

<b>SUBJECT:</b>	<b>ERECTION OF 2-STOREY REAR EXTENSION, TERRACE AND DETACHED GARAGE AT 13 MOUNT PLEASANT, OXTON, CH43 5SY – POTENTIAL REVOCATION OF PLANNING PERMISSION</b>
<b>WARD/S AFFECTED:</b>	<b>OXTON</b>
<b>REPORT OF:</b>	<b>CORPORATE DIRECTOR FOR ECONOMIC AND HOUSING GROWTH</b>
<b>KEY DECISION?</b>	<b>NO</b>

## **1.0 REPORT SUMMARY**

- 1.1 The purpose of this report is to advise Members that the grant of planning permission associated with APP/18/00817 did not follow the correct procedural process and to explore the expediency for revoking the permission that was issued on 9<sup>th</sup> October 2018.

## **2.0 RECOMMENDATION(S)**

- 2.1 It is not considered expedient to revoke planning permission APP/18/00817 having regards to the Development Plan and other material considerations.

## **3.0 REASON(S) FOR RECOMMENDATION(S)**

- 3.1 Having regards to the Development Plan, the approved development is appropriate to the size of the plot and would not dominate the existing dwelling and would not be so extensive as to be unneighbourly, particularly having regard to any effect on light to and the outlook from neighbours' habitable rooms. The design of the development together with the materials proposed to be used match and compliment those of the existing building.
- 3.2 The development would not affect the setting of special character of Oxtan Village Conservation Area, and would not impact on the distinctive characteristics of the Area. The development preserves the sense of contrast between houses in spacious grounds and cottage-style groups and would see a sandstone boundary wall that has collapsed be rebuilt reinstating a unifying feature within the Area. The Council's Conservation Officer did not object to the proposals noting the small scale nature of the development proposed and that the development is restricted to the rear of the site.

- 3.3 There is a liability for the local authority to pay compensation for abortive expenditure and for any other loss or damage directly attributable to the revocation.

#### **4.0 BACKGROUND INFORMATION**

- 4.1 A planning application for the erection of a two storey rear extension, terrace and detached garage to the rear of 'Grass Guards' 13 Mount Pleasant in Oxton was submitted to the Council on 18 June 2018.
- 4.2 At the time when the application was submitted, the Development Management Team was experiencing significant pressures having regards to the high volume of applications and pre-application enquiries being submitted to the Council coupled with resourcing issues . The Council engaged a number of agency workers to assist in clearing a backlog of applications that had not been allocated to officers whilst permanent solutions to the resourcing issues were explored and progressed. These backlog issues have now been resolved.
- 4.3 On 9<sup>th</sup> August 2018, application APP/18/00817 was allocated to one of the agency workers. The application was made valid and Ward Councillors were informed by email alert that this application had been received in their ward. On 15<sup>th</sup> August 2018, neighbour notification letters were sent to 12 adjoining/nearby properties. A Site Notice was also posted. The publicity period for this application closed on 19<sup>th</sup> September 2018.
- 4.4 On 10<sup>th</sup> September 2018, Councillor Brame requested that, "If officers are minded to approve this application for 13 Mount Pleasant could you please remove it from delegation. I believe the application conflicts with the Oxton Conservation Area Management Plan as it permits the demolition of a sandstone wall." This request was made in line with the Council's Scheme of Delegation for Determining Planning Applications (March 2014). It was made in writing, giving a planning reason for the request and was made prior to the end of the publicity period.
- 4.5 The case officer replied to Councillor Brame to state that he "saw no reason at this moment to put it (the application) to Committee." He quoted that the Scheme of Delegation gives "authority to officers to determine all applications where it is proposed to make a decision that is contrary to the Development Plan with the exception of domestic extensions."
- 4.6 On receipt of this response, Councillor Brame sought advice from his ward colleague, Councillor Stuart Kelly, who subsequently contacted the Development Management Manager to seek clarification as to whether the Scheme of Delegation had changed and was concerned that the case officer was reluctant to accept Councillor Brame's request for the application to be referred to Planning Committee.

- 4.7 It was confirmed to Councillor Kelly that the Scheme had not changed and that Councillor Brame's request was reasonable in all aspects having regard to the Scheme of Delegation
- 4.8 On 11 September 2018, the Development Management Manager put in writing to the case officer that the Scheme of Delegation allowed for any Member to remove an application from delegation provided it was done in writing, gave a valid planning reason for doing so and was done prior to the last date for comments.
- 4.9 Further to the request by the Ward Councillor that this application be considered by the Planning Committee, 31 representations were received in connection with this application. 6 were in support whilst 25 were objecting to the development proposed. Therefore, under the provisions of the Scheme of Delegation for Determining Planning Applications, a second trigger for reporting this application to Planning Committee had been met (i.e. more than 15 separate letters of objection had been received).
- 4.10 On 9<sup>th</sup> October 2018, the case officer presented a delegated report recommending approval of the application. The report made no reference to the Ward Councillor's observations on the application nor his request that should officers be minded to approve the application that it be removed from delegation and decided by Committee. The report did, however, highlight that 25 objections had been received.
- 4.11 The application was authorised and the decision notice was issued on 9<sup>th</sup> October 2018 effectively granting planning permission for the development.
- 4.12 On 3<sup>rd</sup> November 2018, Councillor Stuart Kelly emailed the Development Management Manager asking if he could explain why this application had been approved without referral to the Planning Committee as per the Council Constitution. He outlined that there were two reasons why this application ought to have referred, namely a request from an elected member and more than 15 individual objections had been received. The Councillor considered this to be a serious breach of the Council's Constitution.
- 4.13 An internal investigation was undertaken which concluded that the planning permission was not properly granted in terms of procedure, having regards to the Council's Constitution and Scheme of Delegation for Determining Planning Applications.
- 4.14 Following the investigation, the following actions were taken:
- 4.14.1 A review of all of the applications where the agency worker was case officer was undertaken to ensure this had not taken place elsewhere; no further incidences resulted following this review;
  - 4.14.2 Officers Reports for both delegated and Planning Committee items have been amended to include a specific section to report Ward Member Comments which will ensure that officers are required to report any received and for senior officers to be aware of these comments prior to authorising decisions; and

4.14.3 Appropriate action was taken under the Councils HR procedures and all officers have received refresher instructions around the provisions of the current Scheme of Delegation for Determining Planning Applications.

4.15 It is clear from the officer's written assessment of the proposals that, notwithstanding that this application should have been reported to Planning Committee, all the material planning considerations raised in objections to the proposal have been properly considered and taken into account when making a recommendation on this application.

4.16 Although there were 25 individual letters received, there was no qualifying petition of objection and therefore, the right to address the Planning Committee has not been lost to the objectors although the Ward Councillor has lost his right to address the Committee about the application as his request was not actioned.

4.17 Notwithstanding all of the above, a report to Planning Committee would have carried a recommendation of approval having regard to:

- the scale of the development proposed,
- its siting to the rear of the property
- the fact that the sandstone wall has already collapsed along a significant part of its length,
- that access to the unadopted highway does not in itself require planning permission,
- that the construction of a new garage would not result in any harm to the amenities of the area or the Conservation Area as a whole,
- that the proposals were supported by the Council's Conservation Officer,
- that the collapsed sandstone wall would be reinstated as part of these proposals thereby enhancing this part of the Conservation Area and
- that the proposals were considered to be appropriate to the size of the plot, the design and materials were considered to be acceptable and that the development would not harm the setting of the Oxtown Village Conservation Area

4.18 As outlined above, a qualifying petition of objection had not been received so only a Ward Councillor would have had the opportunity to address Committee. Therefore, local objectors have not been deprived of this opportunity as a result of the decision having been taken under delegated authority. All material planning objections were taken into consideration when determining the application.

4.19 The application would have been debated by Members of the Planning Committee and subject to that debate, an alternative decision to that recommended by officers may have been made. Members of the Committee have lost that opportunity as the planning permission has not been properly granted in terms of procedure and process.

## **5.0 LEGAL CONSIDERATIONS**

- 5.1 The law allows the local planning authority to revoke a planning permission “to such extent as they consider expedient” with regard to the Development Plan and other material considerations.
- 5.2 The power to revoke stems from Section 97 of the Town and Country Planning Act, 1990. Such powers can only be used before the development is complete.
- 5.3 The power is entirely discretionary and the local authority can decide not to exercise the power if it considers it is expedient not to do so. If a Revocation Order is made and opposed (e.g. by the applicant) then the revocation does not take effect unless it is confirmed by the Secretary of State. Notice of an application to the Secretary of State must be served on the owner/occupier of the land and on any person who in the opinion of the local authority will be affected by the Order. Any person on whom notice is served has the right to ask the Secretary of State to arrange for a hearing at which a Planning Inspector would determine the matter.
- 5.4 If an Order is unopposed, the local authority must advertise the fact that the Order has been made.
- 5.5 Legislation does not define what expediency means when considering whether to revoke a planning permission. However, the Supreme Court has stated that Section 97 “requires the authority to satisfy itself that revocation is expedient and in doing so to have regard to the Development Plan and other material considerations.” It has also stated that in this regard, where there is a potential liability for compensation, then that can be taken into consideration when determining whether it is expedient to revoke.

## **6.0 FINANCIAL CONSIDERATIONS**

- 6.1 There is a liability for the local authority to pay compensation. The rules relating to compensation where planning permission has been revoked are set out in Section 107 of the Town and Country Planning Act, 1990.
- 6.2 There is liability for a local authority to pay compensation in respect of:
  - 6.2.1 Expenditure rendered abortive by the Order (e.g. expenditure on preparation of plans for the purposes of works); and
  - 6.2.2 For any other loss or damage directly attributable to the revocation.
- 6.3 Section 107(3) of the Act makes clear that compensation is *not* payable in relation to any works carried out before the planning permission was granted.
- 6.4 In calculating for the purposes of compensation the amount of any loss or damage then depreciation of the value of an interest in land can be taken into account.

- 6.5 In July 2012, the Supreme Court ruled that when local planning authorities are deciding whether or not to revoke a planning permission they are entitled to take into account the compensation they could have to pay. Lord Carnworth in the Supreme Court said: "As custodians of public funds, the authority not only may, but generally must, have regard to the cost to the public of its actions, at least to the extent of considering any case whether the cost is proportionate to the aim to be achieved."

## **7.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 7.1 None.

## **8.0 RELEVANT RISKS**

- 8.1 If planning permission is revoked then compensation will be payable and the revocation would need to be referred to the Secretary of State for determination if any objections are received which could result in a Hearing which would have resource implications.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 None

- 9.2 Equality Impact Assessment (EIA)

(a) Is an EIA required? No

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## **APPENDICES**

None

## **REFERENCE MATERIAL**

## **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>