

Case Officer: Sarah Greenall

Applicant: Mr Jack Piccaver

Proposal: Demolition of existing dilapidated and fire damaged single level dwelling - Class C3(a) - and erection of 4 No. flats in single, two level building - Class C3(a) (resubmission of 21/01212/F)

Ward: Kidlington East

Councillors: Councillor Billington, Councillor Griffiths, and Councillor Middleton

Reason for Referral: Called in by Councillor Billington for the following reasons:

1. Level of local concern
2. Impact on quiet residential street with many bungalows and elderly residents
3. Insufficient parking and increased traffic, noise and pollution

Expiry Date: 17 January 2022

Committee Date: 13 January 2022

SUMMARY OF RECOMMENDATION: REFUSAL

1. APPLICATION SITE AND LOCALITY

1.1. The application site is located within the built-up form of Kidlington within an established residential area to the south of the main village High Street. The site is bound by other residential properties, and St Thomas Moore Roman Catholic School and West Kidlington Primary School are situated further to the south east of the site. Churchill Road itself is characterised with a varied street scene featuring a mixture of single and two storey dwellings that are set back from the road with large driveways/front garden areas and finished in mostly light-coloured rendering.

2. CONSTRAINTS

2.1. The site lies within an area where the West European Hedgehog have been identified; however, other than this the site is considered to be relatively unconstrained. It does not lie within a conservation area or within close proximity to any listed buildings. The site is situated within Flood Zone 1 and is considered to be at low risk of flooding.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

3.1. The application relates to the demolition of the existing bungalow and erection of 4 no. 2 bedroom apartments at 7 Churchill Road, Kidlington. The building would be 1.5 storeys in height and consist of a double gable design on the front elevation finished in white render with anthracite UPVC fenestrations. The proposals include the provision of 4 off street parking spaces at the front of the property that set it back from the road, and shared amenity space, secured and covered bicycle parking and recycling and refuse storage to the rear of the property. The cycle parking provision is located within the allocated amenity space for the individual units to the rear.

4. RELEVANT PLANNING HISTORY

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

21/01212/F

Demolition of existing dilapidated and fire damaged single level dwelling - Class C3(a)
- and erection of 5 x flats in single, two level building - Class C3(a).

Application Withdrawn.

4.2. The above application was withdrawn over concerns with the design, impact on residential amenity and highway issues.

5. PRE-APPLICATION DISCUSSIONS

5.1. The following pre-application discussions have taken place with regard to this proposal:

21/02204/PREAPP

The principle of the development was considered to be acceptable; however, it was advised that the scale of the rear element of the proposals should be reduced to allow the proposals to be acceptable.

6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by way of a site notice displayed near the site, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments is **9 January 2022**.

6.2. 19 letters of objection have been received and no letters of support have been received. The comments raised by third parties are summarised as follows:

- The proposal would be detrimental to the character of the area
- Parking concerns
- Highway safety concerns
- Not enough affordable housing
- Overdevelopment of the site
- Impact on neighbour amenity
- Cumulative negative effects
- Concerns that the outbuilding/office rooms will be used as additional accommodation
- Concerns over drainage
- Increased fumes and noise

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. KIDLINGTON PARISH COUNCIL: **Objects** on the grounds of the proposed development being out of keeping with surrounding character, impact on neighbour amenity and insufficient parking provision.

OTHER CONSULTEES

- 7.3. OCC HIGHWAYS: **No objections**. The proposals offer 1 off-street car parking space per dwelling. This is below the maximum standards of 2 per dwelling for urban areas in Cherwell. In this case, there are mitigating factors which justify a relaxation of parking standards. The site is located in a highly sustainable location, with excellent access to frequent bus services. Nearby amenities are within walking distance and there is a good level of cycling infrastructure nearby. Each site has been provided with covered and secure cycle parking that conforms to policy requirements. The proposals are unlikely to have any adverse impact upon the local highway network in traffic and safety terms.
- 7.4. CDC BUILDING CONTROL: **Comments** that all the windows to all the habitable rooms would need to be suitable for means-of-escape in case of fire. The proposed external wall on the north east elevation (facing the boundary to adjacent property No.5) would need to be located at least one metre from the boundary otherwise non-compliant for fire safety.
- 7.5. CDC ECOLOGY: **No comments received** at the time of writing this report.
- 7.6. CDC ENVIRONMENTAL HEALTH: **No objections** subject to conditions.
- 7.7. CDC HOUSING STANDARDS: **Comments** that the open plan layout of the proposed flats creates a risk from fire. In the event of a fire in the open plan kitchen/living room, there is a risk that occupiers could become trapped in bedrooms. I would recommend that all bedrooms have an alternative means of escape i.e. an emergency egress window. Additional fire safety measures such as misting systems in the kitchen/living room would be recommended.
- 7.8. CDC LAND DRAINAGE: **No objections**. the site is shown to be in an area of medium surface water flood risk. However, given the previous development history at the site, no objections in principle. Drainage: The applicant proposes to provide a soakaway (of size yet to be specified) for the disposal of surface water. This is very unlikely to be acceptable in principle due to the very high impermeability of the superficial geology. The applicant should be asked to justify this proposal through undertaking BRE 365 testing on the site. If soakaways are found not to be feasible the applicant should be asked to propose an alternative method of surface water disposal, which is likely to be achievable only through a S.106 Water Industry Act agreement with Thames Water to connect to their sewer in Churchill Road.
- 7.9. CDC WASTE AND RECYCLING: **No comments received** at the time of writing this report.
- 7.10. THAMES VALLEY POLICE (DESIGN ADVISOR): **No objection** subject to conditions.

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 ('CLP 2015') was formally adopted by Cherwell District Council in July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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 2015)

- PSD1: Presumption in Favour of Sustainable Development
- BSC1: District Wide Housing Distribution
- BSC4: Housing Mix
- ESD1 – Mitigation and adapting to climate change
- ESD3 – Sustainable construction
- ESD5 – Renewable energy
- ESD6: Sustainable Flood Risk Management
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD15: The Character of the Built and Historic Environment
- Policy Villages 1: Village Categorisation

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C30: Design of new residential development

- 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide (2018)
- Kidlington Framework Masterplan SPD (2016)

9. APPRAISAL

- 9.1. The key issues for consideration in this case are:

- Principle of development
- Design, and impact on the character of the area
- Residential amenity
- Highway Impacts
- Ecology impact
- Flood Risk
- Other matters

Principle of Development

- 9.2. The principle of residential development in Kidlington is assessed against Policy Villages 1 in the Cherwell Local Plan Part 1. Kidlington is recognised as a Category A village in the CLP 2015. Category A villages are considered the most sustainable settlements in the District's rural areas and the majority have physical characteristics and a range of services within them to enable them to accommodate some limited extra housing growth. Within Category A villages, residential development will be restricted to the conversion of non-residential buildings, infilling and minor development comprising small groups of dwellings on sites within the built-up area of the settlement.

- 9.3. The application site is located in an established residential area within Kidlington and contains a detached single storey dwelling situated on a generous plot. The application seeks planning permission for the demolition of the dwelling and its replacement with 4no two bedroom flats.
- 9.4. In determining the acceptability of the principle of new dwellings regard is paid to Government guidance contained within the NPPF. This explains that the purpose of the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- 9.5. Paragraph 10 of the NPPF states that so sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development. Paragraph 11 states that applying the presumption to decision-making means:
- approving development proposals that accord with up-to-date development plan without delay; or
 - where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (this includes, for applications involving the provision of housing, situations where the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites), granting permission unless:
 - i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed;
 - ii. or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 9.6. The position in which the most important policies are considered to be out-of-date because of the absence of a five-year housing land supply is often referred to as the 'tilted balance'. Cherwell's position on five-year housing land supply has recently been reviewed by officers for the emerging 2021 Annual Monitoring Report (AMR) which is to be presented to the Council's Executive on 10 January 2022. Despite a strong record of delivery since 2015, the draft AMR presents a 3.8 year supply position for 2021-2026 and 3.5 years for the period 2022-2027 (the latter being effective from 1 April 2022). This compares to the 4.7 year housing land supply for the period 2021-2026 reported in the 2020 AMR. According to the draft AMR, an additional 1,864 homes would need to be shown to be deliverable within the current 2021-2026 five-year period to achieve a five year supply as required by the NPPF.
- 9.7. However, paragraph 12 of the NPPF advises that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. In February 2021, the primacy of development plans in the planning system was reaffirmed by a Court of Appeal ruling on two appeals by land promoter Gladman, which emphasised that where a council lacks the required five-year housing land supply, this may tilt the balance in favour of proposed residential schemes but it does not render grants of planning permission automatic.
- 9.8. The provision of additional housing within an existing residential area located in a sustainable Category A village weighs in favour of this proposal which has the potential of increasing the District's housing supply and therefore helps to address the current shortfall. However, any development proposal would continue to be assessed against the policies of the Development Plan.

- 9.9. The proposed development can therefore be considered acceptable in principle, with overall acceptability subject to compliance with the relevant Development Plan policies and the NPPF.

Design and Impact on the Character of the Area

Legislative and policy context

- 9.10. Government guidance contained within the NPPF requiring good design states that *good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Further, permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.*
- 9.11. Saved Policies C28 and C30 of the CLP 1996 exercise control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context. New housing development should be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.
- 9.12. Policy ESD15 of the CLP 2015 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. It seeks to secure development that would complement and enhance the character of its context through sensitive siting, layout and ensuring a high-quality design.
- 9.13. Paragraph 127 of the NPPF states that planning decisions should ensure that developments:
- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
 - are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
 - are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change
- 9.14. The Council's Design Guide seeks to ensure that new development responds to the traditional settlement pattern and character of a village. This includes the use of continuous building forms along principal routes and the use of traditional building materials and detailing and form that respond to the local vernacular.

Assessment

- 9.15. The application proposes the demolition of the existing 1930s bungalow and its replacement with a purpose-built building containing 4 x 2-bedroom flats. The replacement building would not sit any further forward on the plot than the existing dwelling, although it is noted that it would have a larger overall footprint and the height would be increased from single storey to 1.5 storey. The area is, however, characterised by a varied street scene that has a mixture of single and two storey dwellings. Further to this, several of the nearby bungalows feature dormers on the front elevation which create a perceived feeling of an additional storey. While objectors raise concerns with regards to the additional storey proposed and its impact, given the above it is not considered that increasing the height of the building would result in any harm to the character of the street scene.
- 9.16. The design of the building does include a prominent double gable on the front elevation; however, it is noted that there are a number of front elevations within the

vicinity featuring a gable end design and a double gable also seen on the neighbouring bungalow at number 9. The building is proposed to be finished in a white render and would be set back from the road, which mirrors the character of the neighbouring buildings, and therefore it is not considered that the design of the proposal would result in any material harm to the character or appearance of the area.

- 9.17. The front of the property is proposed to be utilised as parking which would result in a large area of hardstanding being installed. While this is unfortunate, it is noted that this is a feature added to many of the properties in the area. The street does feature a buffer of grass verges to break up areas of hardstanding, and on balance it is not considered the addition would result in such a negative impact to the streetscene to warrant a reason for refusal.
- 9.18. The proposals are therefore considered to be in accordance with Policies C28 and C30 of the CLP 1996, Policy ESD15 of the CLP 2015 and guidance contained within the NPPF.

Residential Amenity

Legislative and policy context

- 9.19. Saved Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. Policy ESD15 of the CLP 2015 highlights, amongst other things, that new development should *consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.*
- 9.20. The Cherwell Residential Design Guide (2017) states that a minimum distance of 22m back to back, between properties must be maintained and a minimum of 14m distance is required from rear elevation to two storey side gable. First floor habitable room windows must not be within 7m of neighbouring property.

Assessment

- 9.21. The proposed development is considered to provide an appropriate standard of living for any future occupants of the proposed flats in terms of the indoor and outdoor amenity space available.
- 9.22. There is some concern over the proposed layouts of the flats in terms of fire safety. The Council's Building Control team advises that all bedrooms would need to have windows that have a suitable for means-of-escape in case of fire, but it is not clear whether this has been incorporated into the design. Further to this, unit 4 at ground floor level would require two door protection at the entrance to ensure it complied with building regulations. However, it is not considered this amounts to a reason to refuse the application on the grounds of living conditions of future occupiers, and would need to be dealt with under separate legislation, i.e. these issues could likely be overcome through alternative solutions and an informative note, highlighting the concerns included on the decision notice should the application be approved, would suffice. That said, the reliance of the upper floor flats on rooflights for light to living spaces is an indicator of the somewhat cramped form of development would result.
- 9.23. It is noted that any windows proposed on the side elevations of the building are either at ground floor level and screened by boundary fencing, or high level rooflights at the first floor level which ensures that there would be no detrimental impacts on the privacy amenity of neighbouring properties.
- 9.24. The replacement building would be constructed in two sections with the front of the building having a ridge height of approximately 6.3 metres, and a subservient rear

section of the building that has a lower ridge height of 5.9 metres. The proposed building would also protrude a further 10.8 metres into the rear garden of the plot than the existing bungalow. It is considered that the proposal would not result in loss of privacy or outlook to the neighbours to the north east (No. 5 Churchill Road) given that there are no windows on the side elevation of the building serving habitable room windows, and the windows on the rear elevation of the building appear to accord with the 45 degree angle rule.

- 9.25. However, the other neighbouring property, to the south west (No. 9 Churchill Road) benefits from a ground floor rear-facing window which is positioned close to the boundary of the two properties and according to floor plans from 2011, this appears to serve bedroom number 3 of the property. This is the only window serving the third bedroom on No. 9, and officers are concerned that this would result in an overbearing impact that would be detrimental to the light and outlook amenity of this neighbour.
- 9.26. The application property benefits from a kitchen on the south western side of the building that extends further to the rear of the main house that already intervenes the 45 degree angle when measuring from the middle of the window serving bedroom 3 at number 9. The proposals would not only extend further into the rear garden by an additional 3.7 metres, but also increase the ridge height of the building close to the boundary of this window by an additional 2.2 metres. While it is noted that the proposals have been amended to reduce the height of the rear section of the building, the additional impact on the 45 degree angle together with the increase to the height of the building is still considered to be too severe and would result in a detrimental impact on the light and outlook amenity to number 9.
- 9.27. The proposals are therefore considered to be contrary to Saved Policy C30 of the CLP 1996 and Policy ESD15 of the CLP 2015.

Highway Impacts

Legislative and policy context

- 9.28. Policy ESD15 of the CLP 2015 states, amongst other matters, that new development proposals should: be designed to deliver high quality safe places to live and work in.
- 9.29. Paragraph 108 of the NPPF states that in assessing specific applications for development, it should be ensured that:
- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
 - b) safe and suitable access to the site can be achieved for all users; and*
 - c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*
- 9.30. In addition, paragraph 109 highlights that *development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

Assessment

- 9.31. Several concerns have been raised with regards to the parking provision proposed at the site, and the potential impact on highway safety. It is noted that the two ground floor flats have an additional room labelled as 'office' space that have the potential to be used as bedrooms; however, the assessment on highway safety has taken this into account.

- 9.32. The proposals offer 1 off-street parking space per dwelling, which is below the maximum parking standards of 2 per dwelling for urban areas in Cherwell. The Local Highway Authority (LHA) has noted that the site benefits from mitigating factors that justify a relaxation of parking standards in this case. The site is in a highly sustainable location, with frequent bus services within close proximity to the site along Oxford Road. Further to this, a number of nearby amenities are within walking distance to the site, and there are good levels of cycling infrastructure nearby.
- 9.33. Each flat has covered and secured cycle parking provision located within the allocated amenity space to the rear of the building that is easily accessible from the side of the building, which would further promote the use of sustainable forms of travel and conform to policy requirements. The LHA has offered no objections to the application, and given the above it is considered the proposals comply with Policy ESD15 of the CLP 2015 and Government guidance contained within the NPPF.
- 9.34. The LHA has noted that any alterations to the public highway would be at the applicant's expense and to Oxfordshire County Council's standards and specifications

Ecology Impact

Legislative and policy context

- 9.35. Paragraph 170 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 9.36. Policy ESD10 of the CLP 2015 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.37. These policies are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.38. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities (LPAs) should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

Assessment

- 9.39. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development

It also states that LPA's can also ask for:

- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
- an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')

9.40. Having considered Natural England's Standing Advice and taking account of the site constraints it is considered that the site has limited potential to contain protected species and any species present are unlikely to be adversely affected by the proposed development. As such no formal survey is required and in the absence of which this does not result in a reason to withhold permission. An informative note reminding the applicant of their duty to protected species would instead be included on the decision notice should the application be approved and is considered sufficient to address the risk of any residual harm.

Flood Risk

Legislative and policy context

9.41. Policy ESD 6 of the CLP 2015 states that site specific flood risk assessments will be required to accompany development proposals in the following situations:

- All development proposals located in flood zones 2 or 3
- Development proposals of 1 hectare or more located in flood zone 1
- Development sites located in an area known to have experienced flooding problems
- Development sites located within 9m of any watercourses.

9.42. The Policy goes on to state that *development should be safe and remain operational (where necessary) and proposals should demonstrate that surface water will be managed effectively on site and that the development will not increase flood risk elsewhere, including sewer flooding.*

Assessment

9.43. It has been noted that Land and Drainage have suggested that the applicant should be asked to justify this proposal through undertaking BRE 365 testing on the site. The site is however situated within a Flood Zone 1 area and is not at significant risk of flooding. The proposal is situated on previously developed land and would be less than 1 hectare in size, nor is it located within 9 metres of any watercourses. It is therefore considered sufficient for the structure to be built in accordance with Approved Document H of the Building Regulations. The application is therefore considered to comply with Policy ESD 6 of the CLP 2015.

Other Matters

9.44. It is noted that several objectors raised concerns around the description of the development, which suggested that the existing bungalow was dilapidated and fire damaged. While on site it was noted that there is some fire damage to the property, it is not considered to be in a dilapidated state that could not be rectified with some minor modifications to the building. That said, it is not considered that the state of the building has any impact on officers' view of the proposals.

9.45. Concerns have also been raised with regards to the use of an existing outbuilding currently located in the rear garden of the site that has the potential to be used as additional accommodation. It is noted, however, that this is not included in the

proposals and would be removed as part of the scheme – this should be a condition of any approval given. Therefore, if the outbuilding were to be retained and used as additional accommodation then the development will not have been completed in accordance with the approved plans, and enforcement action would be sought.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. The proposal would result in additional dwellings in a sustainable urban location, to which significant weight should be attached and some minor, temporary benefits through construction jobs. However, the proposal fails to comply with the relevant Development Plan policies and guidance listed at section 8 of this report because it would result in an unacceptable impact on the light and outlook amenity of number 9 Churchill Road, and it is considered that these impacts would significantly and demonstrably outweigh the proposal's benefits. There are no other material considerations that outweigh this conflict and the harm caused, and therefore permission should be refused.

11. RECOMMENDATION

RECOMMENDATION - REFUSAL FOR THE REASONS SET OUT BELOW

REASONS FOR REFUSAL

1. By virtue of its size and massing, the proposed development would have an overbearing impact on number 9 Churchill Road that would be detrimental to the living conditions of the neighbouring occupier through loss of light and outlook. The proposal is therefore contrary to Saved Policy C30 of the Cherwell Local Plan 1996, Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.