

Committee Report

Item No: 1

Reference: DC/18/00535 & DC/18/00536

Case Officer: Elizabeth Flood

Ward: Berners.

Ward Member/s: Cllr Peter Patrick. Cllr Derek Davis.

RECOMMENDATION – DELEGATED AUTHORITY TO GRANT PLANNING PERMISSION AND LISTED BUILDING CONSENT SUBJECT TO RESOLUTION OF LAND CONTAMINATION, A S.106 AGREEMENT AND CONDITIONS

Description of Development

Planning Application and Listed Building Consent. Alterations and extension to form single-storey dwelling and construction of associated works.

Location

The Walled Garden, Nursery Lane, Woolverstone, IP9 1AX

Parish: Woolverstone

Expiry Date: 16/04/2018

Application Type: FUL - Full Planning Application

Development Type: Minor Dwellings

Applicant: Mr G Braithwaite

Agent: Mr Neil Ward

PART ONE – REASON FOR REFERENCE TO COMMITTEE

The application is referred to committee for the following reason/s:

The site was called into Committee by the Ward Member due to the controversial nature of the proposals.

Details of Previous Committee / Resolutions and any member site visit

The application was subject to a Committee site visit on the 25th April 2018.

PART TWO – POLICIES AND CONSULTATION SUMMARY

Summary of Policies

NPPF - National Planning Policy Framework

CS01 - Applying the presumption in Favour of Sustainable Development in Babergh

CS02 - Settlement Pattern Policy

CS15 - Implementing Sustainable Development

CN01 - Design Standards

CN06 - Listed Buildings - Alteration/Ext/COU

CN08 - Development in/near conservation areas

CR02 - AONB Landscape

TP15 - Parking Standards - New Development

Consultations and Representations

During the course of the application Consultation and Representations from third parties have been received. These are summarised below.

A: Summary of Consultations

Historic England: Do not wish to comment

Suffolk County Council Highways: Recommend conditions

Environmental Health Land Contamination: Recommend refusal due to insufficient information on land contamination

Woolverstone Parish Council: Object to the development and provide the following comments:

- Historic England views should be sought as the original development was only acceptable as enabling development
- The minimum required development should be undertaken to preserve the historic asset
- Plot 11 was given exceptional permission due to the requirement to preserve the listed wall, however it is now proposed that plot 11 be removed for the responsibilities for the historic structures
- The new dwelling would impact on the integrity of the Walled Garden
- The s.106 agreement in place is intended to safeguard the heritage asset and should not be removed and replaced by planning conditions.
- It has always been Babergh's view that a dwelling within the Walled Garden would be unacceptable.
- There are on-going enforcement issues on the site
- Existing access drive is inappropriate for the proposed development
- There are inaccuracies within the application documents

Heritage Officer:

- The development would ensure the visual legibility of this part of the site, and by tying a dwelling within the garden to the ownership of the wall it would help ensure that the wall would be maintained. It should be noted the S.106 is required in order to ensure the ongoing protection of the listed buildings on this site. The form and scale of the dwelling is crucial to its success, in that regard, whilst the overall scale of the property is not hugely inappropriate, its double transverse gables are.
- If the scheme is amended to address Heritage concerns then, subject to conditions, the Heritage Team would be able to support the proposed development, as it would sustain the narrative of the walled garden, further reveal its significance by amplifying the relationship of simple structures reminiscent of horticultural buildings to the wall, and in so doing meet the requirements of the LBA, the NPPF and the policies within the Local Plan.
- Recommend conditions.

B: Representations

14 letters of objection have been received which provide the following comments:

- The loss of the s.106 agreement would not provide adequate protection to the listed wall and buildings
 - The introduction of a dwelling within the walled garden will be detrimental to the listed wall
 - A smaller dwelling within the walled garden may have insufficient means to maintain the walled garden in the long term
 - Impact on the wall and Nursery Lane from utilities having to be laid underneath it
 - Access to the new dwelling will involve a new entrance through the wall
 - Planning permission for one dwelling within the walled garden will lead to pressure for additional dwellings within the walled garden
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- The LPA has had a consistent approach to not supporting new dwellings within the walled garden
- The bothies are not suitable for residential use
- The access to the new dwelling will be substandard
- The use of the bothies for residential use will be detrimental to neighbouring properties due to noise and disturbance
- Could result in parking along Nursery Lane
- Part of the external wall would need to be removed to allow the access
- Removal of the s.106 agreement will remove the obligation to not sell the additional dwellings before the dwelling connected to the listed building
- There are inaccuracies within the planning applications forms

1 letter of support has been received which provide the following comments:

- Relocating the proposed dwelling from the slip garden to the walled garden would improve the overall layout of the development

PART THREE – ASSESSMENT OF APPLICATION

1. The Site and Surroundings

1.1. The application site lies to the south of a Grade II listed garden wall and has planning permission for the construction of four dwellings; B/14/00703/FUL refers. Plots 10 and 11 and Plot 13/ Courtyard House have been virtually completed. Plot 12 has been started including foundations having been laid. A driveway to the rear of Plot 11 has been constructed. A garage has been built to the front of Plot 11.

1.2. The Grade II listed walled garden and surrounding land is within the ownership of the applicant.

1.3 To the west of the site are properties on Nursery Lane approved under planning application, these dwellings share an access off Main Road with the site. To the north of the site is the Thatched Cottage which is located north of the site and whose boundary includes access gates into the site. To the east of the site is Dairy Farm.

1.4 The majority of the site is outside the Built up Area Boundary of Woolverstone and is also located within the Woolverstone Conservation Area and the Suffolk Coasts and Heaths AONB. There are no other applicable constraints to the site.

2. The Proposal

2.1. The proposal is for the development of one dwelling within the Walled Garden. The proposal is to replace the proposed dwelling in the east slip garden (plot 12) with a dwelling within the Walled Garden. The dwelling would be located adjacent to the listed wall. The dwelling would comprise of four elements; a new building comprising of a living/kitchen/dining room and three bedrooms would be located adjacent to the south wall of the Walled Garden, this element would be connected to a previously approved greenhouse/conservatory on the east wall which has direct access to the bothies which are located on the other side of the Walled Garden. It is proposed that the bothies are used as home office and guest rooms. It is also proposed that a new access through the wall on the east site to a reinstated glass house within the courtyard area. A garage is also proposed in this courtyard. The existing buildings within the courtyard including the mushroom house and repaired carnation house and potting shed would be retained as outbuildings for the new dwelling.

2.2 The proposed dwelling would be accessed via a shared access off Nursery Lane into the courtyard.

3. Relevant History

3.1 The site has a long planning history, the most relevant application are B/14/00703/FUL- Erection of 4 no. dwellings, garages and associated works granted permission subject to a section 106 agreement 15th January 2016. 11. The section 106 agreement was entered into which involved the owners of Plot 11 also having ownership of the walled garden and historic structures and responsibility for future maintenance as prescribed in 'The Long Term Conservation Plan'. The legal obligation included a condition not to sever the walled garden from the remainder of the planning unit. This would mean that the walled garden was connected to a significant asset. In addition the s.106 agreement only allowed one of the four dwellings to be sold prior to Plot 11. This was to prevent all the other dwellings being sold, potentially leaving the liability for the walled garden and associated structure without any dwelling to own the Walled Garden and structures and be responsible for long term maintenance.

3.2 A further application B/16/01566 - Erection of 3 bay garage to plot 11 and amendments to access and parking for plots 10, 11 and 12, remains undetermined, but was resolved to be approved by Planning Committee. This application provided a new access to the rear of plot 11 to plot 12 in the east slip garden.

4. The Principle Of Development

4.1. The majority of the site (all except the courtyard area) is outside the built up area Woolverstone and is within the Countryside. The site has a long history, the initial development B/08/1067 was for the construction of 11 no. dwellings with associated garaging. Construction of new vehicular access (development to enable the restoration of the Listed Walled Garden and associated structures). This development included the houses on Nursery Lane, Plot 10 (all within the BUAB) and Plot 11, which was proposed to be a large dwelling which would have the responsibility for the Walled Garden and associated structures. A s.106 agreement was associated with this application. Plot 11 was justified as an exception to the development plan and outside the BUAB as an enabling development to provide repairs to the listed wall and associated structures and ensures long term ownership of the structures.

3.2 In 2014 an application was approved for the erection of 4 No. dwellings, garages and associated works. This application was for Plots 10, 11, 12 and 13/Courtyard House. The justification for the additional dwellings was that although Plot 11 had been extensively marketed off plan, it had not been sold. Additional dwellings were required to allow a viable development. Plot 11 was proposed to retain the Walled Garden and the majority of the associated structures. Plot 12 and 13 were proposed to be each located in the Slip Garden.

3.3 The proposed application would replace the existing Plot 12 in the east slip garden with a dwelling in the Walled Garden. There would be no increase in dwellings from the 2014 application. The planning statement accompanying the application justifies the new dwelling as it would provide a better relationship with the Walled Garden and associated structures. The principle of four dwellings on the site has been accepted under planning application B/14/00703.

5. Site Access, Parking And Highway Safety Considerations

5.1. The access to the new dwelling would be via an existing access off Nursery Lane. The previous access has been approved for four dwellings and the proposal would not increase the number of dwellings. As such the access is considered acceptable. An electronic gate has been installed at the entrance of the access, although this gate may require listed building consent it will not prevent access to the dwellings.

5.2 It is proposed to provide garaging and parking for the new dwelling within the courtyard. This will require demolition of part of the outer wall to the courtyard. The demolition is relatively minor and considered to be acceptable to provide adequate access to the site.

6. Design And Layout

6.1. The new dwelling is similar to the dwelling which was previously approved for Plot 12. This would be a long narrow design with a lean to roof, this is considered appropriate for a building coming off the wall and would reflect the previously approved glasshouse within the Walled Garden which is proposed to become part of the new dwelling.

6.2 There were some minor concerns in relation to the design of the dwelling, including the use of apex roof structures off the main roof and the overly domestic fenestration of the north elevation. Revised plans have been received which are considered to overcome these concerns.

10. Heritage Issues [Including The Impact On The Character And Appearance Of The Conservation Area And On The Setting Of Neighbouring Listed Buildings]

10.1 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that 'in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority.....shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'. The Walled Garden at the former Paul Double Nurseries was listed as Woolverstone Hall Walled Garden and Associated Structures on 13th September 2006. The heritage issue is the effect of these proposals on the significance of the Walled Garden as a designated heritage asset.

10.2. The original intention of supporting a development of one large dwelling on the outside of the Walled Garden was that this was required in order to pay for the works to repair the Walled Garden and associated structures as well as the on-going liability for the historic buildings. Allowing a smaller dwelling within the Walled Garden is a significant departure from this. However given that the repairs to the buildings and walls have been completed, the liability going forward will be less. The proposed dwelling is not unsubstantial in size, particularly as it is connected to the external greenhouse and bothies and if there is a s.106 agreement in association with the dwelling, it will be clear to any potential purchasers the significant responsibilities which would go with the property ownership.

10.3 A second advantage of the proposed new dwelling is that it would be directly within the Walled Garden, this will create visual legibility. In addition the proposed dwelling will use some of the associated buildings including the bothies as part of the accommodation. The link between the dwelling and the listed structures would be greater which should ensure that the dwellings are maintained.

10.4 7.3 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states '...In the exercise, with respect to any buildings or other land in a conservation area....special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'.

10.5 Section 11A(2) of the National Parks and Access to the Countryside Act 1949 and Section 85 of the Countryside and Rights of Way Act 2000 requires that 'in exercising or performing any functions in relation to, or so as to affect, land in.....Areas of Outstanding Natural Beauty, relevant authorities 'shall have regard' to their purposes'. The statutory purpose of an AONB designation is to conserve and enhance the natural beauty of the area.

10.6. The new dwelling would be located within the Walled Garden so would not be especially visible within the wider conservation area and the scale, design and materials are all considered appropriate. As such the proposal would not detrimental to the character of the Woolverstone Conservation Area and therefore the proposal is in accordance with Policy CN08 of the Local Plan. 34. The landscape character of the AONB will not be affected by the proposals and the provisions of Local Plan Policy CR02 will be satisfied in this regard.

11. Impact On Residential Amenity

11.1. The proposed dwelling would be substantially located within the Walled Garden and be completely private. Comments have been received stating the using the bothies as additional accommodation would be impractical and potentially disturbing to neighbouring properties particularly if they are accessed off Nursery Lane.

11.2 The bothies consist of a long narrow set of rooms which could be accessed either from within the new dwelling or Nursery Lane. Given that there will be direct access to the bothies from the dwelling and parking for the new dwelling in the courtyard it is unlikely that the Nursery Lane access will be used, especially as this is a narrow road without parking.

11.3 The bothies are curtilage listed structures, their historic importance is based on their use, simple layout and fenestration, any alteration to the bothies would require planning permission and listed building consent, any significant change to the internal layout of external appearance is unlikely to be supported. However in their existing configuration they will be able to be used as ancillary dwelling space for guest rooms or home office. Providing a use for the bothies will help to protect them in the long term and anyone buying the dwelling will be aware of the limitations of the bothies as accommodation.

12. Planning Obligations

12.1. The previous planning applications for developments connected with the Walled Garden have included a s.106 agreement to protect the Walled Garden and associated structures in the short and long term. The application for the new dwelling states that a s.106 agreement is unduly onerous and could be replaced with conditions.

12.2 Officer's disagree with this assertion and consider that the proposed new dwelling would only be acceptable if it was subject to a s.106 agreement to include the following items:

- (1) Only 1 dwelling of the three other dwellings which are currently being constructed to be sold before the new plot 12 within the Walled Garden is sold. This is to prevent sale of all the other dwellings, leaving the Walled Garden with no ownership and then future pressure for the subdivision of the walled garden for more dwellings.
- (2) Long Term Conservation Plan. The original application was subject to a short and long term conservation plan. The repairs required for within the short term conservation plan have been undertaken; however the long term conservation plan will ensure that the listed wall and associated structures are maintained in the long term.
- (3) 1 open day per year of the Walled Garden and associated structures. The wider development was supported as an exception to the Local Plan Policies due to it being enabling development. It is therefore appropriate that the Walled Garden is opened one day a year for the public to appreciate the historic structure
- (4) No sale, lease etc of the Walled Garden and associated structures away from new plot 12. The historic importance of the Walled Garden is due to its intact ownership. Any subdivision of the walled garden both physically or through landownership could be very detrimental to the listed walled garden.
- (5) No subdivision of the Walled Garden
- (6) To ensure only one of the two approved plot 12 dwellings is built

12.3 The agent has confirmed that the first clause would be unacceptable and state:
Acceptance of such a restriction, given that plot 10, plot 11 and the Courtyard buildings are either complete or virtually complete, would place a wholly unacceptable or unreasonable burden on my client. He has made a substantial investment in the development to date and with the proposed restriction in place he would be prevented from recouping that investment by sale of the existing properties on the open market for perhaps a year or more.

12.4 Officer's disagree that this clause is unreasonable. The developer brought the site in 2014 and signed up to the s.106 agreement at the time, the existing s.106 includes a very similar clause, allowing the sale of only one dwelling prior to plot 11 being sold so there can be no surprise that about such a requirement. In addition if this application is granted subject to the s.106 agreement then this would not supercede the original 2014 application, rather it gives the developer a choice over which development proceeds. Plot 11 is virtually complete and could be marketed now with the Walled Garden and associated structures, in accordance with the s.106 agreement, allowing sale of the other plots.

12.5 In addition, the proposed new dwelling is a simple structure and there is no reason why it would take up to a year to build. A revised s.106 agreement would allow plot 11 to be sold now, this is a large dwelling and would recoup a significant amount of the developer's investment. In the meantime the new plot 12 could be built and sold, allowing plot 10 and Courtyard House to be sold.

12.6 The only reason four dwellings were approved on the site was because plot 11 was not sold following extensive marketing and it was argued by the previous developer that the scheme was not viable due to the significant liabilities that the walled garden and associated structures bring with them. An additional two dwellings would increase the profit of the overall scheme, allow for repairs to the listed structures and the sale of plot 11 at a price to reflect the future liabilities that this dwelling would have. If all the dwellings and land are sold, this leaves the Walled Garden and associated structures vulnerable to further arguments regarding viability.

12.7 The only way to force the developer to build plot 12 and protect the walled garden in the long term is to use the fact that the other plots cannot be sold beforehand as collateral. Without a s.106 to ensure this happens then plot 12 may never be built, the Walled Garden and associated structures could be sold without the dwelling being built or further viability arguments could be brought forward to try and persuade the Council to approve further dwellings built within the listed wall. Although these scenarios are unlikely, there has been planning permission to build a dwelling in association with the Walled Garden since 2008 and its long term future and maintenance is still not secure. The agent has argued that listed building regulations could force the developer to maintain the Walled Garden in the future if plot 12 is not built. However the developer will want to move on from the site once the dwellings are built and it will be far more difficult to force an absent developer to maintain the wall than it will be the occupiers the future occupiers of plot 12 who will need to abide by the s.106 and will be living within the Walled Garden. As such it is the Officer's view that the first clause of the s.106 is vital to support the proposed new dwelling.

13 Land Contamination

13.1 The Environmental Protection Officer has objected to the proposal as it no land contamination information has been provided. The Walled Garden was used for a long time as a plant nursery and is very unlikely to be contaminated. However additional information regarding land contamination is being sought from the agent.

PART FOUR – CONCLUSION

13. Planning Balance and Conclusion

13.1. A new dwelling within the Walled Garden would be a significant departure from previous advice and decisions in relation to the site, where it was considered that any dwellings within the Walled Garden would be unacceptable. However the circumstances of the site have changed since 2014 when the application for 4 dwellings has been approved. The majority of the repairs required under the short term conservation plan have been completed and therefore the liabilities attached to any building from the Walled Garden and associated structures are much less.

13.2 In addition there is a Committee Resolution to approve planning permission for the access to the rear of plot 11, to provide a new access to plot 12. This has resulted in a physical divide between plot 11 and the Walled Garden. A dwelling within the Walled Garden would have a better relation with the wall and the associated structures which should ensure the long term maintenance of the listed structures.

13.3 This case is finely balanced, but subject to the s.106 agreement to ensure that plot 12 is built and that maintained in the long term it is considered acceptable.

RECOMMENDATION A

That authority be delegated to Corporate Manager - Growth & Sustainable Planning to:

- (1) Subject to resolving the objections of the Environmental Protection Officer in relation to land contamination.
- (2) Subject to the prior agreement of a Section 106 Planning Obligation on appropriate terms to the satisfaction of the Corporate Manager – Planning for Growth to secure:
 - Only 1 dwelling of the three other dwellings (plots 10, 11 and 13/Courtyard House) which are currently being completed to be sold before the new plot 12 within the Walled Garden is sold.
 - Long Term Conservation Plan.
 - 1 open day per year of the Walled Garden and associated structures
 - No sale, lease etc of the Walled Garden and associated structures away from new plot 12.
 - No subdivision of the Walled Garden
 - To ensure only one plot 12 dwelling is built
 - Any other obligation within the original s.106 agreement
- (3) That the Corporate Manager – Planning for Growth be authorised to grant Planning Permission subject to conditions including:
 - Standard time limit
 - Approved Plans
 - Details of materials
 - As recommended by the Heritage Officer in relation to details of the new building.
 - As recommended by highways
 - Removal of new entrance to the walled garden from plot 11 and closure of access gate to plot 11
- (4) That in the event of the issue of land contamination not being resolved or Planning obligations referred to in Resolution (1) or (2) above not being secured that the Corporate Manager – Planning for Growth be authorised to refuse planning permission on appropriate grounds.

RECOMMENDATION B

Grant Listed Building Consent subject to conditions including:

- Standard time limit
 - Approved Plans
 - Details of materials
 - As recommended by the Heritage Officer in relation to details of the new building.
 - Removal of new entrance to the walled garden from plot 11
-