



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 detached 2 storey garage and associated parking using existing access on land to the rear of 43 Upper Oldfield Park

CASE OFFICER: Martin Almond

DATE: 22 December 2019

COMMENT: STRONG OBJECTION

Bath Heritage Watchdog objects strongly to this application.

PRINCIPLE OF DEVELOPMENT

Having researched the Government guidelines there has to be serious consideration about whether any dwelling could be considered appropriate for this site. The Government definition of brownfield sites excludes “*Land in built-up areas such as private residential gardens, parks, recreation grounds and allotments, which, although it may feature paths, pavilions and other buildings, has not been previously developed*”, and the NPPF specifically excludes residential gardens as previously developed land or potential windfall sites. This application therefore is a “garden grabbing” proposal: the fact that the applicant has made previous unsuccessful applications to build on this area of garden does not establish a principle that the area is land that can be developed.

In fact the opposite is true. The history of the “Charters” site is that the building was constructed larger than the development described in the planning application, it was refused permission, and then the refusal was overturned by a Planning Inspector as a result of an Appeal.

The Secretary of State has the legal authority (from the Town and Country Planning Act Schedule 6) to overrule a Local Planning Authority decision, so the Planning Inspector appointed by the Secretary of State cannot be overruled by the Local Planning Authority until after all the Conditions are discharged and the development permitted on appeal has been completed. Section 79(5) of the TCPA is quite specific: “The decision of the Secretary of State on such an appeal shall be final”.

The applicant submitted an application (11/04509/COND) to get the Appeal Conditions signed off, but misquoted the Condition numbers. The drawings submitted were in response to Condition 1, but the application called it Condition 2 and the Case Officer did not spot this and referred to it as Condition 2 throughout. It makes no practical difference because Condition 2 remains unfulfilled until the landscaping and planting are in place and thus all the Conditions are not discharged. Therefore there is a legal principle that the Local Planning Authority is not yet in a position to approve any application for this site.

The Appeal Inspector has noted in his Decision Report that the development was the tallest building in the street, 7 stories (Lower Ground, Upper Ground, First, Second, Third, Fourth, Fifth) in the set of drawings compared to the 5 stories with the lower one partially sunk into the ground for the next highest building next door. In that context, the appropriate amenity space was judged to be all the areas of the site that were not occupied by the building.

The successful Appeal for 14/04547/FUL was accompanied by Condition 2 that all hard and soft landscape works shall be carried out in accordance with the approved scheme (approved by 11/05409/COND) prior to occupation of any part of the development. The amenity space must have been considered to be so important to the intended residents of the building that it had to be in place before anybody moved in. However, the development is already occupied, which makes mandatory the urgent delivery of the landscaping which has the development site occupied by 7 trees, 4 flower beds, a shed and a pavilion. It is also a moot point that “occupation of any part of the development” in the Condition forecloses any option of any other residential development on the 43 Upper Oldfield Park site until five years **after** the approved landscaping has been delivered when the obligation to replace any of the planting which dies or is removed finally lapses.

Condition 7 bans the use of the gate onto Junction Road “other than for servicing and emergency vehicles” so the expectation of the applicant that it is an access that can serve on-site garaging must be refused. The gateway is on a busy road just beyond a blind bend, and the local residents know that the roadway outside the boundary wall is an accident black spot. These are mostly relatively minor in that they involve bent metal rather than injuries, which keeps them out of the statistics (and might explain why the Highways comment doesn't see the obvious problems that the residents regard as inevitable if drivers exit the gateway which has very limited visibility).

Condition 11 of the Appeal decision specifically states “no lines, mains, pipes, cables or other apparatus shall be installed or laid on the site other than in accordance with drawings first submitted to and approved in writing by the local planning authority”. We note that this too had been ignored by the applicant, when the emails reproduced for this application reveal “*At the beginning of the construction of Charters the contractor extended the foul and surface drainage to the contractors compound (effectively the current application site area) for their use during construction. On completion the drains were capped and their positions recorded*” in defiance of this condition. This additional plumbing was banned by the Secretary of State and B&NES is therefore not in a position to accept their reuse.

RISK TO THE LANDMARK STONE PINE

This is the third application to reuse part of the garden of 'Charters', and for the third time the plans include designs which are likely to eventually kill the feature tree.

We pointed out in the previous application (which was eventually withdrawn) that the Arboricultural Report consistently under-estimates the size of the tree and therefore proposes a root protection area that is too small.

This application's report in its Tree Schedule uses again the erroneous estimated trunk diameter as a calculated 870mm despite the actual measurement in Norland's 15/03897/COND being 950mm, and that was three years earlier so it is probably slightly more now. The ensuing different calculations make a metre greater radius for the root protection zone which is 11.4 metres when using the Norland measurement.

The same report also continues to quote "Extensive dead wood in lower canopy" which doesn't visibly exist as any passer-by can see, and that false claim allocates the classification as a Category B tree when the Norland assessment classed it (correctly) as a Category A tree.

There is no Root Protection fencing currently in position, even though the Secretary of State imposed a condition "The protective fences erected around the pine tree on the Junction Road boundary ... shall not be removed until the completion of the development. The area within the protected areas is to be kept clear of any building, plant, materials, debris and trenching, with the existing ground levels maintained, and there shall be no entry to those areas except for arboriculture or landscape works as otherwise approved" the current application expects to get agreed a (undersized) 10.44 metre Root Protection area, confirms in Section 2.0 that nothing untoward will take place within the RPA, and then in the later method statement expects to store materials hazardous to the tree at just 10 metres and will also carry mixed cement at that distance. This looks even more inadequate when the Norland RPA calculation showed that three years ago 11.4 metres was the minimum area to be protected.

The methodology proposes "the extant tarmac surfacing will be carefully lifted using a tracked mini-digger" yet the "Trees In Focus" document appended is very clear that this is unacceptable: "Excavations – even stripping the topsoil – within the rooting area will sever roots. The closer the excavation is to the trunk the larger will be the roots lost and the greater the significance for the health and stability of the tree." The appended drawing 191104-JRB-TPP-Rev B-NB&AM shows that part of the excavation is within 2 metres of the trunk, so it must be assumed that the damage will be serious. The claim that the cellular design and perforated cell walls of the 'Cellular Confinement System' reduces the vertical load pressure on sub soils to tree roots and prevents damage, does not reflect the Norland assessment of the same technology which insists that within a root protection zone it can only support light and transient loads and their side of the tree was designed to expect pedestrians rather than vehicles to use it.

Furthermore, the "Trees In Focus" guidance emphasises that heavy loads on the root system are likely to badly damage the roots and yet this planning application proposes using "Tuff Trak" Heavy Duty Road Mat to support cranes and other plant which means that the Root Protection Area will be subject to crushing from heavy vehicles. Also, because the Road Mat will keep water away from the roots and the weight of the vehicles will cause pressure damage to them, the root system will suffer badly. Not only is there a plan to use the gate as an entrance for construction plant contrary to all the Conditions prohibiting such use, but it will do lasting damage to the tree, which may not survive.

The garage/store is a 2-storey building of a type that has elsewhere in the locality been proposed (see 09/01062/FUL) and refused both by the council and by the Secretary of State on Appeal because of its uncharacteristic appearance in the neighbourhood. This same reason for refusal applies here. However, in this case it will also occupy a large part of the 11.4 metre root protection area of the landmark tree, and if built its roof will permanently deprive that area of the roots of the rainwater it is accustomed to receiving.

This Arboricultural Report is wholly unacceptable as a means of protecting a significant tree, and it should be rejected outright. The combined assaults of starving the tree of water, compacting the soil with heavy vehicles and mixing cement within the root protection zone makes the death of the tree probable.

We pointed out in our objections to the previous planning application that relying on the tree being in a Conservation Area to protect it would be inadequate. This third attempt to get planning permission to badly damage and probably kill the landmark tree proves that a full Tree Protection Order is essential.

DESIGN AND MATERIALS

There are some uncharacteristic parts of this application. There is no justification for a separate storage floor above the garage and utilities when the equivalent space could have been included elsewhere without needing to go outside in the weather. The D&A indicates it could be storage or living space which are two very different uses in planning terms.

The largest part of the unconventionally shaped dwelling is to be constructed of similar stone to the boundary wall, and it is oriented so that the gable end faces Junction Road which is typical for the area. However there is a proposal to add a pedestrian access through the wall which is definitely not a characteristic of the area. Nor are interlocking sections of a dwelling appropriate in an area which has a SPD which notes “a consistency of built form. The roofs being of raised seam aluminium are definitely alien to the materials used in the houses on the opposite side of Junction Road too. A dwelling “with its own special character” is inconsistent with the SPD which is supposed to control the appearance of developments in the area.

CONCLUSION

The role of the Secretary of State in providing planning permission on appeal subject to a set of Conditions means that until all those conditions are met the Local Planning Authority has no rights under the Town and Country Planning Act to grant any contrary permission for this site. For that reason alone, this application must be refused, with a notice that no further applications for the Charters land will be accepted in future.

If the applicant considers appealing that refusal, it is very unlikely that such an appeal will succeed when the reason for doing so was to ensure that the mandatory requirements from the previous Appeal are delivered.

That said, there is a separate reason for refusing an application which will inevitably damage a landmark tree and possibly kill it; a risk that the previous Condition that the gate onto Junction Road should not be used was intended to protect against.

Finally there is an SPD that tries to preserve the character of a Conservation Area, and this application proposes a design and materials which are incompatible with that aim.