



Planning Committee Date	07 August 2024
Report to	Cambridge City Council Planning Committee
Lead Officer	Joint Director of Planning and Economic Development
Reference	24/01388/S73
Site	45 Nightingale Avenue, Cambridge, CB1 8SG
Ward / Parish	Queen Ediths
Proposal	S73 to vary conditions 2 (Approved plans) and 13 (Obscured glazing) of planning permission 17/2261/FUL (Erection of two detached, three storey, four bedroom family homes with single storey elements to the front and rear following demolition of existing detached house and garage) fenestration alterations and addition of roof lantern.
Applicant	Mr Samih Al-Hayek
Presenting Officer	Paulo Tavares
Reason Reported to Committee	Third party representations
Member Site Visit Date	N/A
Key Issues	1. Residential Amenity
Recommendation	APPROVE subject to conditions.

1.0 Executive Summary

- 1.1 The application seeks to vary conditions 2 (Approved plans) and 13 (Obscured glazing) of planning permission 17/2261/FUL (Erection of two detached, three storey, four bedroom family homes with single storey elements to the front and rear following demolition of existing detached house and garage), fenestration alterations and addition of roof lantern.
- 1.2 The proposed variations include several updates to the fenestration detailing of the consented dwellings and an alteration from a rear stepped landscaped garden to a single level rear garden. These modifications to the original consent are considered acceptable in design and amenity terms and to accord with relevant Local Plan policies.
- 1.3 Officers recommend that the Planning Committee approve the application subject to conditions outlined in the report.

2.0 Site Description and Context

None-relevant	X		
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- 2.1 The application site is currently a two-storey detached dwelling on the south, eastern side of Nightingale Avenue. Nightingale Avenue is tree lined and characterised by detached dwellings which typically fill entire width of the plot. The houses generally have open front gardens. On the opposite side of Nightingale Avenue is Nightingale Recreation Ground.
- 2.2 The site is not within a Conservation Area and falls outside the Controlled Parking Zone.

3.0 The Proposal

- 3.1 This application seeks approval to vary conditions 2 (Approved plans) and 13 (Obscured glazing) of planning permission 17/2261/FUL (Erection of two detached, three storey, four bedroom family homes with single storey elements to the front and rear following demolition of existing detached house and garage), fenestration alterations and addition of roof lantern.
- 3.2 The application seeks to replace plans referenced under conditions two and thirteen of extant planning permission ref. 17/2261/FUL. The revisions sought are:
- Addition of a first floor obscure glazed window to the eastern elevation of the dwellings.
 - Addition of first floor, gable end window to the front and rear
 - Addition of ground floor window to eastern elevation of dwellings
 - Addition of a roof lantern over the rear, single-storey element.
 - Bifold door minor relocation on the rear elevation
 - Rear, stepped landscaping to be single level rear garden.

- Change from eight skylights on the eastern elevation to four.
- It is noted by officers that the juliet balconies are shown as an amendment on the S73 plans, however, officers consider this was originally approved and therefore is not a consideration in this application.

4.0 Relevant Site History

Reference	Description	Outcome
17/2261/FUL	Erection of two detached, three storey, four bedroom family homes with single storey elements to the front and rear following demolition of existing detached house and garage.	Permitted
17/2261/CONDB	Submission of details required by condition 9 (external surfaces) of planning permission 17/2261/FUL	Discharged
17/2261/NMA1	Non material amendment on application 17/2261/FUL for: - Roof Dormer, from zinc cladding to aluminium/composite cladding. - Double Storey Walls, from Red Wienerberger Ewhurst brick to Grey Kirton Chatsworth brick. - Rear Single Storey Walls, from timber oak cladding to Grey Kirton Chatsworth brick. - Fenestration Alterations to walls and roof. - Addition of Roof Lantern over rear single storey element. - Addition of first floor side window. - Rear stepped landscaping to be single level rear garden.	Withdrawn
21/01538/DEMDET	The demolition of an existing detached house and single storey garage	Deemed Consent

- 4.1 The application follows approval of the erection of two detached, three storey, four bedroom family homes with single storey elements to the front and rear following demolition of existing detached house and garage granted in 2018. The application approved under reference 17/2261/FUL has been implemented and this permission is thereby extant.

5.0 Policy

5.1 National

National Planning Policy Framework 2023
National Planning Practice Guidance
National Design Guide 2021
Environment Act 2021

Technical Housing Standards – Nationally Described Space Standard (2015)
Circular 11/95 (Conditions, Annex A)

5.2 **Cambridge Local Plan 2018**

Policy 1: The presumption in favour of sustainable development
Policy 3: Spatial strategy for the location of residential development
Policy 35: Protection of human health and quality of life from noise and vibration
Policy 50: Residential space standards Internal residential space standards
Policy 51: Accessible homes
Policy 55: Responding to context
Policy 56: Creating successful places
Policy 57: Designing new buildings
Policy 58: Altering and extending existing buildings
Policy 59: Designing landscape and the public realm
Policy 80: Supporting sustainable access to development
Policy 81: Mitigating the transport impact of development

5.3 **Neighbourhood Plan**

N/A

5.4 **Supplementary Planning Documents**

Biodiversity SPD – Adopted February 2022
Sustainable Design and Construction SPD – Adopted January 2020
Cambridgeshire Flood and Water SPD – Adopted November 2016

6.0 **Consultations**

6.1 **County Highways Development Management – No Objection**

Following a review of the documents provided to the Highway Authority as part of the above S73 application the proposed alterations do not change the Highway Authority's original comments and it is requested the conditions set by the Highway Authority and required by the Planning Authority under application 17/2261/FUL be re-imposed.

6.2 **Environmental Health – No Objection**

With regard to the proposals to vary the condition 2 and 13 imposed on planning permission ref.17/2261/FUL we have no concerns and have no additional comments or recommended conditions to make regarding this application.

However, the conditions as recommended in our original planning consultation memo dated the 20th of February 2018 (Planning Ref No:

17/2261/FUL & M3 Ref No: WK/201753288) remain relevant and should be retained / imposed.

7.0 Third Party Representations

7.1 Two representation has been received. The objectors raised the following issue:

- Sets a precedent for the road
- Three Storey dwelling
- Covenant in place for one dwelling
- Own application for three storey dwelling refused in Rotherwick Way (adjacent road) due to overlooking gardens in Nightingale Avenue
- Height of dwellings will be 1m higher than original dwelling
- Rear gable end window will overlook gardens in Rotherwick Way
- Juliet Balconies at first floor will overlook gardens in Rotherwick Way
- Privacy

8.0 Member Representations

8.1 None.

9.0 Local Interest Groups and Organisations / Petition

9.1 None.

9.2 The above representations are a summary of the comments that have been received. Full details of the representations are available on the Council's website.

10.0 Assessment

10.1 Planning Background

10.2 This application seeks minor material amendments to an approved development that has extant planning permission. In line with national guidance and legislation, as this is a S73 application, members should direct their consideration of the application to the merits of the changes between the schemes rather than seek to reconsider all issues afresh.

10.3 Planning Practice Guidance states that new issues may arise after planning permission has been granted, which require modification of the approved proposals. [Paragraph: 001 Reference ID: 17a-001-20140306].

10.4 The applicant has sought to amend the conditions attached to the planning permission by seeking to make a minor material amendment. Paragraph 13 of Planning Practice Guidance advises that there is no statutory limit on the degree of change permissible to conditions under S73, but the change must only relate to conditions and not to the operative part of the permission [Paragraph: 013 Reference ID: 17a-013-20140306] Case law

has established the test which governs section 73 cases is to be found in R v Coventry City Council, ex p. Arrowcroft Group plc [2001] PLCR 7, in which Sullivan J held that, under that section, a local planning authority: "is able to impose different conditions upon a new planning permission, but only if they are conditions which the council could lawfully have imposed on the original planning permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application." (para. 33).

10.5 Where an application under section 73 is granted, the effect is the issue of new planning permission, sitting alongside the original permission, which remains intact and unamended [Paragraph: 015 Reference ID: 17a-015-20140306].

10.6 **Principle of Development**

10.7 The principle of development has been established through the granting of planning ref. 17/2261/FUL. The impact of the revisions are considered below, however, the principle of the development is acceptable and in accordance with policies 3 of the Cambridge City Local Plan (2018). The existing permission, which established the principle, is extant.

10.8 **Design, Layout, Scale and Landscaping**

10.9 Policies 55, 56, 57, 58 and 59 seek to ensure that development responds appropriately to its context, is of a high quality, reflects or successfully contrasts with existing building forms and materials and includes appropriate landscaping and boundary treatment.

10.10 The proposed revisions do not alter the general scale, character or layout of the proposed dwellings to those originally approved as the updated plans seek alterations to fenestration arrangements and other such detailing. The general design and appearance of the proposed dwellings is therefore considered acceptable, with the minor alterations sought to the detailing considered in turn below.

10.11 The gable window to the principal elevation will not impact any other dwelling and is considered an acceptable amendment to the scheme.

10.12 The addition of the roof lantern to the rear single storey elements of the dwellings are considered to be a modern and acceptable amendment to the approved scheme.

10.13 The relocation of the bifold doors is a minor deviation from the approved plans and would fall into the realms of a non-material amendment and therefore considered acceptable by officers.

10.14 The number of skylights now proposed is a reduction to the previously approved scheme and as such would be considered acceptable by officers in design terms.

- 10.15 It is noted by officers that the juliet balconies are shown as an amendment on the S73 plans, however, officers consider this was originally approved and therefore is not a consideration in this application.
- 10.16 The minor changes to the rear garden areas of each dwelling and loss of stepped landscaping in place of single level gardens is considered acceptable and to have no impact on the wider area. This was originally discharged through application 17/2261/CONDA, therefore it is recommended that it is re-discharged within 3 months of this decision as the application has commenced.
- 10.17 Overall, it is considered that these amendments are considered a minor deviation of additional windows and would have a very limited impact on the character and appearance of the area, particularly compared to the existing consent.
- 10.18 The proposal is compliant with Cambridge Local Plan (2018) policies 55, 56, 57, and 59 and the NPPF.

10.19 **Amenity**

- 10.20 Policy 35, 50, 51, 57 and 58 seek to preserve the amenity of neighbouring and / or future occupiers in terms of noise and disturbance, overshadowing, overlooking or overbearing and through providing high quality internal and external spaces.

Neighbouring Properties

- 10.21 The gable window to the principal elevation will not impact any other dwelling and is considered an acceptable amendment to the scheme.
- 10.22 The gable window to the rear is considered to be small in scale and would be set back at the original wall level, giving a distance to the rear boundary of 10m. Views accessed from this distance and size window would be considered moderate and no more impactful than first floor rear windows.
- 10.23 Previously approved plans show a stepped garden. The S73 plans show this removed and a low level garden being proposed. This will reduce any moderate overlooking impacts for the neighbouring properties on all boundaries and is a welcome amendment.
- 10.24 The rooflights to the single storey rear elements, the relocation of bi-fold doors and the reduction in the number of skylights are not considered to impact on the amenities of neighbouring properties.
- 10.25 The juliet balconies proposed were included in the previously approved plans and need not be considered as part of this submission due to planning still being extant.

10.26 Overall, the proposal adequately respects the amenity of its neighbours and is considered that it is compliant with Cambridge Local Plan (2018) policies 35, 50, 51, 57 and 58.

10.27 Highway Safety and Transport Impacts

10.28 Policy 80 supports developments where access via walking, cycling and public transport are prioritised and is accessible for all. Policy 81 states that developments will only be permitted where they do not have an unacceptable transport impact.

10.29 Para. 115 of the NPPF advises 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.

10.30 No access alterations are proposed within the application, which has been subject to formal consultation with Cambridgeshire County Council's Local Highways Authority, who raises no objection to the proposal subject to applying the original permission's highways related conditions.

10.31 Subject to conditions as applicable, the proposal accords with the objectives of policy 80 and 81 of the Local Plan and is compliant with NPPF advice.

10.32 Third Party Representations

10.33 Matters relating to principle of development, impact of the character and appearance of the area, residential amenity and highway safety have been addressed in the body of the report. The remaining third-party representations are summarised and considered in the table below:

Third Party Comment	Officer Response
Own application for three storey dwelling refused in Rotherwick Way (adjacent road) due to overlooking gardens in Nightingale Avenue	Each application is assessed on its own merits; the principle of development on this site has already been established. Potential impacts of overlooking have been considered as part of the assessment of the Section 73 proposal

10.34 Planning Balance

10.35 Planning decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (section 70(2) of the Town and Country Planning Act 1990 and section 38[6] of the Planning and Compulsory Purchase Act 2004).

10.36 Summary of harm

- 10.37 Third-party representations have raised concern that the application sets a precedent for the road with a three storey dwelling, covenants in situ, height of proposed dwellings and juliet balconies presenting the opportunity to overlook. However, the principle of development, including the scale and quantum of dwellings on the site, has been established through extant permission 17/2261/FUL. Matters of covenants fall outside of the planning process and are a legal/civil matter between the relevant parties.
- 10.38 The revised fenestration arrangements are not considered to give rise to any further harm to the amenities of neighbouring properties than has already been consented. The rear gable window overlooking the gardens of Rotherwick Way is not considered to be so detrimental to refuse this amendment noting the views already afforded from first floor level.
- 10.39 Summary of benefits
- 10.40 The proposed development is appropriate for its location and is in keeping with the character of the immediate context while creating a good quality living environment for future occupiers.
- 10.41 The development will positively contribute to the supply of residential accommodation available to the public within Cambridge.

Conclusion

- 10.42 Having taken into account the provisions of the development plan, NPPF and NPPG guidance, the views of statutory consultees and wider stakeholders, as well as all other material planning considerations, the proposed development is recommended for approval.

11.0 Recommendation

11.1 Approve subject to:

- The planning conditions and informatives as set out below with minor amendments to the conditions as drafted delegated to officers.

12.0 Planning Conditions

1 Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.

Plans to be listed:

200 – Proposed Floorplans – 15 April 2024

201 – Proposed Roof and Floorplans – 15 April 2024

220 – Proposed Elevations – 15 April 2024

221 – Proposed Elevations – 15 April 2024

240 – Proposed Site Section – 15 April 2024
241 – Proposed Section – 15 April 2024
280 – Proposed Site Plan – 15 April 2024
17-1002-PL-01 – Location Plan – 29 December 2017

Reason: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.

2 Construction Hours

No construction work or demolition work shall be carried out or plant operated other than between the following hours: 0800 hours and 1800 hours on Monday to Friday, 0800 hours and 1300 hours on Saturday and at no time on Sundays, Bank or Public Holidays.

Reason: To protect the amenity of the adjoining properties. (Cambridge Local Plan 2018 policy 35).

3 Collection during Construction

There should be no collections from or deliveries to the site during the demolition and construction stages outside the hours of 0800 hours and 1800 hours on Monday to Friday, 0800 hours to 1300 hours on Saturday and at no time on Sundays, Bank or Public Holidays.

Reason: To protect the amenity of the adjoining properties. (Cambridge Local Plan 2018 policy 35).

4 Piling

In the event of the foundations for the proposed development requiring piling, prior to the development taking place the applicant shall provide the local authority with a report / method statement for approval detailing the type of piling and mitigation measures to be taken to protect local residents from noise and/or vibration. Potential noise and vibration levels at the nearest noise sensitive locations shall be predicted in accordance with the provisions of BS 5228-1&2:2009 Code of Practice for noise and vibration control on construction and open sites. Development shall be carried out in accordance with the approved details.

Due to the proximity of this site to existing residential premises and other noise sensitive premises, impact pile driving is not recommended.

Reason: To protect the amenity of the adjoining properties. (Cambridge Local Plan 2018 policy 35).

5 Dust

The details agreed in 17/2261/CONDA in regards of a programme of measures to minimise the spread of airborne dust from the site during the demolition / construction period are to be followed. The development shall be implemented in accordance with the approved scheme.

Reason: To protect the amenity of nearby properties (Cambridge Local Plan 2018 policy 36).

6 Drainage

Details approved in application 17/2261/CONDA which concern the surface water drainage works of the development hereby permitted. The Development shall be carried out in accordance with the approved details.

No building hereby permitted shall be occupied until drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. The surface water drainage scheme shall be managed and maintained thereafter in accordance with the agreed details and management and maintenance plan for the lifetime of the development.

Reason: To ensure appropriate surface water drainage and prevent the increased risk of flooding (Cambridge Local Plan 2018 policies 31 a

7 Access free from Obstruction

Before occupation of the dwelling, the access shall be provided in accordance with the approved drawings and shall be retained in accordance with these details and free of obstruction thereafter.

Reason: In the interests of highway safety (Cambridge Local Plan 2018 policy 81).

8 Sample Materials

The materials to be used in the construction of the external surfaces of the development hereby permitted, are to be in accordance with 17/2261/CONDB. Development shall be carried out in accordance with the approved details.

Reason: To ensure that the external appearance of the development does not detract from the character and appearance of the area. (Cambridge Local Plan 2018 policies 55 and 57).

9 Cycle Parking

Details of facilities for the covered, secure parking of bicycles for use in connection with the development hereby permitted shall be carried out in conformity of the detail in application 17/2261/CONDA. The agreed

facilities shall be provided in accordance with the approved details before use of the development commences.

Reason: To ensure appropriate provision for the secure storage of bicycles (Cambridge Local Plan 2018 policy 82).

10 Hard and Soft Landscaping

Within 3 months of this decision notice details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts, other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg furniture, play equipment, refuse or other storage units, signs, lighting); proposed and existing functional services above and below ground (eg drainage, power, communications cables, pipelines indicating lines, manholes, supports); retained historic landscape features and proposals for restoration, where relevant. Soft Landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and an implementation programme.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscaping in accordance with the approved design (Cambridge Local Plan 2018; Policies 55, 57 and 59).

11 Permitted Development Rights

Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B and E of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that order with or without modification): the enlargement, improvement or other alteration of the dwellinghouse; the construction of dormer windows/roof extensions; and the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool, shall not be allowed without the granting of specific planning permission.

Reason: To ensure sufficient amenity space is retained for future occupiers of the dwelling and to protect the character of the area (Cambridge Local Plan 2018 policies 55 and 57).

12 Obscure Glazing

The windows identified as having obscured glass on drawing numbers Proposed Elevations 220 - Rev R1 and Proposed Elevations 221 – Rev 1 shall be obscure glazed to a minimum level of obscurity to conform to Pilkington Glass level 3 or equivalent prior to commencement of use (of the extension) and shall have restrictors to ensure that the window cannot

be opened more than 45 degrees beyond the plane of the adjacent wall and shall be retained as such thereafter.

Reason: In the interests of residential amenity (Cambridge Local Plan 2018 policies 55 and 57).

13.0 Informatives

1 Dust condition informative

To satisfy the condition requiring the submission of a program of measures to control airborne dust above, the applicant should have regard to:

-Council's Supplementary Planning Document - Sustainable Design and Construction 2007:
<http://www.cambridge.gov.uk/public/docs/sustainable-design-and-construction-spd.pdf>

-Guidance on the assessment of dust from demolition and construction
http://iaqm.co.uk/wp-content/uploads/guidance/iaqm_guidance_report_draft1.4.pdf

- Air Quality Monitoring in the Vicinity of Demolition and Construction Sites 2012
http://www.iaqm.co.uk/wp-content/uploads/guidance/monitoring_construction_sites_2012.pdf

-Control of dust and emissions during construction and demolition - supplementary planning guidance
https://www.london.gov/sites/default/files/Dust%20and%20Emissions%20SPG%208%20July%202014_0.pdf

2 Housing Act

The Housing Act 2004 introduced the Housing Health & Safety Rating System as a way to ensure that all residential premises provide a safe and healthy environment to any future occupiers or visitors.

Each of the dwellings must be built to ensure that there are no unacceptable hazards for example ensuring adequate fire precautions are installed; all habitable rooms have adequate lighting and floor area etc.

Further information may be found here:
<https://www.cambridge.gov.uk/housing-health-and-safety-rating-system>