P4/C,P5/D,P6/F,P7/D,P8/E,P9/C1/B,P11/B,P12 and P13/A.
AMENDMENTS	Drawing numbers 599/P2/E,P3/D,P4/C,P5/D,P6/F,P7/D,P8/E,P9/C1/B,P11/B,P12 and P13/C.
GRID REFERENCE	473234/197125
OFFICER	Miss P A Fox

- 1.0 **INTRODUCTION**
- 1.1 On 11th October 2006 the Planning Committee considered the above application. At that meeting, following a site visit, Members resolved to grant approval of the application subject to conditions.
- 1.2 The application sought to regularise the dwelling as built which does not accord with approved plans.
- 1.3 Prior to the release of the decision notice representations were received from solicitors acting for Mr and Mrs Olive, the owners of a neighbouring property called Wildwood. These alleged that the Committee’s decision was based on misinformation and susceptible to judicial challenge. A full copy of the representations is **attached** as Appendix A. The applicant has been given an opportunity to respond to the allegations and his solicitor’s comments are **attached** as Appendix B.
- 1.4 In the light of these representations the application and the report to the planning committee have been thoroughly reviewed. This has resulted in the need to bring a revised report back to this committee in order that the application can be reconsidered. Both the applicant and Mr and Mrs Olive have been offered an opportunity to comment on matters of fact in respect of a draft version of this report (section one and two). Amendments have been made where appropriate in this report.

1.5 This report has been split into two sections. In the first section Officers address the key representations that have been received, as referred to in paragraph 1.3 above. In the light of the errors that have been identified in this section, the application has been reconsidered by officers and the second section sets out the material planning issues upon which Committee Members should determine the application.

2.0 **SECTION ONE
KEY ISSUES AND RESPONSES**

2.1 Within the representations made by the objectors and their solicitors in October 2006 six main issues are raised:

- i) The accuracy of the submitted plans and differences between those approved in 2003, the minor amendment and the current application.
- ii) Whether or not condition 6 of the 2003 permission (requiring details of slab and ground levels to be submitted) has been discharged.
- iii) The validity of minor amendment plans approved in May 2005.
- iv) The fact that the application was not advertised as a departure.
- v) The manner in which the Forestry Officer's comments were reported
- vi) The Officer's report did not assess the development against the criteria in Policy H12 (the replacement dwelling policy)

i) The accuracy of the submitted plans and the differences between those approved in 2003, the minor amendment and the current application

2.2 The objectors' and their solicitor's representations have drawn attention to what they believe to be inaccuracies in the submitted drawings. It is stated that, in respect of the drawing which showed the relationship between the proposed house and neighbouring property, Wildwood, the proposed dwelling is shown built 'into' the ground whereas on all the other submitted drawings it is on the ground. They argue that as a result there is a discrepancy between the submitted drawings of 0.7 metres. Drawing 9 (submitted with the original application) and 9A (submitted with the minor amendment) show the roof height of the dwelling to be some 0.7 metres lower than all the other drawings.

2.3 The objector's view is that differences between the 2003 planning permission, the minor amendment plans and the current application were misrepresented in the officer's report and presentation to the Planning Committee on 11 October 2006.

2.4 It is their opinion that the increase in the height of the dwelling sought by the minor amendment was 0.53 metres and the dwelling as built is a further 1.6 metres higher, making it some 2.13 metres higher than the dwelling originally approved in 2003.

2.5 Attention is drawn to the fact that the officer's original report included, in its appendices, a plan numbered P9B. This plan was supplied to Monson when they were instructed to make a comparison survey between the approved, minor amendment and as built plans in July 2006. As this plan did not form part of the 2003 planning application, the subsequent minor amendment or the 2006 planning application it should not have been referred to.

2.6 The objectors state that drawing No P9/C, submitted with the current retrospective application, is misleading and inaccurate in respect of the distance to Wildwood's boundary and the overall height of the dwelling as built.

The applicant's response

2.7 In response to this, the applicant's solicitor has stated that it must be obvious to anyone involved in this matter that this is an extremely difficult site. In their opinion Condition 6 of

the 2003 approval (requiring details of ground and slab levels to be submitted) was a starting point for agreeing ground and slab levels and thus the resulting dwelling height. Whilst it is accepted that a plan showing a datum point and annotated ground and slab levels of the dwelling was never produced, a datum point was set on the site and agreed by the planning case officer. It was by reference to that datum point that the house was constructed. The Monson survey has erroneously taken the top of the neighbour's boundary fence as a datum point. The differences between heights on Monson's survey and the applicant's drawings are due to this erroneous datum point.

- 2.8 In the applicant's opinion the minor amendment plan approved in May 2005 allowed an overall increase in the ridge of the dwelling of 1.2 metres and the dwelling as built has been erected in accordance with discussions held on site, pursuant to the requirements of Condition 6.

The officers' response

- 2.9 It is recognised that the plans submitted as part of the 2003 application and subsequently approved as a minor amendment lacked any reference to a clear datum point. Nevertheless the drawings 9 and 9A (submitted with the 2003 approval and minor amendment respectively) entitled 'relationship of new house to adjoining property' showed the boundary fence and the profile of Wildwood. It therefore produced an expectation of the development's likely relationship with Wildwood.
- 2.10 In comparison to the cross section drawing accompanying the 2003 approved plans and the Council's expectation of the resulting relationship, the dwelling as built on site is 2.13 metres higher and, in comparison with the plans approved as a minor amendment, the dwelling as built is 1.6 metres higher. Officers accept that the differences between the respective plans were incorrectly explained in the officer's original report to the Planning Committee. Comparisons had been made with a drawing numbered P9B which the applicant supplied during informal discussions with the case officer in June 2006. As referred to in paragraph 2.5 of this section, Plan P9B did not form part of a formally submitted set of plans and it should not have been referred to.
- 2.11 The issue of whether or not the applicant has satisfactorily discharged the requirements of Condition 6 (requiring slab and ground levels to be submitted) is discussed in greater detail below. However, for the avoidance of doubt and irrespective of whether the condition was discharged or not, a fresh planning application was required for the retention of the dwelling as built because there had been a material change in the size and elevational treatment of the development namely:

- i) the overall height of the dwelling differed to that shown on the drawings showing the relationship with Wildwood (Drawings 9 and 9A)
- ii) the position of a window (W11 on north elevation) and some doors had been changed to windows (DW6 and DW8 on north elevation)
- iii) the cill height of two windows in the west elevation had been raised

Officers accept that drawing P9C originally submitted with the current application is difficult to read because it shows a perspective. At the Council's request the applicant provided a replacement drawing which is more directly comparable to drawings 9 and 9A. Drawing No P9/C1 was received on 7 March 2007. Neighbours and the Parish Council were notified of the receipt of this further plan and their comments are reported in the second section of the report under consultations and representations.

ii) Whether or not Condition 6 of the 2003 planning permission (the submission of level details) has been discharged

The objectors' representations

- 2.12 The objectors have drawn attention to the fact that Condition 6 of the 2003 approval stipulates that prior to the commencement of any development detailed plans showing ground levels of the site and slab levels of the proposed dwelling shall be submitted to and approved in writing by the Local Planning Authority. They state that the only plans submitted prior to the commencement of the development were those accompanying the original application P03/E0584 and those subsequently approved as a minor amendment.
- 2.13 In their view any verbal agreement with the case officer does not constitute the discharge of Condition 6 nor does a letter dated 25 July 2006 sent by the case officer because:
- i) work on the development was well underway by the date of the letter; and
 - ii) there are no plans to show the position of the verbally agreed datum marker.
- 2.14 In the objectors' opinion any agreement by the Council of the levels described by the applicant 'would have constituted an act of gross negligence - given the material alteration in the resultant relationship between the new dwelling and Wildwood' compared to that shown on the 2003 planning approval and subsequent minor amendment.

The applicant's response

- 2.15 The applicant's solicitor's view is that Condition 6 of the 2003 approval was the starting point for ground and slab levels to be agreed and approved. Whilst the applicant acknowledges that a detailed levels plan showing a datum point was never produced, he states that a clear and undisputed datum point was agreed on site. It was with reference to this that the level for the ground floor was agreed by the case officer on 4 August 2005. Although the verbal agreement given to a wooden level marker was not formalised by the submission and approval of a plan, the case officer confirmed in telephone conversations and emails that the slab level for the ground floor had been agreed on site by reference to the datum marker and a tree planted in the garden. The applicant is adamant that he described on site the final height of the building 'in relation to the height of Wildwood' and a 'particular tree near the boundary of Wildwood and Woodside' and that the case officer indicated her verbal agreement to that. He states that the dwelling has been erected in accordance with the discussions on site but its final height is actually slightly lower than the case officer agreed would be acceptable. The current retrospective application was submitted 'at the invitation of SODC' and is without prejudice to the issue of whether it was in fact strictly necessary.

The officers' response

- 2.16 Following receipt of a letter from the applicant's architect explaining the design was going to relate to an existing terrace level, a discussion took place on site with the case officer regarding the intended slab level. The case officer subsequently confirmed in writing that the slab level for the ground floor of the main dwelling was agreed by reference to a datum marker and an existing tree following the site meeting.
- 2.17 Other than part of a section through the dwelling submitted on 28 July 2005, no other plans were formally submitted pursuant to this condition. Work had clearly commenced in advance of the written approval being given. Had the case officer been fully aware that the slab levels described on site were going to have the effect of increasing the overall height of the dwelling, your officers consider that it was unlikely that agreement would have been given to them pursuant to the planning condition. Whilst it is acknowledged that the applicant strongly disagrees with this opinion the variances, described in paragraph 2.12,

with both the 2003 approval, its accompanying design and access statement and the minor amendment plans are such that your officers consider that the applicant cannot rely on the verbal and written approval he was given in August 2005 and May 2006 respectively as having discharged condition 6.

iii) The validity of the minor amendment plans

- 2.18 In April 2005 the applicant sought the Council's agreement to amendments to approved plans (planning application P03/E0584). A set of plans, drawing numbers P2A – P9A were received on 29 April 2005. It is the Council's normal practice to make the relevant Parish Council and neighbours aware of the receipt of such plans and seek their views.

The objectors' representations

- 2.19 The objectors have stated that they did not receive a letter advising them of the minor amendment. Had they received such notification they would have objected because, they state, the impact on their amenities arising from the increase in the roof height of the new dwelling (which they state to be 0.53 metres) is unacceptable. If this objection had been received the applicant would have been required to make a planning application for the proposed changes. They would have also objected to any subsequent planning application encompassing these changes.

The officer's response

- 2.20 When a minor amendment is requested it is the Council's standard procedure to send consultation letters to the owners/occupiers of neighbouring properties who have been notified of the original planning application. The Council's manual records indicate that, following receipt of the applicant's revised drawings, letters were sent to the Parish Council and owners/occupiers of neighbouring properties. However a later check of computerised records in November 2006 revealed that only the Parish Council had in fact been notified. The case officer who had arranged for the administrative section to issue these letters was unaware of this error when she wrote to the applicant confirming approval of the minor amendment on 25 May 2005 and when she prepared the original report in respect of the current application in October 2006. The Council therefore accept that, due to an administrative error, neighbouring landowners were not informed of the changes proposed by the applicant. Systems have been changed to ensure that such an error is not repeated in the future. As the minor amendment plans were approved in writing by the case officer on 25 May 2005 the applicant can build to either the original plans approved in October 2003 (P2-P9) or to those approved as a minor amendment in 2005 (P2A-P9A). The approval of the minor amendment did not remove the applicant's obligation to comply with all of the conditions attached to the 2003 permission. As the development has not been built in accordance with approved plans or the minor amendment plans the current application has provided the objector with a formal opportunity to raise representations that can be considered as part of the Committee's determination of this application.

iv) The fact that the application was not advertised as a departure

The objectors' representations

- 2.21 The objectors have drawn attention to the fact that the 2003 planning application was advertised by the Council as a departure to the Development Plan whereas the current application was not.

The officers' response

- 2.22 The 2003 application was advertised as a departure to the Development Plan in the local press and the matter was explicitly referred to on the site notice. The decision as to whether or not to advertise an application as a departure is at an officer's discretion and is taken at an early stage in the processing of an application. Where there is an obvious and clear-cut conflict with a development plan policy it is standard practice to draw attention to

this on both the site notice and in local press. As the 2003 and 2006 application are similar and in both cases the volume of the proposed dwelling significantly exceeds that of the original dwelling this inconsistency is acknowledged.

- 2.23 Arrangements were made for a site notice to be displayed and for an appropriate notice to be placed in the local press. This was carried out in April last year. The revised attached report is updated to reflect this correction.

v) The manner in which the Forestry Officer's comments were reported

The objectors' representations

- 2.24 The objectors have drawn attention to the fact that the Forestry Officer's comments are inaccurately reported in the officer's original report and, contrary to his advice, the planning officer suggested that suggested semi mature trees could be planted close to the common boundary.

The officers' response

- 2.25 It is accepted that the Forestry Officer's comments were not reported accurately within the original report. The Forestry Officer had confirmed the works already implemented have resulted in a considerable impact on the rooting area of two good specimen spruce and the works are likely to be detrimental to their health and longevity. He also stated that there is insufficient room for the planting on the eastern boundary other than hedging and this will not attain a height that will screen the new structure from the neighbouring dwelling. The Forestry Officer has subsequently advised that the current semi mature tree planting is inappropriate and native hedgerow species would be more appropriate.

v) The Officer's report did not assess the development against the criteria in H12 (the replacement dwelling policy)

The objectors' representations

- 2.26 The objectors have referred to the fact that the main body of the officer's report does not assess the application against the criteria within Policy H12 of SOLP 2011 and, in particular, does not refer to the increase in the volume of the dwelling as built comparative to the original dwelling on the site. In further representations the objectors and their planning consultant have expressed the view that it is inappropriate to assess the application against H12 (the replacement dwelling policy) as the bungalow that previously occupied the site was demolished in 2000. At that time no planning permission existed for its replacement and the view is expressed that 'there was at that stage an abandonment of use.'

The officers' response

- 2.27 The original officer's report included reference to Policy H12 in the list of relevant policies. However it is accepted that the five criteria in Policy H12 were not specifically addressed within the 'Planning Issues' section of the report. The second section of this report reassesses the application and therefore addresses this point. It also explains why officers consider H12 is the relevant policy and why officers are of the opinion that residential use has not been abandoned.