

**1 HORSEHEATH ROAD, LINTON**

**Assessment of Application S/0793/18/FL**

**28 June 2018**

**Carter Jonas**

**PLANNING REPORT**

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## Introduction

1. This report has been prepared by Carter Jonas LLP on behalf of Ms Kate Kell, in respect of application S/0793/18/FL relating to a residential development at No.1 Horseheath Road. The application was approved at South Cambridgeshire Planning Committee in June 2018.
2. Our client, who resides at an adjacent property, 24 Parsonage Way, has grave concerns over the way the application has been handled and is considering making an application for a judicial review of the decision taken by the Council at a recent Planning Committee meeting. It is our view that the application has not been processed fairly and that the decision reached is inconsistent with South Cambridgeshire's local planning policies and related design guidance. This is explored further below.

## The Site

3. The 0.28ha site is to the north of Horseheath Road in the centre of Linton. The site currently comprises a detached two-storey dwelling on a large plot. It is bounded to the north by Nos. 24 Parsonage Way (under the ownership of Ms Kell) and 33 Parsonage Way; to the east by residential dwellings off Kinsey Place; to the south by Horseheath Road and further residential development; and to the west by Linton Library and Community Centre.
4. No.24 Parsonage Way is situated immediately to the north of the application site. South-facing rooms with windows onto the application site comprise a ground floor conservatory and kitchen diner, with first floor bedroom and frosted bathroom window.
5. The existing dwelling of No.1 Horseheath Road is situated between 19m and 27.5m from the rear boundary of No.24 Parsonage Way. However, due to the oblique angle of the existing dwelling in relation to No.24, first floor windows do not directly face No.24 Parsonage Way and the impact of overlooking is currently fairly limited. This impact is further reduced because two of the windows are frosted bathroom/toilet windows and the third is situated over the stairwell and landing. All three windows are therefore in non-habitable rooms.

## Planning History

6. No.1 Horseheath Road has been subject to a number of planning applications. This are summarised below.

Reference	Description	Decision
S/2112/07/F	Erection of 10 Sheltered Retirement Homes	Withdrawn February 2008
S/2504/14/OL	Demolition of the existing dwelling and erection of 9 dwellings	Withdrawn June 2015
S/2109/15/OL	Demolition of the existing dwelling and erection of 9 dwellings	Refused January 2016
S/0623/16/OL	Outline planning permission for demolition of the existing dwelling and erection of 7 dwellings all matters reserved except access	Approved November 2016
S/3184/17/FL	Erection of 6 market dwellings and 3 affordable housing dwellings following demolition of existing dwelling	Refused December 2017
S/0793/18/FL	Demolition of existing dwelling and construction of 7 dwellings	Approved June 2018

7. The more relevant applications are explored below.

### Application S/2109/15/OL

8. This application for 9 dwellings was refused in January 2016.
9. The proposed site plan showed 4 pairs of semi-detached dwellings and a single detached dwelling. Three of the pairs of semi-detached dwellings were arranged linearly across the centre of the site, with a detached and pair of semi-detached dwellings to the south (see figure 1 below).



Figure 1: Proposed Site Plan for S/2109/15/OL

10. The decision notice stated: *“The proposal would result in overdevelopment of the site by virtue of the applicant’s failure to demonstrate that nine dwellings would not result in harm to the amenity of adjoining neighbouring properties. The proposal would therefore be contrary to Policies DP/2 and DP/3 of the South Cambridgeshire Local Development Framework Core Strategy DPD 2007 that states a new development should preserve or enhance the character of the local area and planning permission will not be granted where the proposed development would have an unacceptable adverse impact on residential amenity.”*
11. Other matters such as the principle of development and impact on highways, landscape and protected trees were all found to be acceptable. Accordingly it was the impact on the amenity of surrounding housing which was found to be the critical factor in refusal.

**Application S/0623/16/OL**

12. This application for 7 dwellings was approved in November 2016, and is the outline application to which the latest application S/0793/18/FL relates.
13. The proposed site plan, which was indicative, showed the detached and semi-detached dwellings arranged in a staggered pattern diagonally across the site (Figure 2 below). The plan included distances

measured accurately from the conservatory and south east corner of 24 Parsonage Way, ensuring all windows to habitable rooms have a minimum 25m amenity.



Figure 2: Proposed Site Plan for S/0623/16/OL

14. In their determination of the application, the officer wrote the following in relation to residential amenity in the committee report:

15. *“The indicative site plan submitted with this application indicates the development layout in relation to neighbouring residential dwelling at No.24 Parsonage Way would be set 25 metres from this neighbouring dwelling to the rear. The District Design Guide requires a minimum distance of 25 metres is provided between rear or side building faces containing habitable rooms. The proposed layout now illustrates that 25 metres is provided between the rear of housing 1-5 and the neighbouring property at No.24 Parsonage Way.*

16. *“Proposed houses 6 & 7 as shown on the illustrative site plan would be sited less than 25 metres from the side elevation of No.33 Parsonage Way and garden of No.31 Parsonage Way. The side gable within No.33 Parsonage Way has no side elevation windows which face the site, with the garden area of No.31 Parsonage Way wrapping around and being sited adjacent to the common boundary with the site. The illustrative site plan shows that proposed houses 6 and 7 would be sited between 15 metres from the common boundary. ...*

17. "Given the previous reason for refusal, the proposal has demonstrated that the proposed 7 dwellings would be capable on the site without resulting in harm to the amenity of adjoining neighbouring properties."

**Application S/3184/17/FL**

18. Following the approval of application S/0623/16/OL, the site was sold and a revised outline application for 9 dwellings was submitted. This was refused in December 2017.

19. The proposed site plan showed 6 detached houses arranged in a staggered pattern along the centre of the site, with a further detached and pair of semi-detached dwellings to the south of the site. The rear facades of plots 1, 2, 3, 4 and 5 were all between 17 and 23m from the dining window of No.24 Parsonage Way.

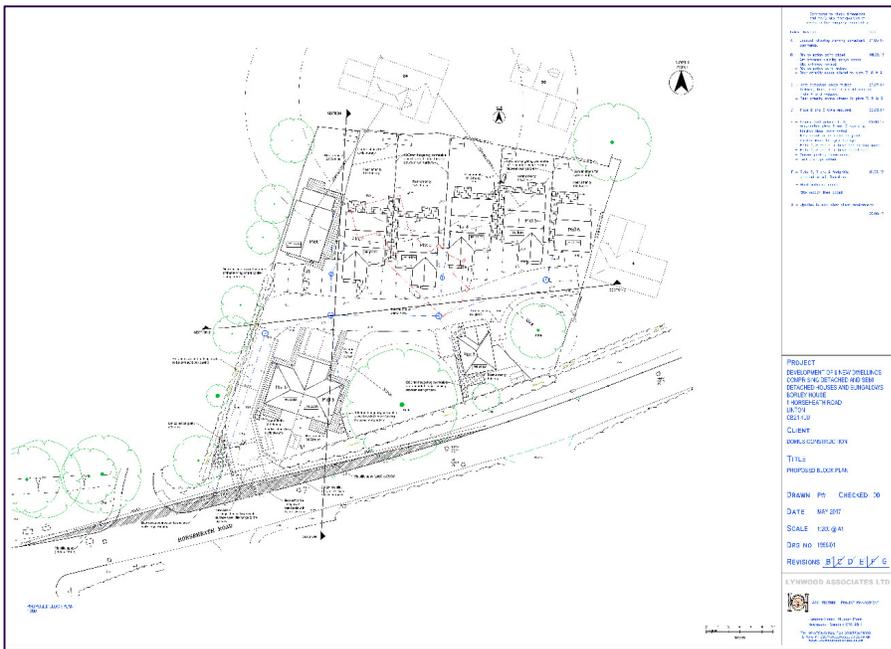


Figure 3: Proposed Site Plan for S/3184/17/FL

20. The Committee Report commented: "... The existing dwelling at No.24 Parsonage Way is considered to result in overlooking and a loss of privacy to the gardens of the new dwellings on Plots 1 and 2. The first floor bedroom window and second floor bedroom and family room roof lights in the rear (south) elevation would be situated just 9m from the rear part of the garden and 20 metres from the main sitting

*out area to the rear of the dwelling. This relationship was the same as on the indicative plan of the previously refused application and is not considered acceptable.”*

21. It should also be noted that distances of 23-24m were provided from the dining room windows of Plots 1 and 2 to the first floor bedroom windows of No.24 Parsonage Way. This was considered unacceptable.
22. The proposal scheme was also deemed to harm the character of the area by being unduly cramped, and providing inadequate amenities to two of the proposed dwellings.
23. The decision notice confirmed this by stating: *“The existing dwelling at No. 24 Parsonage Way, by virtue of the position of the first floor bedroom window in the rear elevation, is considered to adversely affect the amenities of the future occupiers of the dwelling on Plots 1 and 2 through a loss of privacy. The proposal is therefore contrary to Policy DP/3 of the South Cambridgeshire Local Development Framework Development Control Policies DPD 2007 that states planning permission will not be granted where the proposed development would have an unacceptable adverse impact on residential amenity.”*

#### **Application S/0793/18/FL**

24. The application allowed for “Demolition of existing dwelling and construction of 7 dwellings.” It was submitted to South Cambridgeshire District Council in February 2018.
25. The application scheme comprises 7 dwellings, laid out as two detached homes (plots 1 and 7), a terrace (plots 2-4) and a pair of semi-detached dwellings (plots 5 and 6). They are arranged roughly north-south off a single access drive linking with Horseheath Road to the south, and rear gardens to the north.
26. The application was recommended for approval by the case officer and went before South Cambridgeshire Planning Committee on 6<sup>th</sup> June, where it was approved.

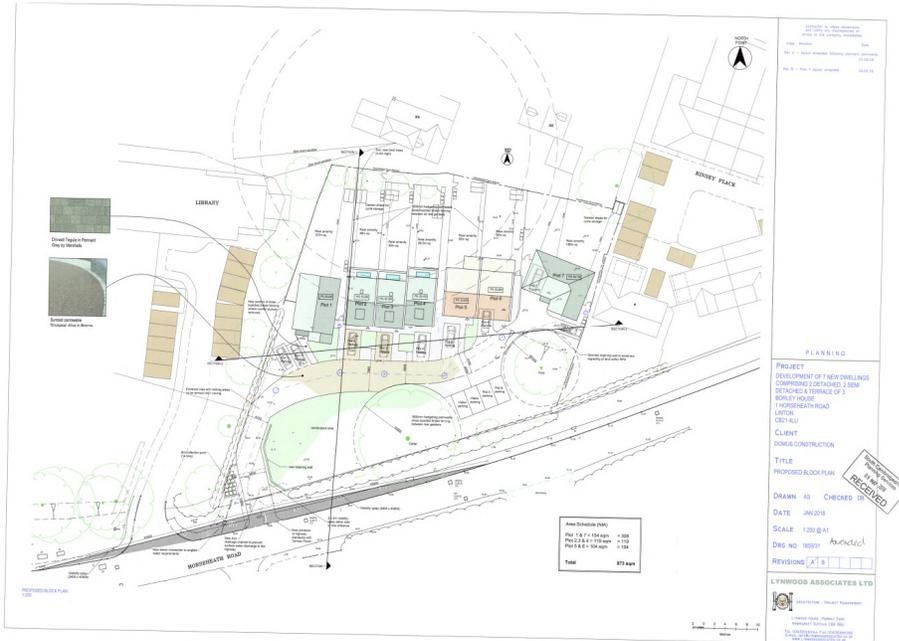


Figure 4: Proposed Site Plan for S/0793/18/FL

27. The committee report noted in relation to residential amenity (paragraphs 85 to 88): *“The development is not considered to result in an unduly overbearing mass when viewed from or a loss of light or privacy to the dwelling and garden of the neighbour at No. 24 Parsonage Way.*
28. *“The dwellings would be orientated to the south and be sited at least 13 metres off the boundary with that property. This relationship is considered satisfactory given that it meets the advice set out in the District Design Guide SPD for window to building distances of 12 metres particular given that the neighbour is set at a higher ground level than the proposed dwellings.*
29. *“The first floor windows of the new dwellings would be sited 22 metres from the ground floor dining area window in the rear elevation, 25 metres from the conservatory attached to the rear elevation and 29 metres from the first floor bedroom window in the rear elevation of that property. This relationship is, on balance considered acceptable given the advice set out in the District Design Guide SPD for back-to-back distances of 25 metres between windows is a guide only.*
30. *“The first floor windows of the new dwellings would be sited 20.5 metres from the decked area, 20 metres from the garden area between the conservatory and boundary and 16 metres from the garden area to the side of the property. This relationship is, on balance considered acceptable given it meets the advice set out in the District Design Guide SPD for window to boundary distances of 15 metres.”*

31. The committee report further stated that *“The previous planning application on the site for nine dwellings under reference S/3184/17/FL was refused on the grounds that the first and second floor windows in the rear elevation of the existing dwelling at No. 24 Parsonage Way would result in a loss of privacy to the gardens of the new dwellings and the existing trees would dominate the gardens of the new dwellings.*
32. *“The new scheme is considered to have addressed the reasons for refusal set out above. There is now a greater distance between the existing and proposed dwellings and the gardens to the dwellings are no longer sited in such close proximity to the mature trees.”*

## **Relevant Planning Policies and Guidance**

33. As can be noted from the above, the principle of development of the site is not in dispute. The determining factor in the approval or otherwise of applications S/2109/15/OL, S/0623/16/OL and S/3184/17/FL has been impact on residential amenity, both of the proposed dwellings and of the existing Nos. 24 and 33 Parsonage Way.
34. The interpretation of policies DP/2 and DP/3 of the Development Control Policies 2007, and paragraphs 6.67-6.68 of the South Cambridgeshire District Design Guide, has been critical to the acceptance or rejection of the applications listed above.

## **South Cambridgeshire Development Control Policies 2007**

### **35. Policy DP/2 – Design of New Development**

*...All new development must be of high quality design and, as appropriate to the scale and nature of the development, should:*

- a. Preserve or enhance the character of the local area;*
- b. Conserve or enhance important environmental assets of the site;*
- c. Include variety and interest within a coherent design, which is legible and provides a sense of place whilst also responding to the local context and respecting local distinctiveness;*
- d. Achieve a legible development, which includes streets, squares and other public spaces with a defined sense of enclosure and interesting vistas, skylines, focal points and landmarks, with good interrelationship between buildings, routes and spaces both within the development and with the surrounding area;*

- e. *Achieve a permeable development for all sectors of the community and all modes of transport, including links to existing footways, cycleways, bridleways, rights of way, green spaces and roads;*
- f. *Be compatible with its location and appropriate in terms of scale, mass, form, siting, design, proportion, materials, texture and colour in relation to the surrounding area;*
- g. *In the case of residential development, provide higher residential densities, and a mix of housing types including smaller homes;*
- h. *Provide high quality public spaces;*
- i. *Provide an inclusive environment that is created for people, that is and feels safe, and that has a strong community focus;*
- j. *Include high quality landscaping compatible with the scale and character of the development and its surroundings.*

**36. Policy DP/3 – Development Criteria**

*...Planning permission will not be granted where the proposed development would have an unacceptable adverse impact:*

- j. *On residential amenity;*
- k. *From traffic generated;*
- l. *On village character;*
- m. *On the countryside, and landscape character;*
- n. *From undue environmental disturbance such as noise, lighting, vibration, odour, noxious emissions or dust;*
- o. *On ecological, wildlife and archaeological interests;*
- p. *On flooding and flood risk;*
- q. *On the best and most versatile agricultural land;*
- r. *On quality of ground or surface water;*
- s. *On recreation or other community facilities.*

**South Cambridgeshire District Design Guide SPD March 2010**

**37. Privacy and Overlooking**, paragraphs 6.67 – 6.68:

*Protecting privacy and avoiding overlooking of neighbouring houses should be given high priority in any residential context and the Council is required to consider any relevant objections received from neighbours.*

*To prevent the overlooking of habitable rooms to the rear of residential properties and rear private gardens, it is preferable that a minimum distance of 15m is provided between the windows and the*

*property boundary. For two storey residential properties, a minimum distance of 25m should be provided between rear or side building faces containing habitable rooms; which should be increased to 30m, for 3 storey residential properties. Where the opposing alignment of facing windows is significantly offset, these distances may be slightly reduced. Where blank walls are proposed opposite the windows to habitable rooms, this distance can be reduced further, with a minimum of 12m between the wall and any neighbouring windows that are directly opposite.*

## Assessment

38. It should be noted that application S/0793/18/FL was supported by incorrect plans and sections, and that the officer's report contains factual inaccuracies relating to the distances between boundaries (plot 7 is only 10.5m from the boundary of No.24 Parsonage Way, below the 15m distance recommended in the Guidance).
39. The Design Guidance is clear that a minimum distance of 25m is required between rear elevations with habitable rooms. This principle has been applied consistently in the determination of applications S/2109/15/OL, S/0623/16/OL and S/3184/17/FL.

Application	Distance of first floor north façade of nearest plot from conservatory or dining window of 24 Parsonage Way	Decision
S/2109/15/OL	Plot 2 – 20.4m	Refused
S/0623/16/OL	Plot 1-5 – 25m	Approved
S/3184/17/FL	Plot 2 – 21.1m	Refused
S/0793/18/FL	Plot 5 – 21.3m	Approved

40. The Design Guidance is an adopted supplementary planning document and as such should be treated as part of the development plan and therefore a weighty material consideration in the determination of planning applications. The statement in the officer's report that the measurement is a "guide only" is clearly inconsistent with the approach taken previously to development on the site, when the distance of the proposed dwellings from No.24 Parsonage Way was not considered to comply with policies DP/2 and DP/3.

## Conclusion

41. There has been clear inconsistency in the decision making process applied to planning applications at No.1 Horseheath Road. What was considered an unacceptable distance for application S/2109/15/OL was no longer considered unacceptable for application S/0793/18/FL.
42. The Council has failed to properly apply the principle of consistency or follow its adopted policies that it has used to refuse similar applications on the same site. As noted in the accompanying letter from Ashtons Legal and in a letter from Ms Kell, the Council has also failed to follow correct procedure in dealing with the application, as has been well established in case law such as R (Midcounties Co-Operative Limited) v Forest of Dean District Council [2017] EWHC 2050 and Baroness Cumberlege v Secretary of State for Communities & Local Government [2017] EWHC 2057.
43. On this basis we believe that there is a reasonable likelihood that the decision would be quashed on an application for judicial review.

