



Bath Heritage Watchdog

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APPLICATION NUMBER: 19/04909/FUL

ADDRESS: Charters, 43 Upper Oldfield Park, Bath

PROPOSAL: Erection of 2 storey dwelling with associated parking using existing access on land to the rear of 43 Upper Oldfield Park

CASE OFFICER: Martin Almond

DATE: 9 June 2020

COMMENT: STRONG OBJECTION

Bath Heritage Watchdog continues to object strongly to this application. The revised documents are noted, but they only serve to highlight the fact that the associated documents such as the Design and Access Statement and the Arboricultural Report remain as originally written and are now conflicting with the latest drawings. The Proposed Drainage Plan still does not provide the surface water volumetric information requested by the Drainage and Flooding Team, and the drawing shows new foul and surface water drainage that will require trenching across the Charters established front garden to avoid uphill runs.

The revised drawings fail to address our “in principle” objection to any development on this site that does not comply with the full set of Conditions attached to the Appeal Decision to allow the appeal against the original refusal to permit 14/04547/FUL. It is also important to recognise that the garden to Charters is a communal space to be used by all 14 flats, and the landscaping condition demonstrates the opinion that the entire garden area is necessary to serve that requirement. With the current coronavirus guidance that residents not living together must keep 2 metres from anybody else, the shortened Charters garden would be far too small if this section was allowed to be separated off for a new development.

The reason for our in principle objection is the Town and Country Planning Act shows that the Planning Inspectorate represents the Secretary of State (Schedule 6), that the Secretary of State can add Conditions to any decision, and that the Decision by the Secretary of State is final (Section 79). Thus the Local Planning Authority cannot override the Conditions imposed by the Secretary of State whilst they remain pending, and the High Court would quash any attempt to do so. Also, the Applicant cannot successfully appeal a new refusal decision which recognises that the Secretary of State had the final decision on the site.

It should also be noted that the Secretary of State's decision is in accordance with the Government guidelines which exclude this application site from being treated as a windfall site, and is in accordance with the NPPF's exclusion of "garden grabbing", a principle that residential gardens are not areas of land that can be developed.

Aside from the "In Principle" objection the ambiguities introduced by the mix of original and replacement documentation still needs to be recognised. The applicant continues to use the wrongly calculated root protection area in the replacement drawings, something we pointed out in our earlier objections, and using the proper measurements on the new drawings would show one of the parking spaces being above the roots. The Arboricultural Report continues to show the use of the Screw Foundation System despite nothing now being erected in the area where it would have been used; and if the use remains possible as a result of a consent, such screws could be used to deliberately damage the tree roots. The Highways comment states that the scheme layout shows that stores for refuse and cycle parking would be retained yet the floor plans do not show what the waste management plan indicates in words with an arrow into the kitchen, so there is no consistency between the diagrams.

Also, despite the Norland documentation being very clear that the Cellular Confinement System is designed for transitory light loads and cannot be used for parking without damaging the underlying roots, this application still proposes using it as a surface to drive over (and perhaps park on because nobody will check the usage once installed), and yet Highways propose a Condition requiring a compacted surface instead. The documentation and advice is now too inconsistent to allow a decision other than a refusal to be arrived at.

Our concerns in our original objection: about the inaccuracies and contradictions in the Arboricultural Report; about the damaging use of Tuff Trak over the root system; about the uncharacteristic design and materials used in the proposed and now larger development not complying with the SPD expectation of a consistency of built form, all still remain. However, because the planning legislation doesn't allow a Local Planning Authority to override an incompletely delivered planning decision by the Secretary of State, these are secondary considerations.