

SUBJECT DEVELOPMENT APPLICATION REPORTS ITEM 7

REPORT OF Head of Planning & Building Control

APPLICATION NO.	P09/E1033
APPLICATION TYPE	Full Planning
REGISTERED	15 October 2009
PARISH	Chinnor
WARD MEMBER(S)	Mr Geoff Andrews Mr Christopher Hood
APPLICANT	Mr and Mrs D Walsh
SITE	14 Malyns Close, Chinnor
PROPOSAL	Erection of new 3-bedroom semi-detached dwelling and associated parking on land adjacent to no.14. Demolition of existing outbuilding
AMENDMENTS	As amplified by Email from Agent dated 5 November 2009 and forestry report accompanying letter from Agent dated 5 November 2009.
GRID REFERENCE	475296/201424
OFFICER	Mrs H Moore

1.0 INTRODUCTION

1.1 The application is referred to Planning Committee because the Officer recommendation differs from the Parish Council's views.

1.2 The site lies within the main confines of Chinnor. Fourteen Malyns Close is an end terrace house and the site proposed for development comprises the side garden of that property. There is a walnut tree, protected by a tree preservation order, within the site. The houses in Malyns Close front onto an open area and access to the properties is via a service road to the rear.

2.0 PROPOSAL

2.1 The proposal is to demolish the existing garage and to erect a new end terrace dwelling within the side garden of the existing property. The new dwelling is set back some 2.8m back from the front of 14 Malyns Close, and comprises a 3 bed dwelling, to be constructed in brick with a concrete tiled roof. Two parking spaces would be provided for both the existing and the proposed dwellings, accessed from the service road to the rear.

2.2 A design and access statement, sustainability and arboricultural reports accompany the application, full details of which can be viewed on the Council's web site at www.southoxon.gov.uk In the design and access statement the agent considers that the proposed dwelling would be comparable in scale and form as the existing terrace and would provide satisfactory parking and garden areas for both properties. He advises that the development has been carefully considered to ensure that there would be no adverse impact on the TPO walnut tree. This has been achieved by

setting the proposed house back from the tree and by providing alternative sources of light to those rooms facing the tree. In his view, the setting back of the proposed house would not adversely affect the existing property on the site, or any other property.

- 2.3 On request, an Arboricultural Report was provided during the processing of the application. The Decay Detection Report, dated August 2007 and forming part of the Arboricultural Report, found that the probing of each cavity of the tree 'revealed that whereas there is some wood decay at each location where the drill was used, the proportion of wood affected is not likely to affect the structural integrity of the stem at this time. Nonetheless, it should be noted that the tree has a much reduced crown, possibly up to 60% of what would be expected in a tree of this age, and as such, the condition of the main stem could not be relied upon to support a full crown'.

An Arboricultural Method Statement accompanies the application which details the construction measures which the Forestry Consultant considers necessary to ensure the retention and protection of the TPO'd tree. A form of raft foundation is recommended to avoid damage to roots. The Consultant also considers that as the tree has a reduced crown, issues such as shading, leaf drop or honeydew are unlikely to arise and so there is unlikely to be any pressure by future occupiers for canopy reduction or removal of the tree.

- 2.4 Plans accompanying the application at **Appendix 1** show the location of the site and details of the proposals.

3.0 **CONSULTATIONS & REPRESENTATIONS**

- 3.1 **Chinnor Parish Council** – The application should be approved.

- 3.2 **OCC Highway** - No objection, subject to the provision of parking prior to the first occupation of the new dwelling.

- 3.3 **Forestry Officer** – Objection raised. Full comments are contained in the main body of the report.

- 3.4 **Waste Management Officer** – The provision of refuse and recycling storage should be conditioned on any planning permission.

- 3.5 **Health & Housing - Env. Protection Team** – Contamination investigation and remediation conditions should be imposed on any planning permission.

Neighbour responses – One neighbour in support –

- The proposal will not affect the existing property.
- A similar construction has been allowed at 16 Maylins Close.

6 neighbour letters of objection – the points raised include the following matters –

- Car parking in the area is already a problem, there are more cars than spaces available.
- The service road provides access to parking spaces for all residents, and is owned in part by all residents, each occupier is responsible for repairs and maintenance. Who would pay for repairs to damage caused by construction vehicles? One of the proposed parking spaces is on the service road.

- The proposals are likely to adversely affect the walnut tree protected by a TPO
- The proposals for the erection of a new dwelling have previously been refused, and the site is too small.
- The proposals would result in loss of light and view, and would devalue our property.

The proposals would result in unacceptable construction noise.

4.0 **RELEVANT PLANNING HISTORY**

- 4.1 P06/E1328/0 – Erection of new dwelling. Permission refused on the basis that the proposals would result in the loss of an important tree protected by a tree preservation order.

5.0 **POLICY & GUIDANCE**

- 5.1 South Oxfordshire Local Plan (SOLP) 2011 policies:

G2 Protection and enhancement of the environment
G6 Promoting good design
C9 Landscape features
D1 Good design and local distinctiveness
D2 Vehicle and bicycle parking
D3 Plot coverage and garden areas
D4 Privacy and daylight
D8 Sustainable Design
D10 Waste management
H4 Provision of housing in towns and larger villages
T1 and T2 Transport Requirements

South Oxfordshire Design Guide 2008
PPS3 Housing
PPS1 Delivering Sustainable Development

6.0 **PLANNING CONSIDERATIONS**

- 6.1 The main issues to be considered in the determination of this application are as follows –

- 1) Whether the principle of the erection of a dwelling on the land is acceptable;
- 2) Whether the details of the dwelling are acceptable and would provide satisfactory amenities for future occupiers;
- 3) Whether the development would adversely affect adjoining properties;
- 4) Whether the access and parking proposals are satisfactory;
- 5) Whether the proposals would be likely to lead to the loss of the walnut tree, and if so, whether the loss would be acceptable.

The Principle

- 6.2 Policy H4 of the South Oxfordshire Local Plan states that the erection of housing within the larger villages of the District will be permitted provided that :-

- an important space of public, environmental or ecological value is not lost, nor an important public view spoilt,
- the design, height, scale and materials of the proposed development are in keeping with its surroundings,
- the character of the area is not adversely affected, and

- there are no overriding amenity, environmental or highway objections.

6.3 The site lies on the edge of Chinnor which is one of the larger villages in the District where the principle of residential development is acceptable subject to the above criteria being met. The site forms the side garden of an existing property and the development of the site would not result in the loss of a space which has important recreation or amenity value, nor would it result in an extension of development into the open countryside or the loss of an important public view. The remaining criteria are discussed below.

Details of the dwelling

6.4 The proposed dwelling represents the continuation of the terraced form, to be constructed in materials to match existing dwellings. Although the new dwelling would be set back from the front of 14 Malyns Close by some 2.8m, the appearance of the new dwelling would be acceptable. The new three bed dwelling would provide a reasonably sized garden area, some 85 sq.m, and would leave the existing property with a garden area of some 60 sq.m. The size of garden areas would be compatible with adjoining properties. As such, Officers consider the detailing of the dwelling to be acceptable.

Impact on adjoining properties

6.5 Whilst the proposed dwelling would lie partly behind the adjoining dwelling, it would lie to the north of that property and should not adversely affect the residential amenity of that property. The dwelling would lie some distance from other adjacent properties and accordingly should not result in the loss of light or undue overlooking. The loss of a view is not a material planning consideration. Accordingly, Officers consider that the proposed development would not significantly adversely affect the amenity of adjoining residential properties.

Access and parking.

6.6 Access to the site would be taken along the access road to the rear of the property. The access road serves properties in Malyns Close and Springfield Drive. Whilst neighbours have expressed considerable concern about using this road as access to the new property in terms of ownership and rights of way, that is a private matter between those parties that have an interest in the road and is not a material planning consideration. In addition, congestion along the access track and noise from construction vehicles is also not a reason to refuse planning permission. Oxfordshire County Council as highway authority are satisfied that the access road is suitable to serve an additional dwelling and that parking for the existing and proposed dwelling could be provided within the site. Whilst some neighbours have commented that one of the proposed parking spaces is shown on part of the access track, all parking spaces are shown to be on land owned by the applicant. Accordingly, Officers consider the proposal is satisfactory in terms of highway safety.

The walnut tree.

6.7 Policy H4 of the Local Plan advises that development should not be permitted if it would adversely affect the character of the area, or result in amenity or environmental objections. Policies C1 and C9 confirm that any development that would cause the loss of distinctive landscape features will not be permitted where those landscape features make an important contribution to the local scene. Where development is acceptable in principle it should protect important landscape features.

- 6.8 As stated above, the site contains a walnut tree protected by a tree preservation order. The tree is one of four walnut trees which form an attractive soft edge to the built development with the open agricultural land beyond. As such, the trees contribute to the character of the area and the loss of the tree would detract from the character of the area. The plans accompanying the application indicate that the new house would lie some 6m from the trunk of the tree. Planning permission has already been refused (application P06/E1328/0) for the erection of a new house located some 4-5m from the tree on the basis that Officers considered the development would result in the loss of the walnut tree.
- 6.9 The issues relating to the tree are crucial in determination of the application, and accordingly, comments from the Council's Forestry Officer and the agent are quoted in full.
- 6.10 The Council's Forestry Officer's initial comment on the application – 'The walnut tree in the front garden is protected by a tree preservation order. The footprint of the proposed house is within the root protection area of the tree, it is therefore foreseeable the root system will be adversely affected. The tree report has a number of contradictory statements referring to the status and condition of the tree. The report states the tree should be classed as category R (as per BS:5837, 2005), a judgement not made by the author of the report who states "it appears sound and capable of standing for a number of years". It should be classified as B and as such be seen as a constraint to development. The value of the tree has also been formally recognised by the Government Office of the South East, who dismissed an appeal against the council's refusal of an application to fell the tree in 2006. A further decision to refuse consent to fell the tree was made by the council in March 2009, based on its condition. The canopy of the tree will be within 3m from the western elevation restricting light into the master bedroom and drawing room. The tree will also significantly reduce the amount of useable garden space. It is therefore foreseeable that occupants will consider the tree to be overbearing, which will cause further pressure on the removal of the tree. I object to the application due to the foreseeable damage it will have on a protected tree that contributes to the character of the surrounding area'.
- 6.11 In response to the Forestry Officer's comments, the agent commented –

'We have gone to great lengths to ensure that the development proposals are fully inline with the guidelines of BS5837, which have been prepared by your councils previous Tree Officer and who was responsible for placing the preservation order on the Walnut Tree in the first place. In fact, I would like to deal with each point that the Tree Officer has raised separately as follows: -

Damage To Tree Roots

Great care has been taken to ensure that no damage will take place to the tree root system. To this end, we have specified Abbey Pynford 'Housedeck' System, a small bore pile system whereby the front perimeter wall is supported on a cantilevered raft foundation. This is a specialist system for working closely to trees whereby the actual foundation construction is outside the root protection zone. Therefore no damage will take place to the existing tree root system. This is a recognised accepted system.

Damage To The Amenity Of The New Dwelling

To say that the retaining of the existing tree would have a negative effect upon the amenity of the new dwelling and in particular the loss of daylight to the living room /

master bedroom suggests that the writer has not even considered the proposed plans for the new dwelling. If you refer to the proposed elevations, you will notice that the whole orientation of the dwelling has been designed to take advantage of the open views and light from over the open fields adjacent. In fact the openings to this elevation are so generous that it would not affect the internal quality of the rooms in question if there were no windows facing the Walnut Tree.

With regards to the comments relating to the tree being detrimental to the amenity of the dwelling, I would like to point out that, firstly the Walnut Tree is located within the front garden of the proposed dwelling not the rear garden and the size of the rear garden is in excess of all the other properties within the terrace. In addition the new dwelling would have the additional benefit of having a private front garden, which none of the other properties in the terrace enjoy. Therefore to say that retention of the tree would prove detrimental to the amenity space or the living conditions of the new dwelling is simply unfounded.

Character Of The Area

Every effort is being made to retain the Walnut Tree so that there will be no change to the character of the area and this application successfully strikes the balance between making best use of previously developed land and protecting and enhancing the character of the area'.

6.12 In maintaining his objection to the proposal, the Council's forestry officer commented:

In response to Mr. Burnaby-Smith's comments I place emphasis on the future relationship between the existing or replacement tree and the new house, which I believe to be unsustainable.

The presence of any structure, even small bore piles and foundations, will still disturb the roots, soil and rainwater distribution in the rooting area of the tree and reduce the available area for rooting for the replacement tree when the existing one is felled (as a condition in accordance with the TPO legislation). The tree's current size is relatively small for a walnut due to extensive surgery over the years and as a result of retrenchment of the crown due to old age. A vigorous semi-mature tree will be almost as large with plenty still to grow (potentially >20m height by >6m radial crown spread). The tree will drop leaves, twigs, fruit and other detritus throughout the year and this causes a nuisance especially if the crown overhangs the house as a fully mature replacement would do. The process of natural retrenchment will also be a major concern as the tree gets older and deadwood and defects start to appear, since the frequency of use of the "target area" will have been significantly increased under the tree.

Encroachment of buildings towards the tree will inevitably result in increased pressure to remove or excessively prune the existing or replacement tree. The council has to be reasonable in its approach to deciding applications for works to protected trees and if a new house is built, the presence of the house and its proximity to the tree will give more weight behind future applications to fell or excessively prune. There is a history of two refusals to fell the tree since 2006 and on appeal the government officer supported the council. The previous application to build a new dwelling here was refused partly for tree issues and I do not consider that anything has changed, since it is the reduction of overall space for the existing or replacement tree (above and below ground), which is the fundamental issue'.

6.13 The Council's Forestry Officer accepts that the tree may only have a relatively limited lifespan in tree terms. However, the proposed tree quality assessment of category 'B' suggests that this would be a minimum of 20 years. Even if the tree was to be removed, the tree preservation order legislation places the landowner under a duty to plant a replacement tree in the same place. The age and reduced vigor of this mature tree mean that it will be particularly susceptible to changes to the surrounding ground and environmental conditions that will inevitably result from the development proposals. A replacement tree of the same species is considered appropriate for the current site conditions and necessary to sustain the significance of the landscape feature created by the line of walnut trees.

6.14 This site has a number of walnut trees running along the north western fence line between the properties on Malyns Close and the paddock/field beyond. Officers consider it would be good practice to ensure retention of this line of trees to enhance the amenity value and sylvan character of the area. Accordingly, development of the site by the erection of a house and the consequent impact on the health of the tree would result in the loss of a significant landscape feature and detract from the rural character of the area. This opinion is supported by the recent TPO appeal dismissal. In addition, the planting of a replacement tree, as required by legislation, would result in the planting of a new tree much too close to the proposed dwelling.

7.0 **CONCLUSION**

7.1 The development would have an adverse impact on the health of the adjacent walnut tree, protected by a tree preservation order, and would result in the loss of the tree, detracting from the character of the area. The planting of a replacement tree would result in the planting of new tree unacceptably close to the proposed dwelling, contrary to good practice.

8.0 **RECOMMENDATION**

8.1 **That planning permission be refused fro the following reasons:**

- 1. The development is contrary to Policies H4, C1 and C9 of the South Oxfordshire Local Plan 2011. The proposals would adversely affect the health of a walnut tree, leading to the loss of the tree, which is the subject of a tree preservation order, and contributes significantly to the character of the area. As such, the proposal would result in the loss of an important landscape feature and would detract from the established character of the site which lies on the edge of the built up area of Chinnor. The planting of a replacement of the tree would result in the planting of a new tree unacceptably close to the proposed dwelling.**

Author Helen Moore
Contact No. 01491 823732
Email Add. planning.east@southoxon.gov.uk