

Former Rosemary Main Street Fringford

13/00718/F

Ward: Fringford

District Councillor: Cllr B. Wood

Case Officer: Laura Bailey

Recommendation: Approval

Applicant: Mr & Mrs R Ward

Application Description: Retrospective: Variation of condition 2 of 11/01160/F – re-submission of 13/00097/F

Committee Referral: At the request of the Ward Member and in the light of previous Committee involvement

1. Site Description and Proposed Development

- 1.1 The site is situated central to the village of Fringford. The proposal relates to the redevelopment of the plot of a single dwelling that was replaced by 2 detached dwellings. 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. There are no other relevant site constraints.
- 1.2 The detached dwelling that was demolished was set forward of its neighbours to either side (Kohanka to the southwest and The Gables to the northeast). 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 ran along the rear boundary of the curtilage (which has subsequently been removed), with stone built boundary walls to the side boundaries.
- 1.3 The approved development under application 11/01160/F involved the complete clearance of the site and replacement with 2 no. detached three bedroom dwellings. The front elevation of each dwelling contained two mid-eaves height dormer windows, single integral garage and entrance doorway with kitchen window.
- 1.4 During the erection of the new dwellings under the aforementioned consent, concerns were raised that the position of the buildings within the site was incorrect. Site measurements were taken by the Enforcement Team which confirmed that the buildings were incorrectly sited. However, exact detailed measurements were difficult to ascertain and were subsequently verified following an independent assessment by a specialist survey company instructed by the Council that confirmed that the buildings had been erected some 1.2m forward of the approved siting.
- 1.5 A subsequent application was therefore submitted (13/00097/F refers) seeking to regularise the position of the buildings (as constructed), by varying condition 2 of the original permission (11/01160/F refers). Condition 2 of this permission required the development to be carried out in accordance with the approved plans submitted in support of the application. However, this application was withdrawn prior to its scheduled committee date.

- 1.5 This application seeks to regularise the siting of the buildings by varying condition 2 of the original permission 11/01160/F, but with an amendment to the first floor element of plot 1 (which is to be set back from the existing front elevation by 1.1 metres), with the footprint of the ground floor of that unit remaining as built. The design of the front elevation of plot one has been amended, to continue the single storey lean to projection across the width of the front elevation, resulting in a projecting, single storey gable arrangement for the integral garage. Plot 2 is to remain as built. Two off-street parking spaces are provided to the front of the dwellings. Access to the dwellings is centralised within the curtilage and 1 metre tall dry stone walls have been erected to either side of the access.

2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letters, press notice and a site notice. Amended plans have been received during the processing of the application, which include the north east and south west 'internal' elevations, which were missing from plots 1 and 2 and the side elevations of plot 1 and 2 are now labelled correctly. Further drawings were issued, showing that the conifers at the rear removed (as is the position on site) and correctly labelling the plots on the separate plans provided (drawings P/11/055/003 Rev D and P/11/055/004 Rev D refer). The Parish Council and neighbours were sent letters informing them of the amended plans, giving them 10 days to comment. However, representations received after the 10 day deadline have been taken into account. To date, eight letters of objection have been received and 1 letter of support. The representations received to date are summarised below. Full copies are available from the Council's website, via Public Access:

Objections

- Approving this application would set a precedent
- Hardstanding to the front is out of character
- Planning should only have been granted for 1 dwelling
- Impact on the character and appearance of the area;
- Impact on the setting of the listed building opposite;
- Overlooking from side windows that serve en-suite bathrooms;
- Enforcement action should be taken to remove the buildings;
- Out of keeping with the area.

Support

- The non compliance with the plans is so trivial it should be ignored
- Nothing out of character with the new units
- Hardstanding to the front keeps cars off the road
- Parish Council have been ill advised and should be guided by CDC

3. Consultations

- 3.1 **Fringford Parish Council:** Objects to the proposal for the following reasons:

- There is still no change to the footprint of the two houses. One is to remain exactly as built and both would be ahead of the originally approved location – forward of the original Rosemary Cottage and closer to the roadside by between 1.1 and 1.2 metres.
- The proposal to reduce only the first floor and roofline of the left hand house by 1.1 metres is an inadequate reduction in the bulk of the two buildings which would continue to have a detrimental impact on the visual amenity and street scene, jutting out significantly beyond the line of the original house and

houses around them.

- The visual impact of the overall development is of significant detriment to the street scene; particularly as it is opposite one of the village's Grade II listed buildings – The Old Forge. The design, imposing scale and forward location of both houses is not in keeping with adjacent properties.
- The development now includes a 15 metre wide hard-standing / quadruple driveway which has eradicated the original front garden, natural hedge and grass verge, which is not in keeping with the rest of Main Street or the village in general, where green verges are a consistent and prominent feature.
- The concern that this proposal would set a precedent and encourage other developers to ignore planning rules and conditions in Fringford and other villages. In addition to the unlawful location of the two buildings, the developers have also ignored conditions relating to the non-removal of trees and the repositioning of the roadside walls.

The Councillors felt that these revised plans provided to us on 24 June were not satisfactory as they did not show the outline of the original house in relation to the new buildings. The Parish Council also believes that the new plans submitted should not have constituted an amendment application as the design and location are significantly different to the originally approved plans.

Cherwell District Council Consultees

3.2 Arboriculturalist: No objections

Oxfordshire County Council Consultees

3.3 **Highways Liaison Officer:** No objection

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)

- C13: Areas of High Landscape Value
- C28: Development Control - Design
- C30: Development Control – Amenity
- H13: Category-1 Settlements

4.2 Other Material Policy and Guidance

National Planning Policy Framework

5. Appraisal

5.1 The key issues for consideration in this application are:

- Relevant planning History
- Impact on residential amenities
- Impact on character and appearance of the area
- Impact on highway safety
- Impact on listed buildings

Relevant Planning History

- 5.2 A planning application was submitted for '*Demolition of existing dwelling and replace with 2 No. new dwellings*' on 25th July 2011 and approved on 15th September 2011 (Ref: 11/01160/F). The application was approved under delegated authority as 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. An application to discharge conditions was submitted on 1st November 2011 and approved 9th December 2011. (Ref: 11/00298/DISC)
- 5.3 A complaint was received in May 2012 alleging the new dwellings may not have been built in accordance with the approved plans. 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 6th 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.
- 5.4 Given the complicated and unprecedented nature of this case, an independent full survey of the site was commissioned. This was done on 28th November 2012. 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 Survey base plan.
- 5.5 A report was presented to Members on 21st January 2013 by the Enforcement Team. The recommendation of the report was to note that the HPPDM intended to take formal enforcement action to rectify the current position.
- 5.6 An application was submitted on the 25th January 2013, seeking to regularise the siting of the dwellings, as constructed. This application was withdrawn, prior to its scheduled committee date. Enforcement action has been delayed to allow the determination of this application.

Impact on neighbour amenities

- 5.7 In assessing the agreed siting of the proposed dwellings under application 11/01106/F, it was acknowledged that the proposed dwellings would sit forward of the general building line along the north-western side of Main Street, although the existing building line is not rigid, as the original dwelling at Rosemary sat further forward than its immediate neighbours. It was accepted that the siting would respect the current form of development in the vicinity and would not harm the character and appearance of the area nor the amenities of the adjoining occupiers to a significant degree.
- 5.8 It is acknowledged that the approved siting of the dwellings did allow the dwellings to project forward by 3.5m of Kohanka and 3m forward of The Gables. The current proposal seeks to set the first floor element of plot 1 (adjacent to Kohanka) back by 1.1 metres from the built front elevation. This would bring the existing first floor WC and bathroom windows back behind the existing front elevation of Kohanka. It also

reduces the first floor projection beyond the existing front elevation of Kohanka from 4.5 metres to 3.4 metres, which is 100 mm less than was originally approved.

- 5.9 Having visited the site several times and viewed the proposal from the nearest first floor window within Kohanka (serving an office), it is my view that the proposal will not have an unacceptable impact in terms of overlooking from the south west elevation of plot 1 (facing towards Kohanka) as the first floor windows are set back behind their forward most front elevation. Those occupant's amenities could be further protected by the addition of a planning condition to require those windows to remain obscurely glazed and non-opening, unless parts of the window that can be opened are more than 1.7 metres above the floor of those rooms.
- 5.10 Similarly, in terms of outlook from this office window in Kohanka, I consider the revised proposal acceptable, particularly given that the originally approved scheme set the first floor element 100 mm further forward than is currently proposed.
- 5.11 In relation to The Gables, given the distance of plot 2 from the boundary and the nature of the first floor window (serving a WC, which will be conditioned in the same way as mentioned in para 5.9 above), I do not consider that the proposal would cause demonstrable harm to the occupant's amenities by way of overlooking or overdominance.
- 5.12 In all other respects, it is considered that the proposal would not cause demonstrable harm to neighbour amenity by way of overlooking, overdominance or overshadowing. Accordingly, it is considered that the proposal complies with Policy C30 of the adopted Cherwell Local Plan and guidance contained within the NPPF.

Impact on the character and appearance of the area

- 5.13 Whilst the current siting of the dwellings is considered a material deviation from the approved plans, the increased projection of 1.2m is not considered to significantly increase the impact of the new dwellings on the street scene. Main Street does not have a uniform appearance, insofar as the dwellings comprise a variety of styles, designs and set back from the highway. Notably, Spring Cottage (adjacent to Kohanka) is set slightly further forward as are the pair of semi detached dwellings (5 and 6 The Green), which are viewed in the context of the dwellings along the north side of Main Street. In any case, all of the dwellings on the north side of Main Street are set back a significant distance from the highway (~ between 10 and 13 metres), including the dwellings as part of this application, so the step forward is not prominent from views within the public domain.
- 5.14 Views of the dwellings on the northern side of Main Street, when travelling in a north easterly direction, are heavily obscured by mature vegetation between the front boundaries of the properties. Similarly, when travelling in the opposing direction along Main Street, the dwellings are almost completely obscured from views within the public domain due to the various conifer hedges and semi mature trees along the front boundaries of the neighbouring properties fronting Main Street.
- 5.15 In my view, the slight step forward is not readily noticeable, nor does it detract from the character or appearance of the area or street scene and therefore complies with Policy C28 of the adopted Cherwell Local Plan.

Impact on Highway Safety

- 5.16 Oxfordshire County Council Highway Authority have raised no objection to the application on the grounds of highway safety as sufficient parking to serve the

dwelling would be retained on site. I see no reason to disagree with this assessment and consider the proposal to accord with Government guidance contained within the NPPF and Policy T1 of the South East Plan 2009.

Impact on the setting of the listed building

- 5.17 The original application (11/01106/F) considered the impact the development would have on The Forge, a grade II listed building opposite the site. In determining the application, it was considered that the development would not result in substantial harm to the significance of the listed building.
- 5.18 The development has been brought forward but still maintains a large gap between developments. I am satisfied that the development would not harm the significance of the listed building opposite.

Other matters

- 5.19 Concerns have been raised in relation to the perceived delays in instigating enforcement action and the potential for this to set a precedent for others to act in the same manner. In all cases, the Council must demonstrate that it has acted in a reasonable manner. The Council follows the National guidance and takes formal enforcement action only as a last resort, where it is expedient and proportionate to do so. The Council seeks to engage with the landowner in the first instance and seeks voluntary compliance or an application to attempt to regularise the position. If there is a need to serve an Enforcement Notice, it should only require the minimum steps necessary to make the use/development acceptable in planning terms. This follows a 2012 High Court decision involving Chiltern District Council, where the judge held that requiring the complete demolition of a barn conversion was excessive, when the landowner could have remedied the breach by merely altering the building.
- 5.20 Clearly, each case must be considered on its own merits, but in this particular case, taking account of all the information received, Officers consider that the matter can be remedied in the manner set out in this proposal.
- 5.21 Comments have been made in relation to the removal of the hedge to the front of the dwelling and creation of hardstanding. Both of these operations do not require planning permission and therefore, the Council has no control over such alterations.
- 5.22 The conifer hedge to the rear of the site has been removed. However, the trees were not considered worthy of formal protection, nor were they conditioned to be retained. The trees provided additional screening of views of the dwelling from the properties at the rear of the site, but these dwellings have their own vegetative screen, provided by a mixture conifers / semi mature trees/shrubs in their respective gardens.
- 5.23 If Members are minded to accept this recommendation, the legal department will need to be instructed to serve an Enforcement Notice requiring the applicants to comply with the newly approved drawings. If Members are minded to refuse the application, the legal department have already been instructed to serve a Notice requiring the front elevations of both plots one and two to be moved back by 1.2 metres. Members will be aware that the service of Enforcement notices is delegated to Officers.

Engagement

- 5.24 Paragraphs 186 and 187 of the NPPF places a duty on the Local Authority to be positive in its decision taking. In this case the applicant met with Officers to discuss the application.

Conclusion

- 5.25 For the reasons as set out above, the application is considered acceptable and is recommended for approval, subject to the conditions set out below.

6. Recommendation

Approval, subject to the following:

1. That within four months of the date of this decision, the first floor of plot one shall be demolished and re-built in accordance with approved drawings P/11/055/010 and P/11/055/003 Rev D.

Reason: In order to adequately mitigate the impact of the existing development on the amenities of the adjacent neighbour, in accordance with Policy C30 of the Adopted Cherwell Local Plan and central Government guidance contained in the National Planning Policy Framework.

2. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: P/11/055/010, P/11/055/003 Rev D and P/11/055/004 Rev D.

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with Government guidance contained within the National Planning Policy Framework.

3. The materials to be used in the reconstruction of the walls and roof of both dwellings shall match in terms of colour, type and texture those used on the existing dwellings.

Reason: To ensure that the development is constructed and finished in materials which are in harmony with the existing buildings and to comply with Policy C28 of the adopted Cherwell Local Plan and guidance contained in the National Planning Policy Framework.

4. The development hereby approved shall be carried out in accordance with the details approved under application 11/00298/DISC, with the exception of condition 11, unless alternative details are approved under an alternative discharge of condition application.

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with Government guidance contained within the National Planning Policy Framework.

5. That the first floor bathroom and en-suite windows in the south west and north east elevations of plot 1 and 2, respectively, shall be glazed at all times with obscured glass and shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the windows are installed.

Reason: To safeguard the privacy of the occupants of the neighbouring dwellings and to comply with saved Policy C30 of the adopted Cherwell Local Plan and guidance contained within the National Planning Policy Framework.

6. Notwithstanding the provisions of Classes A to E (inc.) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)

(Amendment) (No. 2) (England) Order 1995 and its subsequent amendments, the approved dwelling(s) shall not be extended, nor shall any structures be erected within the curtilage of the said dwelling(s), without the prior express planning consent of the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the amenities of the occupants of the adjoining dwellings in accordance with Policies C28 and C30 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

STATEMENT OF ENGAGEMENT

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way as set out in the application report.