

Site Address: Former Rosemary, Main Street, Fringford

14/00817/F

Ward: Fringford

District Councillor: Cllr Wood

Case Officer: Michelle Jarvis

Recommendation: Refusal

Applicant: Mr and Mrs Ward

Application Description: Variation of Condition 2 of 13/00718/F – alteration to front of elevation of plot 1

Committee date: 10 July 2014

1. Site Description and Proposed Development

- 1.1 The site is situated central to the village of Fringford. There was a previous building on the site which was demolished as part of the earlier planning permission. 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.
- 1.2 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 runs along the rear boundary of the curtilage, with stone built boundary walls to the side boundaries.
- 1.3 The approved development under the 2011 consent (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 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. Four off-street parking spaces are provided to the front of the dwellings. The existing hedgerow was removed and access to the dwellings centralised within the curtilage with a 1 metre tall dry stone wall erected either side of the access.
- 1.4 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.
- 1.5 This site has been subject to a considerable amount of planning history as detailed below:

Application	Description	Decision	Date
11/01160/F	Demolition of existing dwelling and replacement with 2 no. new dwellings	APPROVED	Sept. 2011

11/00298/DISC	Discharge of conditions	APPROVED	Dec. 2011
12/00173/CPLANS	Enforcement complaint logged alleging the dwellings were not being built in accordance with approved plans	SUSTAINED – take action	July 2012
13/00097/F	Variation of Condition 2 of 11/01160/F	WITHDRAWN	April 2013
13/00718/F	Variation of condition 2 of 11/01160/F – resubmission of earlier application	REFUSED	July 2013
13/00138/EPLAN	Enforcement Notice served to secure compliance with earlier permission	SERVED	July 2013
13/01075/F	Variation of condition 2 of 11/01160/F – amended landscaping and site boundary	NOT PROCEEDED WITH	July 2013
APP/C3105/A/13/2203150	Appeal against Notice	ALLOWED & NOTICE QUASHED	March 2014
APP/C3105/A/13/2203150	Appeal against refusal of planning permission	ALLOWED	March 2014
14/00871/F	Variation of Condition 2 of 13/00718/F – alteration to the front elevation	PENDING	

2. Application Publicity

2.1 The application has been advertised by way of neighbour letter and site notice. The final date for comment was the 23rd June 2014.

1 letter of objection has been received and in summary, it raises the following issues:

- The planning permission issued by the Planning Inspector shows the whole

gable and top section being moved back by 1.1m thus in a small way reducing the overwhelming impact on Kohanka and Main Street. The new proposal does not do this

- By reducing a small section of the existing gable end, the remaining building will look completely out of balance, but still with the same overbearing effect on Kohanka and Main Street

3. Consultations

3.1 Fringford Parish Council: Object to the application and make the following comments:

- the application does not remedy the fundamental problem that the houses were built 1.1 metres too far forward of the approved position and the proposed plans do not conform to the Planning Inspector's recommendation that the whole of the first floor be set back by 1.1 metres;
- as proposed the forward projection of the dwellings still negatively affects the street scene;
- the minimal alterations to the dwellings will not sufficiently reduce the overbearing impact on Kohanka or the listed building – the Forge - opposite.
- The Parish Council would also like to make the following points:
 - given the history of this site the Parish Council believes that this matter should be referred to the Planning Committee as previous applications for Rosemary Cottages have;
 - any future approval for this site should contain the conditions outlined in the Planning Inspectors report regarding windows to both plots and the removal of any Permitted Development Rights;
 - it was noted that this application and previous ones for this site, seeks permission to erect two three bedroom houses whereas it would appear that two four bedroom houses have been built;
 - notwithstanding the outcome of this application the Parish Council strongly believes that CDC should pursue the option of a Second Bite Enforcement Order as highlighted in the Planning Inspector's Report of 5 March.

Oxfordshire County Council Consultees

3.3 Highways Officer: To date no comments received

3.4 OCC Archaeologist: No archaeological constraints to this scheme.

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

National Planning Policy Framework

4.2 Planning Policy Guidance

Submission Cherwell Local Plan (January 2014)

The Submission Local Plan has been through public consultation and was submitted to PINs in January 2014 for Examination to take place in June 2014. The Submission Local Plan does not have Development Plan status but is a material planning consideration. The Plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case:

ESD16: The Character of the Built and Historic Environment
Other Material Policy and Guidance

5. **Appraisal**

5.1 The key issues for consideration in this application are:

- Relevant planning History
- Impact on residential amenities
- Design
- Impact on highway safety
- Impact on listed buildings
- Third party comments

Relevant planning history

- 5.2 As outlined in the table above, there is a significant amount of planning history arising from the enforcement investigation which began in 2012. For the purposes of this application, it is pertinent to outline the history from the last relevant planning application (ref 13/00718/F) which resulted in a combined appeal against the refusal of this planning permission and an appeal against the service of the Enforcement Notice (ref 13/00138/ECPLAN).
- 5.3 Following further survey work carried out as part of the on-going investigation, it was proved that the dwellings had been sited 1-1.2m further forward than the approved plans. This results in a clear breach of planning control and a breach of condition 2 of the planning permission. As a result Members endorsed the Officers decision to serve an Enforcement Notice to seek the regularisation of the site in accordance with the approved planning permission. That notice was served 17 July 2013.
- 5.4 A revised scheme was submitted 16th May 2013 (13/00718/F) which sought 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 was proposed to be set back from the existing front elevation by 1.1 metres), with the single storey 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 per dwelling 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. This application was refused by Members.

- 5.5 A combined appeal was heard in January 2014 which dealt with the refusal of planning permission and also the Enforcement Notice. The enforcement appeal was heard on ground (a) that the breach of control should be given permission, ground (c) works do not constitute the need for planning permission and ground (f) the steps required by the notice exceed what is necessary.
- 5.6 The Inspector quashed the enforcement notice. At para 10 he states that *“there were clear problems with the notice as issued. The allegation does not accurately reflect the breach that has taken place and the requirements cannot secure compliance with the approved plans.”* In summary, Officers tried an “under-enforce” approach, rather than requiring complete demolition, but this was not acceptable to the Inspector.
- 5.7 In the decision the Inspector goes on to state *“In consequence of the above I find that the allegation in the notice does not accurately reflect the material deviation of the development that has taken place from the approved plans and the stated requirements would not ensure compliance with the approved plans”*. The Inspector does have powers to correct a notice however in this case he considered that the alteration of the notice could not be made without injustice to the Appellants.
- 5.8 In respect of the appeal against the refusal of planning permission, this was allowed subject to conditions. In his decision the Inspector considered the main points of concern to be the character and appearance of the area, living conditions, and other matters raised by third parties. He acknowledges that the development would not be materially harmful to the character and appearance of the High Street. In addition he goes on to consider that in terms of the living conditions of the adjacent property *“I conclude on this issue that the scheme would not be dominant and the harm I have identified due to overlooking is limited and conditions attached to a permission would adequately mitigate that harm.”*
- 5.9 Given the appeal decision, the appellants effectively now have a consent which requires the front portion of the first floor of Plot 1 to be demolished and rebuilt further back by 1.1m in accordance with the drawings submitted as part of application 13/00718/F. There are no live enforcement notices on site.
- 5.10 The applicants have submitted this application as an alternative to the scheme approved at appeal and have dealt with it as a variation of Condition 2 of the former application so as to retain the permission in place for plot 2 which is already on site. See paragraph 5.13 below for a description of the proposed scheme .

Impact on residential amenities

- 5.11 In assessing the siting of the proposed dwellings under application 11/01160/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.
- 5.12 It is acknowledged that the approved siting of the two dwellings did allow them to project by 3.5m of Kohanka and 3m forward of The Gables. The proposal which was allowed on appeal (ref 13/00718/F) proposed to set the first floor element of plot 1 (adjacent to Kohanka) back by 1.1 metres from the existing front elevation. This would then bring the first floor WC and bathroom windows back behind the existing front elevation of Kohanka. It would also reduce the first floor projection beyond the existing front elevation of Kohanka from 4.5 metres to 3.4 metres, which is 100mm less than was originally approved.

- 5.13 The current proposal before Members now seeks to alter only Plot 1 which is adjacent to Kohanka by altering the first floor front corner of the building nearest to Kohanka and removing one of the first floor side facing windows. This would effectively result in the alteration of the full gable replacing it with an asymmetric gable. The built form at ground floor level would remain as a 4.5m projection forward of Kohanka, whilst at first floor the development would be taken back by 1.10m resulting in the built form now being less prominent when viewed from the office window in Kohanka. In addition one of the windows has now been removed from the scheme which further reduces the impact on the neighbouring property.
- 5.14 It is considered that in respect of the impact of the neighbouring property alone, the current proposal has provided a solution which is considered by your officers to be an improvement which goes some way to rectify the issues with the proposal that were raised in the appeal. The Inspector in his decision outlines that in his view the issues to consider in terms of neighbour amenity are that of overlooking presented by the first and ground floor windows and the resulting outlook from the office window in Kohanka. He considers that *“the appeal scheme would reduce the visual impact of the first floor of Plot 1 on the outlook from Kohanka such that it would not be dominant or harmful to the living conditions of occupants of that dwelling.”* He goes on to say that *“due to plot 1 being building forward of the position approved a ground floor window to kitchen/breakfast area in the side elevation of Plot 1 overlooks the front garden and access of Kohanka and lead to some actual and also perceived overlooking of that area. I accept that overlooking from the side window involved is likely to reduce the enjoyment gained from the use of the front garden of Kohanka by its occupants although such harm would be limited”*. However, the HDM has reservations about the proposed design solution

Design

- 5.15 The NPPF sets out the economic, social and environmental roles of planning in seeking to achieve sustainable development: contributing to building a strong, responsive and competitive economy; supporting strong, vibrant and healthy communities; and contributing to protecting and enhancing our natural, built and historic environment (para’ 7). It also provides (para’ 17) a set of core planning principles which, amongst other things, require planning to:
- Be genuinely plan led, empowering local people to shape their surroundings and to provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;
 - proactively drive and support sustainable economic development to deliver homes and businesses, infrastructure and thriving local places that the country needs;
 - always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
 - support the transition to a low carbon future in a changing climate;
 - encourage the effective use of land by reusing land that has been previously developed;
 - actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are of can be made sustainable; and
 - deliver sufficient community and cultural facilities and services to meet local needs
- 5.16 Further, guidance contained within the NPPF requires good design, “The Government attaches great importance to the design of the built environment. Good design is a

key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.” (Para. 56) Further, “Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.” (Para. 64)

- 5.17 Saved policy C28 of the adopted Cherwell Local Plan 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the urban context of that development. Saved policy C30 of the adopted Cherwell Local Plan 1996 states control will be exercised to ensure that all new housing development is compatible with the appearance, character, layout, scale and density with existing dwellings in the vicinity. The policy continues by stating that a development must also provide standards of amenity and privacy acceptable to the local planning authority.
- 5.18 Submission Local Plan Policy ESD16: The Character of the Built and Historic Environment, seeks to ensure that development respects existing built form, scale and massing of buildings through the integration of new development contributing to the existing streets, spaces and form and character with buildings configured to create clearly defined active public frontages. The policy also requires consideration of amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space.
- 5.19 The previous scheme (allowed at appeal) detailed an arrangement which retained the proposed two dormer window at first floor level and a garage with lean-to roof over at ground floor. This element projected forward of the dwelling but was set off the boundary with the neighbouring Kohanka. The current design is considered to be much more contrived and it results in the loss of one dormer window to allow for an asymmetric roof arrangement which then drops further to provide the second dormer. Plot 2 would remain as a two-dormer dwelling.
- 5.20 In the Inspectors decision he considered carefully the design as then proposed by the applicant and concluded that as a result of the set-back proposed and that the siting of the dwellings as built reflect both the previous forward siting of the former Rosemary Cottage and the variation in setbacks along Main Street, *“Consequently I do not consider that the dwellings now proposed would appear incongruous in the street scene”*.
- 5.21 Officers consider that the scheme before Members represents a poor design. It now loses the symmetry that is currently present in both plots and will be highly visible in the street scene and from wide views. The side elevation would be a contrived feature and idiosyncratic feature that would draw attention to itself. Local planning policy clearly outlines the need for planning to support good design and reject that which does not contribute well to its locality.
- 5.22 It is considered that whilst the applicants may arguably have reached a reasonable reduction in the degree of impact of the development upon the neighbours, but this has come at the cost of the design of the dwelling. The dwelling proposed will have a window set back into the wall with a shorter roof above which then drops down straight to then accommodate the remaining dormer window. This is considered to be out of keeping with the adjacent Plot 2 dwelling and the street scene contrary to policies C28 and C30 of the adopted Cherwell Local Plan and Government guidance within the NPPF.
- 5.23 It is noted Main Street does not have a uniform appearance, insofar as the dwellings comprise a variety of styles, designs and set back from the highway. Views of the dwellings will still be gained particularly when travelling towards the properties in a north-easterly direction. There is some vegetation which provides glimpses through

however it is considered that this design will stand out against the more traditional appearance of the majority of dwellings adjacent.

- 5.24 In determining the appeal, the Inspector was very clear in his reasoning that the proposal subject to the appeal, which includes the two dormer and traditional roof arrangement, was acceptable when viewed from the street scene. He states *"I do not consider that the dwellings now proposed would appear incongruous in the street scene or conflict with LP policies C28 and C30 in that regard"*.
- 5.25 Overall, Officers remain significantly concerned that the scheme before Members now is a poor attempt at producing an acceptable final form for this building

Highway Safety

- 5.26 Whilst Oxfordshire County Council Highway Authority have not provided comments on this application, on the previous application (subject to the appeal) they raised no objection to the application on the grounds of highway safety as sufficient parking to serve the dwelling would be retained on site. There has been no changes proposed to the parking arrangement as a result of this application and I see no reason to disagree with this assessment that was previously made.

Impact on listed buildings

- 5.27 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.
- 5.28 The Council did raise concern through the appeal process that the proposal at that time impacted detrimentally upon the appearance of The Forge caused by the increased projection. The Inspector disagreed and ruled that the scheme would have very little additional impact on the setting of the building.
- 5.29 The scheme before Members now is also not considered to be detrimental to the character or appearance of the listed building and as such the proposal is considered to be in accordance with LP saved policies C28 and C30.

Third Party Comments

- 5.30 The comments made by the occupants of Kohanka have been addressed through this report. They are mainly concerned with the design and its impact on their property which is clearly shared by Officers.
- 5.31 With regard to the Parish Council, again it is considered that the majority of their concerns have been dealt with through this report. They raise a query regarding the fact that two four bed houses have been built whereas permission was only original granted for two three bedroom houses.
- 5.32 The consent granted in 2011 (ref 11/01160/F) has now been superseded by the consent granted at appeal in 2014 (ref 13/00817/F) for Plot 1 only. The floor plans attached to this permission clearly show three bedrooms at first floor level, one with an ensuite and a separate toilet and bathroom. The current submission plan shows the same arrangement.
- 5.33 With regard to the re-serving of an Enforcement Notice, if Members are minded to accept this recommendation, the HDM will instruct the Council's solicitors to serve an enforcement notice requiring the applicants to comply with the drawings approved through the appeal process.

Engagement

- 5.34 With regard to the duty set out in paragraphs 186 and 187 of the Framework, no problems or issues have arisen during the application. It is considered that the duty to be positive and proactive has been discharged through the timely and efficient determination of this application.

Conclusion

- 5.35 The alteration that has been proposed is not considered to be appropriate visually and represents a contrived and somewhat incongruous feature in the overall street scene. It is clear why the applicants have proposed such an amendment in order to get around the cost and disruption to implement the consent gained at appeal however this is not considered to be sufficient reason to outweigh the concern over the design and its impact visually upon the area. It is for these reasons that the application is recommended for refusal.

6. Recommendation

Refusal, for the following reason:

1. The proposal by virtue of its contrived design does not respect the character and scale of the existing building as well as the surrounding built form and is therefore considered to introduce an incongruous feature into the street scene which is unsympathetic and harmful to the character and appearance of the area. The proposal is therefore contrary to the provisions of Policies C28 and C30 of the adopted Cherwell Local Plan, Policy ESD 16 of the Proposed Submission 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 dealt with the application in a timely and efficient manner.

CONTACT OFFICER: Michelle Jarvis

TELEPHONE NO: 01295 221826