

**AGENDA ITEM NO** 1  
**APPLICATION NO** 3778/15  
**PROPOSAL** Minor material amendment to implemented planning permission 1402/04 ('Erect two storey dwelling and attached cart lodge using existing vehicular access') to reduce extent of demolition in order to allow creation of annex (and reduce size of approved cart lodge).  
[Application made under S73 of the Town and Country Planning Act 1990 to vary condition 3 of planning permission 1402/04].  
**SITE LOCATION** Sunnyside Cottage, Church Lane, Yaxley IP23 8BU  
**SITE AREA (Ha)** 0.12  
**APPLICANT** Mr D Burn & Ms L Seward  
**RECEIVED** October 20, 2015  
**EXPIRY DATE** February 3, 2016

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#### **REASONS FOR REFERENCE TO COMMITTEE**

1. The application is referred to committee for the following reason:
  - The applicant is the elected Member for the Ward of Palgrave.

#### **PRE-APPLICATION ADVICE**

2. The applicant discussed the proposal with your Corporate Manager and the case officer in order to establish the most appropriate route to resolve a breach of a condition attached to planning permission (reference 1402/04), to vary the approved scheme to allow a reduction in the extent of demolition works required by that permission, and to change the use of the remainder of the building from that originally approved. A type of application known as a 'Minor Material Amendment' was considered to be the most suitable route to achieve these three objectives on a single application. This type of application is described below.

#### **SITE AND SURROUNDINGS**

3. The application site comprises what was originally one of a pair of semi-detached dwellings together with a new dwelling constructed under planning permission 1402/04. The original semi-detached property is in a poor state of repair, is currently uninhabitable and has not been used as a dwellinghouse since the new dwelling granted by permission 1402/04 was first occupied. The cessation of use of the original semi-detached property for residential purposes is the subject of a condition on permission 1402/04.

The new detached dwelling and former semi-detached property sit within approximately 0.12 hectares of land at the far end of Church Lane, Yaxley. Church Lane is an unclassified highway that serves approximately sixteen properties and terminates to the north of the application site, to which access is gained over a private unmade track that also serves the adjoining semi-detached property (Primrose Cottage). A Public Right of Way runs immediately to the east of the application site but is unaffected by the proposed development. The site is within the Yaxley settlement boundary.

## HISTORY

4. The following planning history is relevant to the application site:

- |         |  |                                |
|---------|--|--------------------------------|
| 1402/04 | Erect two storey dwelling and attached cart lodge using existing vehicular access (revised scheme to that previously approved under planning permission reference 797/00)      | Permission<br>5 January 2005.  |
| 797/00  | Partial demolition of existing cottage, retaining part to use as hobby room/store. Erection of new two storey dwelling and attached cart lodge using existing vehicular access | Permission<br>6 September 2000 |

## BACKGROUND

5. Planning Permission 1402/04 (and the original scheme 797/00, referred to above) effectively granted permission for a replacement dwelling, and also required the original dwelling on the application site to be partly demolished within a specified timeframe. Once the replacement dwelling was occupied the remaining part of the original dwelling was to be used for domestic storage, and no longer to be occupied as a separate dwellinghouse.

During the course of development the applicant found himself unable to comply with a condition attached to planning permission 1402/04 which required that part of the original semi-detached dwelling be demolished within a specified timeframe, and as a result he found himself in breach of that condition. The application before Members today is therefore submitted in order both to resolve the outstanding breach of planning control, and also to reconsider the extent of demolition and use to which the remainder of the former dwelling may be put. The applicant points out that the former dwelling has not been used as a unit of residential accommodation since the new dwelling permitted under reference 1402/04 was first occupied.

## PROPOSAL

6. For the reasons outlined in the background discussion above the application before Members today effectively seeks an *amendment* to planning permission 1402/04, in order to allow a larger proportion of the former semi-detached dwelling to be retained than originally approved under permission 1402/04, and for that remaining part to be used as a residential annex to the replacement dwelling. Specifically, the application seeks to retain an additional 2.5 metres in width of the original building compared to the amount of demolition previously approved, and to use the remainder of that building as an annex to the replacement dwelling approved under reference 1402/04. The original scheme proposed the remaining part of the original dwelling to be used as a store room with a hobby room above, although it could equally be used for any purposes incidental and ancillary to the replacement dwelling.

The application before Members today takes the form of a '**Minor Material Amendment**' to planning permission 1402/04, and is made under Section 73 of the Town and Country Planning Act 1990 (as amended). This type of application uses the same legislative provision as that used in an application to remove or vary a condition, but can also be used - as in this case - to consider a revised set of documents for what is essentially a proposal of a *similar* nature. Successful applications for 'Minor Material Amendments' result in a new planning permission being issued, and therefore if Members are minded to support the proposal the existing breach of planning control would be resolved in addition to approving revised proposals for the amount of demolition and use of the remaining part of the building as an annex. An application for a '**Minor Material**' amendment should not be confused with one for a '**Non Material**' amendment' which is appropriate only for the most trivial changes, and for which consultation is not required.

## POLICY

7. **Planning Policy and Guidance** – See Appendix below.

## CONSULTATIONS

8. **Yaxley Parish Council** – Objects. Queries the definition of an annex and considers the proposal to be for a dwelling; Queries restriction on use and subsequent sale; Does not agree the proposal is a 'minor amendment'\*\*\* to the original permission because the originally condemned property would become habitable; Proposal would result in a totally different project; Non-specific comment on the impact on the attached property. Requests - if permission is granted - that conditions are applied as follows:
- A reasonable time limit for the completion of the work;
  - That the annex should only be used by a family member;
  - If the building is for an elderly relative the design should be appropriate to the needs of an elderly person;

- If the property is sold\* then it should be sold as one property not in parts. [*\* Case Officer's note: It would be unlawful for the Council to seek to impose any restriction on the applicant's right to dispose of any of all of his property.*]

**Suffolk County Council (Rights of Way)** – No objection to the proposed works.

## **LOCAL AND THIRD PARTY REPRESENTATIONS**

9. The following is a summary of the representations received.

- Using the former dwelling as an annex would not save heating costs at the adjoining property, since the heating costs have not risen during the period it has been unoccupied;
- The proposal would result in two properties with up to 12 people occupying them, many of who could own vehicles;
- Proposal would increase traffic over the access track, which is in our ownership, and would cause more wear and tear;
- Access runs parallel to our property and increased traffic would cause loss of privacy;
- Vehicles cause damage to the road surface at the junction with Church Lane;
- Impossible for large vehicles to access the site;
- The application is not a minor amendment;
- The applicant has had sufficient time to comply with the original permission and further delay could mean more years of worry;
- The applicant's family do not live with the applicant, as stated;

Case Officer's Note: Other issues raised in the representation, including assurances that the original scheme would be implemented, are not material planning considerations. The type of application submitted is known as a 'Minor Material Amendment,' and the description used does not refer to any assessment by the applicant or your officers as to whether the works are 'minor' or otherwise.

## **ASSESSMENT**

10. The proposal is considered to raise the following core planning issues:

### **Principle of development**

The site is within the settlement boundary for the village of Yaxley, and adopted development plan policies are generally supportive of both the principle of a replacement dwelling and a residential annex subject to assessment on a case-by-case basis. Whilst your officers would seek justification for an annex in the countryside or other unsustainable location where a new unit of residential accommodation would not normally be permitted, your adopted policy H19 makes no reference to

any criteria against which to assess need within settlement boundaries for secondary villages such as Yaxley. On that basis the proposed use of part of the original dwelling as an annex to the new dwelling permitted under reference 1402/04 would not be considered to be contrary to the development plan, and falls to be assessed against other development plan policies and material considerations.

### **Character and appearance of the area**

The appearance of the overall development would be little changed from that approved under the original planning permission 1402/04. Documents submitted with that application for permission show approximately 8.2 metres of the original semi-detached dwelling to be demolished, whereas the revised scheme shows approximately 5.7 metres to be removed. As a result approximately 2.5 metres more of the original dwelling would be retained than originally proposed. The length of the single storey 'cartlodge' garaging would be increased by the same amount, allowing for the provision of two parking bays rather than the three bays original permitted. These changes would affect the appearance of the original dwelling and the single-storey linking structure alone, and would not alter the appearance of the replacement dwelling. The net result is that the change in appearance of the buildings within the site between that originally approved and that now proposed is relatively minor, and your officers are satisfied that the proposal would not be materially harmful to the character or appearance of the area.

### **Highway Safety**

The use of part of the original dwelling as a residential annex may result in an increase in vehicular movements as a result of intensified residential use within the site. However, the numbers of vehicular movements that might be anticipated is dependent to some extent on the nature of the household and the levels of car ownership. A household with several young children, or teenage children with their own vehicles might well result in significantly more vehicular movements than a mature household with one or more parents occupying an annex. Taking this into account your officers are satisfied that the proposal would not raise significant highway safety issues, and are satisfied that it would not cause demonstrable harm in this respect.

Although the representation received refers to the potential for damage to the private access driveway serving the site, this is a private matter between the applicant and the landowner.

### **Residential Amenity**

The proposed annex would be formed from the remainder of what was originally a semi-detached dwelling, and therefore use for the purposes of residential accommodation cannot be considered harmful to residential amenity *per se*, the issue to be assessed being whether the annex and

replacement dwelling would *cumulatively* cause harm to the amenities of the occupiers of Primrose Cottage to such an extent as to render the proposal unacceptable. In this respect increased vehicular movements and other activity resulting from an increase in the number of persons occupying the dwelling and its annex would be material considerations however, as with assessment in respect of highway safety above, an increase in vehicular movements and other disturbance might also arise due to the demographics of a larger family occupying the replacement dwelling alone.

Your officers have considered the proposal in respect of the amenities of the occupiers of Primrose Cottage adjacent, including their written representation objecting to the proposal. An increase in vehicular movements, the use of the remainder of the former dwelling as an annex, and the potential for disturbance and a loss of privacy arising from that use have all been considered, however notwithstanding these issues your officers cannot demonstrate harm arising from the proposal that would substantiate refusal of permission on the above grounds. Members will be aware that use of the remaining part of the former dwelling for purposes 'incidental and ancillary' to the replacement dwelling would not require planning permission. As with your officers' assessment, Members therefore need to consider whether the occupation of the annex would cause demonstrable harm to the amenities of the occupiers of Primrose Cottage (or other dwellings in the vicinity) that would not arise from ancillary and incidental uses. Only if Members are satisfied that the current proposal would cause such harm should they consider refusing the application on the grounds of harm to residential amenity.

In summary your officers have taken into account the representation received, however they are content that the proposal would not be demonstrably harmful to the amenities of the occupiers of Primrose Cottage or any dwelling in the vicinity of the site, and that it accords with policies GP1, H16 and SB2 in this respect.

### **Heritage**

The site is approximately 100m to the east of the Grade I listed St Mary's Church, and is separated from it by several dwellings. Taking into account the distance between the site and the Church, and intervening residential development, your officers are satisfied that the proposal would not materially affect the setting of the Church and accords with Local Plan policy HB1 in respect of the protection of historic buildings. There is no conservation area in Yaxley and your officers are therefore satisfied the proposal would not result in material harm to designated heritage assets.

### **Protected Species and Biodiversity**

The former dwelling does not meet the criteria set out in Natural England's standing advice regarding use by bats and the proposed works are therefore considered unlikely to cause harm to bats or their habitat. Similarly, land in a residential curtilage used as parking, laid to lawn or

7

tended as domestic garden would be considered relatively unlikely to provide suitable habitat for other protected species.

### **Other**

As an application for a 'Minor Material Amendment' results in the grant of a new planning permission it is necessary to re-impose any relevant conditions from the original planning permission onto any new permission. It is not appropriate in this case to impose a 'commencement' condition because the proposal relates to both the original dwelling and its replacement, and as such development has already commenced. Somewhat unusually it would be appropriate to impose a condition requiring works to the proposed annex to be completed by a specified date in order to secure the planning gain for which permission was originally approved. Permission 1402/04 also included a condition (condition 3) requiring a parking and turning area to be provided and retained, and a similar condition should be imposed in the interests of amenity. This condition should be tied to first occupation of the annex but should not refer to 'use' as imposed on the original permission.

The applicant has advised your officers that heavy machinery would be required to carry out some of the proposed works, and this would need to be arranged over land outside the application site to avoid using the private access driveway off Church Lane. This work would preferably be carried out during the summer months, and in view of this constraint your officers recommend that two years are allowed for the development to be completed.

### **Summary**

The physical changes proposed by this application are relatively minor when compared with the scheme originally approved, and whilst the changes to the layout are also minor the proposal has attracted objection from both the Parish Council and the occupiers of the adjacent semi-detached dwelling. Your officers have considered the issues raised in these objections, and although some of those matters are not material planning considerations and cannot be taken into account, your officers cannot identify demonstrable harm to any material planning consideration that would substantiate refusal of permission. The recommendation is made accordingly.

### **RECOMMENDATION**

#### **GRANT PLANNING PERMISSION subject to the following conditions:**

- Standard 'Annex' condition (restricting occupation to family members of the occupants of the replacement dwelling approved under reference 1402/04);
- Remainder of original dwelling only to be used for purposes ancillary and incidental to the replacement dwelling when not in use as a residential annex to the dwelling approved under reference 1402/04;



- Two year time limit for completion of works;
- Provision of parking and manoeuvring areas;
- Works to be carried out in accordance with the approved documents.

Philip Isbell  
Corporate Manager - Development Management

Adrian Matthews  
Development Management  
Planning Officer

## **APPENDIX A - PLANNING POLICIES**

### **1. Mid Suffolk Core Strategy Development Plan Document and the Core Strategy Focused Review**

**Cor1** - CS1 Settlement Hierarchy

**Cor5** - CS5 Mid Suffolks Environment

**CSFR-FC1** - PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT

**CSFR-FC1.1** - MID SUFFOLK APPROACH TO DELIVERING SUSTAINABLE DEVELOPMENT

### **2. Mid Suffolk Local Plan**

**GP1** - DESIGN AND LAYOUT OF DEVELOPMENT

**RT12** - FOOTPATHS AND BRIDLEWAYS

**H19** - ACCOMMODATION FOR SPECIAL FAMILY NEEDS

**H16** - PROTECTING EXISTING RESIDENTIAL AMENITY

**HB1** - PROTECTION OF HISTORIC BUILDINGS

**T10** - HIGHWAY CONSIDERATIONS IN DEVELOPMENT

**SB2** - DEVELOPMENT APPROPRIATE TO ITS SETTING

### **3. Planning Policy Statements, Circulars & Other policy**

**NPPF** - National Planning Policy Framework

## **APPENDIX B - NEIGHBOUR REPRESENTATIONS**

Letter(s) of representation(s) have been received from a total of **1** interested party(ies).

The following people **objected** to the application

[Redacted]

The following people **supported** the application:

The following people **commented** on the application: