

# Derwent Green Residents Group

27 Derwent Road  
Bicester  
OX26 2JA

18 August 2015

Planning Department  
Cherwell District Council,  
Bodicote House,  
Bodicote,  
Banbury  
Oxfordshire OX15 4AA

Reference Planning Application **15/01295/F - OBJECTIONS**

Dear Sirs

This is the **formal response of the Derwent Green Residents Group**, a properly constituted 'Voluntary or Community Body' comprising – currently – 33 adults living within 200 metres of the piece of land under consideration, **strongly objecting to this proposal.**

**We are currently awaiting a reply on the question as to whether the planning application is valid.**

15/01295/F is headed "Land Adjoining and North East of 27 Dryden Avenue". There is no such address. While the plot is identified on maps included with the documents available on the Cherwell District Council website, this information is not included on the neighbour notification documents that were dated 6 August 2015. Thus those who received these notifications would not have known to what they referred without further investigation. We note that the designation has now been changed on the website – to the equally inaccurate 'Land Adjoining And South West Of 27 Derwent Road Bicester.'

Our first and major contention is that **this land is not and should not be available for development**, and the applicant should have been informed of the relevant facts before this application was made.

This plot of land is one of the ornamental gardens and green spaces established as part of the planning permission given for the original Greenwood Homes development, built in the early 1980s. We have been attempting to establish the exact terms of this original planning agreement: we are yet to receive a reply from our request to the CDC Planning Department, made by email on 21 July, as to how historic planning information can be accessed.

It has been maintained by the Council, so far as we know, from the moment the streets were adopted by the Council. An email from a Landscape Officer in the Environmental Services Department dated 11 August

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2015 states "It would have been an original planning requirement that these pieces of land were laid out and maintained as public open space, which the council has done ever since."

It is our understanding that when this plot of land was bought by Mr Edward Manu in February 2005, it would have been made clear to him that this was public open space, maintained by the Council, and therefore not available for development. While we cannot prove that assumption, we would suggest it is strongly reinforced by the fact that the price for this plot of land, and several other smaller plots, was only £4,000. **We are not experts in understanding legal documents, but the Land Registry Transfer dated 11.02.05 includes a Third Schedule stipulation 2: "No building shall be erected on the property..."**

Our second contention is that **this plot of land has been bought on the basis of misrepresentation.**

Local residents first became aware of the sale in the first week of April 2015, when strangers were seen taking photos of the Green. They revealed that it was up for auction on 15 April. (The 'For Sale' put up by the Auction House was positioned over 400 metres from the actual plot.)

Local residents had therefore little more than a week to react. They realised that the land was being sold for potential development. The guide price was given as £25,000+; it was described as 'Suitable for Development (subject to obtaining all necessary consents)'; and when The Auction House was telephoned for more details, they assumed the caller was a potential buyer and stated "It is there for development – you will have to speak to the Council to see how many houses you could build on it."

Examination of the documents supplied by The Auction House in support of Lot 42, inaccurately described as *Land Adjoining and North East of 27 Dryden Avenue, Bicester, Oxfordshire, OX26 2NJ*, revealed that the vendor's address was also inaccurately given as 2 Dryden Avenue. They also included a Commercial Property Standard Enquiries form that included section 4, extract as follows:

***Adverse rights affecting the Property***

*Unless apparent from the copy documents supplied, are there any covenants, restrictions, agreements, rights or informal arrangements of any kind to which the Property is subject (whether public or private and whether existing or in the course of acquisition) (Adverse Rights)?*

NO

*Does the Property, or any property over which Rights are enjoyed, include any land that is currently used or has in the past ten years been used by members of the public for recreational purposes, whether with or without your permission?*

NO

*Does the boundary of the Property (or, if applicable, the Development) immediately adjoin a highway maintainable at public expense at, and for the full width of, each point of access?*

NO

We believe all three of these answers are incorrect; the second demonstrably so (see below).

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The Auction House was informed of these inaccuracies (email 13 April 2015): they were asked "Does the accuracy of info given affect the validity of the sale?" Their response was (14 April) "No, I do not believe so." When informed that "You are offering for sale a piece of land backed by a 'legal pack' that apparently misrepresents the item being sold and identifies the vendor with a false/out-of-date address," they responded "I cannot take instructions from third parties or decide what is correct and what is false. I always forward every enquiry or claim on to the acting solicitors and am reliant on them to provide a legal pack."

The vendor's solicitors were informed of these same inaccuracies (email 15 April). They indicated that the inaccurate address for the vendor had been corrected in the contract, and explained that "I cannot comment on answers given by my client to the CSPE. I have raised your comments with him however." 15 April was the date of the auction – so we have to conclude that the land was bought for £75,000 on the basis of inaccurate information being provided by the vendor. The fact that the price was three times the guide price indicates that at least two parties believed the information given in the legal pack and assumed that planning permission would be forthcoming.

Our third contention is that we are in the process of **a) registering the plot as an official village green b) registering the plot as a local green space and c) registering the plot as an asset of community value.**

Since local residents became aware of the sale of the land on 15 April, we realised that we should take what steps we could to reinforce what we understood to be the protected status of the plot before an application for planning permission was made. Two of our local councillors assured us that they had made representations to the Planning Department so that they would receive an alert should any enquiry about development on this plot be made.

The Residents Group made repeated attempts to find out from the Land Registry who had bought the plot. We were informed that an application for change of ownership had been made on 18 May, but towards the end of July this had still not been processed. We assumed – falsely it transpires – that the change of ownership would need to be registered before planning permission could be pursued.

At that point we also emailed the Planning Department (email 21 July, see Appendix 1), stating "The purpose of emailing you at this point is to ensure that CDC planners are fully aware of this situation should the as yet unidentified purchaser make a pre-application enquiry."

We have not as yet received a reply to that email, though we now know that a pre-application request was made on 10 June. We are extremely disappointed that from our perspective the Planning Department have failed to communicate information that may have enabled local residents to complete the processes intended to reinforce the protection of this green space from development.

The AGM of the Derwent Green Residents Group was held on 26 July 2015; the constitution of the group was formally adopted, and it was unanimously agreed that the following actions should be taken in respect of the land to the left of 27 Derwent Road, faced by 23-26 Derwent Road and recently designated ON318671 by the Land Registry (this was communicated to the Planning Department in a letter dated 9 August – Appendix 2):

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### **a. Registering the plot as an official village green**

The official guidance on this process states that “If you can prove that local people have used the land without secrecy, force or permission for at least 20 years for lawful sports and pastimes, you can apply to register the land as new green.”

The Derwent Green Residents Group assert categorically that local people have used the land without secrecy, force or permission for at least 20 years for lawful sports and pastimes: it has been used for neighbourhood barbecues, jubilee street parties; children have played games, had picnics, and learned to ride bikes. It is on this basis we have begun the process of gathering the evidence need as part of the official application procedure, with the intention of submitting this to the relevant authority as soon as is practicable.

### **b. Registering the plot as a local green space**

We understand that The National Planning Framework (NPPF), published by the Department for Communities and Local Government in March 2012, sets out the government’s planning policies for England. Paragraphs 76 to 78 introduce a new Local Green Space designation (LGS) to protect local green areas of particular importance to local communities. This will enable communities, in certain circumstances, to identify and protect areas that are of value to them through local and neighbourhood plans.

Those circumstances, we are informed, are

- where the green space is in reasonably close proximity to the community it serves;
- where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
- where the green area concerned is local in character and is not an extensive tract of land.

We are convinced that these conditions are met by this piece of land, and in the process of preparing a formal application following the guidance given by the Planning Policy Team Leader at CDC on 12 August.

### **c. Registering the plot as an asset of community value.**

While we understand the relatively limited rights conferred by registering the plot as an asset of community value, explained fully on the Cherwell District Council’s website, we agreed that having formed the Residents Group in accordance with the specified requirements we should fill in the relevant ACV nomination form and submit it – which was done on 10 August 2015.

These actions have been taken as part of an agreed strategy for the Derwent Green Residents Group to protect a green space valued and used by local residents for more than 20 years. We believe it is fully in line with the following Cherwell District Council vision statement: *“The vision for green spaces in Cherwell is ‘to provide, safeguard and develop a network of safe, accessible and attractive green spaces that are*

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*valued, well managed and maintained and enhance the quality of life, sense of well-being, health and learning opportunities of all sections of the community’.*”

This introduces our fourth contention: that **development on this plot would contravene the National Planning Policy Framework and Cherwell District Council’s stated policies and principles in respect of housing and green spaces.**

The **National Planning Policy Framework** (March 2012) includes the following relevant statements:

**“Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements...”** (section 74)

**“Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities...”** (section 73)

**“Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them.”** (section 76)

The **Cherwell Local Plan** adopted in July 2015 includes:

**“Policy BSC 10: Open Space, Outdoor Sport and Recreation Provision**

The Council will encourage partnership working to ensure that sufficient quantity and quality of, and convenient access to open space, sport and recreation provision is secured through the following measures:

- Protecting existing sites
- Ensuring that proposals for new development contribute to open space, sport and recreation provision commensurate to the need generated by the proposals.”

Also: **“Ensuring that green infrastructure network considerations are integral to the planning of new development,”** (Policy ESD 17: Green Infrastructure, p127) and **“Development proposals will be required to contribute to the provision of open space...”** (Policy BSC 11: Local Standards of Provision - Outdoor Recreation, p82) and **“The general principles underlying the policy are that all new dwellings should contribute towards the provision of open space.”** (Cherwell Local Plan B165, p82)

**This piece of land may be relatively small, but it is an existing site that deserves to be protected – and this proposed new development directly destroys a valued and well-used open space.**

The Cherwell Local Plan specifically indicates that Bicester is lacking in open space:

**“Bicester has existing deficiencies in open space, sports and recreation amenities... There is a shortfall of natural/semi-natural green space, children's play space... additional open space, will be required to provide for future development needs.”** (Cherwell Local Plan C21, p133)

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“Cherwell households have the lowest access to natural green space across the whole of the South East; 72% of households meet none of the Accessible Green Space requirements - a reflection of the low number of country parks and areas of common land in the District.” (Cherwell Local Plan A25, p36)

It therefore proposes positive action to defend and increase the provision of open space:

“We are looking to ensure sustainable development by: improving the amenity and connectivity of the town with a network of parkland, landscaped areas and amenity space...” (Cherwell Local Plan C28, p135)

“Some of the existing deficiencies in open space provision will require the allocation of land through the Local Plan process, as follows: 11.69 ha parks and gardens...” (Cherwell Local Plan C81, p159)

**We therefore urge the Council to take this opportunity to clearly indicate that it intends to act positively in this respect.**

We also urge the Council to consider the political and reputational dimensions of this decision in the light of these following statements:

“This is a plan which demonstrates a respect for the past and which seeks to preserve and enhance what makes Cherwell District special...” (Cherwell Local Plan, Councillor Barry Wood, p1)

“There is a social and economic need to improve Bicester's self-sufficiency and its image as a place to live and work.” (Cherwell Local Plan C20, p132)

“Cherwell's countryside, landscape and green spaces are important natural resources. They form the setting of our towns and villages, contribute to their identity and the well-being of Cherwell's communities, and provide recreation opportunities.” (Cherwell Local Plan B87, p59)

**In the houses surrounding this plot of land are children who have grown up enjoying the amenity provided by this open space; as young adults they are bemused that the authorities are even considering the destruction of this amenity. There are also adults who have lived in Bicester for over 20 years, next to this Green, and are deeply troubled by this threat to a valued amenity. If it is lost to development, there will be a serious loss of credibility for local politics.**

**We are all aware of the Council's enthusiasm for Bicester's designation as a garden town; if it is unable to protect the ornamental gardens that have been an integral part of this development for 30 years, then there is a real danger that its reputation will be in tatters and the garden town a completely hollow and meaningless aspiration. There are 13,000 additional homes built and in the pipeline for Bicester: there is absolutely no strategic requirement or pressing need to destroy an ornamental garden to provide three more.**

The documents supplied as part of this application clearly state “A five year housing land supply should be maintained and at this time the Council is able to demonstrate a 5.1 year supply of deliverable housing land.” There is therefore no pressing need to find further land for development at this time.

**We are also extremely concerned that giving permission to build on this ornamental garden on the Greenwood Homes estate will be a green light to landowners and speculators to pursue planning**

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**permission for the remaining ornamental gardens on the estate – which we understand to have been consistently denied for the past 30 years.**

We have, however, taken some encouragement from this statement of principle:

“Consideration will be given to the need to designate Local Green Spaces (green areas of particular importance to the local community) in accordance with advice in the NPPF and NPPG, through the preparation of the Local Plan Part 2,” (Cherwell Local Plan B159, p76)

and the fact that we have received a positive response to our initiation of seeking registration of this land as a Local Green Space; “However, we have now started on a Part 2 of the Local Plan which will include non-strategic allocations of land and will consider any submissions for Local Green Space designations. I would therefore encourage you to participate in that process. I will add the residents group to our consultation database and attach details of the initial notification that was undertaken recently.” (Email, 12 August 2015)

**We therefore urge the Planning Committee to at very least allow us the possibility of pursuing this option.**

**I repeat that it is the conviction of the Derwent Green Residents Group that this land is not and should not be available for development, and that this should be the overriding factor in rejecting this planning application and working with us to protect and defend this ornamental garden/open space.**

**Nevertheless, there are a number of specific reasons why any particular proposal for housing development on this land should be rejected:**

- It is contrary to the principles described in the National Planning Policy Framework (NPPF) - Promoting Healthy Communities
- The coherence and integrity of the street scene design for the whole Greenwood Homes estate will be destroyed
- 23-26 Derwent Road were designed and built to overlook an ornamental garden. It is a feature of the design plan for the whole development that rows of houses are positioned to overlook such green spaces rather than be positioned on a road frontage in the traditional manner. Any development on this plot destroys a fundamental design principle of the whole estate and significantly reduces, if not destroys, the whole outlook of these particular four houses
- This particular proposal results in the back gardens of the property directly abutting the front gardens of 23-26 Derwent Road. We would be interested to know of any development in Bicester where this is regarded as an acceptable feature
- In the same way this particular proposal results in kitchen and bedroom windows directly facing the living-room and bedroom windows of 23-26 Derwent Road

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- Access for emergency services and deliveries will be adversely affected, particularly for 25 and 26 Derwent Road
- The outlook of several houses – from either front windows or back windows – in Derwent Road, Dryden Avenue and Tweed Crescent will be adversely affected. The outlook from the garden of 27 Derwent Road will also be adversely affected
- Any proposed development on this site will result in the loss of on-street parking for existing residents, already at a premium. The current proposal includes five off-street car-parking spaces which will require the creation of drop kerbs on to a through road – which exist nowhere else on the entire Greenwood Homes development – and one of which will be opposite the exit from Tweed Crescent. It is impossible to contemplate that Oxfordshire County Council Highways Department will allow this potential for a significant road safety hazard.

In summary, therefore, we entirely agree with the quoted statement of the Council Planning Officer at the pre-application stage: ***“The original layout approved in the 1970s shows this site to have been part of an area of open space in an otherwise dense housing area. There are small pockets of green space offering some relief with the street scape which would otherwise be wholly dominated by buildings and the roads. Open areas of green space perform an essential function and should not be considered as opportunities to exploit for further development where they would cause harm.*”**

***“In my opinion, this green space does perform an essential function in the street scape, forms an essential element of the original planned estate and appears to be a pleasant area of open space. It contributes positively to the character of the area, and in my opinion your proposal would cause substantial harm to this character.”***

We believe that to be true of any possible proposal for this site, and therefore no permission should be given to build any kind of housing on the land adjacent to 27 Derwent Road:

- it is an ornamental garden integral to the design of the Greenwood Homes estate
- its status as open space was protected by the original planning stipulations, has been reinforced by regular public use for 30 years and is confirmed by its ongoing maintenance by the Council
- it is impossible to build any homes on the site without destroying the design and planning integrity of the area and creating an extremely negative Impact on the character and appearance of the area; without adversely and significantly affecting the outlook and amenity of the immediate neighbours; and without losing the open space amenity it provides to many more local residents

Yours faithfully

Stephen Rand  
Chair

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## Appendix 1

Email sent to [planning@cherwell-dc.gov.uk](mailto:planning@cherwell-dc.gov.uk) on 21 July 2015

Dear Sirs

Earlier this year we were made aware that the small green – part of the original ornamental gardens of the Greenwood Homes estate – had been put up for sale by auction, and was duly sold for £75,000. The Land Registry inform me that a change of ownership was applied for on 18 May but has yet to be processed. They also informed me that it had been designated a new title - ON318671, having been formerly part of ON255392. (Another, smaller, part of ON255392 has also been put up for sale by auction tomorrow.)

Local residents have reacted with dismay and amazement. In particular we noted – and informed the auction house and the vendor's solicitor – that the General pre-contract enquiries for all property transactions document supplied by the vendor's solicitor and passed on to potential buyers by the auction house included an Enquiries section that contained inaccuracies, and in particular showed the question Does the Property, or any property over which Rights are enjoyed, include any land that is currently used or has in the past ten years been used by members of the public for recreational purposes, whether with or without your permission? NO

This is manifestly untrue (and would have been known by the owner of the property to be untrue), as many residents have regularly used this green for recreational purposes for over 20 years – I taught my granddaughter to ride her bike on it, for example.

In order to respond to this potential threat to the green we have consulted our local councillors and others.

- First, we realised we had to set up a proper community group – the Derwent Green Residents Group now exists. It will meet in the next few days to hold an AGM and formally adopt the constitution and appoint officers and a committee. We will register this as a local community group with CDC.
- Second, that meeting will also formally agree to apply to CDC to register the green as an asset of community value.
- Third, that meeting will also formally agree to apply to register the land as a new village green.

The purpose of emailing you at this point is to ensure that CDC planners are fully aware of this situation should the as yet unidentified purchaser make a pre-application enquiry. We assume this green would be covered by paragraph BSC10 of the draft local plan: "Development proposals that would result in the loss of sites will be assessed in accordance with guidance in the NPPF and NPPG, and will not be permitted unless the proposal would not result in the loss of an open space of importance to the character or amenity of the surrounding area... Consideration will be given to the need to designate Local Green Spaces

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(green areas of particular importance to the local community) in accordance with advice in the NPPF and NPPG, through the preparation of the Local Neighbourhoods DPD."

I would also be grateful if you could advise on how we might track down historic planning permissions – we would be keen to pin down the status of these ornamental gardens in the original planning permission given to Greenwood Homes.

## **Appendix 2**

### **Letter dated 9 August 2015 sent to Planning Department, Cherwell District Council**

Dear Sirs

At the AGM of the Derwent Green Residents Group held on 26 July 2015, the constitution of the group was formally adopted, and it was agreed that the following actions should be taken in respect of the land to the left of 27 Derwent Road, faced by 23-26 Derwent Road and recently designated ON318671 by the Land Registry:

#### **1. Registering the plot as an official village green**

This is on the basis that "If you can prove that local people have used the land without secrecy, force or permission for at least 20 years for lawful sports and pastimes, you can apply to register the land as new green." The Derwent Green Residents Group assert categorically that local people have used the land without secrecy, force or permission for at least 20 years for lawful sports and pastimes, and have begun the process of gathering the evidence needed as part of the official application procedure, with the intention of submitting this to the relevant authority as soon as is practicable.

Research on the Cherwell District Council and Oxfordshire County Council's website has struggled to reveal what address should be used to submit this application. It appears that it has to be sent to Cherwell District Council to be forwarded to Oxfordshire County Council. Clarification on this information would be appreciated.

#### **2. Registering the plot as a local green space**

We understand that The National Planning Framework (NPPF), published by the Department for Communities and Local Government in March 2012, sets out the government's planning policies for England. Paragraphs 76 to 78 introduce a new Local Green Space designation (LGS) to protect local green areas of particular importance to local communities. This will enable communities, in certain circumstances, to identify and protect areas that are of value to them through local and neighbourhood plans. We are in the process of preparing a formal application on this basis.

Once again we have struggled to find guidance on how and where to make this application and would appreciate any help that can be given. We have been advised that we should initially approach Mr Adrian Colwell, Head of Strategic Planning & The Economy.

#### **3. Registering the plot as an asset of community value**

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The view from the edge of the front garden of 23 Derwent Road. Below is the view envisaged by the developer. Note that the drawing appears to show a lower fence than the 1.5m fence shown on the plans.



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While we understand the relatively limited rights conferred by registering the plot as an asset of community value, explained fully on the Cherwell District Council's website, we have also agreed that having formed the Residents Group in accordance with the specified requirements we should fill in the relevant ACV nomination form and submit it as soon as possible.

These actions are part of an agreed strategy to protect a green space valued and used by local residents for more than 20 years. We have taken some encouragement from the relevant Cherwell District Council vision statement: *"The vision for green spaces in Cherwell is 'to provide, safeguard and develop a network of safe, accessible and attractive green spaces that are valued, well managed and maintained and enhance the quality of life, sense of well-being, health and learning opportunities of all sections of the community'."*

The Derwent Green Residents Group is determined to work with the Council in order to fulfil this vision for this small but much used and valued green space.

Yours faithfully



Stephen Rand  
Chair

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# Welcome to Derwent Green



View from Dryden Avenue – the proposed building would block this view entirely



The path at the back of the plot – a 1.5m picket fence is proposed to mark the left-hand boundary



View from the access point between 23 and 27 Derwent Road



View across the Green from the front door of 25 Derwent Road

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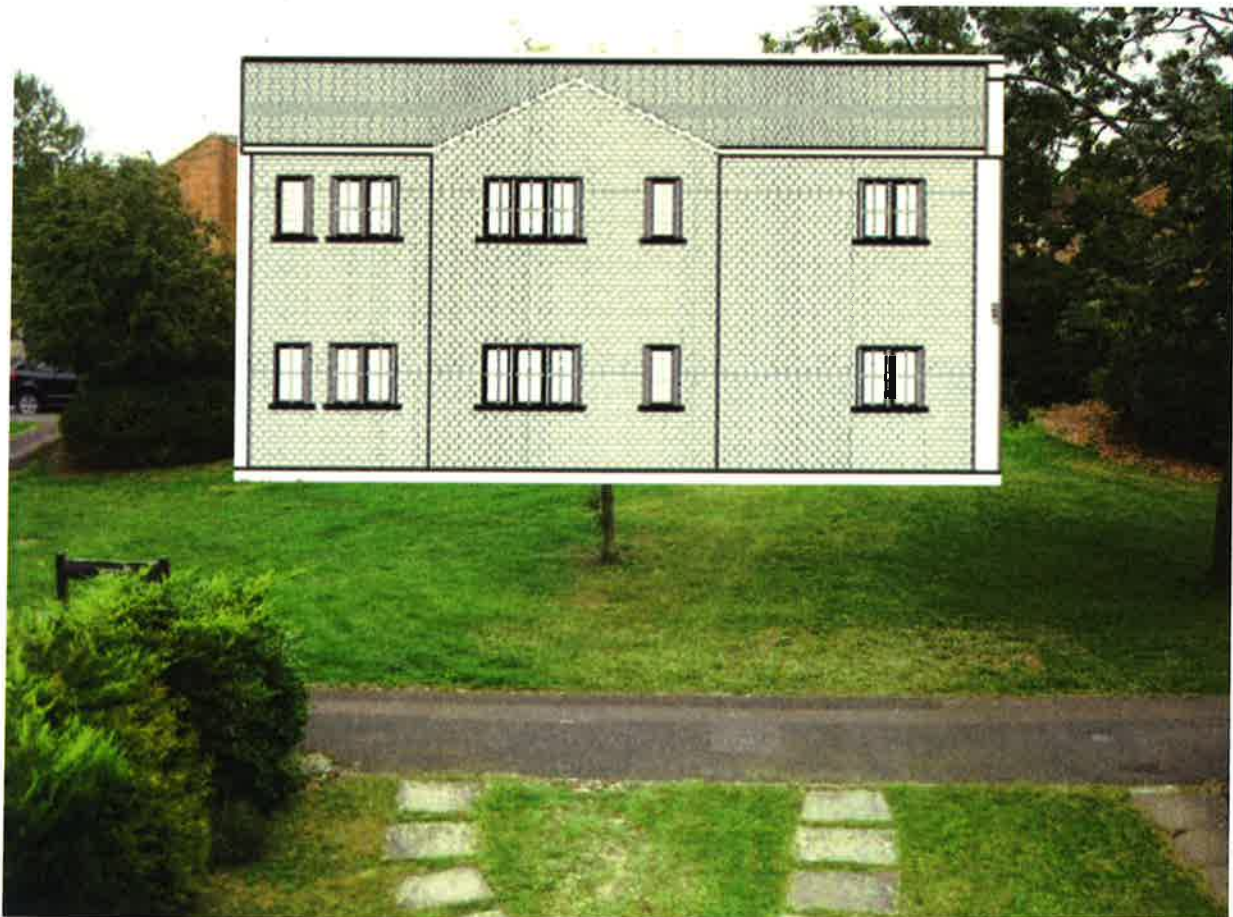
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View from the front bedroom of 25 Derwent Road

Below – with proposed building superimposed. Note that rear windows of proposed building look straight into front windows of 25 Derwent Road. 1.5m picket fence would be along the far edge of the path.



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