

**Case Officer:** Gemma Magnuson

**Applicant:** Punch Partnerships (PML) Limited

**Proposal:** Breakthrough in boundary wall to facilitate a pedestrian entrance (resubmission of 21/01023/LB)

**Ward:** Launton And Otmoor

**Councillors:** Cllr Hallchurch MBE, Cllr Holland and Cllr Hughes

**Reason for Referral:** Called in by Cllr Hughes for the following reasons: a valued asset of the village that is of high public interest

**Expiry Date:** 3 December 2021

**Committee Date:** 2 December 2021

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**SUMMARY OF RECOMMENDATION: DELEGATE POWERS TO GRANT LISTED BUILDING CONSENT SUBJECT TO CONDITIONS FOLLOWING EXPIRY OF CONSULATION PERIOD**

**1. APPLICATION SITE AND LOCALITY**

1.1. The application site consists of part of the garden associated with The Ben Jonson Inn, more specifically, the existing stone wall marking the northern boundary of the garden. The wall runs alongside the pavement on Westlands Avenue.

**2. CONSTRAINTS**

2.1. The Ben Jonson Inn itself is a Grade II listed building. A former stable, now outhouse, situated to the south-west of The Ben Jonson Inn is also a Grade II listed building. Other Grade II listed buildings are positioned in close proximity to the site, including Oxford House to the south-east, and The Cottages across the road to the north-east. The site lies within the designated Weston-on-the-Green Conservation Area and has been identified as being of archaeological interest.

2.2. The land is potentially contaminated. The Weston Fen Site of Special Scientific Interest is within 2km of the site and Oxfordshire protected and notable species the west european hedgehog has been identified in the area.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. Listed building consent is sought for the demolition of a 940mm section of wall to facilitate the creation of a pedestrian entrance. A post and rail style gate would be installed within the gap. The section of wall to be removed would be at the western most end of the wall.

3.2. This application for listed building consent has been submitted alongside an application for planning permission for the removal of the 940mm section of wall, and the erection of a two bedroom bungalow within the garden. The pedestrian access would serve the new dwelling.

**4. RELEVANT PLANNING HISTORY**

4.1. The following planning history is considered relevant to the current proposal:

**Application: 20/02180/F**

Refused - 6 November 2020

Erection of a four bedroom chalet bungalow (C3) to the rear of the existing public house (A4), with a new access created off Westlands Avenue, and associated parking and landscaping

**Application: 20/03406/F**

Refused - 18 February 2021

Erection of a two-bedroom bungalow (C3) to the rear of the existing public house (Sui Generis), with a new access created off Westlands Avenue following the partial demolition of the boundary wall, and associated parking and landscaping.

**Application: 20/03407/LB**

Refused 18 February 2021

Partial demolition of the boundary wall to create access for new dwelling proposed under 20/03406/F

**Application: 21/01022/F**

Refused 18 May 2021

Erection of a two-bedroom bungalow to the rear of the existing public house (Sui Generis), utilising existing access and associated parking and landscaping, and the small breakthrough in the boundary wall to facilitate a pedestrian entrance.

**Application: 21/01023/LB**

Refused 18 May 2021

Partial demolition of the boundary wall to create pedestrian entrance

**Application: 21/02473/LB**

Undetermined at time of writing

Breakthrough in boundary wall to facilitate a pedestrian entrance (resubmission of 21/01023/LB)

**Application: 21/03591/F**

Undetermined at time of writing

Relocation of children's play equipment/memorial garden

4.2. The site has been the subject of a number of recent applications for a similar proposal, all of which have been refused. This detailed history has been summarised below:

20/02180/F

4.3. Planning permission was sought for a chalet bungalow style dwelling upon the site with front and rear dormer windows serving first floor accommodation. Construction materials would consist of red brick and rendered walls with a slate roof. A larger section of the curtilage listed stone wall on the northern boundary would be removed when compared to the current scheme, providing vehicular access to three off-street parking spaces. A larger area of pub garden would also have been used for the development. An objection was received from the Conservation Officer. The application was subsequently refused on the following grounds:

1. *By virtue of its unsympathetic design and its siting in an undeveloped gap and the loss of the curtilage listed boundary wall, the proposed dwelling would cause harm to the significance of the Weston on the Green Conservation Area and the Grade II listed Ben Jonson public house as well as adversely affecting the visual amenities of the locality. The harm to the heritage assets, which is less than substantial, would not be outweighed by public benefits. Thus, the proposal is*

*contrary to Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1, saved Policies C23, C28, C30 and C33 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.*

2. *In the absence of clear evidence that the loss of a large area of the garden for the public house would not impact on the future of the business, the proposed development would cause harm to the viability of the public house and may result in the loss of a village service. The proposal is therefore contrary to Saved Policy S29 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.*

20/03406/F & 20/03407/LB

- 4.4. Planning permission and listed building consent were sought for the erection of a two bedroom bungalow upon a reduced area of the pub garden. The dwelling would have an 'L' shaped footprint, with limestone walls and a grey tiled roof. Vehicular access would continue to be taken from Westland Avenue, although the width of the section of wall to be removed is reduced to the width of one parking space with a tandem parking arrangement in the site. A pedestrian gate would also be installed requiring the removal of a second, smaller section of the wall. An objection was received from the Conservation Officer. The applications were subsequently refused on the following grounds:

*F. By virtue of its siting in an undeveloped gap and the loss of sections of the curtilage listed boundary wall, the proposed dwelling would cause harm to the significance of the Weston on the Green Conservation Area and the Grade II listed Ben Jonson public house as well as adversely affecting the visual amenities of the locality. The harm to the heritage assets, which is less than substantial, would not be outweighed by public benefits. Thus, the proposal is contrary to Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1, saved Policies C23, C28, C30 and C33 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework*

*LB. By virtue of the loss of sections of the curtilage listed boundary wall, the proposed development would cause harm to the significance of the Grade II listed Ben Jonson public house as well as the Weston on the Green Conservation Area. The harm to heritage assets, which is less than substantial, would not be outweighed by public benefits. Thus, the proposal is contrary to saved policy C18 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.*

- 4.5. Appeals against the above decisions have been submitted and a start date is awaited (see Appeal Ref: APP/C3105/W/21/3278245).

21/01022/F & 21/01023/LB

- 4.6. Planning permission and listed building consent were sought for the erection of a two bedroom bungalow upon the site. The dwelling would have a 'T' shaped footprint, with limestone walls and a grey tiled roof. Vehicular access would now be taken through the pub car park and not through an opening in the curtilage listed stone wall on the northern boundary. A pedestrian access onto Westlands Avenue, in the same position as that currently proposed, remained. An objection was received from OCC Highway Authority due to third party land separating the site and the public highway, and the potential for the parking arrangements to be affected by customer parking and deliveries for the public house. The Conservation Officer had not commented on the scheme at the time of writing the report. The applications were subsequently refused on the following grounds:

*F. By virtue of its siting in an undeveloped gap and the loss of a section of the curtilage listed boundary wall, the proposed dwelling would cause harm to the significance of the Weston on the Green Conservation Area and the Grade II listed Ben Jonson public house as well as adversely affecting the visual amenities of the locality. The harm to the heritage assets, which is less than substantial, would not be outweighed by public benefits. Thus, the proposal is contrary to Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1, saved Policies C23, C28, C30 and C33 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.*

*The proposed development, by reason of its separation from the highway by a section of third party land, would fail to provide a safe access to the site. The proposed parking could not be guaranteed to remain in perpetuity and the vehicles from the development would park on the nearby highway network. The proposal would therefore result in significant and demonstrable harm to highway safety. As such the proposal is contrary to Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.*

*LB. By virtue of the loss of a section of the curtilage listed boundary wall, the proposed development would cause harm to the significance of the Grade II listed Ben Jonson public house as well as the Weston on the Green Conservation Area. The harm to heritage assets, which is less than substantial, would not be outweighed by public benefits. Thus, the proposal is contrary to saved Policy C18 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.*

- 4.7. Late comments were received from the Conservation Officer although these were not taken into consideration in the determination of the latest refused applications. The advice given by the Conservation Officer specifically regarding the loss of the section of wall was that the retention of much of the boundary wall is welcomed, and the creation of the small pedestrian access is not considered to result in an unacceptable loss of historic fabric or on its own alter the character of the wall in a detrimental way.

## **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. No pre-application discussions have taken place with regard to this proposal.

## **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a Site Notice displayed near the site, expiring **29 November 2021** and by advertisement in the local newspaper expiring **25 November 2021**. The overall final date for comments is **2 December 2021**.
- 6.2. At the time of writing, no comments have been raised by third parties. Any comments received after the date of writing will be reported as a late representation.
- 6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## **7. RESPONSE TO CONSULTATION**

- 7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

## PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 7.2. WESTON ON THE GREEN PARISH COUNCIL: **Object** on the grounds of the dwelling not constituting infilling or acceptable minor development harming the loose-knit character of the village, harm to protected species the West European Hedgehog, inconsistent with local character of Conservation Area and surrounding Grade II listed buildings especially the wall, harm the character of the Conservation Area, contrary to Neighbourhood Plan, loss of amenity garden, access required during building phase and loss of access required to current car park in perpetuity having a detrimental effect upon this historic site and business that is the Ben Jonson Inn, unsatisfactory access that is not owned or controlled by the applicant.
- 7.3. WESTON ON THE GREEN NEIGHBOURHOOD PLAN FORUM: No comments received.

## CONSULTEES

- 7.4. NATIONAL AMENITY SOCIETIES: No comments received at time of writing.
- 7.5. CDC CONSERVATION: **No objection** subject to condition requiring a method statement for the treatment of the wall.

## **8. RELEVANT PLANNING POLICY AND GUIDANCE**

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- ESD15 - The Character of the Built and Historic Environment

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C18 – Listed buildings

- 8.3. Under Section 38 of the Planning and Compulsory Purchase Act 2004, a Neighbourhood Plan that has been approved at referendum also forms part of the statutory development plan for the area. In this case, the application site falls within the Weston on the Green Neighbourhood Plan and the following Policies of the Neighbourhood Plan are considered relevant:

- C4 – Avoid harm to heritage assets, character of village centre, important space, key street scenes and views

- 8.4. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- Weston-On-The-Green Conservation Area Appraisal (2009)

## 9. APPRAISAL

### *Policy context*

- 9.1. The key issue for consideration in this case is the impact on the historic significance and setting of the listed building(s).
- 9.2. Section 16(2) of The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that: *In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Further, under Section 72(1) of the same Act the Local Planning Authority has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
- 9.3. Listed Buildings and Conservation Areas are designated heritage assets, and Paragraph 190 of the NPPF states that: *Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise.*
- 9.4. The NPPF directs that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2031 Part 1 echoes this guidance.
- 9.5. Saved Policy C18 of the Cherwell Local Plan 1996 only supports minor and sympathetic alterations to listed buildings.
- 9.6. Policy C4 of the WotGNP states that development should not harm a heritage asset, character of the village centre or important spaces, key street scenes and views.

### *Assessment*

- 9.7. The site is positioned just inside the designated Weston on the Green Conservation Area, with the curtilage listed wall itself forming the boundary of the designated area. The site is also within the curtilage of The Ben Jonson Inn that is a Grade II listed building dating from the early/mid 18th Century, and adjacent to the separately Grade II listed stable building to the south. The Ben Jonson Inn occupies a prominent position in the Conservation Area, with the associated garden being considered to contribute to the setting of the listed buildings and the character of the Conservation Area in this location. Whilst there are other Grade II listed buildings situated further afield to the north-east and south, the site is not considered to play an integral role in forming a part of their setting.
- 9.8. The historic significance of the wall is considered to be its location and the contribution it makes to the designated Conservation Area, and the setting of the listed buildings within the confines of The Ben Jonson Inn.
- 9.9. The impact of the proposed development upon the designated Conservation Area, the curtilage listed wall and the setting of the listed buildings has remained a concern of Officers dealing with all previous applications relating to the erection of a dwelling upon the site. In summary, the concerns related the loss of sections of curtilage listed boundary wall, were both the harm to the historic significance of the

Weston on the Green Conservation Area and the setting of Grade II listed The Ben Jonson Inn. Previously, although this was found to represent less than substantial harm, it was not be outweighed by public benefits.

- 9.10. It is important to note that the Case Officer reports relating to the latest refused applications (see: 21/01022/F & 21/01023/LB) were written without the benefit of advice from the Conservation Officer. The Conservation Officer had later advised that the retention of much of the boundary wall was welcomed, and that the creation of a small pedestrian access was not considered to result in an unacceptable loss of historic fabric or on its own alter the character of the wall in a detrimental way. The Case Officer had instead referred to the previous comments made by the Conservation Officer where a larger section of wall was to be removed.
- 9.11. The loss of a small section of the wall would not result in a harmful loss of fabric, and the sense of enclosure would be maintained.

#### *Conclusion*

- 9.12. The amended scheme avoids any harm to the historic significance of the designated Conservation Area, the curtilage listed wall or the nearby listed buildings through development within their setting, in accordance with Government guidance contained within the NPPF, Policy ESD 15 of the CLP 2031 Part 1, saved Policy C28 of the CLP 1996 and Policy C4 of the WotGNP.

## **10. PLANNING BALANCE AND CONCLUSION**

- 10.1. In light of the opinion of the Conservation Officer that the breakthrough in the wall to create a pedestrian access would not result in harm to the historic significance of the curtilage listed wall, or alter the character of the wall in a detrimental way so that it would result in harm to the historic significance of the designated Conservation Area or the nearby listed buildings through development within their setting, it is considered that listed building consent should be granted for the works.

## **11. RECOMMENDATION**

**RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT LISTED BUILDING CONSENT, INCLUDING THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY), SUBJECT TO NO NEW COMMENTS BEING RECEIVED AT THE CLOSE OF THE PUBLIC CONSULTATION PROCESS ON THE 2 DECEMBER 2021 UNLESS IN THE VIEW OF THE ASSISTANT DIRECTOR ANY COMMENTS RECEIVED DO NOT RAISE NEW MATERIAL PLANNING ISSUES**

### CONDITIONS

#### **Time Limit**

1. The works to which this consent relates shall be begun not later than the expiration of three years beginning with the date of this consent.

Reason - To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

#### **Compliance with Plans**

2. 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: Planning, Design and Access Statement Ref: 00151, EcoUrban

Arboricultural Implications Assessment and Method Statement ref: 201271-AIA3, TPA Transport Planning Associates Transport Statement ref: 2005-011/TS/03, Roper-Pressdee Heritage Ltd. Heritage Statement Drawing No's: 20.02 Rev. D, 10.00 Rev. J, 10.01 Rev. G, 10.03 Rev. D, 10.04 Rev. H, 00.06 Rev.C,

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 the National Planning Policy Framework.

**Making good of wall**

3. Following demolition of the section of stone wall along the northern boundary hereby approved, the remaining element of wall shall be made good with any remedial stonework being carried out in natural stone of the same type, texture, colour and appearance as the stone on the existing stone wall, and shall be laid, dressed and coursed to match that of the existing stone wall.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C4 of the Weston On The Green Neighbourhood Plan, Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C18 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework