

Planning Committee

Rosemary Development - Fringford

31 January 2013

Report of Head of Public Protection and Development Management

PURPOSE OF REPORT

To bring to the attention of the Committee a planning enforcement case that is currently being investigated and to advise Members of the action to be undertaken by officers

This report is public

Recommendations

The Committee is recommended to:

- (1) Note the contents of the report and the Head of Public Protection and Development Management's intention to serve an Enforcement Notice requiring the demolition of the dwellings.

Executive Summary

Introduction

- 1.1 This case was received via the Ward Member at the end of May 2012. The complaint was that the dwellings as approved under planning application 11/01160/F had not been built to the approved plans. Specifically the concern was that the dwellings had been built further forward than shown on the approved drawings.

Planning History

- 1.2 A planning application was submitted for '*Demolition of existing dwelling and replace with 2 No. new dwellings*' on 25 July 2011 and approved on 15 September 2011 (Ref: 11/01160/F). Application to discharge conditions submitted on 1 November 2011 and approved 9 December 2011. (Ref:

11/00298/DISC)

- 1.3 The site is situated in the centre of Fringford. The previously demolished dwelling was not a listed building although a Grade II listed building, The Forge, is situated directly opposite the site to the south-east beyond a grass verge. The site is not in a Conservation Area although it is within an Area of High Landscape Value. The site is an Area of Archaeological Interest as part of the historic village core.
- 1.4 The demolished detached dwelling was set forward of its neighbours to either side. Vehicular access to the site was gained via a gated driveway, leading to a detached garage and an outbuilding stood adjacent to the south-western boundary of the curtilage. A low hedgerow marked the front boundary. A conifer hedgerow runs along the rear boundary of the curtilage, with stone built boundary walls to the side boundaries.
- 1.5 The approved development involved the complete clearance of the site and replacement with 2 no. detached three bedroom dwellings. The front elevation of each dwelling comprises two mid-eaves height dormer windows, single integral garage and entrance doorway with kitchen window. The dwellings would appear 'mirrored', both being of identical appearance. The depth of the dwellings would be formed using a gable feature upon the rear elevation, providing two-storey accommodation, with a ridge height that appears subservient to the front-most element of the dwellings. Two off-street parking spaces are provided to the front of the dwellings. The existing hedgerow at the front boundary was to be removed, with access to the dwellings centralised within the curtilage and 1 metre tall dry stone walls to be erected to either side of the access.
- 1.6 The construction materials are stone with brick detailing to match that of the neighbouring dwellings to the north-east and south-west. The roofs are tile. Windows and doors are constructed from timber.
- 1.7 The application was approved under delegated authority. It was considered that the development was acceptable on its planning merits given that the principle of the replacement dwellings was acceptable in this location and the dwellings were of a design, size and style that is appropriate in their context and would not cause detriment to the setting of the nearby listed building, highway safety, neighbouring properties or the visual amenity of the wider locality. Further, the development would preserve the character and appearance of the Area of High Landscape Value.
- 1.8 Specifically in relation to neighbouring properties, consideration was given to the impact on Kohanka within the Case Officers report.

The nearest dwelling to Kohanka to the south-west would extend beyond both the front and rear elevations of this neighbouring property. With regard to the front elevation, an integral garage is positioned closest to the site at ground floor level, with a dormer window at first floor level. The 45-degree angle has been applied to this window, as set out in the Cherwell District Council (CDC) Home Extensions and Alterations guide (2007) and the dwelling would not protrude into this line. A dormer window also exists upon the rear facing roof slope, although as the dwelling would only extend 1 metre beyond the rear elevation of this neighbour's property and would not protrude into the 45-degree angle I do not consider that harm would be caused. No windows exist within the side facing elevation of this neighbouring property facing the site,

although I have recommended the attachment of a condition requiring the proposed bathroom window to be obscurely glazed due to proximity of the proposed window to this neighbouring property and the possibility of obtaining views down into the rear garden.

Enforcement History

- 2.1 A complaint was received from the Ward Member in May 2012 alleging the new dwellings may not have been built in accordance with the approved plans.
- 2.2 An initial site visit was carried out on 30 May 2012. The site compound was locked up restricting access, however on first assessment it appeared as if the dwellings had been built around 2 metres further forward than approved.
- 2.3 A meeting was arranged with the planning agent for the site (David Berlouis of Cadmonkies) on 8 June 2012. Mr Berlouis' electronic measure was used due to access restrictions on to the site. Measurements were taken from where Mr Berlouis had assumed the red line to be and found to measure accordingly with the approved plan.
- 2.4 Following the site visit the case was discussed amongst the enforcement team and it was concluded that the neighbouring properties should be measured to see how they were positioned in relation to the approved plans. This was carried out on 6 July. It was difficult to confirm from this visit where the boundaries were in relation to the plan as all boundary walls to the front of the site had been demolished with building materials and heras fencing obscuring some of the site. The visit did however confirm that the neighbouring properties were roughly in the correct location.
- 2.5 Initial advice was sought from the Legal Department on 11 July 2012. They advised that if the new builds were built in accordance with the approved plans then the authority would be unable to pursue any further action.
- 2.6 The case was discussed at during a meeting of other Senior Officers on 18 July 2012. It was agreed that a full site survey be carried out by the Enforcement Team including taking measurements of neighbouring dwellings either side. This survey was carried out on 31 July 2012.
- 2.7 A further comprehensive site survey by Officers was carried out on 7 August 2012, accompanied by the agent, owners and complainant.
- 2.8 Concern was also raised at this point by the Parish Council regarding the submission of amended plans. The original case officer provided details in the form of a synopsis dated 18 October 2012.
- 2.9 Given the complicated and unprecedented nature of this case, an independent full survey of the site was commissioned. ON Centre Surveys Ltd carried out a full survey on 28 November 2012.
- 2.10 A full report and overlay plans were received from ON Centre Surveys Ltd on 19 December 2012. Members will be supplied with a copy of the overlay plan at Committee.

- 2.11 Some concern was also raised regarding the insertion of windows at first floor levels on both side elevations overlooking both Kohanka and The Gables. These windows were not shown on the submitted plans and whilst we have been advised that the windows will serve en-suite/bathrooms, it is suggested that this matter can be encompassed in any future further action.

Consultations

Third parties with an interest in the site have been asked to provide comments.

Mr Berlouis (agent) on behalf of Mr & Mrs Ward (Applicants of the site)

Thank you for the opportunity to view and comment on the alleged breach of planning control.

The planning application site boundaries were prepared from digital information supplied by Ordnance Survey (c) Crown Copyright 2011. Under Licence number 100020449. The information was taken in good faith and several overall widths were taken on site together with depths to points which could be accessed within the constraints of the overgrown gardens and these concluded that they were correct.

We appreciate that all of the boundaries and ownership appear to be mis-aligned and we shall be contacting the owners to prepare new deeds, in line with the surveyed information.

We have prepared three separate plans using the digital plans prepared by On Centre to align established points on the West and Front boundary with Kohanka.

Plan 1 - would indicate that – on the new buildings are:
- **694.38 mm** forward of the approved position on the property on the West
- **388.66 mm** forward of the approved position on the property on the East.

Plan 2 - would indicate that – on the new buildings are:
- **138.65 mm** forward of the approved position on the property on the West
- **486.36 mm** forward of the approved position on the property on the East.

Plan 3 - would conclude that – on the new buildings are:
- Sited as per the approval plans on the property on the West
- Sited as per the approval plans on the property on the East.

The overall depth of the site from front to back on the

western boundary is **36095.18mm**

Depending on which alignment point you use building are correct or only slightly forward of the approved position. We can confirm from site measurements taken with Mrs Jarvis and Ms Baker that the dwellings themselves are smaller than those approved.

The site was very overgrown and we set out the building in good faith from the front boundary line. As the position is inconclusive we hope that no further action is required. We have however been advised that a non-material change application for the revised fenestration to the en-suite on the West and East facing elevations should be made.

**Mr Maciejewski
(Owner/Occupier of
Kohanka, Main Road,
Fringford)**

“The plans for the new development of the two new houses known as ‘Rosemary Cottages’ were submitted and passed as 2 no. three bed roomed houses. The new position as passed on block plan shows house no. 1 being .9 metres in front of the original Rosemary house.

House no. 1 has in fact been built 1.2 metres (four feet) further forward than passed on block plan, so that the new house is now 2.1 metres further forward than the original old building line.

So, when entering Main Street via the Village Green heading towards the Church you are now hit with a view of a huge gable end of stone and brick, completely altering the street view and aesthetic feel of this part of the village.

The points I would like to be raised are the following:

1) The new houses were set out on site by Cadmonkies, themselves, so why did Cadmonkies not reapply for planning when it was obvious that house no. 1 did not fit the site as on the block plan passed. A new application should have been made for a smaller house that would fit the site,.

2) The plans also showed an extra ensuite window overlooking the neighbours on either side which had not been submitted or passed by Planning.

3) We were informed by the CDC that Cadmonkies had told them that the new houses were in the correct position as passed on block plan, but that Kohanka and Gables properties were in fact further back than actually shown

on the Ordnance Survey block plan used. As proved by the Survey carried out by On Centre Surveys the Ordnance Survey block plan is correct and Kohanka and the Gables are in the right position as shown. As proven by the Survey the two new houses are 1.2 metres further forward than passed.

4) The new front boundary corner walls were requested by Mr. Hughes of the Highways Department to be built a minimum of 2.4 metres from the edge of the road. Cadmonkies written reply and block plans submitted state that the walls will be 2.6 metres from the road. This was agreed and passed at Planning.

5) I would like to point out the following:-

Condition 2 as laid down by the Delegates Report and Planning Conditions states,

“except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: drawings No’s P/11/055/001 Rev:B received 01.09.11, P/11/055/003 ref: B received 31.08.11, P/11/055/004 Rev: B received 31.08.11, P/11/055/005 Rev: A received 31.08.11.”

“Reason – for the avoidance of doubt to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within PPS1.”

This Planning Condition has clearly been broken and ignored.”

**Fringford Parish
Council**

“The Parish Council would like to make the following points with regard to the development.

The visual impact of the development in its current position is of significant detriment to the street scene of the village; particularly as it is opposite one of the village’s Grade II listed buildings - The Old Forge - which has been featured in Lark Rise to Candleford publicity and which visitors to the village admire.

There are serious concerns about the impact of future building work on the village that allowing this development to remain in its current position would have, both within the village and in the wider Cherwell District, and the Parish Council does not wish this development to set a precedent.

The Parish Council requests that now that the independent survey confirms these houses are too far forward by between 1 - 1.2 metres that the Council enforces the original set of plans and have the houses demolished and rebuilt as submitted in the original approved plans and that the Planning Officers acknowledge the precedent this development sets.

I trust that this is of help to the Planning Committee.”

**Mr Thwaites
(Owner/Occupier of
The Ganders, Main
Road, Fringford)**

- Firstly as the equipment used in the survey is accurate to +/- 3mm please explain the vagueness of the readings of 1 – 1.2 m.

- The position of the two new houses have been moved forward by a considerable distance towards the road, thus breaking the Condition 2 laid down in the Delegates Report

-I am concerned that the fact the Cadmonkies drawings do not state any key dimensions in relation to the position of these new buildings

- I am also appalled at the time delay of at least 5 months when no action was taken by the council and we have had to watch these houses continued to be built without and restraint. This has now led to the house being built and certainly one finished which is now being inhabited.

- Can you explain why only the offending party is able to represent themselves at the next meeting and no one (including a representative of the parish council) else allowed in? This seems to be “one sided” get together between the offending parties and CDC planning where no one who is directly affected or represents the village can state the overwhelming offence that the building of these new properties has caused. Where is the democracy in this planning process here?

[NB: This matter has been addressed and clarified by Officers.]

- There is also the consideration of the addition of extra windows which again went through without any consultation and directly overlook our property onto the front entrance again previously referred to: An additional window, not on the plans submitted and passed, has been added to bedroom 2 on both properties. The one now facing Ganders directly overlooks our driveway and front door so we are overlooked and lose our privacy.

- I would also point out that the two buttresses are also

built forward of the original planning line (as on drawing P/11/055/007 dated October 2011) and also confirmed by the independent survey (drawing number 21075A/2 of 29th November 2012) that these are also demolished and built as according to approved plans.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 The independent survey concluded that the dwellings have been set out and built 1-1.2m further forward than as the approved plans showed. The survey indicates that this may be partially due to mapping intolerances from the ordnance survey based site plan. However, it is the independent surveyors opinion that had the original proposed site plan been based on an accurate topographical survey, prior to design, some of the problems may have been avoided, i.e. the size and shape of the site are not consistent with the Ordnance base plan.
- 3.2 Discussions with the applicants and their agent have indicated that the OS base map was not entirely accurate in the boundary details and that the OS base had to be altered to include the jut out of the wall on the South-western boundary. The overlay plans produced by On Centre Ltd, indicate that this is a key discrepancy from the actual position of the wall on site. When setting out the builds this may have been a key component of the incorrect positioning of the new dwellings.
- 3.3 One of the main concerns raised by local residents and the Parish Council is over the parking arrangements now that the properties are sited further forward into the approved parking areas for the dwellings. It is our opinion that this does not pose a significant issue as it has been demonstrated that four larger vehicles can be positioned on the driveway comfortably without encroaching on to the highway.
- 3.4 In respect of the current siting of the dwellings, whilst the approved dwellings were positioned forward of the established building line, it is considered that this is a material deviation from the approved plans. The increased projection of the dwellings by 1-1.2 meters creates an increased level of harm to the neighbouring properties, and also upon the wider locality. The approved siting of the dwellings did allow them to project by 3.5m forward of Kohanka and 3m forward of The Gables but this was considered acceptable. What has now been built significantly increases the impact of the new dwellings on both neighbouring properties and the streetscene, resulting in an unacceptable level of harm.
- 3.5 There has been some criticism over the delay in taking formal action. Clearly taking action earlier may have been premature until such time as a formal survey could establish the level at which there was an identified breach of planning control. The applicants were warned that any work carried out during the investigation would be at their own risk.

Conclusion

It has been proved that the dwellings have been sited 1-1.2m further forward than the approved plans. This results in a clear breach of condition 2 of the planning permission. Officers do not consider that the impact of the scheme in this location is acceptable due to the increased level of harm caused to neighbouring properties at Kohanka and The Gables, and the wider streetscene of Main Road, Fringford. Officers would not support a retrospective application for what has been built and therefore consider it expedient to take enforcement action. The legal department have been instructed to serve an enforcement notice.

Implications

Financial:	<p>The cost of taking enforcement action and defending any subsequent appeal can be accommodated within existing budgetary provision</p> <p>Comments checked by Kate Drinkwater, [Insert job title] 01295 22[Insert extension number]</p>
Legal:	<p>Officers have delegated authority to take enforcement action when they consider it necessary and expedient to do so.</p> <p>Comments checked by Nigel Bell, Team Leader – Planning & Litigation, 01295 221687</p>
Risk Management:	<p>Officers believe there has been a clear breach of planning control and consider it expedient to take enforcement action. Failure to do so would bring the planning regime into disrepute and may result in a complaint to the Local Government Ombudsman.</p> <p>Comments checked by Nigel Bell, Team Leader – Planning & Litigation, 01295 221687</p>

Wards Affected

Fringford

Document Information

Appendix No	Title
Appendix	ON Centre survey
Background Papers	
Planning Application Ref No. 11/01160/F	
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