

Case Officer: Nathanael Stock

Recommendation: Approve

Applicant: Mr Ryan Breslin

Proposal: Increase extent of basement, from semi basement to full basement
(proposed as non-material amendment to 21/01437/F)

Expiry Date: 1 September 2021

1. APPLICATION SITE AND APPROVED DEVELOPMENT

- 1.1. The application relates to a detached dwelling in a substantial parcel of land, to the rear elevation of the dwelling the land extends approximately 114 metres to the north. The existing dwelling on site is constructed externally in brick under a clay tile roof, and dates to approx. the 1960s. The site is located adjacent to but outside of the Sibford Gower with Burdrop Conservation Area.
- 1.2. Planning permission has been granted for the erection of a two-storey detached replacement dwelling with basement.

2. DESCRIPTION OF PROPOSED AMENDMENT(S)

- 2.1. The application seeks approval for an increase in the extent of the basement to cover the full footprint of the dwelling.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:
- 3.2. 21/00291/PREAPP – Replacement dwelling comprising detached 1.5 storey building with semi basement at front – Positive advice given, but for some amendments being made
- 3.3. 21/01437/F – Two storey detached replacement dwelling with semi basement – granted with conditions, 14.07.2021

4. PUBLICITY AND CONSULTATION

- 4.1. There is no statutory requirement to consult on, or publicise, applications seeking approval for non-material amendments to an existing planning permission. However, the following comments have been received: (summarise below, or delete if not relevant):
 - Surprised that the proposed change is being submitted and apparently accepted as a non-material amendment
 - The proposal would have a material effect on: the total accommodation provided, the excavation work required, the number of off- and on-site material movements, and on the duration of the construction period.

- The proposal would provide long term benefits for the applicant's family and once built should have minimal impact on the immediate neighbours provided that the proposed fire stairs are only intended for and used as an emergency escape, and not as a separate or independent access to the basement dwelling rooms.
- The proposals would eliminate the justification for any future outbuildings or any future non-compliance with the land covenants.
- Would request that the neighbour impact of this significant additional construction work is minimised and sensitively managed; that the proposed planting in the vicinity of the fire stairs / light well is extended along the short eastern edge where possible; and that additional planning conditions are attached as appropriate.

4.2. Responses are available to view in full on the Council's website, via the online Planning Register.

5. APPRAISAL

5.1. The key issue for consideration in this case is whether the proposed change(s) can be accepted as non-material; there is no consideration of the planning merits of the proposed changes.

5.2. Section 96A of the Town and Country Planning Act 1990 (as amended) states that: "A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material". It is also stated that: "In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted".

5.3. The Planning Practice Guidance states that: "There is no statutory definition of non-material. This is because it will be dependent on the context of the overall scheme - an amendment that is non material in one context may be material in another. The Local Planning Authority must be satisfied that the amendment sought is non-material in order to grant an application". The judgement on materiality in any particular case is one of fact and degree, also taking into account the likely impacts of the amendment. Materiality is considered against the development as a whole, not just part of it. The benchmark for forming the judgement on materiality is always the original permission.

5.4. The proposed change would not be discernible from outside of the site and would not materially change the form or character of the development or its impact on the character and appearance of the area. It would therefore not be a material change in terms of visual impact.

5.5. The part of the site where the change is proposed is not an archaeological alert area, and as such there are considered to be no additional implications in this regard.

5.6. That said, it would be a significant change within the site, at least as perceived by the adjacent neighbours to the site, and the question is whether the change is a material one in terms of residential amenity.

5.7. In making this assessment, the planning officer has consulted counterparts in the Building Control Team, who have advised as follows:

Clearly the construction of the basement, foundation and associated retaining walls would have to take cognisance of any adjoining structure in close proximity with its foundations at a higher level than the reduced dig levels for the excavation to the basement. I would expect that any submission to a Building Control Body for this dwelling/basement would include structural calculations which had considered this matter. Furthermore there is other legislation (The Party Wall etc. Act 1996) which exists to protect owners rights where excavations are carried out near neighbouring buildings (this is legislation Building Control are aware of but do not administer, this is down to the building owner to commission their own Party Wall surveyor to Act on their behalf. I understand the Party Wall Act kicks in where one of the following occurs;

1) *Excavations for a new building or structure occur within 3 metres of a neighbouring building where the excavation will go deeper than the neighbours foundations.*

2) *Excavations for a new building or structure occur within 6 metres of a neighbouring owner's building where the reduced level of that excavation/work cuts a line drawn downwards at 45 degrees from the bottom of the neighbours foundations.*

As stated above BC do not administer the Party Wall Act and are not specialists in this legislation but would advise the owners, if concerned, that this maybe something to explore further.

I note that the habitable rooms within the basement does not have natural ventilation, Building Control again would expect justification from a specialist in the field that compliance with Part F (Ventilation) of the Building Regulations was possible in this instance.

- 5.8. Having regard to the above comments, it is considered that from a construction perspective the proposed change does not raise any new issues.
- 5.9. The proposed change would not have any bearing on the previous assessment in terms of outlook, light or privacy.
- 5.10. The neighbours might expect to be given the opportunity to comment on this proposed change, which might be perceived as raising new issues especially during the construction period (more excavation, more vehicle movements, etc.), though it is noted that one of the adjacent neighbours has commented on this application
- 5.11. It is noted that conditions have been imposed on the planning permission in respect of externally facing materials, parking and manoeuvring areas, a hard landscape scheme and covered cycle parking facilities, obscure glazing of certain windows, along with removal of permitted development rights for extensions and outbuildings.
- 5.12. The proposal would not be prevented by any of these conditions, and in the event of permission being given for the current application all of these conditions would continue to apply. The government guidance on S96A applications suggests that conditions may be imposed under S96A.
- 5.13. It is considered that the landscaping condition may reasonably be amended to include soft landscaping to mitigate any impact to the eastern neighbour from the proximity of the stairwell, and that a condition to limit construction hours may be reasonably imposed to mitigate any impact through additional construction traffic / vehicular movements.
- 5.14. Condition 5 would also need to be amended to reflect the amended plans submitted.

5.15. Subject to these additional / amended conditions, the proposed change is considered not to raise any new issues and would not be precluded by any conditions imposed on the planning permission, and therefore to be non-material.

6. CONCLUSION

6.1. The proposal is considered to be non-material and the application is therefore recommended for approval.

Amended Condition 2

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application form and the following plans and documents:

- 253 03 100 – Site Location Plan
- 253_03_300 P5 – Proposed Site Plan
- 253 04 300 P5 – Proposed Elevations 1
- 253_04_301 P5 – Proposed Elevations 2
- 253 03 304 P4 – Proposed Basement Plan
- 253_03_301 P5 – Proposed Ground Floor Plan
- 253_03_302 P5 – Proposed First Floor Plan
- 253_03_303 P4 – Proposed Roof Plan
- 253_05_300 P3 – Proposed Sections

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to safeguard the character and appearance of the area and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

Amended Condition 5

5. Prior to the first occupation of the development hereby approved the parking and manoeuvring areas shall be provided in accordance with the plan approved (Drw No. 253_03_300 P5) and shall be constructed from porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the site. The parking and manoeuvring area shall be retained and maintained as such thereafter and shall be unobstructed except for the parking and manoeuvring of vehicles at all times.

Reason - In the interests of highway safety and flood prevention and to comply with Policies ESD6 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework

Amended Condition 6

6. Notwithstanding the details submitted, the development shall not be occupied unless and until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-

- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
- (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,

- (c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps, and
- (d) details of all means of enclosure and other boundary treatments and an alternative detail for the entrance gate, to be at least 5 metres from the highway.

The development shall be carried out in strict accordance with the approved details prior to the first occupation of the development, and the hard landscape elements shall be retained as such thereafter.

Reason: In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

Additional Condition 10

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

Reason: In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

Additional Condition 11 regarding construction hours

There shall be no construction work, including deliveries, outside of the hours of 0800 to 1800 on Mondays to Saturdays and there shall be no construction work on Sundays or Bank Holidays.

Reason: To minimise any detrimental impacts on the living conditions of neighbouring residents, the amenities of the area in general, and in the interests of highway safety and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

Case Officer: Nathanael Stock

DATE: 09.09.2021

Checked By: Paul Ihringer

DATE: 10/9/21
