

APPLICATION NO.	P21/S0290/FUL
APPLICATION TYPE	FULL APPLICATION
REGISTERED	2.2.2021
PARISH	SOUTH STOKE
WARD MEMBER(S)	Maggie Filipova-Rivers
APPLICANT	Mr & Mrs C Dodridge
SITE	Fifield House, Ferry Road, South Stoke, RG8 0JL
PROPOSAL	Variation of condition 5 (removal of the words "...but to the east and south of the garage on the boundary to The Old Forge House..." on application ref. P19/S1072/FUL. The original description of P19/S1072/FUL was "Alterations to design of rear elevation of house and provision of building in garden following approval of replacement dwelling under permission P16/S3861/FUL".
OFFICER	Neil Davies

1.0 **INTRODUCTION AND PROPOSAL**

- 1.1 This application has been referred to the Planning Committee following a call-in request by the Ward Member Councillor Filipova-Rivers on the grounds that not providing the agreed landscaping is unneighbourly. This report sets out the officer's recommendation of approval and how that has been reached with regard to the relevant material planning considerations and the development plan.
- 1.2 Fifield Cottage is a detached two-storey dwelling accessed off a short track from the highway within the built-up limits of South Stoke. The property sits within a large plot and benefits from a detached garage.
- 1.3 The property is not listed but does sit within the Chilterns Area of Outstanding Natural Beauty (AONB), Flood zone 2, an area of known archaeological constraints and an area where protected species (bats) are known to reside. A plan identifying the site in greater context is attached at **Appendix 1** to this report.
- 1.4 Planning permission was granted for a replacement dwelling in 2016 under application reference P16/S3861/FUL for the erection of a detached two storey dwelling and detached pitched roof garage. The condition requiring a landscaping scheme was discharged under application P18/S0727/DIS and approved the details shown on drawing no. TDS 345/FC 7001 REV D.

The 2016 application was amended under application P19/S1072/FUL, as a part retrospective application to extend the canopy on left side elevation, add flue to left side elevation in lieu of chimney, revise roof layout on single storey rear elevation, revise access and turning area and a revised landscaping scheme. This application included a revised landscaping scheme shown on drawing no TDS 345/FC2000 L. The details of the new drawing were agreed and a condition to ensure that the approved scheme was implemented was included. Details of the landscaping schemes are included at **Appendix 2** to this report.

1.5 The landscaping condition relating to the original application (P16/3861/FUL) is as follows –

6. Prior to the commencement of the development hereby permitted a scheme for the landscaping of the site, including the planting of live trees and shrubs, the treatment of the access road and hard standings, and the provision of boundary treatment shall be submitted to and approved in writing by the Local Planning Authority. The treatment of the access road and hard standings, and the provision of boundary treatment shall be implemented prior to the first occupation of dwelling. The remainder of the approved scheme, including the planting of live trees and shrubs, shall be implemented within the first planting season after first occupation of the dwelling. Thereafter the landscaping shall be maintained in accordance with the approved scheme. In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub or

equivalent number of trees or shrubs, as the case may be, of a species first approved by the Local Planning Authority, shall be planted and properly maintained in a position or positions first approved in writing by the Local Planning Authority.

Reason: To help to assimilate the development into its surroundings in accordance with Policies CSEN1 and CSQ3 of the South Oxfordshire Core Strategy 2027 and Policies G2, C9 and D1 of the South Oxfordshire Local Plan 2011.

The planning condition relating to application P19/S1072/FUL is as follows –

5. The drive layout and landscaping on the boundaries to Ashmount House and Waives should be carried out as shown on drawing TDS 345/FC2000 revision L, but to the East and South of the garage on the boundary to The Old Forge House the planting should be carried out as shown on the approved discharge plan, TDS 345/ FC 7001 revision D of application P18/S0727/DIS. The landscaping scheme shall be implemented prior to the first planting season after occupation or use of the approved development and thereafter be maintained in accordance with the approved scheme. In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub or equivalent number of trees or shrubs, as the case may be, of a species first approved by the Local Planning Authority, shall be planted and properly maintained in a position or positions first approved in writing by the Local Planning Authority.

Reason: To help to assimilate the development into its surroundings in accordance with Policies CSEN1 and CSQ3 of the South Oxfordshire Core Strategy 2027 and Policies G2, C9 and D1 of the South Oxfordshire Local Plan 2011.

1.6 This is an application under Section 73 of the Town and Country Planning Act for the variation of condition 5 on application ref. P19/S1072/FUL. The variation to the approved landscaping scheme is to remove the requirement to provide new yew trees on the east and south of the garage.

2.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

2.1 **South Stoke Parish Council – Object**

- The planting detailed serves the job of the screening as per application P16/S3861/FUL. It does appear that appropriate screening with the appropriate Yew trees, to provide the screening above the fence for the neighbour is possible and should be planted in accordance with P16/S3861/FUL

Neighbour representations – Object (x2)

- Owners have inherited an outstanding compliance issue with this development that has a history of non-compliance with approved plans.
- Cover letter from agent does not recognise all trees along our entire boundary with Fifield Cottage were removed and the impact of this on our property was substantial. In recognition of that a provision was made for adequate landscaping and planning permission for Fifield House was granted on 23rd July 2019 that includes Condition 5.
- The amended parking and turning provision implementation at Fifield House has led to narrower borders than originally proposed or as indicated on the approved plans. The trees and hedge plants are all too close to the boundary fence to allow for proper development and facilitate pruning and damage to the fence which already shows signs of movement.
- The approved planting plan was not followed along the boundary between Fifield House and Waives i.e. trees not where indicated.
- The extent of the 3m pleached hornbeam hedge is not shown accurately. Whilst it provides some mutual screening and privacy it does not provide adequate screening for the master bedroom, lounge and garden at Waives being deciduous and some component specimens appear to have died.
- The temporary privacy screen we have erected will be removed when the hedge and trees have the hedge and trees have established and matured enough to screen and provide privacy for our property
- We believe the Developer s Agent should implement all the landscaping responsibilities and undertake remedial works in accordance with the permission granted and with the approved plans including Condition 5 without amendment as this has mutual benefit to Waives, Old Forge House and Fifield House.
- The removal of the words requested by the applicant means that the application seeks to remove the obligation to landscape our boundary leaving the only landscaping obligation to be that in respect of Waives and Ashmount House as shown by TDS345/FC7001D.
- Yew trees have not been planted as per the approved landscaping plans to the rear or side of the garage.
- The lack of landscaping has been the subject of two enforcement investigations.
- The revised scheme does nothing more than seek to renege on a current obligation.
- The arboricultural report commissioned by the applicants is neither independent or acceptable. The Council should commission such advice.
- The advice is in respect of “a hedge”. Mature 12 foot high yew trees are not hedges.
- The advice is in respect of the side of the garage and gives no advice in respect of the void that exists between the garage and the house. More specifically, the side passageway to the garage being 1.4m wide narrowing to 1.1m wide is in fact wider in the main than the passageway behind the garage which is 1.2m where 4 yew trees have been planted.

- The yew trees on the back of the garage have flourished. Yew trees grow very well in shaded areas. There is more than sufficient light along the side of the garage
- We doubt whether landscaping would even have been considered for the garden room in Waives due to the presence of existing trees on the site removed by the developer during the development of Fifield House.
- We don't understand what substantial tree screen is under our control as stated by the agent. Certainly, we can currently see the development from every rear window of our house.
- Previous planting consisted of 4ft beech saplings not the yew trees on the plan.
- The agent refers to the report prepared by HEIGHTS and maintains no planting would be successful. This is clearly incorrect for the reasons already stated. The agent also states that branches overhanging the fence line would require cutting. This is incorrect as shown by the successful planting of 2 of the yew trees to the rear that are shaded by the leylandii.
- Previous assurances to neighbours and Council officials by the developer that landscaping scheme would and could be met.
- We would expect the planning officer responsible for this application to gain confirmation from an independent tree officer that the tree planting scheme can successfully be completed.

Forestry Officer (South and Vale) – No objection.

3.0 **RELEVANT PLANNING HISTORY**

3.1 [P19/S4022/PEO](#) – Response (02/12/2019)

Small single storey extensions to the rear (below the existing balcony) and front of the existing house, together with internal alterations.

[P19/S1072/FUL](#) - Approved (23/07/2019)

Alterations to design of rear elevation of house and provision of building in garden following approval of replacement dwelling under permission P16/S3861/FUL. (As amended by drawing no.s TDS 345 / FC2001 E and TDS 345 / FC2000 K to extend canopy on left side elevation (retrospective), add flue to left side elevation in lieu of chimney (retrospective), revise roof layout on single storey rear elevation (retrospective), revised access and turning area and revised landscaping (retrospective) received on 9 May 2019 and drawing no TDS 345/FC2000 L to amend landscaping scheme on 19 June 2019.

[P18/S4145/HH](#) - Withdrawn (13/02/2019)

Provision of a garden room in the rear garden, (retrospective) alteration to roof above stairs, and provision of balcony to bedroom on flat roof area above kitchen. (as amended by drawings TDS 345 FC2000E and TDS 345 FC2001C to remove patio door to bedroom and balcony above kitchen and replace with window and hipped roof arrangement received on 24 January 2019)

[P18/S0727/DIS](#) - Approved (03/04/2018)

Discharge of conditions 3- materials, 5-levels details and 6-landscaping on application P16/S3861/FUL (as amended by plan received 21st March 2018)

[P18/S0724/NM](#) - Approved (03/04/2018)

Non material amendment sought to make alterations to window and door positions as originally approved on application P16/S3861/FUL

Demolition of existing dwelling and garage and construct replacement dwelling and garage (as amended and amplified by Bat Survey Report received 16th May 2017 and Location, Site & Elevation plans received 19th May 2017, plans & information received 12th July 2017 & Bat Survey Report received 15th August 2017).

[P16/S3861/FUL](#) - Approved (27/10/2017)

Demolition of existing dwelling and garage and construct replacement dwelling and garage (as amended and amplified by Bat Survey Report received 16th May 2017 and Location, Site & Elevation plans received 19th May 2017, plans & information received 12th July 2017 & Bat Survey Report received 15th August 2017).

[P14/S2065/PEO](#) – Response (15/07/2014)

Follow-up to application P14/S1338/PEO. Pre-application advice bat survey required, as discussed and agreed with Dominic Lamb (Countryside Officer) for site visit/loft conversion.

[P14/S1338/PEO](#) – Response (16/06/2014)

a) Conversion of existing bungalow to a two storey dwelling b) Erection new of two-storey dwelling on the current footprint. c) Erection of larger two-storey dwelling extending 10ft into patio area (but still more than 7 metres from rear boundary).

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

DES2 - Enhancing Local Character

DES6 - Residential Amenity

ENV1 - Landscape and Countryside

STRAT1 - The Overall Strategy

5.2 **Neighbourhood Plan**

South Stoke does not currently have a neighbourhood plan.

5.3 **Supplementary Planning Guidance/Documents**

South Oxfordshire Design Guide 2016 (SODG 2016)

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 73 applications the Council can only consider the original condition and the reasons for applying the condition; new conditions can be attached but only in so far as they apply to the original condition. If the Council decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they should refuse the application.

6.2 Paragraph 15 of NPPG notes where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and un-amended. Furthermore, to assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. A section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission.

6.3 **The relevant planning considerations are the following:**

- **Any changes to the Development Plan or site conditions since the original approval**
- **Principle of amending the approved landscaping scheme and the retention of the trees.**
- **Conditions.**

6.4 **Any changes to the Development Plan or site conditions since the original approval.**

Since the grant of planning permission there has been a change in development plan with the adoption at the end of 2020 of the South Oxfordshire Local Plan 2035. The introduction of this new plan has not resulted in a change in policy that would materially affect the outcome of this application.

6.5 **Principle of amending the approved landscaping scheme and the retention of the trees.** The property is complete and occupied. As highlighted earlier in the report the application seeks to vary the condition 5 in relation to the landscaping scheme shown on the approved plan TDS 345/FC2000 L on planning approval P19/S1072/FUL. The Parish and neighbours have objected to the variation of the condition.

The Parish objection relates to the loss of screening between the properties. They consider that appropriate screening with the appropriate Yew trees, to provide the screening above the fence for the neighbour, is possible and should be planted in accordance landscaping plans. I am of the view that given the separation distance from the neighbouring dwellings and the presence of a 2-metre boundary fence the amenities of the neighbours in terms of overbearing, loss of light, overshadowing or privacy would not be materially harmed with removal of the requirement to plant yew trees to the east and south of the garage.

It should be noted that the reason for applying the condition (see para. 1.5) is not to screen or provide privacy for the neighbouring properties but to assimilate the development into the wider area. This condition, and reason, follows the direction of the original approval of P16/S3861/FUL also shown in para. 1.5. Forestry comments on the original application were as follows -

The trees within this site are not protected by a tree preservation order or a conservation area. All of the significant trees have been removed prior to the application being made. None of the remaining trees meet the necessary criteria to be protected by a TPO. In light of the above I have no objection to the development. If permission is to be granted a landscaping condition should be attached to secure a planting scheme to re tree the site and help to soften the impact of the development.

6.6 Comments submitted by the neighbour at Waisies are very similar to the objection raised on application P19/S1072/FUL with regard to landscaping along the driveway and north of the garage. These comments were reviewed by the Forestry Officer at the

time and addressed under the previous application. The comments from Waisies note that the owners have inherited an outstanding compliance issue with this development. They consider that the approved landscaping scheme should be carried out and Condition 5 should not be varied as this has mutual benefit to Waisies, Old Forge House and Fifield House in their opinion.

- 6.7 The neighbour at Old Forge House is more directly affected by this revision and has raised several points of objection (see para 2.1 above). The concerns relate to the lack of adherence to the landscaping plans with regard to the type and numbers of trees planted around the garage area and along the fence toward the main house itself. Having visited the site previously I can confirm that Beech saplings were originally planted along the southern edge of the garage with only 5 Yew trees on the rear elevation. This hedge did not extend to the end of the fence toward the main house.



The neighbour concerns relate to the supporting documentation from the agent and the arboricultural report commissioned by the applicants, especially with regard to growing conditions given that the Yew trees to the rear have established. They have requested confirmation from an independent tree officer that the tree planting scheme can successfully be completed. In summary the occupants at Old Forge House seek the implementation of the approved planting scheme in line with the assurances previously given to neighbours and Council officials by the developer that landscaping scheme would and could be met.

- 6.8 The Forestry Officer, who has been involved with previous applications on the site, has reviewed the submitted details and provided the following comments –
The long established conifer hedge / row of trees growing within the neighbouring property due south of the garage significantly restricts the amount of light reaching the areas proposed for planting around the garage. The conifers will also be extracting a lot of moisture from the ground and also reduce the amount of rainfall reaching the soil. As a result, the growing environment for any proposed planting would be challenging.

Yew as a species can tolerate a degree of shade but combined with the very poor soil conditions on the applicant's side of the southern boundary, I would expect planting to struggle and likely fail. Due to the existing conifers to the south I consider the planting, if it could become established, would provide little additional screening of the garage than the neighbour s conifers already do.

The small number of Yew trees planted between the rear eastern garage elevation and site boundary will receive more light and have better growing conditions the further away they are from the conifers. As can be seen the Yews planted closer to the conifers show signs of decreased vitality than those further away. As the Yew is growing in very close proximity to the boundary, those that do establish would be very hard to maintain from the applicant's side of the land. On balance, I consider maintaining the requirements set out in the wording would be impossible to enforce, as in the current circumstances the neighbouring conifer hedge / trees would out compete new planting for light and moisture. If a proposed development is not considered sufficiently harmful and therefore permitted, but adjacent neighbours would prefer additional screening, then planting on their own side of the boundary would allow them to maintain the vegetation to suit their own requirements.



- 6.9 Observations from my site visit also highlighted that part of the neighbour's hedge close to the leylandii trees is showing signs of failure. It is also noted that there would only be a requirement to implement the planting of trees for a period of 5 years after which, given that they are currently not afforded protection by being in a Conservation Area or a Tree Protection Order, they could be removed.



- 6.10 The removal of the requirement to plant trees to the east and south of the garage would in my view not have any significant impact on views from or to the open countryside of the AONB given that the garage area is shielded from view by residential dwellings and

current boundary screening. Whilst there is an argument that the landscaping scheme should be implemented as agreed, I believe there is sufficient evidence following the completion of the development that ground conditions would not support tree growth to the area south of the garage that was not available at the time of the original determination. Furthermore, the Yew trees to the east close to the leylandii are showing decreased vitality than those further away and given the proximity to the boundary, those that have established are very hard to maintain from the applicant's side of the land. I am therefore on balance of the view that an amendment to the condition should be agreed.

6.11 Conditions.

All planning conditions applied to previous determinations have been met with conditions discharged where required. An amended landscaping condition has been added to the determination to reflect the proposal to allow for the removal of the Yew trees around the garage with the Landscaping along the drive and boundary with Waisies remaining extant.

7.0 CONCLUSION

7.1 Officers recommend that planning permission is granted to vary condition 5 as the amendment to the wording of the condition would remove the maintenance requirements set out in the previous condition that would be impossible to enforce. The requirement to plant and maintain trees in these locations would not have a material impact on the Chilterns Area of Outstanding Natural Beauty or neighbour impact.

8.0 RECOMMENDATION

8.1 **Planning permission is granted**

1 : Landscaping implementation.

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