

**NORTH AREA COMMITTEE MEETING (PLANNING ITEMS)**

**- 28<sup>th</sup> August 2014**

**Amendment/De-brief Sheet**

**PLANNING APPLICATIONS**

**CIRCULATION:** First

**ITEM:** **APPLICATION REF:** 14/0890/FUL

**Location:** Smiths Footwear, 127 Milton Road

**Target Date:** 29.07.2014

**To Note:**

This is the previous appeal decision:



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## Appeal Decision

Site visit made on 9 November 2010

by **David Vickery** DipT&CP MRTPI

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

Decision date: 25 November 2010

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**Appeal Ref: APP/Q0505/A/10/2130700**

**127 Milton Road, Cambridge CB4 1XE**

- 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 Mr M Smith against the decision of Cambridge City Council.
  - The application Ref 09/0659/FUL, dated 17 July 2009, was refused by notice dated 17 December 2009.
  - The development proposed is the erection of 6 No. 1-bedroom residential apartments.
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### Decision

1. I dismiss the appeal.

### Preliminary matter

2. The appellant submitted a section 106 Unilateral Undertaking which would make a number of payments to the Council for community facilities, formal and informal open space, children and teenager's facilities and long life learning provision.
3. The Community Infrastructure Levy (CIL) Regulation 122 sets out a series of tests for an Obligation: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. There is similar Government advice in Circular 5/2005 at paragraph B5. The Planning Inspectorate's Good Practice Advice Note 16/2010 on Obligations sets out the type of evidence that is likely to be needed to enable the Secretary of State to assess whether any required financial contribution meets the statutory and policy tests set out above. Unfortunately, this information is largely lacking in this case.
4. Some of the payments appear to be as a result of a standard tariff per dwelling contribution which applies to all development proposals. But I have no information that tells me whether key parts of the required monies are relevant, necessary, or fairly and reasonably related in scale and kind in this specific and particular instance.
5. Whilst Circular 05/2005 encourages formulae and standard charges, it makes it clear that their application should comply with the Circular's policy tests (and now with the statutory tests in CIL Regulation 122). The Circular also says that standard charges should not be applied in a blanket form regardless of actual impacts (paragraph B35). That paragraph goes on to say that whether a standard charge is sought will depend upon the nature of the proposed development.

6. The lack of information applies to the community facilities, formal and informal open space, children and teenager's facilities payments. I do not know whether these are directly related to the proposal, or are necessary, or are fairly and reasonably related in scale and kind. It might be that the open space payments are to alleviate shortfalls in the provision of on-site space, but this is not clear, and I do not know exactly what, where or when the new open space would be provided so that I can assess its relevance.
7. The Council said that there was insufficient education capacity, but provided no further details. And there was no indication of on what, where or when the money would be spent. I consider, therefore, that I can give no weight to the proposed section 106 Obligation because it would not, on the basis of the scanty information submitted, comply with the statutory and policy tests.

### **Main Issues**

8. There are two main issues in this case:
  - The effect of the proposal on the character and appearance of the surrounding area;
  - The proposal's impact on the living conditions of nearby existing residential occupiers with particular reference to overlooking and privacy, and on future occupiers' living conditions with regard to amenity space.

### **Reasons**

#### *Effect on character and appearance*

9. The proposed building would be an extension to the rear of a row of flat roofed two-storey shops. It would join into, at the same height, an existing two-storey pitched roof rear extension. To the north-west are modern pitched roof two storey terraced houses and a modern three-storey elderly persons home (Ellis House). Most of the rear ground behind the Milton Road shop frontages is open, with some single storey outbuildings used in association with the commercial uses.
10. I consider that the proposed design would fit in with the existing rear two-storey extension, the modern terraced houses and the Ellis House and other pitched roof two-storey buildings close to the site. Its design would reflect, integrate with, and not dominate the existing pattern of development, which contains a mixture of building styles, heights and open space. It would be difficult to see the building from Milton Road itself, and any views would, in any event, be brief and from the north-east direction of only a small part of the building (its roof and part of its upper floor) over the top of the adjacent single storey flat roofed Co-Op store.
11. There would be sufficient distance from other nearby buildings, particularly the shops and the Mulberry Close houses, so that the proposed building's presence would be acceptable and subordinate to the local building heights and built relationships. Although it would be larger than some other buildings, it would not appear out of place in this partly commercial environment, especially when compared to the very large mass of Ellis House. I consider that it would have a positive visual impact.

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12. I conclude that the proposed building would not seriously harm the character and appearance of the surrounding area. It would therefore comply with the Council's saved design policies in the Local Plan.

*Impact on living conditions*

13. I saw that the first floor windows to living and kitchen areas in two flats of the proposal would overlook the rear gardens and rear rooms of the row of terrace houses facing towards the site. The distances involved would be acceptable in normal circumstances – that is, where the first floor rooms proposed were bedroom or bathroom/toilet windows. But in this instance the proposed first floor rooms would be the main living areas.
14. People in these two first floor flats would overlook four or so of the Mulberry Close gardens, which are relatively restricted in size. Whilst direct views of the garden surfaces could be screened, views of that area closest to the dwellings and of people in the gardens would still be obtained. Existing residents would be aware at all times of the possibility of being seen by people living in the living areas or kitchens of the two flats. The two flats' living areas would also overlook existing living and bedroom windows on the rear elevations of the Mulberry Close houses.
15. I consider, overall, that the living conditions of the residents living in Mulberry Close, particularly those in Nos. 32 to 35 inclusive, would be seriously harmed by this overlooking and the consequent loss of privacy.
16. There would be little in the way of amenity space for the future occupants of the proposed flats. There is no guarantee that the building will be used solely by students. In any event, there is no reason to believe that students do not need at least a reasonable amount of open space. Most of the area around the proposal would be taken up by vehicular areas and communal pedestrian access. I do not consider the small area proposed for open space for six flats to be sufficient, and I am not convinced that some of it is properly useable or useful. The local public open spaces mentioned by the appellant, whilst technically within walking distance, are all too far to be used as convenient substitutes for the lack of open space within this proposal.
17. I have previously commented on the section 106 payments for open space – I do not know what the payments will achieve or where or when. So I cannot rely upon it resolving this particular failing of the proposal.
18. I conclude that the proposal would seriously harm the living conditions of both existing and proposed residential occupiers. This is due to overlooking and loss of privacy, and the provision of inadequate open amenity space for the future occupiers. The proposal would therefore be contrary to saved Local Plan policies on these matters.

**Other considerations**

19. I have also considered other factors mentioned by local people, including the rear access to the site. But I see no reason to disagree with the highway authority's view that the access would be acceptable given the likely traffic generation. Legal rights of way must be resolved by the developer and are not a planning matter.

20. I appreciate the advice in Planning Policy Statement 3 and the need for housing in the City mentioned by the appellant, but that must be balanced against the harm that I have found here. And it is that harm that I consider outweighs these, or any other positive material consideration, and which makes this proposal unacceptable.

21. For the reasons given above I conclude that the appeal should be dismissed.

*David Vickery*

INSPECTOR

Amendments To Text: Nothing

Pre-Committee Amendments to Recommendation: None

**DECISION:**

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CIRCULATION: First

ITEM: APPLICATION REF: 14/0447/FUL

Location: 192 Green End Road

Target Date: 30.05.2014

To Note: Nothing

Amendments To Text: None

Pre-Committee Amendments to Recommendation:

Add the following condition:

Within one calendar month of the receipt of the Decision Notice an Acoustic Report and Mitigation Strategy relating to the plant shall be submitted to the Local Planning Authority for approval. Within one calendar month of the written approval of the submitted Acoustic Report and Mitigation Strategy, or in accordance with a timetable agreed with the Local Planning Authority, the Mitigation Strategy shall be carried out and a Commissioning Certificate submitted to the Local Planning Authority. The development shall be implemented in accordance with the approved Mitigation Strategy in perpetuity and the equipment shall be maintained in accordance with the manufacturer's recommendations.

Reason: In the interests of residential amenity. (Cambridge Local Plan 2006, policy 4/13)

**DECISION:**

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CIRCULATION: First

ITEM: APPLICATION REF: 14/0614/FUL

Location: 38 Chesterton Hall Crescent

Target Date: 18.06.2014

To Note: Nothing

Amendments To Text: None

Pre-Committee Amendments to Recommendation: None

**DECISION:**

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CIRCULATION: First

ITEM: APPLICATION REF: 14/0518/FUL

Location: 243, 245 And 247 Milton Road

Target Date: 03.06.2014

To Note: Nothing

Amendments To Text: None

Pre-Committee Amendments to Recommendation: None

**DECISION:**

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CIRCULATION: First

ITEM: APPLICATION REF: 14/0936/FUL

Location: Garages 301 – 326, Hawkins Road

Target Date: 07.08.2014

To Note: Nothing

Amendments To Text: None

Pre-Committee Amendments to Recommendation: None

**DECISION:**

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CIRCULATION: First

ITEM: APPLICATION REF: ENFORCEMENT REPORT

Location: Citygate, Woodhead Drive

Target Date:

To Note: comments from developer



Company Registration Number: 6959600. Registered office: 112 Lancaster Way, Ely, Cambridgeshire, CB6 3NW. Directors: Adam J Tuck. Michael E Hendry. VAT Registration Number: 160 7432 25.  
112 Lancaster Way Ely Cambridgeshire CB6 3NW Tel: 01353 740922 Mobile: 07876 220755 [www.plansurv.co.uk](http://www.plansurv.co.uk)

**WRITTEN STATEMENT IN CONNECTION WITH ENFORCEMENT REFERENCE CE/5854 –  
CONDITION 14 OF PLANNING REF: 10/0367/FUL.**

Martin Jackson from City Gate Ltd would like to make the following comments in response to the report prepared by the Enforcement Officer dated 28<sup>th</sup> August 2014.

1. Government Circular 11/95 – Use of conditions in Planning Permission is relevant to this case. Paragraph 30 of Circular 11/95 states; 'Conditions which require specific works to be carried out should state clearly when this must be done. The Condition does not state when the wall needs to be

completed. Work on the wall has commenced and there is no stated time frame for the wall to be completed.

2. Appendix B of Government Circular 11/95 states that conditions are unacceptable when they require a development to be completed within a time limit. There is no need to complete the development within a certain time frame. Mr Jackson would argue that work on the wall has commenced and it could be completed at some time in the future so we are unsure what Enforcement action the Council can take.

3. The reason for Condition 14 is to 'Protect the amenity currently enjoyed by the occupier of 56 Robert Jennings Close'. The part of the wall that has been erected adjoins the rear garden of No. 56 Robert Jennings Close, the existing brick gable flank wall to No. 56 Robert Jennings Close extends further along the boundary. The adjoining neighbour has erected an unauthorised lean to structure in this area which is now beyond enforcement action.

4. When Planning Ref 10/0367/FUL was presented to members of the Planning Committee the Officer in their report stated that 'I do not feel that it is reasonable to insist that the developer erects a high wall when this would have a negative impact on the appearance of the area'.

5. The previous Planning Inspectors Decision is not relevant to this case as that was an Appeal against the Local Authorities refusal to remove the condition. If a further Appeal was submitted a different Inspector would be entitled to reach a different decision.

6. Condition 14 is poorly worded; it is not precise, enforceable or reasonable in all other aspects. The condition does not stipulate when the wall needs to be completed and it does not define the maximum height or exact location of the wall.

7. Enforcement action is discretionary and Local Planning Authorities should act expediently, proportionally and in the public interest. Mr Jackson is entitled to complete the wall at some time in the future and in the meantime, as the Council have not provided any evidence to the contrary, the existing timber fence adequately protects the amenity of the occupiers of No. 56 Robert Jennings Close. If any issues regarding noise and disturbance were to arise these would be controlled by Environmental Health and are outside of Planning controls.

**Adam Tuck**  
**BSc (Hons) MRICS CPDS.**  
**For and on behalf of PlanSurv Ltd**  
E-Mail: adam@plansurv.co.uk.

Amendments To Text:      None

Pre-Committee Amendments to Recommendation:      None

**DECISION:**

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