

APPLICATION NO.	P22/S1554/HH
APPLICATION TYPE	HOUSEHOLDER
REGISTERED	22.4.2022
PARISH	BRIGHTWELLCUMSOTWELL
WARD MEMBER(S)	Anne-Marie Simpson Ben Manning
APPLICANT	Mr Rolfe Edwards
SITE	Apple Croft Slade End Brightwell cum Sotwell, OX10 0RD
PROPOSAL	Variation of condition 2 (approved plans) and condition 4 (obscure glazing) on application P21/S0317/HH to comply with constructional details. (As amended by drawings accompanying email from agent received 5 July 2022 and application form received 26 April 2023 and amplified by information received 26 April 2023 and corrected by revised block and roof plan received 31 May 2023)
OFFICER	(Extension and alterations to include raising the roof to create a full height first floor) Paul Bowers

1.0 INTRODUCTION AND PROPOSAL

- 1.1 This report sets out the justification for officers' recommendation to grant planning permission having regard to the development plan and any other material planning considerations.
- 1.2 The application is referred to committee at the request of Councillor Anne-Marie Simpson.
- 1.3 Applecroft is a 1950's chalet style bungalow that is set back from the road to the north of Slade End within the built-up limits of Brightwell-cum-Sotwell. The property is partially screened from view by a timber clad outbuilding to the front with generous parking and a modest size garden area to the rear.
- 1.4 The property is not listed and is located just outside the Brightwell-cum-Sotwell Conservation Area which lies to the south of Slade End and immediately east of the site.

A site location plan can be found at **Appendix 1** of this report.

- 1.5 Planning permission was granted in 2021 under application reference P21/S0317/HH for extensions and alterations to include raising the roof to create a full height first floor. The approved plans for that application can be found at **Appendix 2**.

The plans accompanying the current application can be found at **Appendix 3**.

- 1.6 This application is made under Section 73 of the Town and Country Planning Act 1990 (As amended) to vary the approved plans by altering the wording of Condition 2 and also to change the wording of Condition 4 relating to obscure glazing. This application is made retrospectively.

The changes to the approved plans include the following;

- Details and height of the roof.
- Changes to cladding.
- Changes to the size and position of the single storey rear extension

- 1.7 Condition 4 required specific windows to be obscure glazed and fixed shut. The development has been carried out to include windows that, whilst obscure glazed, are capable of being opened.

Window restrictors have been placed on the windows to limit the opening of the windows and consequently the amount of available overlooking to adjoining properties. The proposed change to the wording of Condition 4 allows for the retention of the existing windows with the restrictors and includes a provision to retain the restrictors and to prevent them from being removed in future.

- 1.8 During the application the plans have been altered to accurately reflect the as built development.

- 1.9 There is a current enforcement investigation on this site in relation to the height of the roof.

- 1.10 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.

2.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

- 2.1 Full copies of the representations are available on the Council's website at www.southoxon.gov.uk under the planning reference number.

Brightwell-cum-Sotwell Parish Council – Object to the application in its original and amended forms for the following reasons;

- The development conflicts with policies in the development plan.
- No adequate justification for the works not having been carried out in accordance with the approved plans.
- Harmful impact on the amenities of neighbours.
- Impact on the conservation area and listed buildings.
- The development does not reflect the positive features of the conservation area.

Third party representations – 29 x letters in relation to the plans as originally submitted raising the following concerns;

- The original permission was unlawful as the information in the original permission was misleading.
- The ridge height is higher than the approved scheme and now commensurate with the adjoining property Oakridge which is unacceptable.
- Negative impact on the character and appearance of the conservation area and listed buildings.
- The development is unneighbourly.
- Loss of privacy and light to Oakridge.
- Allowing this development will bring the planning process into disrepute.
- The windows on the rear are openable.
- Concern over delays of enforcement action.
- Concern over the justification for the changes to the scheme.
- Concern over the future of the coach house at the front of the site.

15 x letters to the amended plans correcting the scheme to reflect the as built situation raising the following concerns;

- The original planning permission was unlawful.
- The as built building is out of character.
- Harmful to the conservation area and listed buildings.
- Allowing this development retrospectively sets a dangerous precedent.
- The building is oppressive and unneighbourly.
- Concern over the delays.
- Concern about the impact of the rear extension to the occupant of Oakridge.
- The windows remain openable.
- Concern over the temporary access.
- Concern over the regard for Great Crested Newts
- The building should be torn down and rebuilt to the approved height.

13 x letters of objection to the revised information relating to the windows;

- Concern about the increase in height over and above the approved scheme in terms of impact on neighbouring properties and the character of the immediate area.
- Loss of the timber cladding that would have softened its presence.
- Concern over the use of window restrictors.
- Concern over the impact of the rear extension to Oakridge.
- Approving the development will set a precedent

County Archaeological Services – No objection.

Countryside Officer – Request a pre-commencement condition.

Forestry Officer – Request a variation of the tree protection condition to become a landscape condition requiring new planting at the front of the site to mitigate for any potential damage to trees during construction.

3.0 RELEVANT PLANNING HISTORY

3.1 [P21/S0317/HH](#) - Approved (20/05/2021)

Extension and alterations to include raising the roof to create a full height first floor (As amended by drwng no.s 834-01-08 rev A, P834-01-09 Rev A, P834-01-10 REV A, P834- 01-11 Rev A, P834-01-12 Rev A, P834-01-13 and P834-01-14 Rev A to reduce height and amend roof form, received on 30 March 2021 and augmented by supplementary Design and access statement and BRE daylight and sunlight document received 27 April 2021)

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

DES8 - Promoting Sustainable Design

ENV8 - Conservation Areas

H20 – Extensions to dwellings

STRAT1 - The Overall Strategy

TRANS5 - Consideration of Development Proposals

ENV6 - Historic Environment

ENV7 - Listed Buildings

5.2 Neighbourhood Plan

Brightwell-cum-Sotwell Neighbourhood Plan (BCSNP) policies;

BCS7 - Landscape character and the villages

BCS9 - Design principles

BCS10 - Design principles in the Conservation Area and their settings.

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 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 differing proposed conditions, planning permission should be granted. If permission is required to be granted subject to the same conditions as those to which the previous permission was granted, they should refuse the application.
- 6.2 Paragraph 015 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 It is not intended to go through all the planning issues that were assessed in connection with the original application on the site given that this has been considered and determined to be acceptable. Given the context of the changes, the conditions being varied and the reasons for applying them, it is only necessary to consider the impact of the changes on the character and appearance of the site and surrounding area and the impact on neighbouring properties.
- 6.4 **Impact on the character and appearance of the existing dwelling and the wider area.**

Policy DES1 seeks to ensure that all new development is of a high-quality design subject to a series of criteria.

Policy DES2 states that all new development must be designed to reflect the positive features that make up the character of the local area and should both physically and visually enhance and complement the surroundings.

Policy H20 refers to sufficient amenity areas for the extended dwelling with regard to the standards in the Joint Design Guide. This relates to both the amenities of the occupants of the dwelling but also has an impact on how the character of the area is affected.

- 6.5 Policy BCS9 of the BCSNP states that the development proposals will be supported, provided they complement, enhance and reinforce the local distinctiveness of the village and where appropriate are designed to enhance the setting of the conservation areas and their settings. Proposals must show clearly how the scale, mass, density, layout and design of the site, building or extension fits in with the character of the immediate area and wider context within the village. The scale of new developments should conserve and enhance the rural character and appearance of the village and its landscape

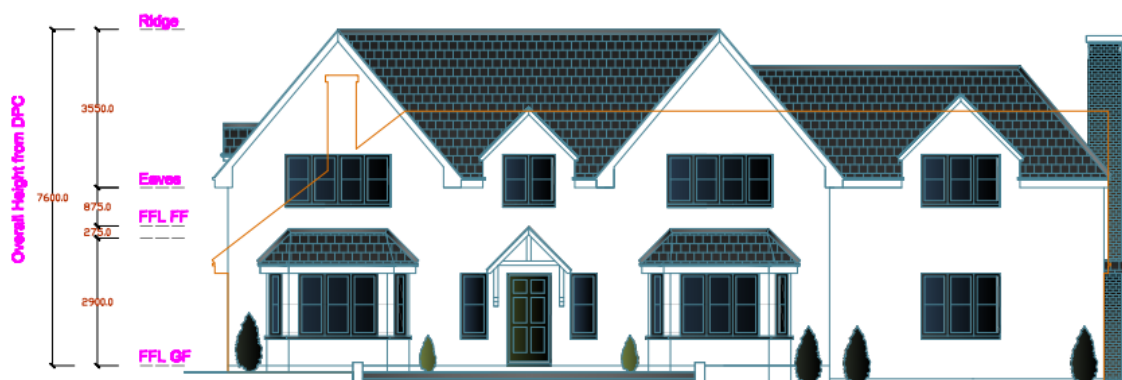
setting as defined in the adopted Village Design Statement and Conservation Area Character Appraisal.

- 6.6 The key consideration as part of this application is to compare what has been approved with what has been built. The original approved plans are included at **Appendix 2** and the proposed plans at **Appendix 3**. A more direct comparison can be made below with the plans seen next to each other.

Approved –



As built –



- 6.7 The elevation drawings of the approved plans show a height of the extended property with a ridge height of some 7.1 metres taken from damp proof course (DPC).

The elevation drawings of the current application show the building height as being some 7.6 metres from the finished floor level (FFL).

Measurements taken by the enforcement team indicate a ridge height from ground level of some 7.7 metres with a damp proof course between 150 to 200mm.

This is an increase in height with a variation between some 0.47 metres to 0.52 metres.

- 6.8 The starting point for the consideration of this change in height is not how the character of the area and the setting of heritage assets is affected by the height overall, but the difference in height between what was approved, and considered acceptable, and what has been built.
- 6.9 In addition, changes have been made to the appearance of the building with the removal of timber cladding on the front elevation and changes to the single storey extension to the rear.
- 6.10 Your officers are satisfied that the increase in height above the approved height, the loss of the timber cladding and the change to the size of the single storey rear extension, do not materially increase the impact of the development to such an extent that it would harm the character and appearance of the area or the setting of the adjacent conservation area.

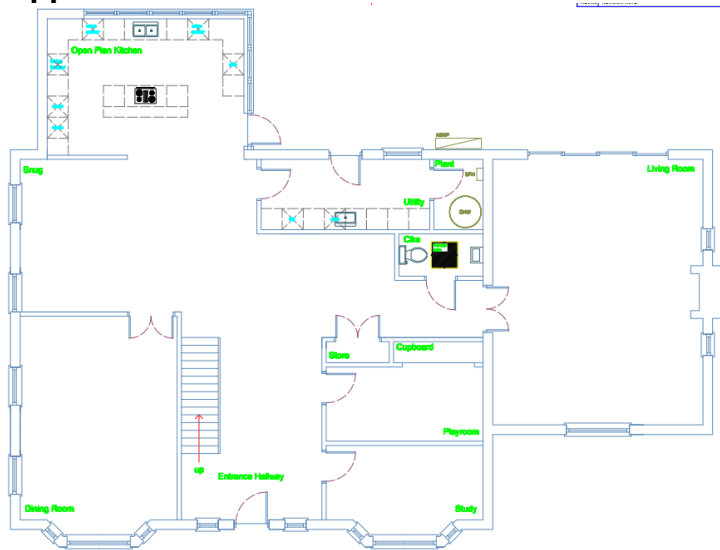
Your officers are of the view that the development as built, complies with policies contained within both the local plan and the neighbourhood plan in respect of this issue.

6.11 Impact on the amenities of neighbouring properties.

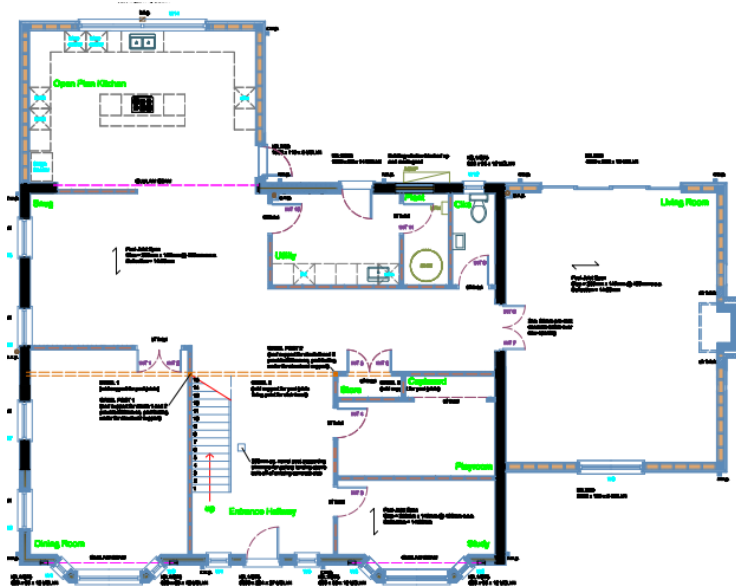
DES6 of the SOLP seeks to ensure that development proposals will not result in significant adverse impacts on the amenity of neighbouring uses. Such factors include a loss of privacy, daylight or sunlight and dominance or visual intrusion.

- 6.12 It is necessary to consider whether the changes that have been made to the building from the approved plans result in a materially different impact to the amenities of nearby properties to the extent that the development has now become unneighbourly.
- 6.13 Having visited the adjoining property at Oakridge and considered the comments and information submitted by the objector, I have concluded that the increase in height does not result in a materially different impact. The measurements from the objector confirm that Applecroft is no higher than Oakridge. The difference in height does not result in an oppressive or overbearing impact and in my view it is acceptable.
- 6.14 The single storey rear extension has changed from what was previously approved and can be compared below;

Approved –



As built –



The rear extension remains 4.5 metres in depth but has been brought in line with the side wall of the house rather than inset. The previously approved lantern roof has been removed and now has a flat roof.

- 6.15 What has been built is closer to the neighbour and higher than the approved single storey extension and consequently the impact is greater. However, regard must be had, not only to the difference between the approved and as built extension, but also what could have been erected without needing planning permission utilising permitted development rights.

- 6.16 A single storey extension of 4 metres in length and 3 metres in height could be erected on a house like this without needing planning permission. What has been built is 4.5 metres long and 3.4 metres high. The extension is therefore only 0.5 metres longer and 0.4 metres higher than what could be built without the need for planning permission.
- 6.17 Taking in to account these differences and the fact that there remains a gap between the extension and the boundary and the neighbouring property at Oakridge and that it does not project beyond the rear elevation of Oakridge, I am satisfied that what has been built does not result in a materially harmful unneighbourly impact.
- 6.18 The increase in height has increased the impact of the development on all surrounding properties. However, the increase does not, in my view, create a level of harm that would justify a refusal of planning permission.
- 6.19 Condition 4 of the original permission stipulated the following;

The bathroom, en-suite and dresser windows in the west and north east elevations of the first floor hereby permitted shall be glazed in obscure glass with a minimum of level 3 obscurity, and shall be fixed shut with the exception of a top hung openable fanlight (or other means of opening to be first agreed in writing by the Local Planning Authority) prior to the first occupation of the accommodation and it shall be retained as such thereafter.

Reason: To ensure that the development is not unneighbourly in accordance with Policy DES6 of the South Oxfordshire Local Plan 2035.

- 6.20 The applicants are seeking to vary the wording of condition 4 to reflect the as built situation. Whilst the windows are obscure glazed they are also capable of being opened. However, the applicants have installed window restrictors which limit the extent of their opening to no more than 2.5cm. This allows for ventilation but restricts views out so that they do not result in an unacceptable level of overlooking of the adjoining properties.
- 6.21 In my view revising the wording of condition 4 to ensure that the windows remain obscure glazed and securing the retention of the window restrictors is acceptable. This is on the basis that there are nearer windows to the boundary serving a bedroom which do not have restricted opening requirements and are clear glazed.
- 6.22 Taken overall and in relation to all nearby properties I am of the view that what has been built is not unneighbourly and accords with Policy DES6 of the SOLP subject to the revised wording of Condition 4 that ensures the retention of the restrictors.
- 6.23 **Heritage impacts.**

Policies ENV6 and ENV8 of the SOLP seek assurance that proposals for new development should be sensitively designed and should not cause harm to the historic environment. Proposals for development within or affecting the setting

of a Conservation Area must conserve or enhance its special interest, character, setting and appearance.

Policy BCS10 of the neighbourhood plan states that development proposals in the Conservation Areas, as shown on the Policies Map, will be supported, provided they have full regard to the following design principles:

- i. Boundary treatments to highways and village lanes should comprise the use of native hedgerow, stone, brick or flint boundary walls or iron railings as appropriate to the immediate context of the site;
- ii. There should be no sub-division of the historic curtilage of listed buildings if it can be demonstrated that the historic significance of the building and its setting would be harmed and;
- iii. Landscape schemes should include local indigenous trees and features that form part of the vernacular of the conservation area.

6.24 The application site is not within the conservation area as shown below with the green hatched area depicting the extent of the conservation area.



The building is not a listed building but the nearest listed building shown outlined in gold is Triangle Cottage which is to the south of the site on the opposite side of the road.

- 6.25 The listed building is located on the opposite side of the road. The application property is not seen in the same visual context of the listed building as result of the distance and juxtaposition. In my view the changes to the building both in terms of height and appearance will have no impact on the setting of listed buildings. Consequently, the development accords with Policy ENV7 of the SOLP.
- 6.26 The site is not within the conservation area but immediately adjacent to it and development on this site has the potential to affect its setting. The starting point is that the approved scheme did not cause a materially harmful impact to the setting of the conservation area and was deemed acceptable in terms of policy. Therefore, I am of the view that the increase in height of the roof in line with the adjacent property, the loss of the cladding on the building and differing single storey rear extension does not create a material increase in the impact of the development to the setting of the conservation area.

The difference in height when seen in the context of the wider area does not result in a significantly different appearance. The timber cladding broke up the front elevation but a consistent appearance in terms of materials across the building does not create an incongruous or significantly different appearance from what has been approved.

6.27 Impact on trees.

Policy ENV1 of the SOLP relates to landscape and countryside. It states South Oxfordshire's landscape, countryside and rural areas will be protected against harmful development. Development will only be permitted where it protects and, where possible enhances, features that contribute to the nature and quality of South Oxfordshire's landscapes, in particular trees (including individual trees, groups of trees and woodlands), hedgerows and field boundaries;

- 6.28 Policy BCS12 of the neighbourhood plan states that development proposals will be supported if they have had regard to the following biodiversity principles:
- i. Avoid the unnecessary loss of mature trees, hedgerows or other form of wildlife corridor, either as part of a landscape scheme and layout or as part of the construction works of a development scheme;
 - ii. Where the loss of a mature tree or hedgerow is unavoidable, the proposals must make provision on site for replacements;
- 6.29 Condition 5 on P21/S0317/HH required tree protection details prior to the commencement of the development and this was not discharged. There is no evidence that tree protection was provided throughout the construction process.
- 6.30 The impact of the built dwelling would have no greater impact on the trees than the previously approved. However, given the larger scale of the building, landscaping would help to soften the visual appearance. A landscaping condition is proposed to secure a planting scheme, with new tree and hedge planting at the front. This would also help to mitigate any tree damage caused by the lack of tree protection fencing throughout the build process and ensure compliance with the development plan.

6.31 **Impact on protected species.**

Policy ENV2 and ENV3 of the SOLP along with Policy BCS12 of the neighbourhood plan seek to protect wildlife and legally protected species.

Condition 6 of the original permission P21/S0317/HH required a strategy to avoid impacts to amphibians during construction to be submitted to and approved by the local planning authority.

6.32 An application to discharge this condition was submitted to the council but was never formally determined due to the ongoing enforcement investigation that led to this application. However, the council's ecologist had found the submitted information to be acceptable. Given that construction is complete Condition 6 is now no longer necessary.

6.33 **Community Infrastructure Levy**

The proposal is not CIL liable as the proposed development would not result in a footprint increase in excess of 100 square metres.

6.34 **Conditions.**

The nature of this retrospective application is such that there are implications for the conditions of the original permission which go beyond those specifically being altered by this application. I will take each condition in turn as they appeared on the decision notice for planning permission P21/S0317/HH and set out how they have now changed.

6.35 *Condition 1 – Commencement 3 years –*

This condition is no longer necessary as the development has commenced. The condition is omitted.

Condition 2 – Approved plans

This condition is the subject of this application, and its wording is altered to list the plans accompanying this application showing the as built situation.

Condition 3 – Materials as on plan –

This condition required the development to be carried out in the materials specified. Given that the development is now complete this condition is no longer necessary and is omitted.

Condition 4 – Obscure glazing –

This condition is the subject of this application and is proposed to be changed to ensure the retention of the obscure glazing and the window restrictors thereby ensuring that views out are restricted to avoid overlooking.

Condition 5 – Tree protection

It is unclear whether the tree protection was in place during construction and whether trees have been affected. To mitigate any potential impact the condition is proposed to be changed so that a landscaping scheme is required

for additional planting that should be submitted and approved within 6 months of the decision.

Condition 6 – Protection of amphibians

As explained in paragraph 6.30 this condition is no longer necessary and is omitted.

6.36 Intentional unauthorised development.

This application seeks to address differences between what was approved under planning ref P21/S0317/HH 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.

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.

In this case I conclude that the retrospective nature of the application does not present a reason in isolation to refuse planning permission. Officers understand the difference in the height of the development was due to unavailability of certain materials, issues in respect of construction companies going out of business because of covid and the knock-on effects of the shortage of building materials and substantial increase in prices. The council has no evidence to suggest that this was not the case. The agent has cooperated with the case officer in relation to this application and has provided the additional information/clarification when requested.

7.0 CONCLUSION

7.1 The scale and design of the development remains in keeping with the character of the building and the surrounding area.

The changes from the approved scheme would not materially harm the amenity of neighbouring properties.

In conjunction with the proposed conditions, the development accords with relevant planning policy.

8.0 RECOMMENDATION

8.1 That planning permission is granted subject to the following conditions;

8.2 1 : Approved plans

2 : Landscaping Scheme – within 6 months

3 : Obscure glazing

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