



Bath Heritage Watchdog

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APPLICATION NUMBER: 18/02330/FUL

ADDRESS: 43 Upper Oldfield Park, Bath

PROPOSAL: Originally: Erection of 5 residential units for student or healthcare worker accommodation and associated works
Updated to: Erection of 5 units for student and/or healthcare worker accommodation (C4 use) and associated works
Updated again to: Erection of 4 units for student and/or healthcare worker accommodation (C4 use) and associated works

CASE OFFICER: Martin Arnold

DATE: 12 September 2018

COMMENT: STRONG OBJECTION

Bath Heritage Watchdog maintains its objection to this application.

The expectation that an update to a planning application should have earlier plans clarified, or changes to them to be specified. The latest amendments to this application create an inconsistent position:

- The description now shows 4 units but there has been no update to the Application Form which still shows 5 units;
- The original "Proposed Site Plan" has been appropriately marked "Superseded" but there are two new versions of the "Proposed Site Plan", both dated 3 Jan 2019, where one shows 4 units and the other shows 5 units;
- The "Proposed Site Plan" showing 5 units is referenced in the Arboricultural Report, so it must be treated as a valid document and not a mistake;
- The Arboricultural Report claims to provide a Root Protection Area to safeguard the tree, then continues to use a too-small estimate of the size of the area, despite our previous set of comments identifying 15/03897/COND as the planning application which gives the correct measurements. Even then the Arboricultural Report shows a drawing of the location of the protective fence which doesn't cover even their own calculated area;
- The original Design and Access Statement has not been updated, so it still proposes a drop-off zone in front of the development despite the road and pavement being too narrow to accommodate one and the later Technical Note identifying a different Move In/Move Out strategy;
- The proposed Move In/Move Out strategy is incompatible with the Arboricultural Report expectation that the Root Protection Area should remain undisturbed.

In view of the very mixed messages conveyed by the above incompatibilities (which on their own make approval as described impossible to permit as currently documented), we did a cross-check on some of the other claims. The permission granted for the hard and soft landscaping (Condition 1 of the set imposed by the Planning Inspector) is in 16/01102/COND. That application makes it clear that the design in 11/05409/COND was approved as far as the hard landscape materials and the soft landscape planting scheme was concerned. Although a rough sketch of the proposed root protection fenced area was provided as a response to Condition 4 of 07/02461/FUL, that part of the earlier documentation was not mentioned nor approved in 16/01102/COND.

It is worth noting that the sketch in 07/02461/FUL shows an arbitrary size which does not make any reference to the size of tree it was supposed to protect, which might explain why its 7.5 metre radius is nowhere near the 10.44 metre underestimated size calculated for the Arboricultural Report and is totally inadequate compared to the 11.4 metres properly calculated in 15/03897/COND. We have now had sight of some photographs taken by local residents during the construction of "Charters" and the protective fence installed was roughly rectangular, and hard against this fence was parked heavy plant followed by a considerable period of time accommodating a large skip and piles of wood and stone. This would have crushed some of the roots of the feature tree, and that might explain why the condition of the tree has deteriorated between the Norland College survey of the tree and the Arboricultural Report's later description of the same tree.

In view of the damage already done to this landmark tree by the previous work on site by the applicants, it is imperative that it is now given proper statutory protection. The council's Arboriculture staff need to take urgent action to protect it with a Tree Preservation Order, because it is evident that relying on the implicit protection afforded by the location within a Conservation Area had not been sufficient.

Although the Condition 3 attached to the Appeal Decision by the Planning Inspector make reference to a 2007 planning application in the requirement for protective fencing around the tree, it is reasonable to update the description of the size and position of the fence in the light of the continued growth of the tree in more than a decade since. The real radius should be defined as 11.4 metres, and an Enforcement Notice needs to be issued for the fence to be placed in position immediately, because the Condition specified that it "shall not be removed until the completion of the development" and the development will not be complete until the hard and soft landscaping is all delivered. Note too that the hard and soft landscaping should have been in place before any part of the development was occupied, which demonstrates how essential it was considered for the enjoyment of the residents, and why it is important that even if belatedly, it needs to be delivered.

It is unlikely that the council can ignore the Conditions imposed by the Planning Inspector as part of the Appeal Decision because they were made under delegation from the Secretary of State. As a minimum, the council ought to inform the Secretary of State before any decisions that undermine the expectations of the Planning Inspector are made.

It is a pity that this was not communicated to the applicant as part of the pre-application advice, but we are where we are. Nevertheless, the Secretary of State's department has made it clear that the Conditioned decorative garden had a high amenity value, and the NPPF makes it clear that domestic gardens are not development opportunities. That alone is good reason for refusal. To that can be added all the other objections of materials, appearance, style incompatible with the Conservation Area, parking requirements and HMO overload mentioned in our previous two objections that remain valid. Immediately after the refusal, the enforcements for the Tree Protection Area, the completion of the wall rebuild and the delivery of the landscaping should be given as short a delivery date as possible.