

APPLICATION NO.	P22/S2405/FUL
APPLICATION TYPE	FULL APPLICATION
REGISTERED	29.6.2022
PARISH	WHEATLEY
WARD MEMBER(S)	Alexandrine Kantor
APPLICANT	Mr Taylor
SITE	67 Church Road Wheatley, OX33 1LU
PROPOSAL	Variation of conditions 2 (approved plans) & 9 (Restriction on Use of Roof as Balcony) on planning application P20/S2234/FUL, to allow for new window and new roof terrace on second floor.
	The conversion of the existing dwelling into two, two bedroom flats through the demolition of the existing single storey extension and the addition of a part
	single storey, part two storey extension and associated landscaping.
OFFICER	Kim Gould

1.0 INTRODUCTION AND PROPOSAL

- 1.1 This report sets out the justification for the recommendation to grant planning permission having regard to the development plan and other material planning considerations. The application is referred to Planning Committee because the recommendation to approve planning permission conflicts with the views of the Parish Council who object to the application.
- 1.2 No 67 Church Road is a detached, two-storey dwelling which is located within the built-up limits of Wheatley outside any area of restraint. It has recently been converted into 2 flats.
- 1.3 Church Road is primarily a residential area comprising a mixture of detached, semi-detached, terraced houses and flats with a wide variety of different styles and materials.
- 1.4 The site is identified on the map extract **attached** at Appendix 1.
- 1.5 Planning permission was granted under planning ref P20/S0049/FUL for the conversion and extension of the existing dwelling to create 2 x 1 bed flats.
- 1.6 Planning permission was subsequently granted under ref P20/S2234/FUL for a very similar scheme but to create 2 x 2 bed flats.
- 1.7 This current application is a Section 73A application which seeks to vary conditions 2 and 9 of planning ref P20/S2234/FUL. The key change is the

creation of an additional second floor balcony which is accessed via full length sliding doors.

- 1.8 The application seeks retrospective planning permission as the building work is very near complete,.
- 1.9 The planning system allows for retrospective planning applications to be made under S73A of the Town and Country Planning Act 1990 (as amended). The undertaking of development without the relevant planning permission of itself is not a breach of planning control. The NPPF also advises that formal enforcement action, should not be taken simply to regularise unauthorised development.
- 1.10 Reduced copies of the plans accompanying the application are **attached** at Appendix 2. Full copies of the plans and consultation responses are available for inspection on the Council's website at www.southoxon.gov.uk
- 1.11 There is a current enforcement file open on this site in relation to the additional second floor balcony. Any further investigation/action is on hold pending the determination of this current planning application.
- 1.12 The approved elevation and floor plans under ref P20/S2234/FUL are shown below:



1.13 The proposed elevations as built are shown below :



2.0 SUMMARY OF CONSULTATIONS & REPRESENTATIONS

2.1 Wheatley Parish Council – Objection

County Archaeological Services– No Objection

Neighbours Objection (3)

- Privacy panels should be wider than constructed.
- Loss of privacy
- Roof lantern would disturb sleep through light pollution
- Glass balustrade will reduce privacy
- Strongly object -doors at second floor will reduce privacy
- Two terraces for one flat are not necessary
- Neighbouring development at 73,73a and 73b Church Road had to remove balconies due to adverse impact on neighbour amenity.
- No 67 church Road is currently on the market and if the second-floor balcony is approved, this will set a precedent for any future building.
- Already built balcony and installed doors instead of windows – contravened planning condition.

- Would have objected at the time of the original planning application had we known it was intended to build a second-floor balcony.

3.0 RELEVANT PLANNING HISTORY

3.1 [SE21/174](#) -

Flats not built in accordance with the approved plans for P20/S2234/FUL , 2nd floor terrace.

[P20/S2234/FUL](#) - Approved (17/08/2020)

The conversion of the existing dwelling into two, two bedroom flats through the demolition of the existing single storey extension and the addition of a part single storey, part two storey extension and associated landscaping.

[P20/S0049/FUL](#) - Approved (02/03/2020)

The conversion of the existing dwelling into two, one bedroom flats through the demolition of the existing single storey extension and the addition of a part single storey, part two storey extension and associated landscaping.

4.0 ENVIRONMENTAL IMPACT ASSESSMENT

4.1 N/A

5.0 POLICY & GUIDANCE

5.1 Development Plan Policies

South Oxfordshire Local Plan 2035 (SOLP) Policies:

DES1 - Delivering High Quality Development

DES10 - Carbon Reduction

DES2 - Enhancing Local Character

DES5 - Outdoor Amenity Space

DES6 - Residential Amenity

DES8 - Promoting Sustainable Design

DES9 - Renewable Energy

ENV3 - Biodiversity

H1 - Delivering New Homes

H4 - Housing in the Larger Villages

STRAT1 - The Overall Strategy

TRANS5 - Consideration of Development Proposals

5.2 Neighbourhood Plan

Wheatley Neighbourhood Plan (WNP) made May 2021 policies

H1 Design and Character Principles

P1 Parking

EN1 Biodiversity

5.3 Supplementary Planning Guidance/Documents

South Oxfordshire and Vale of White Horse Joint Design Guide 2022

5.4 National Planning Policy Framework and Planning Practice Guidance

5.5 Other Relevant Legislation

Human Rights Act 1998

The provisions of the Human Rights Act 1998 have been taken into account in the processing of the application and the preparation of this report.

Equality Act 2010

In determining this planning application the Council has regard to its equalities obligations including its obligations under Section 149 of the Equality Act 2010.

6.0 PLANNING CONSIDERATIONS

6.1 When assessing Section 73A applications the Council can only consider the original conditions and the reasons for applying the conditions; new conditions can be attached but only in so far as they apply to the original condition.

6.2 Paragraph 015 of the NPPG notes that where an application under Section 73A is granted, the effect is the issue of a new planning permission, sitting alongside the original permission which remains intact. It further advises that to assist with clarity, decision notices for the grant of planning permission under Section 73A should also repeat the relevant conditions from the original planning permission unless they have already been discharged.

6.3 The planning considerations for this application are therefore:

- Any changes to the development plan or site circumstances.
- Design and character
- The impact on neighbour amenity
- Unauthorised development
- Conditions

6.2 Changes to the development plan or site circumstances

Since the original 2020 planning permission was granted, the Development Plan has changed with the adoption of SOLP 2035 in December 2021.

However, the current Development Plan has not changed the underlying thrust of policy or advice in relation to this proposal. Extensions to and change of use of existing buildings within the built-up areas of the larger villages continues to be acceptable in principle. In addition, the Joint Design Guide has recently been adopted. As this application was registered prior to the formal adoption of the Joint Design Guide it has been assessed under the previous Design Guide.

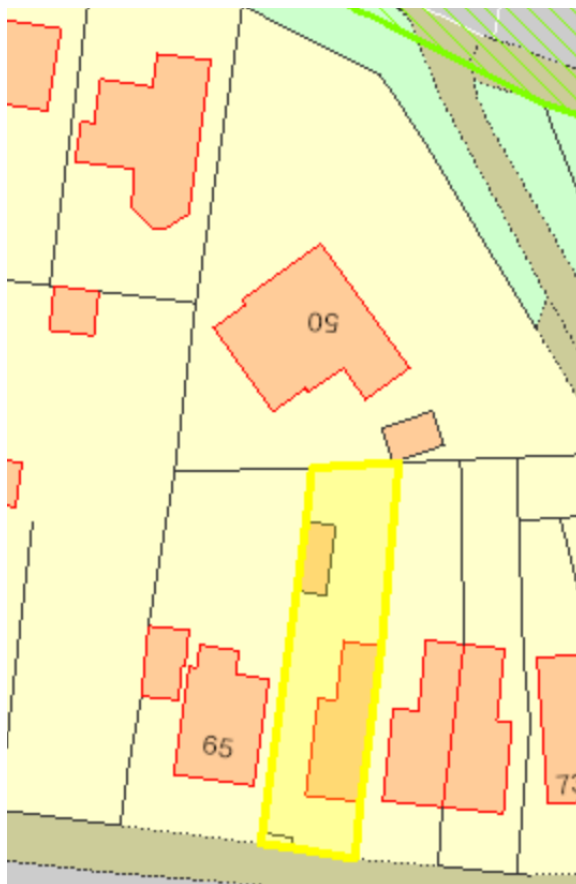
6.3 Design and character

The current proposal seeks to alter the fenestration details in the rear elevation of the building from casement windows to full length sliding doors and to introduce a balcony at second-floor level including timber privacy panels at either side with a slight return at either end together with a glazed balustrade. Overall, the scale and general appearance of the development has not significantly changed from the originally approved scheme. The increased size of the sliding doors and privacy panels to the second floor are now similar to the glazing and privacy panels approved on the original permission for the first floor. The proposal does not have an unacceptable impact on the established character of the area and accords with policy DES1 and DES2 of the SOLP.

6.4 **Residential amenity**

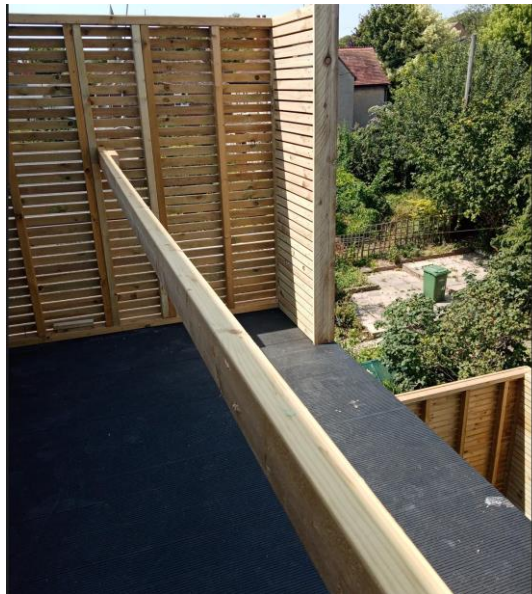
At the time of the original application, neighbour impact was assessed under Policy D4 of the 2011 SOLP, which sought to ensure that development did not result in significant harm to the occupiers of neighbouring properties. Policy D4 has been superseded by Policy DES6 of the SOLP 2035 which seeks to ensure that development does not result in significant adverse impact on the amenity of neighbouring uses, by way of, for example, dominance, visual intrusion, daylight and loss of privacy.

- 6.5 The Parish Council and neighbours to the north (50 London Road), north west (48 London Road) and east (69 Church Road) have objected to this application on the grounds that the introduction of the second floor balcony and full length doors would result in an unacceptable impact on their amenity due to an increased perception of being overlooked.



- 6.6 The neighbour at 50 London Road is orientated so that the side of that property faces the application site,. The second-floor windows of 67 Church Road are some 17m to the joint boundary with a distance of some 21 metres to the nearest part of no 50 London Road. The Joint Design Guide recommends a separation distance of some 12m between the rear of one property and the side of another.
- 6.7 There is a distance of some 35 m between the rear of the application property and number 48 London Road. This well exceeds the recommended back-to-back distance of 25m as set out in the Joint South Oxfordshire Design Guide.

- 6.8 In assessing the impact on the neighbour either side of the application site consideration has to be given to what was originally granted. A first-floor balcony was permitted under the original planning permission subject to a condition which required privacy screens to be erected and maintained to prevent any direct overlooking into the rear gardens of numbers 65 and 69 Church Road. The current proposal seeks retrospective consent for an additional balcony at the second floor with privacy screens. In addition, a glass balustrade is proposed which would prevent occupiers of the flat walking to the edge of the roof terrace and therefore reducing views into gardens either side. Given what was originally granted planning permission, I do not consider that the additional balcony with the privacy schemes and glass balustrade would result in unacceptable harm to the amenities of occupiers of neighbouring properties as the level of overlooking is not materially different in my view. The photo below shows the privacy screen facing number 65 Church Road. The timber horizontal bar is the point where a glass balustrade would be installed.



- 6.5 **Intentional unauthorised development**
This application seeks to address differences between what was approved under planning ref P20/S2234/FUL and what has been built on site. This is a retrospective application as the development is now complete. The Planning System allows for retrospective planning applications to be made under S73A of the Town and Country Planning Act 1990 (as amended) and the undertaking of development without the relevant planning permission in itself is not a breach of planning control. The NPPF also advises that formal enforcement action should not be taken simply to regularise unauthorised development.
- 6.6 The Government published a planning policy statement in 2015 that indicated “intentional unauthorised development” could be a material planning consideration. However, appeal cases have shown that even where this can be proven it is unlikely that this reason alone is enough to refuse planning

permission or take enforcement action. It can be considered, along with all the other material considerations relevant to the case.

- 6.7 In this case I conclude that the unauthorised nature of the development does not present a reason in isolation to refuse planning permission.

7.0 Conditions

Where an LPA approves a Section 73A application, it is issuing a new planning permission. As such, conditions attached to the original planning permission can be altered, if necessary, to reflect the discharge of conditions or in some cases, the conditions are no longer relevant.

- 7.1 The planning permission granted under reference P20/S2234/FUL was subject to the following conditions:

1. Commencement 3 years
2. Development in accordance with approved plans
3. Development to be built using materials as shown on the approved plans.
4. Prior to the occupation of the flats the proposed means of access is to be formed and constructed in accordance with the local highway authority's specification.
5. Vision splay dimensions to be provided prior to occupation.
6. Parking and turning areas to be provided as per approved plan
7. No surface water from the development to be discharged into the adjoining highway.
8. Proposed privacy panels of 2.4m to be erected and retained.
9. The permitted roof terrace shall not be adapted to enable access onto the flat roof and no part of the flat roof shall be used as a balcony or sitting out area without the prior grant of planning permission.

- 7.2 In relation to this Section 73A application, all conditions are repeated unless they have been discharged or are no longer relevant. For clarification the status of the original conditions is set out below.

1. Commencement – not relevant as development has already commenced
2. This current application seeks to vary this condition. Current plan references to be included in this condition.
3. Development built so materials condition no longer relevant
4. Provision of approved access prior to occupation – to be repeated – flats were not occupied at the time of my site visit.
5. Provision of approved Vision splays prior to occupation– repeated
6. Provision of approved Parking and turning areas prior to occupation – repeated
7. No surface water to run off to highway– to be repeated
8. Provision of privacy panels to first and second floor prior to occupation and retention– amended to include second floor in addition to first floor
9. Remaining roof terrace above flat 1 not to be used for sitting out – repeated.

7.0 CONCLUSION

- 7.1 The development as built, has a different impact on neighbour amenity than the originally approved scheme under P20/S2234/FUL as a result of a second-floor roof terrace. However, in your officers' opinion, this would not result in significant adverse impact on neighbours' amenity. The full length second floor windows and the roof terrace would not result in any additional material loss of privacy and planning permission should be granted.

8.0 RECOMMENDATION

That planning permission is granted subject to the following conditions

1 : Approved plans

2 : New vehicular access *

3 : Vision splay dimensions *

4 : Parking & Manoeuvring Areas Retained *

5 : No Surface Water Drainage to Highway

6 : Restriction on Use of Roof as Balcony

7 : Prevention of overlooking

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