

Application No: 12/00460/OUT	Ward: Kidlington South	Date Valid: 11.04.2012
Applicant:	Thinking Buildings	
Site Address:	4 The Rookery, Kidlington	

Proposal: Outline – 14 no. residential dwellings with associated road infrastructure, parking and garaging

Date site visited: 25/11/2011 and 27/04/2012

1. Site Description and Proposal

- 1.1 This application relates to a site occupied by a 1960's single storey dwelling with rooms in the roof, set within an extensive woodland garden of 0.5ha. The site is surrounded by a mixture of residential properties; to the east, late 1960's 2 storey development known as Nurseries Road; to the south and west 1970's 2 storey and single storey development of The Phelps and Grovelands. To the north are older 19th century, traditional, limestone properties, designated as The Rookery Conservation Area, because of their historic significance. There are however no listed buildings in close proximity and the site itself, is not within the Conservation Area. Access is via the tight winding roadway of The Rookery
- 1.2 Despite the site having significant tree coverage, there are no TPO's. The majority of the southern, western and eastern boundaries comprise large mature Leylandii Cypress trees, which dominate The Phelps and Nurseries Road streetscene. A 1.8m high close boarded fence also runs along the eastern boundary of Nurseries Road.
- 1.3 Outline consent is sought for the redevelopment of this site that includes the demolition of the existing dwelling and construction 14 dwellings, comprising 3 no. 2 bedroom units, 7 no. 3 bedroom units, 3 no. 4 bedroom units and 1 no. 4/5 bedroom unit. The means of access and site layout are submitted for determination at this stage with appearance, landscaping and scale reserved for the later stage. Indicative scales of proposed dwellings include 7.8m heights and floor areas ranging from 75m² (2 bed), 90-100m² (3 bed) to 135-165m² (4/5 bed).
- 1.4 The site is within 2km of Rushey Meadows SSSI and a site of Archaeological interest. It is not within a designated area of flood risk and therefore no FRA is required.
- 1.5 The application has been submitted with Topographical, Arboricultural and Phase 1 Habitat survey reports and a Transport Statement.

2. Application Publicity

- 2.1 The application has been advertised by way of 4 no. site notices placed on a street lights/lamp posts at the entrance to The Rookery, opposite no. 11 Nurseries Road, adjacent to no. 67, 49 and entrance to The Phelps. The final date for comment on this application was 24th May 2012.

- 2.2 4 individual letters/emails of support have been received commenting that the scheme is well planned, not too dense, will improve area as the site has become an impenetrable wilderness with a monstrous hedge.
- 2.3 43 individual letters/emails of objection have been received as well as a petition signed by 15 residents of Nurseries Road and objections raised by another 2 residents. Full details are available electronically via the Council's website.

The material planning considerations raised as objections are as follows:

- Loss of many lovely trees and green area
- Loss of wildlife
- The Phelps is a cul-de-sac, a quiet and safe location, used by many pedestrians from the Grovelands estate who will be put at increased risk with much more traffic
- 67 The Phelps is a single storey 2 bedroom property with a direct frontage access to the road, there is no footway separating the front wall of the house and the road (2m distance).
- No. 67 has no off street parking, which would cause inconvenience to occupier and hazardous to road users trying to enter and exist the site as parking usually occurs outside the front door – possibly lead to a TRO being place in turning head
- The internal layout shows a footpath to the west side terminating at the ownership of no. 67, this will lead to possible pedestrian movements on private land or closer to the house and looking into bedroom windows.
- Loss of privacy, quality of life and amenity from overlooking
- The Phelps cul-de-sac end is narrow, it was never designed to allow more traffic and has only a pavement on one side.
- Whilst the majority of The Phelps road is 5.5m wide as it approaches the turning head at the point of access into the site, the carriageway reduces to 4.3m wide. Large refuse or delivery vehicles have to reverse down the road
- Access should go only through The Rookery or Nurseries Road
- Increase in surface flooding
- 14 units is too many with not enough parking - suggests 8 as a compromise
- Kerbside parking will impact on surrounding roads, increasing the already chaotic parking issues along the narrow roads of The Phelps and Nurseries Road and will result in hazardous safety problems for pedestrians and other road users. Disputes already exist – this will make it worse
- Construction vehicles would add to congestion of Crown Road which is already often blocked by cars, vans and HGVs/car transporters behind Audi garage – they should not use this route
- Is there capacity for services?
- No. 67 blocks sight lines of cycle / footpath connection onto The Phelps, no issue at present, but with approx 55 vehicles trips per day from the new development this will increase risk to cyclists and pedestrians
- The new access would require improvements to the pedestrian / cycle pathway and would be difficult to engineer given the proximity of neighbouring properties nos. 67 and 69 The Phelps, and is only 4.3m wide not 4.5m mentioned in the report.
- NPPF is not designed for a free for all development charter – need to consider the character of the area and loss of amenity to neighbouring residents and highway safety issues, which are all material considerations.

- Development is contrary to Paragraph 53 of the NPPF and there is no evidence of binding decisions that supports the application.
- Housing land deficiency is not a viable case
- Contrary to Oxford Local Transport Plan 2011-2030 to reduce traffic, congestion, casualties and dangers and reduce carbon emissions.
- Impact on Human Rights – Protocol 1 Article 1 Protection of property; persons right to the peaceful enjoyment of their property

Non-material comments include:

- Noise during construction
- Ironical that the northern end of The Phelps was not developed by 2 storey houses because owners of No. 4 The Rookery objected at being overlooked!
- Poorly advertised, not enough site notices and confusing with The Rookery address as development impacts The Phelps
- Extensive site clearance and major disruptions
- Loss of property value
- No works at all should take place, including removal of trees until a decision is made

3. Consultations

- 3.1 **Kidlington Parish Council:** Objects on the grounds that:
- There has been no public consultation and that the proposal does not contribute to the local community
 - No provision of affordable housing given the size of the site that could have included 15 no. units to allow for affordable housing
 - No provision for a contribution towards local sport and play facilities
- 3.2 **Natural England:** The proposal does not affect Statutory Protected sites or landscapes or have a significant impact on the conservation of soils not is the proposal EIA development. Refer to Standing Advice in respect to protected species and species protected by domestic legislation. The scheme provides an opportunity to provide enhancement measures.
- 3.3 **OCC Highways:** Raises no objection in principle to the proposal subject to conditions. The following comments are also made:

Access

The existing vehicular access from The Rookery will continue to be used for a single dwelling, and represents no increased residential vehicular traffic along The Rookery compared with the existing situation. Please note that the driveway to this dwelling must be a minimum of 3.0 metres in width.

Three new driveway accesses are proposed onto Nurseries Road, for single access to three new dwellings. Please note that new dropped kerb accesses should not exceed a width of 8.0 metres in accordance with OCC standards, and the proposed accesses for Plots 3 and 4 will likely need to be separated by full-standing kerbs. Pedestrian and vehicle visibility splays have been demonstrated on plans for each access, however visibility splays from each access towards the north need to be shown to the nearside kerb from a distance of 2.4m back from the edge of the carriageway and above a height of 0.9 metre. (Revised visibility splays required)

Access to the remaining 10 proposed dwellings will be taken from The Phelps, via continuation of the existing 4.5m wide carriageway and footway from the end of the cul-de-sac into the site.

All new vehicular accesses must be constructed to OCC specification (condition). A separate application is required to OCC as Local Highway Authority for any new highway access – contact OCC Licensing & Streetworks Team on 0845 310 1111 (informative).

Parking

A total of 34 parking spaces (including three visitor parking spaces for plots 5 to 15) are proposed for the residential development, which is deemed acceptable. The Transport Statement proposes that all single garages will meet minimum dimensions of 3 metres x 6 metres, double garages of 6 metres x 6 metres, and driveway parking space dimensions of 2.5 metres x 5 metres, in accordance with parking standards. (parking condition)

Two cycle parking spaces are proposed per dwelling within the private curtilages.

Drainage

Surface water is proposed to discharge to SUDS, soakaway and main sewer. Full details of the proposed sustainable drainage strategy will be required for consideration and approval. (condition)

Contributions

Contributions will be sought towards OCC services and infrastructure to mitigate the impacts of the proposed development. A transport developer funding contribution of £13,342 is requested in line with Cherwell District Council Planning Obligations SPD (accounting for the existing unit onsite). (Planning obligation)

Servicing and tracking

The new vehicular access from The Phelps leads to a turning head within the site, to be constructed to adoptable standard. Swept paths plans have been submitted of refuse vehicle manoeuvres within the site, to demonstrate possible egress in forward gear. It is noted that the swept path overruns the footways and grass verge within the site. A revised plan of the turning head is requested. (Condition)

Transport Statement

A Transport Statement has been submitted in support of the application. I note that a copy of Appendix B of the TRICS output data has not been included for consideration. The proposal is likely to generate an additional 69 vehicular trips per day. In the peak hour, the proposed development will increase two-way vehicular trips by no more than ten trips, dispersed across Nurseries Road and The Phelps. Accessibility of the site has been considered. The site is within walking distance of Kidlington's facilities, close to national cycle networks 5 and 51, and is within 400 metres of the nearest bus stops, which are frequented by a range of services (Nos. 2A/B/C, 700 and S4). The site can be considered relatively sustainable in terms of transport choices and proximity to local services and facilities.

Construction

The impact of construction vehicles will need to be considered, to ensure no adverse impact on highway infrastructure, highway users and neighbour's amenity. A Construction Traffic Management Plan must be submitted for consideration and approval, to include time of deliveries, parking of contractors' vehicles etc. (condition)

- 3.4 **OCC Drainage:** It is acknowledged that the application is for outline planning only, however surface water and roof water run-off will need to go to soak-away or other Suds feature for each property created., ie all surface water created as a result of each property will need to be dealt with within the each property boundary. Where shared Suds features are proposed, these features could be adopted by the Lead flood Authority which at the present time is Oxfordshire County Council. Should a full planning application be submitted, full details of the proposed drainage strategy will be required.
- 3.5 **OCC Archaeology:** The proposal does not appear directly to affect any presently known archaeological sites. However, our records do indicate the presence of known archaeological finds nearby, and this should be borne in mind by the applicant. If archaeological finds do occur during development the applicant is asked to notify the County Archaeologist in order that he may make a site visit or otherwise advise as necessary.
- 3.6 **OCC Developer Funding:** Oxfordshire County Council wishes to secure a legal agreement for appropriate financial contributions to mitigate the impact this development will cause if implemented in line with your Draft Supplementary Planning Obligations Document (July 2011).

Indicative plans support section 17 of the application; 3 two bedroom, 7 three bedroom and 4 four bedroom homes are proposed to replace 1 three bedroom dwelling presently on site.

Therefore net impact amounts to 3 two bedroom, 6 three bedroom & 4 four bedroom extra homes. We accordingly expect the population to increase by 39 people including 3 pensioners if these homes are built and occupied. We further anticipate at least 8 pupils will attend mainstream schools, in addition to any attending private education or separate schools for those with special educational needs.

There is sufficient capacity in catchment schools and therefore no contributions are necessary in respect to education. There will however be a requirement to contribute £6564.00 towards Libraries, Museum, Adult education, Day resources care centre for elderly, Strategic household waste management.

The contributions identified are necessary to protect the existing levels of infrastructure for local residents.

They are relevant to planning the incorporation of this development within the local community, if it is implemented.

They are directly related to this proposed development and to the scale and kind of the proposal.

They are reasonable and that they should ensure that this proposal is not subsidised by the community, except where sufficient capacity in infrastructure already exists which can absorb the expected impact of this proposed development.

3.7 Head of Safer Communities, Urban & Rural Services (Ecology): Raises no objection and makes the following comments:

- The Phase 1 ecological survey found no evidence of protected species using the site, although it is likely to be a haven locally for nesting birds, foraging bats and hedgehogs (which are now a UK BAP priority species). Other than this, the site has relatively low ecological value. No further surveys are required.
- The report made a number of recommendations with regards to biodiversity protection measures (eg careful treatment & retention of brash/wood piles and minimal external lighting) and enhancement features (such as bat tubes/boxes and bird boxes). Given the value of the site to some species locally, the provision within the NERC Act 2006 for LPA's to take or promote steps to further the conservation of BAP species and Cherwell Policy on enhancing biodiversity, I think a biodiversity enhancement scheme should be submitted for approval at a later stage. This would detail the following:
 - the measures to be taken to ensure the development proceeds in a sensitive manner with regards to bats, birds and hedgehogs (as stated in the Phase 1 Habitat Survey report).
 - the biodiversity enhancement features to be incorporated within the new dwellings and/or around the site (eg bat boxes/tubes, bird boxes). The scheme is to specify the number proposed, type and exact locations.
 - the existing areas of trees and planting to be retained and how these will be protected during the construction phase.
 - the proposed planting scheme for public and private areas (recommendations as to suitable species are made in the Phase 1 report).
- As the Phase 1 report is fairly specific, parts of this could be used to provide some of the detail for such a scheme.

3.8 Head of Safer Communities, Urban & Rural Services (Arboricultural): Objects to the application and raises the following issues:

- The individual trees of any significant value have been identified and retained within the proposed development although the beech tree (T11) would cast excessive shade upon the proposed dwelling plot 1 and, more significantly across the main garden and lawn area placing increasing pressure for the removal of the tree from any potential occupiers. This tree is most definitely worthy of retention and therefore greater consideration must be given towards the provision of a more light orientated garden area and the impact and mitigation of shading upon the design and location of the dwelling.
- Although a significant proportion of trees inspected upon the site have been

graded as category 'C' trees whose presence, individually, should not be considered a constraint, cumulatively certain groups of grade 'C' trees provide not only a valued screen for the development but also provide a value with regard to wildlife habitat. The benefits of screening are none more so evident than the group of trees along the south-east boundary separating the existing dwellings in The Phelps from the proposed plots 4 & 5. Although the cypress hedge may be removed to facilitate development the individual trees, including T15 - 25, although asymmetrical due to growth competition should be retained where possible in order to maintain a screen and to provide habitat. Their retention however will provide excessive shading upon the proposed plots 4 & 5 and therefore it would be advisable to either remove these plots or relocate them further north outside of the potential 'shadow' of these trees.

- The south-west boundary adjacent to plot 7 currently contains little vegetation of any significance however the location and positioning of the plot restricts the provision of landscaping required to provide the necessary screening from the adjacent existing dwellings in The Phelps. Again, removal or relocation of this plot would be recommended in order to provide sufficient space for tree planting and more importantly, adequate room for development of trees without the increasing nuisance issues of reduced light levels/excessive shading.
- The individual plots 8, 9 and 10 appear to be of a sufficient distance from the proposed retained category 'B' trees to the west boundary. Three of these trees are sycamore with the potential to increase in size. Consideration should be given by the architect towards the impact and mitigation of afternoon shading upon the design and aspect of the dwellings.
- The Blue Atlas Cedar (T57) is identified for retention adjacent to the proposed plot 14, due to the prominent location this will eventually form a good visual feature upon entering the site however the location of plot 14 may increase the risk of future conflict between tree and dwelling and more space should be allocated around the tree to allow for replacement planting and continuous tree coverage appropriate in such a central location within the site.
- Overall, I would have no objections to a proposal to develop this area of land but the design appears crowded with too many plots with far too little space allocated for suitable tree planting and landscaping which will and must be required in order to a) mitigate the loss of wildlife habitat b) to provide appropriate screening particularly towards the southern boundary and c) to provide a formal open space area within the centre of the site which may provide for a visual feature as well as allocated area for replanting.

4. Policy Considerations

National Planning Policy Framework (NPPF)

Core planning principles and the delivery of sustainable development with particular regard to the following sections:

- 4: Promoting sustainable transport
- 6: Delivering a wide choice of high quality homes
- 7: Requiring good design
- 8: Promoting healthy communities

11: Conserving and enhancing the natural environment
12: Conserving and enhancing the historic environment

**South East Plan
2009**

Cross Cutting – Policies

CC1: Sustainable Development
CC4: Sustainable Design and Construction
CC6: Sustainable Communities & Character of the Environment
CC7: Infrastructure and Implementation

Housing - Policies

H1: Regional Housing Provision 2006-2026
H2: Managing the delivery of Regional Housing Provision
H4: Type and size of new housing
H5: Housing design and density

Countryside and Landscape Management - Policies

C4: Countryside and Landscape Management

Transport – Policies

T1: Manage and Invest
T4: Parking

Natural Resource Management – Policies

NRM5: Conservation and Improvement of Biodiversity

Management of the Built Environment – Policies

BE1: Management for an Urban Renaissance
BE5: Village management
BE6: Management of the Historic Environment

Social and Community Infrastructure – Policies

S6: Community infrastructure

Central Oxfordshire – Policies

CO1: Core Strategy
CO5: Transport

**Adopted Cherwell
Local Plan 1996
Saved Policies**

C2: Protected Species
C4: Creation of new habitats
C23: Retention of buildings, walls, trees
C28: Design, layout etc standards
C30: Design control
C33: Retention of undeveloped gap
TR1: Transportation Funding

**Non-Statutory
Cherwell Local Plan
2011**

Housing policies H1a, H3, H4, H15, D1, D2, D3, D6,

Transport & Development policies TR1, TR4, TR5 and TR11

Recreation and Community Facilities policies R8, R9 and R10a

Conserving & Enhancing the Environment policies EN23,
EN24, EN25, EN35, EN37, EN40 and EN47.

The Cherwell Local Plan – Proposed Submission Draft May 2012

Urban Design & The Built Environment policies D1,D2, D3 & D6
The Proposed Submission draft of the Cherwell Local Plan was considered at the CDC Executive on 28th May 2012, with public consultation due at the end of June. This document is a material consideration.

The plan places its focus on economic growth and the sorts of communities we build in the most sustainable locations. It also has a strong emphasis on the importance of design quality and respect for our heritage, landscape and environment. These priorities are reflected in the draft.

5. Appraisal

5.1 The key issues for consideration in this application are:

- Policy Context
- Access and highway safety
- Neighbour impact
- Trees
- Ecology
- Planning Obligations/infrastructure contributions

5.2 Policy Context

The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF defines this as having 3 dimensions: economic, social and environmental. Also at the heart of the NPPF is a presumption in favour of sustainable development and in the context of this application would include building a strong and competitive community, promoting sustainable transport, requiring good design, the promotion of healthy communities, meeting the challenge of flooding and the conservation and enhancement of the historic environment.

5.3 Paragraph 14 of the NPPF states that where the development plan is absent, silent or relevant policies are out of date, in order to reflect the thrust of the guidance for a *presumption in favour of sustainable development*, planning permission should be granted unless harm can be identified. There is no specific policy in the adopted Cherwell Local Plan that relates to housing development within the built up limits of Kidlington, and generally, providing that all other material considerations are taken into account and no relative harm exists, the principle of development is generally considered to be acceptable. It is considered that other harms do exist and this will be reasoned out later in the relevant sections of the report.

5.4 Paragraph 35 of the NPPF states that developments should be located and designed where practical to create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians. This aspect will be further expanded later on in the report.

5.5 Paragraph 49 of the NPPF addresses the issue of local authorities five year housing supply and that housing applications should be considered in the context of the presumption in favour of sustainable development.

- 5.6 Paragraph 50 of the NPPF requires that local authorities *plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes).*
- 5.7 Further Paragraph 53 advises that where harm is caused to the local area, the inappropriate development of residential gardens should be resisted.
- 5.8 The general thrust of national policy contained within the NPPF is continued in regional policy, with one of the sustainable development priorities being to ensure the physical and natural environment of the South East is conserved and enhanced. Policy CC6 of the South East Plan 2009 requires decisions associated with the development and use of land to respect, and where appropriate enhance, the character and distinctiveness of settlements throughout the region.
- 5.9 Policy BE1 of the South East Plan 2009 sets out the Plan's approach to promoting and supporting imaginative and efficient design solutions in new development, and aims to increase public acceptance of new housing by making sure that its is of a high quality design that respects local context and confers a sense of place
- 5.10 Policies C28 and C30 of the adopted Cherwell Local Plan relate to all new development and seeks to ensure that it is sympathetic to its context, and the nature, size and prominence of the development proposed, and are compatible with the appearance, character, layout and scale of existing dwellings in the locality and street scene in general.
- 5.11 Policy D1 of the Non-Statutory Cherwell Local Plan 2011 sets out the Council's urban design objectives which seek to ensure that development is compatible with the site's context in terms of its scale, density, massing, height and layout. Whilst Policy D3 seeks to ensure that development reflects or interprets the local distinctive character of the site and its context, by respecting traditional patterns of arrangement, plots and their buildings and spaces and retention and enhancement of existing open spaces and undeveloped gaps of local importance that contribute positively in visual terms to the public realm. The scale, proportion, massing and height of proposed development should be considered in relations to that of adjoining buildings.
- 5.12 Furthermore Policy D6 refers to the consideration of development in design terms which should be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity and also that it provides standards of amenity and privacy acceptable to the Council.
- 5.13 It is considered that the site is capable of redevelopment, however taking into account the above policies and the key issues detailed, the scheme proposed is unacceptable and runs contrary to the policy provisions for the reasons given.
- 5.14 **Access and highway safety**
The means of access into the site has been submitted for determination at this outline stage. The proposal involves the use of 3 no. vehicular access points; the existing access off The Rookery is to be retained and used for Plot 1; the second access will be via The Phelps and will serve 10 no. dwellings and finally 3 no.

dwellings will be served by individual driveways off Nurseries Road. Each dwelling will have at least 2 parking spaces, with a total of 34 no. Parking spaces provided for the whole development (31 no. Allocated and 3 no. Unallocated).

- 5.15 Concern has been raised by local residents in respect to the use The Phelps as an access point to serve 10 no. Dwellings, on the basis that it is narrow, actually measuring 4.3m, instead of the 4.5m stated in the applicant's supporting statement. In response to the concerns raised by residents, the applicant's agents have come back and advised that The Phelps can be classified as a major access road and currently serves 138 houses, whilst narrow at the point of access into the site, it could serve up to 25 dwellings. This section of The Phelps, being a cul-de-sac serves 8 no. houses and taking the proposed development into account, it will only give access to a further 10 units. Also in respect to pedestrian/cyclist safety, essentially vehicle speeds will be very low and the road will be treated similar to a shared surface, reducing conflict with users.
- 5.16 Oxfordshire County Council, as Local Highway Authority has accepted that the proposal in respect to access, parking and highway safety is acceptable in principle, subject to conditions; requiring further details of visibility splays from the proposed dwellings off Nurseries Road and refuse vehicle swept path analysis. On that basis, and despite the level of objection, it is considered that that the proposed means of access off The Phelps to serve 10 no. units, The Rookery to serve 1 dwelling and Nurseries Road to serve 3 no. units, is acceptable in highway safety terms. It is further considered that a reason to refuse the application on highway grounds could not reasonably be sustained at appeal without the support of the Local Highway Authority.
- 5.17 **Neighbour impact**
The application has been submitted in outline form, with the layout submitted for determination at this stage, and whilst indicative details of scale have been provided to enable the contextualisation of the development, it is the layout which is of concern. During the pre-application discussions, officers raised some concerns about the proximity of the proposed dwellings to boundaries and that to enable some form of meaningful landscaping to be planted along the southern and south-western boundaries, to provide some screening for privacy, some plots would need to be relocated or removed from the scheme. At that time, the applicant's agent advised that the layout was shown for indicative purposes only, however, whilst some changes have been made, those previously identified plots are now shown in the layout for determination at this outline stage and they are still very close to the said boundaries.
- 5.18 Whilst it is accepted that the rear gardens of properties range between 10 and 20m deep, essentially, it is the close proximity of plots 4, 5 and 7 to the southern boundary which raises concerns. At most there is only a 2 - 3m gap separating the proposed plots and the neighbours along The Phelps, which is very narrow to enable a good boundary hedge to be planted to help mitigate the gables of the proposed dwellings.
- 5.19 It is the impact on these neighbouring properties which is of most concern, and whilst the scale of plots 4, 5 and 7 could be negotiated further to reduce their height with possibly a 1½ storey restriction, in order to provide the requisite landscaping/hedging, there really ought to be more space to the side and also to avoid the overbearing impact that results from this close proximity. Furthermore, in

respect to trees (which will be discussed later in more detail), there are a number of good specimen trees to be retained, which again are close to boundaries, but because they dominate the garden, they may be removed by future occupiers, and with the result of proposed dwellings to potentially overlook other neighbours and consequential loss of privacy.

5.20 Of additional specific concern is the impact the proposal will have on the neighbour at no. 67 The Phelps from a traffic disturbance perspective. The front wall of this neighbour is only 2m from the road, having no footpath on this particular aspect of The Phelps. The bedrooms of this property are on the front and it is considered that as a result of the level of vehicular activity into and out of the site using the Phelps access (potentially 50+ trips per day), the proposal is likely to have a seriously detrimental effect on the amenities currently enjoyed by the occupier of this adjacent property. The proposal is therefore contrary the National Planning Policy Framework requiring good design and delivering a wide choice of high quality homes and Policies CC6, H5, BE1 and BE5 of the South East Plan 2009 and Policies C28 and C30 of the adopted Cherwell Local Plan.

5.21 **Trees**

Whilst the site is totally enclosed by mature conifers/trees, there are a number of individual trees of significant value and have been identified for retention within the proposed development, specifically the Blue Atlas Cedar which would be a prominent, focal feature upon entering the site. The loss of large, mature conifers will however, be an enhancement and will also remove the 'nuisance' affect they have created for some years to the neighbours. As stated previously, the proximity of the plots in relation to the trees was raised as an issue at the pre-application stage, however, now that the layout has been submitted for determination, the previous concerns of the Arboricultural Officer still remain valid.

5.22 It is likely that the close proximity of the proposed houses to the trees, will give rise to issues in the future for the occupiers, as most of the garden will be shaded and will result in leaf drop, furthermore there is the issue of growth potential of the trees and the closeness of the house. The proposed layout therefore is unacceptable and should be amended accordingly with the possible reduction of units, as essentially the loss of the most significant trees on the site would be harmful to the character of the area and a loss of amenity to the surrounding neighbouring properties. The retention of trees on the site will significantly enhance the area, especially the feature Cedar tree and with the correct layout would create a pleasant residential development that would provide space around the trees and the necessary wildlife mitigation and enhancement measures required to comply with the relevant development plan policies.

5.23 Therefore it is considered that by virtue of the amount of development and its layout, the proposal represents a crowded, overdevelopment of the site, conflicting with the general character of the surrounding area which would threaten the long term future of the retained trees, which may be lopped or felled by future occupants, because of the level of shading and leaf drop that would affect the dwellings and private gardens. The proposal would therefore be contrary to the provisions of the National Planning Policy Framework requiring good design, delivering a wide choice of high quality homes and conserving and enhancing the natural environment and to Policies NRM5, H5, CC6 and C4 of the South East Plan 2009 and Policies C28 and C33 of the adopted Cherwell Local Plan.

5.24 **Ecology**

NPPF – Conserving and enhancing the natural environment requires that “the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures” (para 109)

5.25 Paragraphs 192 and 193 further add that “The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Habitats Regulations Assessment) and that Local Planning Authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question”. One of these requirements is the submission of appropriate protected species surveys which shall be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. This is a requirement under Policy EN23 of the Non-Statutory Cherwell Local Plan 2011.

5.26 Paragraph 18 states that “When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”

5.27 Paragraph. 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, “local planning authorities should consult Natural England before granting planning permission” and paragraph 99 goes onto advise that “it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”

5.28 Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity” and;

5.29 Local planning authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.

- 5.30 Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States to prohibit the deterioration or destruction of their breeding sites or resting places.
- 5.31 Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met.
- 5.32 In respect to the application site, a Phase 1 Habitat Survey Report was undertaken by Windrush Ecology.com dated 7th March 2012 and the report submitted with the application, which found that there were no bats roosting in the dwelling to be demolished and no roosting opportunities in the trees within the garden. A number of bird species were seen and the trees and shrubs were considered suitable nesting site. There were no other notable protected species found within the site. No further surveys were considered necessary. Mitigation and compensation measures were however recommended in the report, which the Council's Ecologist has considered and would be recommended should the development be accepted.
- 5.33 Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The proposal therefore accords with the National Planning Policy Framework -Conserving and enhancing the natural environment and Policy C2 and C4 of the adopted Cherwell Local Plan.
- 5.34 **Infrastructure contributions**
The draft Supplementary Planning Document (SPD) relating to the requirement for financial contributions towards infrastructure or service requirements was considered by the Council's Executive Committee on 23 May 2011 and was approved as interim guidance for development control purposes. Consultation is taking place in June 2012 along with the Proposed Submission Draft of the Cherwell Local Plan.
- 5.35 New development often creates a need for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect on local amenity and the quality of the environment. National planning policy sets out the principle that applicants may reasonably be expected to provide, pay for, or contribute towards the cost, of all or part of the additional infrastructure/service provision that would not have been necessary but for their development. Planning Obligations are the mechanism used to secure these measures.
- 5.36 The applicant has questioned the validity of the Council's SPD and whilst is willing to enter into an appropriate planning obligation, required further justification. This justification has been provided. There is an error in the SPD in respect to LAP provision and as there is a recreation ground close by the applicant is willing to make an offsite contribution instead.
- 5.37 It is considered that the proposed development will give rise to infrastructure or service requirements and therefore is liable for planning obligations.

In this case there is a net gain of 13 no. dwellings comprising: 3 no. x 2 bedroom units, 7 no x 3 bedroom units and 3 no. x 4 bedroom units.

Refuse bins and recycling banks - **£877.50**

General Transport and Access impacts - **£13,342.00**

Libraries - **£769.00**

Day care for the elderly - **£2,763.00**

Adult learning - **£408.00**

Museum resource centre - **£191.00**

Strategic Waste Management - **£2,433.00**

Outdoor Sports - **£28,412.93**

Indoor Sports - **£8,035.56**

Off-site contribution to local LAP/Recreation facilities – TBA

The total contribution sought from the proposal is **£57,231.99** which does not include the last off-site LAP contribution

Justification for the contributions was requested and has been provided. To date no draft legal agreement has been submitted for consideration.

5.38 Effect on the heritage assets (area of archaeological value)

Whilst the site is within an area of archaeological interest, Oxfordshire County Council's Archaeologist has recommended the applicant be informed by a planning note about the potential of Archaeological finds during construction.

5.39 Whilst not in the Conservation Area, development of the site has the potential to affect its setting, however, it is considered that addressed correctly in terms of materials and scale, there will be no harm to the significance of this heritage asset.

5.39 Conclusion

In conclusion therefore taking into account the above appraisal it is considered that the application is unacceptable for the following reasons and conflicts with the Government guidance contained in the NPPF and the other relevant development plan policies listed above and below.

6. Recommendation

REFUSAL for the following reasons:

1. The proposal by virtue of the amount of development and its layout represents a crowded, overdevelopment of the site, conflicting with the general character of the surrounding area which would threaten the long term future of the retained trees, which may be lopped or felled by future occupants, because of the level of shading and leaf drop that would affect the dwellings and private gardens. Furthermore, the crowded layout leaves too little space allocated for suitable replacement tree planting and landscaping which would be required in order to a) mitigate the loss of wildlife habitat b) to provide appropriate screening particularly towards the southern boundary and c) to provide a formal open space area within the centre of the site which will provide for a visual feature as well as an allocated area for replanting. The proposal would therefore

be contrary to the provisions of the National Planning Policy Framework requiring good design, delivering a wide choice of high quality homes and conserving and enhancing the natural environment and to Policies NRM5, H5, CC6 and C4 of the South East Plan 2009 and Policies C28 and C33 of the adopted Cherwell Local Plan

2. The proposal by virtue of the amount of development and its layout would be likely to have a seriously detrimental effect on the amenities of the occupiers of the adjacent properties as a result of the level of vehicular activity into the site from The Phelps and also the overdomination and likelihood of overlooking to surrounding properties with a consequential loss of privacy. The proposal is therefore contrary the National Planning Policy Framework requiring good design and delivering a wide choice of high quality homes and Policies CC6, H5, BE1 and BE5 of the South East Plan 2009 and Policies C28 and C30 of the adopted Cherwell Local Plan
3. In the absence of a satisfactory legal agreement, the Local Planning Authority is not convinced that the infrastructure directly required to service or serve the proposed development, including Adult learning facilities, elderly day care resources, community, library and museum facilities, strategic waste, health services and transport measures will be provided. This would be contrary to the National Planning Policy Framework, Policy CC7 of the South East Plan 2009, Policy R12 of the adopted Cherwell Local Plan and Policies OA1, TR4, R8 and R10A of the Non-Statutory Cherwell Local Plan 2011.

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