

Householder Delegated Report



Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

A. Application Details

Application No.	24/00751/F
Site Address	Willow Cottage, Main Street, Wendlebury, OX25 2PW
Proposal	Erection of a fence marking the boundary between Willow Cottage and the neighbouring property of Brookside
Amended Plans	None received

B. How the Application is Assessed

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The assessment below has taken into account all relevant policies within the development plan along with the material considerations related to the proposal.

C. Relevant Planning Policy Documents and Considerations

Development Plan	Material Considerations
<ul style="list-style-type: none">• Cherwell Local Plan 2011-2031 Part 1 (CLP 2015)• Cherwell Local Plan 1996 (CLP 1996)	<ul style="list-style-type: none">• National Planning Policy Framework (NPPF)• Planning Practice Guidance (PPG)• Supplementary Planning Guidance and Documents• Conservation Area Appraisal• CDC Residential Design Guide 2018• Cherwell Home Extensions and Alterations Design Guide (2007)• Site Constraints• Planning History• Neighbour/Consultation Responses



D. Constraints and Relevant Planning History

Constraints	<ul style="list-style-type: none">• Grade II Listed Building• Flood Zones 2 and 3• Archaeological Alert Area
Site history	None relevant

Pre-application advice	None sought
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E. Summary of Responses

Below is a summary of the responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

Consultees	<p>Clerk to Wendlebury PC - No objections Conservation (CDC)</p> <p>I have looked at your site photos and confirm I have no objection to marking the boundary to define ownership, but a close boarded fence would not be suitable for the setting of a listed building. I would also be concerned about the boundary being too high at 1880 based on how close it lies to the building.</p> <p>A matching stone wall or a robust traditional woven willow fence would be less urban, or a hedge could be planted alongside, and the fence removed once the hedge is established.</p> <p>A good willow fence was constructed at a listed building in Horton cum Studley a few years back, the image on the following link shows a good quality of fence being constructed:</p>  <p>The gates should be hung on sturdy timber posts to avoid fixings to historic fabric, subject to appropriate details/finish.</p>  <p>I would be grateful if you could seek a more appropriate boundary treatment.</p>
Neighbours	<p>There have been 1 letters of objection raising the following comments:</p> <ul style="list-style-type: none"> The single gate on the north end of Willow cottage's boundary, giving access to the rear of Brookside is a pedestrian route to the rear of the house is too wide. Having a single 2 metre wide gate will be inconvenient for anyone using it, and also inconvenient for the owners of Willow Cottage as it will need a huge area of garden to be kept clear in order for the gate to swing open. the original gate was 0.9m wide which is enough for any of the access that is required/allowed according to the property deeds (pedestrian and hand propelled vehicles eg. wheelbarrows)

F. Appraisal of Application

In order to be acceptable the application needs to be assessed against the following topics:

Impact on Character of Host Dwelling and Surrounding Area –Policies: ESD15 (CLP 2015); C28, C30 (CLP 1996); CDC Residential Design Guide (2018); Cherwell Home Extensions and Alterations Design Guide (2007), NPPF;	
The NPPF explains that the Government attaches great importance to the design of the built environment and that good design is a key aspect of sustainable development. The importance of high-quality responsive design also forms a central component of the policies of the development plan and local guidance.	
Therefore, to be supported development proposals should meet the following design tests:	Y / N / NA
a) Does the development use external materials to match those on the existing dwelling?	y
b) Is the design in keeping (use of similar style windows and architectural detailing, fencing/walling) with the host dwelling and the surrounding area?	y
c) Is the development in scale with the existing dwelling, its curtilage and the character of the street scene?	y
d) Is the extension subservient to the existing dwelling?	y
e) For two storey side extensions, does the development avoid a terracing effect ?	n/a
f) Is the development consistent with the CDC Residential Design Guide 2018 and Cherwell Home Extensions and Alterations Design Guide (2007) ?	n/a
<i>Comments (if any):</i> The fences/ gates would be to the rear of the property and would not be visible from the street.	

Impact On Residential Amenity – Policies: ESD15 (CLP 2015); C30 (CLP 1996); CDC Residential Design Guide (2018), Cherwell Home Extensions and Alterations Design Guide (2007); NPPF	
	Y / N / NA
a) Does the proposed development comply with the separation guidelines of the CDC Residential Design Guide (2018) and Cherwell Home Extensions and Alterations Design Guide (2007)?	y
b) Would the proposed development result in an acceptable garden size along with suitable amenity and utility space ?	y
c) Would the development dominate or have an overbearing impact upon any neighbouring garden or property?	n
d) Would the development result in an adverse degree of overshadowing or loss of light to a neighbouring property?	n
e) Would the development result in an adverse degree of overlooking to the any neighbouring residents	n
f) Would the development provide an acceptable standard of living conditions for future occupiers , including noise, privacy, daylight, outlook, air quality etc?	y
g) Would the development adversely affect neighbouring non-domestic uses?	n
<i>Comments (if any):</i> The fence and gates would be less than 2m tall, and as such would not result in significant loss of light or outlook to the attached neighbour, Brookside. The neighbour has objected to the size of the pedestrian gate, on the grounds that their neighbour will have to keep a larger area of land clear to allow the gate to open. However this is not considered a reason to refuse the application. The applicant has confirmed that they will keep the area clear, and that the gate/fence will open over their own land.	

Impact on Highway Safety – Policies: ESD15 (CLP 2015); NPPF	Y / N / NA
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a) Does the number of parking spaces, as a result of the development, comply with the OCC parking standard?	n/a
b) If the parking area is to be altered, does the proposed construction accord with the OCC standard?	n/a
c) Does any new access proposed meet highway standing advice/OCC response (width, visibility splays etc)?	n/a
<i>Comments (if any):</i>	

Impact on Listed Building and/or its Setting - Policies: C18, C21 (CLP96), ESD15 (CLP1); NPPF	
Section 66 of The Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the duty of Local Planning Authorities (when considering whether to grant planning permission for development which affects a listed building or its setting) to 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.	
Assessment of the Impact Proposals to alter or extend a listed building or development within its setting will be permitted where they meet the following tests:	Y / N / NA
a) The proposal contributes to the preservation of the building and is not detrimental to its significance and would not result in the loss of any historic fabric	y
b) The proposal is of an appropriate scale, form, massing and design and uses appropriate materials and methods of construction which are compatible with the character and construction of the listed building	y
c) The proposal has regard to the historic layout of the listed building and other internal features of significance	y
d) The proposal preserves the setting of the listed building	y
Assessment of Harm and any Benefits Having assessed the impact of the development above, assess below the level of harm being caused by the development	Y / N / NA
e) The proposed development would result in no harm to the listed building and/or its setting	y
f) The proposed development considered to result in less than substantial harm to the significance of the listed building and/or its setting?	n/a
g) The less than substantial harm identified (such as loss of historic fabric or modest extensions or to its setting) would be outweighed by the public benefits of the proposal	n/a
h) The proposed development is considered to result in substantial harm to the significance of the listed building and/or its setting?	n/a
i) If substantial harm would be caused, has it been demonstrated that this is necessary to achieve substantial public benefits that outweigh harm or loss , or that the tests and considerations in the NPPF have been met?	n/a
Comments (if any): The house is set well back from the street, with a small garden area to the rear which is surrounded by a wall, close boarded fence, and an open area between the property and its neighbour, Brookside, marked by fence posts approx. 1.8 -2m high. It is proposed to re-instate approx. 1.8m high close boarded timber fences along the side boundary of the site, between Willow Cottage and Brookside, to the north. They would utilise the existing fence posts still extant as visual reminders of the earlier close boarded boundary fence removed by the neighbour when	

they owned both properties. Parts of the previous close boarded fence extend from one of these retained fence posts.

The fence would not be attached to historic fabric, but only a fence post adjacent to the house.

The fence panels will need to be hinged to function as gates, (as the previous fences did – see Officer’s photos which demonstrate the hinges still in place on the fence posts) since the neighbour retains two rights of access over the land, one pedestrian and one vehicular.

The Conservation Officer has objected to the fence/gates proposed, on the grounds that she considers that close boarded fences are not suitable for listed buildings, and has asked that the applicant consider a wall or woven willow fence.

The applicant is strongly opposed to these suggestions, due to the cost of the wall, and the fact that it would not be able to function as a gate to allow access for his neighbour’s right of way, and due to the design of the woven fence, which is less opaque and therefore provides less privacy than a close boarded fence.

Moreover, he rightly points out that although a wall would be in keeping with part of the existing boundary, the other parts of the existing boundary are already made up of close boarded fences, and there are clear indications via fence posts and the existing close boarded fence, of where hinged close boarded fences existed previously in the place that he wishes to re-instate them.

It is considered that the wall proposed would be impractical, as much the fenced area needs to be able to swing, to provide access over the neighbour’s right of access, and the woven fence would look extremely incongruous beside the existing wall and close boarded fences, adding yet another boundary type to the site, which would appear incongruous detract from the setting of the listed building, particularly given the small size of the garden.

It is also considered that since the garden already has close boarded fences, and a close boarded gate, re-instating the close boarded fences to the boundaries they had been removed from cannot be argued to harm the character or setting of the listed building, but would merely sustain its setting and historic significance.

It is also extremely common to find close boarded timber fences to the rear of the listed buildings around garden areas, and very uncommon to find woven fencing, except occasionally in some isolated rural locations.

On balance it is considered that it would be unreasonable to refuse the gates and fences which would not harm the significance or setting of the listed building.

Impact on Archaeology - Policies: ESD15 (CLP 2015); NPPF

Thee site is known for archaeology or has the potential to impact on archaeology because it is in a known asset area

<u>Understanding the Impact</u>	Y / N / NA
a) Has the application submission demonstrated through a proportionate but thorough and systematic heritage assessment the significance of the archaeology that is present?	n
b) If so, is the assessment sufficient so as to understand the potential impact of the proposal on the significance of the asset?	y

Comments (if any): No ground will be disturbed by the works proposed, and thus there is no risk to archaeology.

Assessment of Harm and any Benefits	Y / N / NA
Developments affecting archaeology will only be permitted where they meet the following tests:	
c) Has OCC Archaeology been consulted on the application?	n
d) Did the consultation response advise that the development would not have a harmful impact on the archaeological features at the site?	n/a
e) If yes, have conditions been suggested to be imposed on any approval?	n/a
Comments (if any):	

Impact on Flooding and Drainage in Flood Zone 2/3 - Policies: ESD6, ESD7 (CLP 2015) NPPF	Y / N / NA
a) Is the proposed development less than 250sqm and maintains existing floor levels within the property?	n/a
b) If yes, then in accordance with Environment Agency standing advice for minor developments no consultation with the Environment Agency is required and the development does not represent a significant increase in the risk of flooding.	n/a
c) If no, the Environment Agency was consulted and raised no objections	n/a
Comments (if any): The application is for a fence and would not increase flood risk or harm flood resilience	

Impact on Trees/Hedges / Landscaping – Policies: ESD10, ESD11, ESD13, ESD15 (CLP 2015) NPPF	Y / N / NA
a) if there are mature trees with a high amenity value that the proposed development is adjacent to or in the Root Protection Area of, will the development result in adverse harm to the tree or its loss?	n
b) Is the tree in a conservation area or protected by a Tree Preservation Order (TPO) ?	n/a
c) Do the benefits of the development outweigh the loss of the tree ?	n/a
d) Do any trees need to be potentially protected by a TPO ?	n/a
e) Would the development result in the loss of landscaping/important hedgerows that would help screen/soften the development/ lessen the impact to neighbouring properties ?	n/a
f) Does the development propose appropriate landscaping to help screen or soften the development?	n/a
g) Have you proposed any conditions to secure the retention or protection of trees of or planting of any trees/hedges/landscaping?	n/a
Comments (if any):	

Impact On Ecology¹ – Policies: ESD10, ESD13, ESD15 (CLP 2015), NPPF	Y / N / NA
a) Does the site or proposed development possess/impact on any of the features where protected species are likely to be present (assessed against <u>Natural England's standing advice</u>) and <u>where species are likely to be found</u> ?	n
b) If Y, has a protected species survey been submitted ?	n/a
c) If Y, Does the survey show a detailed consideration of ecological impacts , wildlife mitigation and the creation, restoration and enhancement of wildlife corridors to preserve and enhance biodiversity in accordance with the standing advice ?	n/a

Comments (if any):

Having considered Natural England's Standing Advice and taking account of the site constraints it is considered that the site has limited potential to contain protected species and their existence on the site is unlikely. As such no formal survey is required and the absence of which this does not result in a reason to withhold permission.

G. Conclusion

Due to its siting, scale and design I consider that the proposed development would be sympathetic to the context of the development, would be compatible with the appearance, character, layout, scale and design of existing dwellings in the area, and would sustain the historic significance of the listed building, and would provide adequate standards of amenity and privacy for existing and/or proposed residents. The proposal therefore accords with the policies and considerations as set out at section F above.

H. Recommendation

The application is recommended for **APPROVAL** subject to the conditions set out on the decision notice.

I. Authorisation

Case Officer:	CH	Date:	10/05/24
Authorising Officer:	Paul Ihringer	Date:	22/5/24

Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the information contained within the application form and the following approved plans: Location plan, block plan and proposed fence/ gate drawings, and the email from the applicant dated 19/04/24 confirming that the gates will open over his own land

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

Notes	
1	<p>Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must, in exercising its functions, have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity”.</p> <p>Strict statutory provisions apply where European Protected Species (EPS) are affected, as prescribed in Conservation of Habitats and Species Regulations 2017. When determining a planning application that affects a EPS, local planning authorities must have regard to the requirements of the EC Habitats Directive which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.</p> <p>Under Regulation 43 of the Conservation Regulations 2017 it is a criminal offence to cause harm to a EPS and/or their habitats which includes damage or destruction of a breeding site or resting place. However, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:</p> <ol style="list-style-type: none"> 1) Is the development needed for public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature? 2) Is there any satisfactory alternative? 3) Is there adequate compensation being provided to maintain the favourable conservation status of the species? <p>In order for the local planning authority to discharge its legal duty under the Conservation Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England would be likely to grant a licence for the development. In so doing to authority has to consider itself the 3 derogation tests above.</p> <p>In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.</p>