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# Appeal Decision

Inquiry opened on 8 May 2013

Site visits made on 9 and 10 May 2013

**by Clive Hughes BA (Hons) MA DMS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18 June 2013**

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**Appeal Ref: APP/Q0505/A/12/2176501**

**Land at former St Colette's Preparatory School, Tenison Road, Cambridge CB1 2DP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by ORO Ventures Ltd & MPM Properties (Investments) Ltd against the decision of Cambridge City Council.
  - The application Ref 11/1534/FUL, dated 13 December 2011, was refused by notice dated 11 April 2012.
  - The development proposed is erection of 6x5 bed houses; 1x4 bed house; and 1x3 bed house, internal access road, car and cycle parking and hard and soft landscaping.
  - The inquiry sat for 2 days on 8 and 9 May 2013.
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. At the Inquiry applications for costs were made by ORO Ventures Ltd & MPM Properties (Investments) Ltd and by Dr Andy Harter against Cambridge City Council. These applications are the subject of separate Decisions.

## Procedural matters

3. The application was amended prior to its determination by the Council. The 4- and 3-bed houses were omitted and replaced by an additional 5-bed house resulting in a scheme for 7x5-bed houses. I have used this revised description in the determination of this appeal.
4. At a meeting of the Council's Planning Committee on 25 July 2012, the Council resolved not to pursue its 2<sup>nd</sup> reason for refusal. This matter was, however, pursued by local residents and so remained an issue before the Inquiry.
5. A signed Unilateral Undertaking, dated 18 May 2012 was submitted with the appeal. The Statement of Common Ground (SoCG) confirms that this fully meets the Council's requirements and that the Council is not pursuing its 5<sup>th</sup> reason for refusal.
6. An amended plan, Drawing No 050-205 Rev B, was submitted with the appeal. This corrects the position of the boundary between the appeal site and No 25 Tenison Avenue which was shown incorrectly on Drawing No 050-205 Rev A. That plan is a cross section of the site. The site layout plan (Drawing No 050-100 Rev B), submitted as part of the original planning application, shows the

correct position of the boundary. I am satisfied that no parties would be prejudiced by my consideration of the amended plan.

## **Main Issues**

7. The main issues are (i) whether the proposed development would preserve or enhance the character and appearance of the City of Cambridge Conservation Area No 1 (Central); (ii) the effect of the proposals upon the living conditions of occupiers of nearby dwellings with particular regard to overshadowing (9-31 (odd nos) Tenison Avenue) and the effect on outlook (9-31 (odd nos) Tenison Avenue, 68 and 85 Highsett); (iii) whether the proposals make adequate provision for informal public open space; and (iv) whether the development involves the loss of existing community facilities and, if so, whether the proposals would result in unacceptable conflict with Policy 5/11 of the *Cambridge Local Plan 2006*.

## **Reasons**

### *Background*

8. The appeal site is situated in an urban location to the south of the centre of Cambridge, close to the railway station. The site is roughly rectangular with long boundaries to the north and south and tapering slightly from east to west. It is flat and has many perimeter trees, some of which are the subject of a Tree Preservation Order. The site was last occupied by a school with three large single storey buildings and other areas of hard surfacing. The buildings have now been demolished, with Conservation Area Consent, although their oversites remain. It lies within a Conservation Area.
9. The site is surrounded by buildings, mostly in residential use. To the north, and running parallel with the northern boundary of the site, lies Tenison Avenue, a residential road mainly comprising 3 storey semi detached late Victorian houses. Nos 29/31 are in use as Houses in Multiple Occupation (HMOs). To the west, and separated by a private access road, are 3 storey dwellings in Highsett, a residential development with terraced dwellings aligned north/ south and east/ west. This development also abuts the western end of the southern boundary with 2- and 3-storey terraces aligned with their end elevations facing the site. The remainder of the southern boundary abuts George Pateman Court, a three storey flatted development with balcony access to the upper floors and frontage car parking. To the east are three storey terraced properties fronting Tenison Road that comprise a mix of houses, guest houses and bed and breakfast accommodation.
10. It is proposed to develop the site with three pairs of three storey semi detached houses and a detached house set in four tiers with all the dwellings having their main elevations facing east/ west. There would be a new shared surface access using the existing access point from George Patemen Court and running between the new houses and the rear gardens of Tenison Road and Tenison Avenue properties. Some trees would be felled and there would be new planting. The site is largely surrounded by walls that would be retained.

### *Effect on the character and appearance of the Conservation Area*

11. The City of Cambridge Conservation Area No 1 (Central) is very extensive, covering most of the centre of the city and extending outwards in several directions. It has been extended on a number of occasions, the appeal site and

its surrounding area having been included in 1993. The site is wholly surrounded by the Conservation Area, although the former Focus DIY/ garden store and the housing in Ravensworth Gardens, on the opposite side of Tenison Road, lie outside the Area. There are public views of the site from George Pateman Court, a short residential cul-de-sac, and from around its junction with Tenison Road. Although the site entrance is set some distance back from Tenison Road, the wall and conifer trees to the west of this entrance are clearly visible from the main road.

12. As set out above, the site lies within a predominantly residential area where the proposed houses would accord with the prevailing residential character. The established housing is very varied with a mix of dwelling types, styles and ages. There are detached, semi detached and terraced houses as well as blocks of flats. Most of the properties are three stories high, although even here there are variations with some dwellings having steeply pitched roofs with strong gable features while others have flat roofs (George Pateman Court) or a mix of mono-pitch and butterfly roofs (Highsett). There are also variations in dwelling size and the scale of the gardens.
13. The easternmost two of the proposed dwellings, on Plots 1 and 2, would face towards Tenison Road, albeit they would be sited behind the frontage properties. These two houses would be the only dwellings on the site that would be clearly visible from public viewpoints, although the side elevation of Plot 4 would be seen over the wall from the turning area at the end of George Pateman Court. The main public view, and the view that would have the most impact on the appearance of the Conservation Area would be the front elevation of Plots 1 and 2. Plot 1 would be partly obscured by the retained boundary wall and there is a parking area for the George Pateman Court flats between the houses and Tenison Road.
14. The site has been cleared and so it currently has little presence outside its surrounding walls save for the perimeter trees. The two houses on Plots 1 and 2 would be seen as a pair of modern semi-detached three storey dwellings. They would provide the necessary frontage to the development that would enhance views from Tenison Road. Their form, scale, designs and materials, with strong gables to the front and a mix of materials, would be entirely compatible with the scale and styles of other dwellings in this part of the Conservation Area. The layout of the development, with pairs of houses facing east/ west, would be in keeping with scale and orientation of the short terraces at Highsett. Within the site itself the access serving the dwellings would not be out of character with the accesses within Highsett while the garden sizes would be commensurate with others in the area.
15. I conclude on the first issue that the development would preserve the character of the area and enhance its appearance. It would satisfactorily respond to its Conservation Area context and there would be no unacceptable conflict with the relevant parts of Policies 3/4, 3/7, 3/12 and 5/1 of the *Cambridge Local Plan 2006* and the *National Planning Policy Framework* (the *Framework*).

#### *Effect on living conditions*

##### *Overshadowing*

16. The Council's first reason for refusal refers to the overshadowing of rear gardens, balconies, roof terraces and ground floor rooms of Nos 9-31 Tenison

Avenue during winter months. The appellants and the Council have both used the Building Research Establishment's (BRE) guidance set out in *Site Layout Planning for Daylight and Sunlight*, although the assessment on behalf of the Council does not appear to take account of existing boundary walls and surrounding buildings. The assessment on behalf of the Council also fails to explain whether the development would accord with the guidance. In particular it does not say whether at least half of the amenity areas for each property would receive at least 2 hours sunlight and is therefore well sunlit.

17. The appellants' evidence takes into account the buildings that were on the site but which have since been demolished. These were single storey structures and in mid-winter had relatively little impact due to the height of the existing boundary walls. The appellants' evidence did include an analysis of whether the BRE guidance would be met; there is no dispute that on 21 March the guidance is are fully met. There would be some additional shadows cast by the proposed dwellings, but these would be transient and, taking the day as a whole, adequate sunlight would be received. In coming to this conclusion I have had regard to the fact that this is an urban location where it is not unusual for large areas to be in shadow in mid-winter when the sun is low.

*Effect on outlook/ sense of enclosure*

18. The reason for refusal relates to the impact on the living conditions of the occupiers of Nos 9-31 (odd nos) Tenison Avenue & Nos 68 and 85 Highsett and cites the "overbearing sense of enclosure that will be created by the development". The site was last occupied by single storey school buildings. I agree with the appellants that the northern boundary of the site is the most sensitive as the houses would be sited to the rear of dwellings in Tenison Avenue and at right angles to them. The proposed semi-detached houses would be three storeys high and separated from the boundary by the proposed shared surface access. The detached house (Plot 7) would have a different form with a substantial single storey side projection that would be sited close to the common boundary. There would also be some impact on the living conditions of occupiers of the two closest properties in Highsett, Nos 68 and 85, which are sited parallel with the proposed houses on Plots 6 and 7.
19. Concerning the impact on the living conditions of occupiers of Tenison Avenue properties, the residents of Nos 9, 15, 17, 25 and 29 would be likely to be most affected as they would have new buildings directly behind their houses that would extend for all, or most, of the width of their plots. The outlook from these properties would be significantly changed by the development. The impact on the outlook from the other properties abutting the site would be a little less noticeable due to their siting relative to one another. Drawing No 050-503 sets out the distances between the existing houses and the new buildings. In considering the impact, it must also be borne in mind that the proposed houses have been deliberately designed with asymmetrical roofs such that the ridges are located further from the common boundary than if they were centrally located, in an attempt to reduce their impact.
20. The existing outlook is, to some extent, foreshortened by the flats in George Pateman Court and the house at No 85 Highsett. However, George Pateman Court is some considerable distance away (around 50m from the rear of No 15) and has a flat roof. While it is visible, I do not consider that it can reasonably said to create any unacceptable sense of enclosure. No 85 is a two storey house with a butterfly roof and its visual impact across the site is limited.

21. Many of the properties in Tenison Avenue have been extended to the rear, bringing the built form closer to the appeal site. Some have large first floor windows that take advantage of the openness of the appeal site. I also saw that the rear gardens appear to be well used; for example I saw that the garden of No 15 is filled with children's play equipment while No 25 is actively cultivated. The proposed house on Plot 3 would be sited only about 7m from the garden of No 15; that on Plot 5 would be about 6m from the garden of No 25. The houses would be 3 storeys high, with long roofs sloping down to an eaves height of about 4.5m.
22. I consider that a combination of the height, width, siting and proximity of the houses to the rear windows and gardens of the Tenison Avenue properties would mean that the proposed dwellings would dominate the outlook from these houses and their gardens and result in an overbearing sense of enclosure. This would be seriously harmful to the living conditions of the occupiers of those properties. This particularly applies to the proposed buildings on Plots 2, 3 and 5 and their impact on the living conditions of the occupiers of Nos 9, 15, 17 and 25 Tenison Avenue.
23. I have taken account of the additional planting proposed along the boundary but in order to screen the houses any substantial planting would itself create a sense of enclosure, as well as affecting sunlight to the houses and gardens. I accept that such planting could be undertaken without the need for any permission, but it seems unlikely that it would be carried out other than in association with the redevelopment of the site. I have also noted that the appellants' CGIs (Drawings No 050-600 Rev A) show a tree in the rear garden of No 25 that largely hides the proposed house. That tree does not exist. I also consider that this CGI gives a rather misleading impression as the proposed house on Plot 5 would be wider than the garden of No 25, the built form extending beyond both side boundaries of No 25.
24. Concerning Plot 7, the house would be sited within 1m of the common boundary and would involve the removal of an existing tree and leaving no space for replacement planting. Although a little less tall than the other proposed houses, it would nonetheless be sited immediately to the rear of No 29 Tenison Avenue, a HMO. This has bedroom and kitchen windows in the rear elevation and the garden is used by the residents. I consider that the scale and siting of this house, and its proximity to the boundary, would be overbearing and harmful to the living conditions of the residents of No 29.
25. The houses on Plots 6 and 7 would also be visible from within Nos 68 and 85 Highsett. Their principal outlooks are to the front and rear and so it would only be in oblique views that the new houses would be seen. No 68 has its living room at first floor level with large windows to the rear. While the house at Plot 7 would be only 11.4m distant, the angle would be such that the new house would not visually dominate or unacceptably harm the outlook. The new house on Plot 6 would be closer to the line of sight but would still be only viewed at an oblique angle. In any case, it would be some 30m distant and would not appear overbearing. I acknowledge that due to the siting of Nos 6 and 7 the existing pleasant views across the site would be lost from Nos 68-70 Highsett, but the impact would not be unacceptably harmful.
26. The house on Plot 6 would be sited adjacent to No 85 Highsett and more or less in line with it so would not be likely to impact on its outlook. There is a high wall at this point and the proposed house would not significantly impact upon

the outlook from the garden of No 85. While Plot 7 would be visible from the front windows, it would also be sited at an oblique angle so the impact would not be unduly harmful.

27. I conclude on this issue that the proposals would not result in any unacceptable overshadowing of the Tenison Avenue properties. It would, however, result in an overbearing sense of enclosure for the occupiers of many of the Tenison Avenue dwellings. This would be seriously harmful to their living conditions and contrary to Policies 3/4 (c) and 3/7 (a) of the *Local Plan* and paragraph 17 of the *Framework*.

#### *Open space provision*

28. The Council considers that the on-site informal open space provision is inadequate and so the development is in conflict with Policy 3/8 of the *Local Plan*. The Policy says that provision may be made through commuted payments where the scale of the development indicates, but gives no guidance as to how scale informs that decision. This Policy needs to be read in conjunction with the Council's *Open Space and Recreation Standards* as set out in Appendix A to the *Local Plan* as these apply to all schemes for new residential developments. The *Standards* define informal open space to include amenity greenspaces within housing areas; public open space means space that has unimpeded public access. The definition goes on to say that the amount of provision on site should depend upon the size and character of the proposed development; the character of the surrounding area; and its location in relation to existing open space.
29. In this case the proposals include a relatively small amount of greenspace immediately opposite Plots 1 and 2. While it is under the canopy of trees, these trees have few lower lateral branches facing into the site and the land, which is south facing, would receive a considerable amount of sunlight. I have taken into consideration the small scale of the development (7 units) and the fact that all the houses have private gardens of reasonable size. The site is a small scale private backland development within an area that is characterised by houses with private gardens. Highsett is a similar, if larger, development with no public access or public open space. There is a play area for children, with facilities for under 6's and under 12's, in the Ravensworth Gardens development very nearby on the opposite side of Tenison Road. The nearest playing fields (Coleridge Recreation Ground) are only about 10 minutes' walk away (albeit longer for small children), using the covered cycleway/ footbridge over the railway, which is a reasonable distance.
30. Policy 3/8 allows off-site provision through commuted payments. The submitted UU makes provision for a financial contribution in accordance with the Council's adopted standards. This would be partly used at the Coleridge Recreation Ground and partly for other woodland and open spaces in the City. I conclude on this issue that the small scale and private nature of the development are such that commuted payments are appropriate. They would provide greater benefits for the community than on-site open space provision; the contributions set out in the UU satisfy Policy 3/8 of the *Local Plan*.

#### *The loss of existing school facilities*

31. St Colette's Preparatory school ceased operation from the appeal site in mid-2009; the school buildings were demolished in 2010. In refusing planning

permission for the current proposals, the Council referred to the loss of community facilities on the site and the inadequacy of the marketing strategy. The Council stated that the appellants had not demonstrated that the site was not required for an educational or community use and cited Policy 5/11 of the *Local Plan* and guidance in the *Framework*.

32. The appellants and the Council both took advice from Leading Counsel concerning the applicability of Policy 5/11. The Council subsequently resolved not to pursue this reason for refusal as it had been advised, as a matter of law, that this Policy was not engaged since the buildings had been demolished. Notwithstanding this stance, a local resident acquired Counsel's opinion concerning the applicability of the Policy and residents continued to assert that the Policy is engaged and that the development is in conflict with it. The various legal opinions formed appeal documents.
33. Policy 5/11, under the heading *Protection of Existing Facilities*, sets out three factors any one of which needs to be satisfied in order to permit the loss of community facilities. Supporting paragraph 5.24 advises that the protection of existing facilities is necessary due to the limited scope to provide new facilities.
34. The key word in the Policy is "existing". Before the buildings were demolished, the lawful use of the site was the provision of education use (Use Class D1). Following the demolition of all buildings on the site, the land holds nil use. This conclusion is supported by *Iddenden v Secretary of State for the Environment [1972] 1 WLR 1433*, in which the Court of Appeal held that following demolition the use of land was lost. The more recent case of *W E Black v First Secretary of State [2007] 1 P&CR 7* seems particularly relevant. In brief, the Court held that an Inspector had been wrong to treat a cleared site, where a building housing a health club had been demolished, as an existing sports or recreational facility. This was because the terms "existing sports facility" or "existing recreational facility" necessarily implied a physical resource with particular features making provision for sport or recreation. As the building had been demolished, there was no "existing sports facility" or "existing recreational facility".
35. In this case Policy 5/11 relates to "existing facilities". As the site has been cleared there are no longer any existing education facilities and so the policy cannot reasonably be engaged. I have taken account of the opinion of local residents who argued that it was clearly not the intention of the Council to permit the loss of such sites. However, it seems to me that the wording of the Policy is very clear. The construction of planning policy is a matter of law as is made clear in *Tesco Stores Ltd v City of Dundee [2012] UKSC 13*. The Court held that planning policy statements should be interpreted objectively in accordance with the language used, read in its proper context. A planning authority cannot make the development plan mean whatever they would wish it to mean. In this case the context includes the fact that Conservation Area Consent had been granted for the demolition of the buildings. This allowed the removal of the "existing facilities"; their removal resulted in the cessation of the lawful use. The reference to school sites in the final paragraph of the policy cannot be said to increase its scope as it comes under the general heading *Protection of Existing Facilities*. I do not consider that a reasonable interpretation of this would be that this paragraph could operate independently of the remainder of the Policy.

36. In formulating the Policy the Council must have been aware that the demolition of existing facilities could result in the cessation of a use. The Council could have used different wording if it had wished to retain "existing sites" rather than "existing facilities". The fact that it did not do so indicates to me that there was never any intention of using this Policy to protect sites where the facilities had been removed, as is the case here. In these circumstances I am satisfied that Policy 5/11 is not engaged and that the Council was correct not to pursue this reason for refusal.

#### *Unilateral Undertaking*

37. The appellants submitted a UU that makes provision for the payment of commuted sums for community facilities, informal open space, children's and teenager's facilities, indoor and outdoor sports facilities, waste facilities and various education/ school facilities. The total sum involved is £61,421. The uses to which these sums would be put are set out in the Council's evidence and it is set out in the SoCG that this fully complies with the Council's requirements. Based upon the Council's submissions I am satisfied that these sums comply with the *Community Infrastructure Levy Regulations 2010* and so can be taken into account in this Decision.

#### *Conclusions*

38. I have had regard to all the other matters raised at the Inquiry and in the written submissions. Concerning overlooking and loss of privacy arising from the windows in the proposed houses, the flank, upper floor windows could be non-openable, apart from any top hung light, and fitted with obscured glass which would need to be retained thereafter. This could be the subject of appropriate conditions. Ground floor windows could be so conditioned but unneighbourly overlooking from the ground floor is unlikely to be any more intrusive than views of persons using the access road, gardens etc in any future redevelopment of this site. The finished floor levels of the proposed houses could be the subject of a condition requiring the submission of, and compliance with, full details. I have found nothing in these other matters to outweigh my conclusions on the main issues.
39. In conclusion, this is a disused, vacant urban site, formerly in education use, that is largely surrounded by housing. The principle of residential use is acceptable and the provision of additional housing within the City confines is to be welcomed. The proposed development has been carefully designed to take account of its location within a Conservation Area and to reflect the many different housing styles within the immediate area. The layout and form of the proposals has clearly taken account of the surrounding development and serious attempts have been made to minimise its impact on the living conditions of adjoining residents. I am satisfied that the development would preserve or enhance the character and the appearance of the Conservation Area; would not result in unacceptable overshadowing of adjoining properties; would make provision for sufficient amenity open space; and would provide other community benefits by way of the UU. The site now has nil use as the education facilities have been demolished and so Policy 5/11 of the Local Plan is not engaged.
40. However, I am very concerned that the proposed houses on Plots 2, 3, 5 and 7, due to their height, width, siting and proximity to the rear windows and gardens of the Tenison Avenue properties, would mean that the proposed

dwellings would dominate the outlook from these properties, resulting in an unacceptably overbearing sense of enclosure. This would be seriously harmful to the living conditions of the occupiers of the Tenison Avenue properties and contrary to the development plan and the *Framework*. This harm cannot be overcome by the imposition of conditions and so, for that reason, the appeal is dismissed.

*Clive Hughes*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Douglas Edwards QC	Instructed by Simon Pugh, Head of Legal Services, Cambridge City Council
He called	
Rosie Dinnen BA(Hons)	Senior Planner, Barton Willmore
Dip TP MRTPI	
Catherine Linford	Cambridge City Council (attended site visit)

### FOR THE APPELLANTS:

Simon Bird QC	Instructed by Colin Brown, Januarys
He called	
Colin Brown BA(Hons)	Managing Director, Januarys
MRTPI	
Nicholas Parkinson BSc	Design Director, Hill Residential Ltd
BArch RIBA	
Ian Absolon BSc	Director, GVA Schatunowski Brooks

### INTERESTED PERSONS:

Nicola Harrison	Local resident and former County Councillor
Dr Irene Elia	Local resident
Dr Andy Harter FEng	Local resident
Professor Michael Carpenter	Local resident
Denise Clegg	Owner, 29/ 31 Tenison Avenue
Joseph Saunders	Local resident
Frank Gawthorp	Secretary, Glisson Road & Tenison Road Area Residents' Association and local resident
Sophie Smiley	Local resident
David Gooch	Local resident
Elizabeth Bingham	Local resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Drawing No 050 205 Rev B (Position of boundary wall corrected)
- 2 Letter dated 15 April 2013 from Bursar, Jesus College, to Planning Inspectorate
- 3 Sunlight analysis – missing page from Ian Absolon’s Appendix 3
- 4 Drawings No BRE04 and 05 - transient shadow analysis for 21 December – missing pages from Ian Absolon’s Appendix 2
- 5 Drawings No 050-105 & 106 sections of site showing former school buildings
- 6 Drawing No 050-003 existing boundary wall heights
- 7 Drawing No 050-605 proposed terrace house arrangement plan
- 8 Drawing No 050-104 development density comparison
- 9 Drawing No 050-601 set of CGIs showing views from first floors of Tenison Avenue properties
- 10 Drawing No 050-604 set of CGIs showing views of terraced houses from rear of Tenison Avenue properties
- 11 Set of suncast images with site “as existing” with no buildings.
- 12 Opening submissions on behalf of the appellants
- 13 Opening submissions on behalf of the Council
- 14 Plan showing boundary of Conservation Area
- 15 Extracts from Cambridge Local Plan 2006
- 16 Statement by Dr Andy Harter
- 17 Closing submissions on behalf of the Council
- 18 Closing submissions, incorporating an application for a partial award of costs, on behalf of the appellants

## **PLANS**

- A Drawings No 050-001, 100B, 200, 201, 202, 203, 204A, 205A, 206B, 207B, 500, 501 – application plans showing site location, site layout, floor plans and elevations of houses, garage and cycle store