

<b>APPLICATION NO.</b>	<a href="#">P15/S1546/FUL</a>
<b>APPLICATION TYPE</b>	FULL APPLICATION
<b>REGISTERED</b>	28.5.2015
<b>PARISH</b>	WHEATLEY
<b>WARD MEMBER(S)</b>	Toby Newman
<b>APPLICANT</b>	Mrs Sarah Harris
<b>SITE</b>	1 Coopers Close, Littleworth, OX33 1UA
<b>PROPOSAL</b>	Variation of condition 1 (drawing numbers) of planning permission P10/W1824/RM. Reserved Matters regarding P10/W0461/O - Layout, scale, appearance, the means of access, vehicle and cycle parking, sustainable forms of construction and the landscaping of the site.
<b>AMENDMENTS</b>	(As amended by amended plan No.15.969/01B received on 11 August 2015)
<b>GRID REFERENCE</b>	458840/205615
<b>OFFICER</b>	Rob Cramp

**1.0 INTRODUCTION**

1.1 The application is referred to the planning committee for decision as the officer's recommendation differs from that of the Parish Council.

1.2 The current application follows an enforcement investigation (SE13/111) into development which has been undertaken not in accordance with approved plans. Specifically, an area designated as 'open space' on the plans approved by planning permission P10/W1824/RM has been enclosed with a fence and incorporated into the garden area of one of the houses in the development.

**2.0 PROPOSAL**

2.1 No.1 Coopers Close is a two storey detached dwelling in a residential cul-de-sac in Littleworth. The site is identified on the Ordnance Survey extract **attached** at Appendix 1. It was formerly part of the Oxford to Wheatley railway line (now dismantled). This corridor now serves as a commuting route for wildlife, most particularly for Pipistrelle bats. The land is not subject to any special designation and is not subject to any tree preservation order.

2.2 Littleworth railway bridge is adjacent to the western boundary of the application site. It is otherwise surround on all sides by contemporary detached, semi-detached and terrace housing; and by a mobile home park which lies to the east in Beeching Way.

2.3 The property is one of seven dwellings in a development for which outline planning permission (P10/W0461/O) was granted in June 2010 and a reserved matter planning permission (P10/W1824/RM) was granted in March 2011. A copy of the approved site and landscape plan is **attached** at Appendices 2 and 3 respectively. These plans show the layout of the seven approved residential plots and a vacant area of land to the west of plot 1 designated as 'open space'. A footpath, which previously ran through the middle of the development site is shown diverted along the southern and eastern boundaries.

2.4 The development has not been implemented in accordance with these approved plans in that the area designated as 'open space' on the approved plan has been largely

enclosed by a 1.8m high close boarded fence and incorporated into the garden area of plot 1 in the development. It should be noted that this was done by the developer and not by the current owner/applicant who purchased the property in good faith.

- 2.5 The current application now seeks to regularise the above breach of planning control by seeking retrospective planning permission for an amendment to the approved site plan. A copy of the proposed amended plan is **attached** at Appendix 4.

### 3.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

- 3.1 Wheatley Parish Council – **Refusal** for the following reasons:

- The land is a significant public space that should not simply be incorporated into private garden;
- it is part of a continuous line of green space along the line of the old railway providing a corridor for wildlife;
- it is a significant part of the landscape of Littleworth, which should be left in its natural state;
- it should be left open to public view;
- the height of the fence is out of keeping with the character of the area;
- insufficient space is available outside the fence for vegetation cover;
- the original developer should be asked to reduce the height of the fence to 1.4m;
- The Highway Agency Historical Railways Estate has right of access over the land.

- 3.2 The Highways England Historical Railways Estate – **No objection** subject to the following comments: The current owners are aware of and respect the need for Highways England to access and maintain the bridge, and they understand that access can currently be obtained by the removal of fence panels if needed. This obligation for access (both pedestrian and potentially vehicular), to the bridge across the garden area should be noted on the approval.

- 3.3 Forestry Officer - **No objection** for the following reason:

- very limited usable space for public open space purposes.

- 3.4 Countryside Officer - **No objection** for the following reasons:

- the area along the line of the former railway and land immediately adjacent to the bridge was found to be part of a bat feeding area and commuting route during surveys conducted as part of the original planning application;
- a condition was used to secure the installation of a number of bat boxes in the trees and the new dwellings and to ensure that the area adjacent to the bridge remained undeveloped;
- the installation of the fence would not have any impacts on the local bat population or the ability of bats to feed or commute through the area as bats could easily fly over the fence and indeed would normally fly above this level;
- it does not appear that any significant clearance of the area has taken place other than that required to erect the fence and it is likely that this will quickly regenerate; and
- provided the area enclosed is not domesticated into formal gardens and native tree and scrub cover is maintained then there is not likely to be any impacts on the wildlife corridor.

- 3.5 5 x Neighbours - **Object** for the following reasons:

- important wildlife and green space corridor;
- loss of vegetation from the area has resulted in loss of birdlife from the area;
- in view of its natural importance, it should not be incorporated into a private garden;
- contributes to the local landscape;

- the land should be left open to public view with an open style fence not the existing unauthorised 1.8m high close boarded fence; and
- insufficient room for planting in front of the fence

#### 4.0 **RELEVANT PLANNING HISTORY**

- 4.1 On 5 July 1973 planning permission (P73/M0374) was granted for the filling and grading of the former railway cutting.
- 4.2 On 23 March 2009 the council refused an application (P08/W1339/O) for the erection of 11 dwellings. An appeal against this decision was dismissed on 25 November 2009.
- 4.3 On 23 June 2010 outline planning permission (P10/W0461/O) was granted for the seven dwellings, including 2 x 2 bedroom houses, 4 x 3 bedroom houses and 1 x 3-4 bedroom house.
- 4.4 On 8 March 2015 reserved matters planning permission (P10/W1824/RM) was approved, including Layout, scale, appearance, the means of access, vehicle and cycle parking, sustainable forms of construction and the landscaping of the site.
- 4.5 On 17 May 2012 planning permission (P11/S0157) was granted for an amendment to floor plans approved by application nos.P10/W461/O & P10/W1824/RM.
- 4.6 In 2013 an enforcement investigation (SE13/111) into development not in accordance with approved plans.
- 4.7 On 29 January 2015 planning permission (P14/S3797/HH) was granted for the conversion of garage to provide enlarged kitchen/dining room, utility room and downstairs cloaks room at No.1 Coopers Close.

#### 5.0 **POLICY & GUIDANCE**

- 5.1 South Oxfordshire Core Strategy policies  
CS1 - Presumption in favour of sustainable development  
CSB1 - Conservation and improvement of biodiversity  
CSEN1 - Landscape protection  
CSQ3 - Design
- 5.2 South Oxfordshire Local Plan 2011 policies;  
C4 - Landscape setting of settlements  
C6 - Maintain & enhance biodiversity  
C9 - Loss of landscape features  
D1 - Principles of good design  
D3 - Outdoor amenity area  
G2 - Protect district from adverse development

South Oxfordshire Design Guide 2008

- 5.3 National Planning Policy Framework (NPPF); and Practice Guidance

#### 6.0 **PLANNING CONSIDERATIONS**

- 6.1 The main issues to be considered in the assessment of the current application are:
- the 'fallback position'
  - use of land as 'open space'
  - character and landscape impacts
  - biodiversity impacts

- other material considerations

### **Fallback Position**

- 6.2 In assessing the current application consideration must be given to the owner's 'fallback position' (i.e. the extent to which the owner is lawfully entitled to develop the site without the need for express permission from the council).
- 6.3 In the circumstances of the present case the owner enjoys the benefit of permitted development rights that would ultimately allow for the erection of a 1.2m high close boarded fence adjacent to the highway in Coopers Close, without the need for the express permission of the council, being the height of the fence approved by planning permission P10/W1824/RM to the Coopers Close frontage. Elsewhere the owner is entitled to erect a 2m high close boarded fence without the need for express permission. This constitutes the owner's 'fallback position'.
- 6.4 The 1.8m high close boarded fence that has been erected to enclose the area of open space therefore exceeds the above permitted development rights along the Coopers Close frontage by 0.6m. The remainder of the fence along the western boundary, however, conforms to permitted development rights and must be regarded as lawful. In assessing the current application the planning committee must therefore consider the extent to which the fence as constructed exceeds the above described 'fallback position'; and whether the impact of the additional fence height to the Coopers Close frontage only (0.6m) is sufficient to warrant a refusal of the application and enforcement action to require a reduction in the height of the fence to comply with permitted development rights.

*[Note:- Although plans approved by planning permission P10/W1824/RM show the area of 'open space' to be enclosed by a 1.2m high post and rail fence (see plan **attached** at Appendix 4), there is nothing in the conditions to require the fence to be retained in this form following its initial construction. Planning permissions P10/W0461/O and P10/W1824/RM also contain no conditions removing permitted development rights under Class A, Part 2 of the General Permitted Development Order (GPDO) relating to the erection of fencing. It should also be noted that the application site is not subject to a tree preservation order. There is therefore no basis upon which to require existing trees or other vegetation to be retained indefinitely.]*

### **Use of land as 'Open Space'**

- 6.5 Although the area of land to the west of the development site was designated as 'open space', it is in private ownership and has never been intended for public use. With regard to its value as a potential 'public open space' the Planning Inspector in an appeal against the refusal of an earlier planning application (P08/W1339/O) made the following observation: "...it seems to me that its gradient, the proximity of trees and the presence of the adjoining railway bridge would not make this an especially attractive proposition. I can thus accord the offer little weight."
- 6.6 This area was designated as 'open space' on the approved plans specifically for the purpose of keeping it free of development in order to maintain the openness of the existing wildlife corridor, specifically for the commuting of bats. Faced with the proposition of having to keep and maintain a remnant piece of land which is not capable of development in its own right and that carries with it possible public liability risks, it is perhaps understandable that the developer sought to dispose of the land to the purchaser of plot No.1.
- 6.7 In this regard it is worthy of note that Policy D3 of the local plan draws no distinction between the merits of providing private outdoor amenity space or a shared amenity area within a new housing development. That is provided that adequate amenity space is included having regard to the size of the dwellings proposed and the character of

surrounding development and plot coverage standards. In the circumstances of the present case, each of the plots in the approved scheme has been provided with a garden area in excess of the minimum standards set out in the design guide.

- 6.8 The incorporation of the area previously designated ‘open space’ into the private garden of plot No.1 is compliant with policy D3 and design guide standards and makes good sense in terms of the ongoing care and keeping of the land. The use of the land as private amenity space does not diminish its value as a wildlife corridor (see further comments on biodiversity impacts below). In these circumstances it is not unreasonable for the owners to seek to retain the existing 1.8m high close boarded fence for privacy and security purposes.

#### **Character and Landscape Impacts**

- 6.9 Policy CSEN1 of the core strategy seeks to protect the district’s distinct landscape character and where possible enhance it. Policy CSQ3 provides that new development should respond positively to and respects the character of the site and its surroundings; and enhances local distinctiveness.
- 6.10 Policy C4 of the local plan states that development which would damage the attractive landscape setting of the settlements will not be permitted; policy C9 states that any development that would cause the loss of landscape features will not be permitted where those features make an important contribution to the local scene, and/or provide all or part of an important wildlife habitat and/or have important historical value; policy D1 seeks to protect and reinforce local distinctiveness and the character of the existing landscape; and policy G2 seek to protect the districts settlements from adverse development.
- 6.11 In the circumstances of the present case, the application seek to amend the approved scheme in two fundamental ways: 1) the incorporation of ‘open space’ to the west of the site into the garden space of plot No.1; and 2) the erection of a 1.8m high close boarded fence along the highway frontage to Coopers Close to enclose the land. In terms of their impact on the landscape character and distinctiveness of the site and its surrounding, these amendments do not in themselves have a materially greater impact than the approved scheme or the fallback position as described in paragraphs 6.2 and 6.3 above. Nor does the development diminish its value as a wildlife corridor.
- 6.12 The proposed amended scheme is therefore compliant with policies CSEN1 and CSQ3 of the core strategy; and policies C4, C9, D1 and G2 of the local plan relating to good design and the protect of the landscape, character and local distinctiveness of the site and its surroundings

#### **Biodiversity Impacts**

- 6.13 Policies CSB1 of the core strategy and C6 of the local plan seek to ensure that in the consideration of proposals for new development the biodiversity resources of the district are maintained and enhanced. Habitats, habitat links and wildlife corridors of appropriate scale and kind will be required to ensure there is no net loss in biodiversity resources.
- 6.14 Under the approved development scheme, the area to the west of the site was designated ‘open space’ for the specific purposes of maintaining the openness of an existing wildlife corridor for bats. The installation of bat boxes was required as a condition of planning permission in order to protect and enhance the habitat. These requirements have been met in the implementation of the development.
- 6.15 The council’s countryside officer has confirmed that the installation of the existing 1.8m

high fence “*would not have any impacts on the local bat population or the ability of bats to feed or commute through the area as bats could easily fly over the fence and indeed would normally fly above this level*”.

- 6.16 The proposed amended plan is compliant with policy CSB1 of the core strategy; and policy C6 of the local plan, relating to the protection of biodiversity, subject to the imposition of a condition removing permitted development rights under Classes A, E, F and H of Part 1 of the General Permitted Development Order to prevent the land from being further developed without the council’s express permission.

**Other Material Considerations**

- 6.17 The Highways England Historical Railways Estate has a registered right of access over the land for the purpose of maintaining the bridge that adjoins the land to the west.
- 6.18 Provided that the land remains free from further development, by the removal of permitted development rights, the use of the land as private open space as part of the extended garden area of No.1 Coopers Close will place no greater restriction on Highways England’s ability to access the bridge than the previously approved use for communal open space. Nor does the provision of the fence as constructed represent a greater obstacle to access than the owner’s fallback position (see paragraphs 6.2 and 6.3 above).
- 6.19 Accordingly, Highways England has asked only that this obligation to provide access to the bridge be noted on the approval. This can be done by way of an informative.

**7.0 CONCLUSION**

- 7.1 Your officer recommends that planning permission is granted because the proposed amendment of the plans approved by planning permissions P10/W1824/RM by the incorporation of the area designated ‘open space’ into garden of plot No.1 is compliant with policies and design guidelines relating to the provision of private amenity space, good design, protection of the landscape, character and local distinctiveness and biodiversity.

**8.0 RECOMMENDATION**

- 8.1 **That planning permission be granted subject to the following conditions and informative:**

1. **Compliance with approved plans.**
2. **Removal of permitted development rights Schedule 2, Part 1, Classes A, E, F and H.**

**Informative:**

**The Highways England Historical Railways Estate reserves a right of access (both pedestrian and vehicular) over the land for the purpose of maintaining and repairing the bridge, which adjoins the land to the west, including the removal of fence panels if needed.**

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