

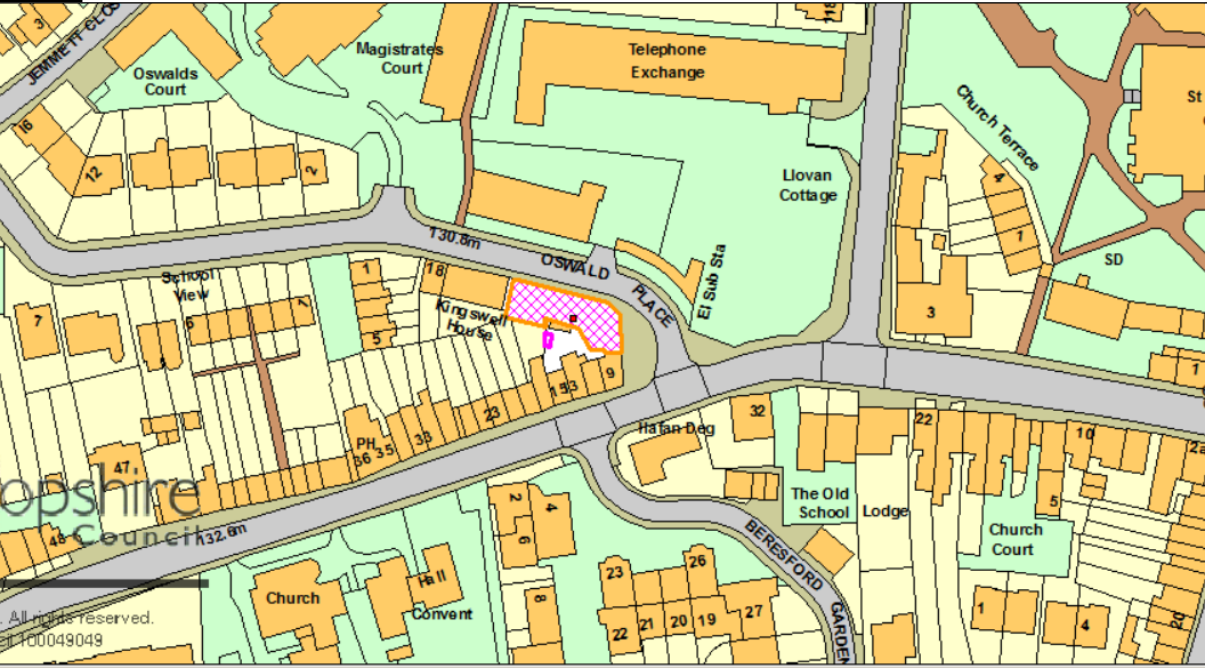
Development Management Report

Responsible Officer: Tim Rogers
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Summary of Application

Application Number: 15/03804/FUL	Parish: Oswestry Town
Proposal: Erection of four dwellings	
Site Address: Former Oswalds Stores Oswalds Well Lane Oswestry Shropshire SY11 2TF	
Applicant: United Trust Bank	
Case Officer: Mark Perry	email: planningdmnw@shropshire.gov.uk

Grid Ref: 328716 - 329319



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Recommendation:- Approval subject to the conditions as set out in Appendix 1.**REPORT****1.0 THE PROPOSAL**

- 1.1 The proposal is for the erection of two pairs of semi-detached dwellings; all are two bedroom. The gross internal floor areas range from 54 sqm up to 64 sqm. Therefore the dwellings will be pitched at the smaller and cheaper end of the property market.
- 1.2 The proposed building, form and detail of the proposed dwelling would be largely traditional in style and would follow the curved alignment of Oswald Place. The scheme includes the provision of private and shared courtyards which would provide some amenity space to future occupiers
- 1.3 None of the dwellings proposed would have any private off street parking because of the constraints of the site which include the limited space and the alignment of the highway.
- 1.4 This site has been the subject of numerous planning applications and planning appeals in recent years none of which have resulting in planning permission being granted. The last planning application was for the erection of five 2/ 3 storey dwellings, this was refused by committee in October 2013 (application no. 12/03718/FUL) the subsequent appeal was then dismissed by the Planning Inspector.
- 1.5 As such this latest proposal is intended to overcome the previous reasons for refusal and the issues of concern identified by the Planning Committees and the Planning Inspectors.

2.0 SITE LOCATION/DESCRIPTION AND HISTORY

- 2.1 The application site comprises an irregular shaped parcel of land (0.286ha in area) which has a frontage to Oswald Place at its junction with Oswald Place and Upper Brook Street to the west of Oswestry town centre. The site falls just inside the Oswestry town centre Conservation Area.
- 2.2 The site is previously developed but was cleared of its former buildings a significant number of years ago. Since that time the site has been surrounded by temporary fencing to Oswalds Place and the site has been left unused to become overgrown although on occasions the vegetation has been cut down in an attempt to improve the site's appearance.
- 2.3 Oswald Place provides access to commercial premises with a vehicle repair business immediately opposite the application site. Further along Oswald Place

there is an access serving the Magistrate's Court and Oswald's Court, a relatively modern residential scheme comprising detached, semi-detached and short row of terraced properties. On the southern side of Oswald Place, more traditional, older residential properties set within a more irregular pattern characterise the street, and these to some extent are reflected on Upper Brook Street, where back of pavement two-storey residential properties are found. A small number of these, numbers 9 to 17, have rear elevations facing immediately onto the application site.

- 2.4 A full planning application was made in 2004 for the demolition of existing buildings and the erection of six dwellings with associated landscaping works (04/13278/FUL). This application was approved by Oswestry Borough Council but was never developed, in all likelihood due to issues over land ownership.
- 2.5 In 2009 a renewal application was submitted pursuant to planning permission 04/132784/FUL, under application reference 09/03185/FUL. The renewal application was refused and appealed under reference APP/L3245/A/2132820, however the appeal was not progressed due to discrepancies between the 2004 approved drawings and 2009 renewal drawings.
- 2.6 In 2011, a full application was submitted for six dwellings, the form of units, their siting and access were as per the previous approval. This was refused and appealed; under reference number APP/L3245/A/11/2163733 where it was subsequently dismissed in February 2012.
- 2.7 The latest application to be considered was for five dwellings. This was also refused and appealed under reference number APP/L3245/A/13/2209289 and again dismissed. The Planning Inspector had a number of concerns about the development which resulted in the appeal being dismissed. These were, 1) the impact upon highway safety for both pedestrians and vehicular traffic as the scheme proposed that 3 of the dwellings having integral garages that opened directly onto the pavement. And, 2) The very small and shaded areas of amenity space for the future occupants of the development.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 It has been requested by the Local Member that the planning application warrants considerations by Members of the Planning Committee

4.0 Community Representations

4.1 **Consultee Comments**

Town Council- The Town Council strongly oppose the application considering that it represents over-intensification of development on the site. It records concern at the absence of on-street parking alongside the fact that concerns already exist with highway and pedestrian dangers appropriate to the site, acknowledging the volume of traffic using the junction and the drop off and collection at the adjoining School.

Concern is also evidenced at the development being so close to busy junctions and the traffic lights that represent a major route in and out of Oswestry.

Highways- No objection following the removal of the on-site parking. The site is sustainably located in close proximity to the town centre and all its availability of infrastructure, community facilities and availability of other modes of transport than just being purely reliant on private transport.

Public Protection- no comments to make on the application

Archaeology- no objection subject to conditions

Affordable Housing- No objection subject to an affordable housing contribution in line with the Council's adopted SPD- Type and Affordability of Housing.

Drainage- No objection subject to conditions

4.2 **Public Comments**

3 letters of representations received commenting on the following issues:

Objection

Encroachment onto neighbours land

No resolution over access rights and boundaries

Impact on neighbours during construction

Cramped rooms

Over development of the plot

Inadequate bin storage and bins obstructing the pavement

Lack of amenity space

Pedestrian safety

Support

The best compromise for the site

No parking is not unique in this location

The site has been an eyesore for long enough

The scheme should be an enhancement to the area

5.0 **THE MAIN ISSUES**

Principle of development

Siting, scale and design of structure

Visual impact and landscaping

Highway implications

6.0 OFFICER APPRAISAL

6.1 Principle of development

6.1.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. Since the adoption of the Council's Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight in the determination of planning applications. The NPPF advises that proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications. Further to the above the Council's SAMDev plan is nearing the end of the process towards adoption having been considered sound by the Planning Inspectorate and is now awaiting consideration by Full Council ahead of its formal adoption. As such very significant weight can be awarded to the SAMDev policies as amended.

6.1.2 The NPPF sets out the presumption in favour of sustainable development as a golden thread running through plan-making and decision-taking (para. 14), so it applies, as a material planning consideration. For decision taking paragraph 14 advises that schemes that accord with a development plan should be approved without delay.

6.1.3 The application site is clearly within the urban area of Oswestry which is the largest market town within the County, the site constitutes a previously developed brownfield and infill site within the development boundary to the settlement. The local area is mixed in character and includes a variety of commercial and residential uses. As such the principle of its redevelopment for residential purposes is clearly acceptable subject to all other material considerations. Redevelopment for residential purposes would be in line with the aims and requirements of adopted Policies CS3, CS6 and CS11 of the Shropshire Core Strategy, MD1, MD2 and MD3 policies of the SAMDev plan and Government advice contained within the National Planning Policy Framework. The other primary considerations are set out below.

6.2 Siting, scale and design of structure

6.2.1 The proposed dwellings will be close to the existing properties that front onto Upper Brook Street and the relationship between proposed and existing dwellings was one of the concerns identified by the Inspector in dismissing the earlier appeal referred to above. The Inspector stated "...the dwellings would in places be less than 6 metres from the rear of the houses on Upper Brook Street. This is less than might normally be expected and it gives rise to potential issues through

overlooking, loss of light and the overbearing impact of new development”. He goes on to comment, “The internal layout is arranged so that bedrooms and bathrooms would be at the rear, reducing the extent to which the privacy of neighbouring residents would be compromised. It also appears that some windows in the existing houses have been screened but the perception of overlooking would remain. In addition, the proximity of the new dwellings would result in an unacceptable sense of enclosure and reduce light levels to the rear of the existing dwellings”.

- 6.2.2 The agents for the previous application sought to overcome the above Inspector’s comments by reducing the height of part of the terrace, the distance between the middle properties to those nearest on Upper Brook Street was also increased. During the latest appeal the Inspector commented that, “the garden depth of properties in Upper Brook Street increases westwards. In these circumstances, the proposal would not, on balance, materially or unreasonably restrict the outlook or availability of daylight and sunlight to the rear of neighbouring houses on Upper Brook Street”. In the application that is now under consideration the applicant has made further changes by only proposing 2-storey dwellings and also further increasing the distance of separation between the proposed and existing properties. At the time of the previous appeal the separation was shown as 9.5 m and 7.0 metres at different points in the site and this has been increased to 12.2 and 7.7 metres respectively. These measurements are taken from the two projecting wings to the rear of the proposed dwellings with the rest of the proposed development having an even greater distance of separation.
- 6.2.3 The Planning Inspector raised no concerns about the impact on outlook or light to the neighbouring dwellings as such the fact that the current application further reduces the height of the proposed dwellings and increases the distance of separation it is also considered that there would be no detrimental impact in this respect.
- 6.2.4 Unlike the previously considered scheme the proposal does now show first floor bedroom windows facing towards the rear windows of the properties on Upper Brook Street; previously only landing windows faced in this direction. Whilst it is acknowledged that the distance between facing windows is less than might be anticipated on more open and less constrained development sites, Officers consider that this must be balanced against the benefits that the development of this unsightly and derelict brownfield site brings. It must also be recognised that this is a near to town centre site where it is common for historic layouts to result in smaller distances of separation and a higher density of development.
- 6.2.5 The external appearance of the development will be traditional in its form. The heights of the development will cascade downwards from the neighbouring development and follow the alignment of the existing terraced properties, although there will be a gap in the terrace which would be filled by a wall with a gate leading through to the shared amenity area for plots 3 and 4. The development would include traditional sash windows and slate roof and robust chimneys to reflect the character of neighbouring buildings and the conservation area.

6.3 Amenity Space

6.3.1 The previous appeal was for a scheme that would have provided very limited and poor quality private amenity space for the future occupiers of the proposed development. This was one factor that contributed towards the Planning Inspector dismissing the appeal. This revised scheme has removed the 3 storey parts of the development and also removed the overhanging first and second floors which caused the Planning Inspector to express concern about the over shadowing of the courtyard areas. The development now proposed would provide more open and more user friendly external amenity spaces. Plots 1 and 2 would have private amenity space measuring 26.1 and 17.3 sq m respectively. Due to the constraints of the site in terms of its shape and land ownership Plots 3 and 4 would have a shared amenity space measuring 33.7 sq m. It is acknowledged that the amenity spaces are small when compared to more typical gardens and they will most likely be hard landscaped but residents would still have sufficient space for some outdoor living as well as space for keeping bicycles, drying clothes, outdoor bin storage etc. It is considered by Officers that the amount of amenity space would meet the most immediate needs for domestic amenity space. For larger open spaces and access to children's play area there is easy access to Cae Glas Park which is just a few minutes walk from the site.

6.4 Impact on Conservation Area

6.4.1 Being within the Town Centre Conservation Area there is a requirement for the proposals to preserve and/or enhance the character and appearance of the Conservation Area. It is considered by Officers that the proposal does follow the pattern of residential development comprising small terraces of properties fronting directly on to the highway. The main finishing materials are traditional and the use of a relevant condition to control their selection can ensure that they are appropriate. It is considered by Officers that the design of the proposed dwellings is acceptable in terms of its location within the Conservation Area.

6.5 Visual impact and landscaping

6.5.1 The proposed development would improve the current overgrown and unkempt appearance of the application site. It would round off development around the corner of the highway in a form which is similar to the character of surrounding development. Because development would be tight to the back of the highway pavement, there is no real scope for landscaping to soften the external appearance of the proposal but the development would be identical to adjacent development in this regard. There will be scope for some very limited and primarily hard landscaping at the rear of the proposed units.

6.5.2 The proposed development will inevitably impact on the outlook from adjacent properties, particularly the rear of those fronting on to Upper Brook Street. There is however no right to a view across the site from those properties and the question is therefore whether the impact is unacceptable in terms of a feeling of enclosure. As confirmed above, officers consider that the changes to this scheme from earlier submissions are on balance sufficient to conclude that the proposed development will not have a significant adverse impact on the privacy, amenity, and will not have a significant overbearing impact on the properties of the Upper Brook Street

residents.

6.6 Highway Safety

6.6.1 One of the primary concerns of the Planning Inspector at the time of the previous appeal was the safety of highway users and pedestrians. To overcome this issue the integral garaging has been completely removed from the application. As such this scheme for four dwellings would not provide any off street parking provision. This is the same situation for many other existing dwellings in the immediate area where occupants rely on the limited supply of on road parking. Not having off street parking is not uncommon in town centre locations where shops, services and facilities are easily accessible and there is also the availability good public transport services and public car parks. As such there is not the necessity to be a car owner in comparison to some of the more rural locations. The roads around the site already have parking restrictions in place, this would ensure that residents do not park in positions where the free flow of traffic and highway safety would be compromised. The Council's Highways Officer has not raised any objection to a development without any off street parking provision.

6.7 Affordable Housing

6.7.1 Regarding the need for an affordable housing payment, Officers acknowledge the November 2014 Ministerial statement and National Planning Practice Guidance (PPG) advising against the use of planning obligations to secure tariff-style contributions. These were afforded weight in a number of recent appeal cases, although the Council contended that those decisions did not set a binding precedent since the evidence underpinning its Core Strategy Policy CS11 had not been considered in full as part of the appeal process. In any event the Government has subsequently withdrawn the relevant PPG following a successful High Court challenge (as of the 31st July 2015). The Council therefore maintains its position that an appropriate affordable housing contribution will continue to be sought in all cases in accordance with adopted Policy CS11 and the Housing SPD. In this case the number of dwelling proposed would not result in the on-site provision of affordable housing; instead a financial contribution would need to be made.

6.8 Other Issues

6.8.1 As part of the consultation process a neighbour has commented on the issue regarding land ownership and access rights. For the purposes of the planning application the applicant has shown all of the proposed development and the private/ shared amenity land to be within the ownership of the applicant. If there is any dispute over ownership or private access right then this would be a civil matter between the two parties concerned.

7.0 CONCLUSION

7.1 The application site is a previously developed site within the built form of the town which is currently overgrown and clearly a candidate for some form of redevelopment. Given the nature of surrounding development and land uses, and the proximity of adjoining properties, residential redevelopment would seem to be the most appropriate. Furthermore the character of residential properties in the

immediate locality is one of quite dense and compact dwellings.

- 7.2 The site is not the easiest to redevelop given the constraints imposed by the proximity of adjoining properties and its location on a bend in the road. This necessitates that any new properties are likely to be sited hard against the rear edge of the footpath to the highway, but this is a common feature of other properties in the vicinity of the site.
- 7.3 Formal amenity space has been provided to the rear of the proposed properties together with the provision of bin storage. The difference with this scheme and previous proposals are the reduction in the number of dwellings and the layout and design of the units mean that they are less suitable for family occupation than earlier submissions. It is acknowledged that there would be no control over occupation of the proposed units but potential occupiers would be fully aware of the limited amenity space and the lack of off street parking.
- 7.4 Given all of the above it is considered that although there are some clear constraints associated with the development of this site, requiring some compromise on the space standards and separation distances and parking provision that may ordinarily be expected. It is considered that on balance it is considered that these issues alone are insufficient to prejudice the proposal as a whole which will provide four dwellings which because of their size would be at the more affordable end of the housing market and located in a sustainable town centre location. Importantly the scheme would allow an existing unsightly site, in a prominent location, which currently has a detrimental impact on the character and appearance of the Conservation Area and its environs.
- 7.5 Therefore subject to the completion of a S106 Agreement to secure the provision of affordable housing in accordance with Council Policy, it is recommended that the application be approved.
- 8.0 Risk Assessment and Opportunities Appraisal
- 8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- ☐ As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- ☐ The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so

unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than 6 weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

9.0 Financial Implications

There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance:

National Planning Policy Framework
Planning Practice Guidance

Core Strategy and Saved Policies:

CS1- Strategic Approach

CS3- Market Towns and other Key Centres

CS6- Sustainable Design and Development Principles

CS11- Type and Affordability of Housing

RELEVANT PLANNING HISTORY:

09/03185/FUL Demolition of existing buildings and erection of six dwellings with associated landscaping works (Renewal of extant permission reference 04/13278/FUL) REFUSE 17th June 2010

11/03612/FUL Demolition of existing buildings and erection of six dwellings with associated landscaping works (amendment to previously withdrawn application 11/02286/FUL) REFUSE 14th October 2011

12/03718/FUL Demolition of existing buildings and erection of five dwellings with associated landscaping works REFUSE 17th October 2013

PREAPP/15/00151 Erection of 4 no. dwellings and associated works PREAIP 12th May 2015

15/03804/FUL Erection of four dwellings PCO

Appeal

10/01814/REF Demolition of existing buildings and erection of six dwellings with associated landscaping works (Renewal of extant permission reference 04/13278/FUL) NOTPW 26th January 2011

Appeal

11/01923/REF Demolition of existing buildings and erection of six dwellings with associated landscaping works (amendment to previously withdrawn application 11/02286/FUL) DISMIS 2nd February 2012

Appeal

13/02088/REF Demolition of existing buildings and erection of five dwellings with associated landscaping works DISMIS 26th March 2014

11. Additional Information

View details online:

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder)

Cllr M. Price

Local Member

Cllr Keith Barrow

Appendices

APPENDIX 1 - Conditions

APPENDIX 1**Conditions****STANDARD CONDITION(S)**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

3. No development shall take place until a scheme of foul drainage, and surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use.

Reason: To ensure satisfactory drainage of the site and to avoid flooding.

4. No development approved by this permission shall commence until the applicant, or their agent or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Local Planning Authority prior to the commencement of works.

Reason: The development site is known to hold archaeological interest.

5. Notwithstanding the details shown on the approved plans, before development commences samples and/or details of the roofing materials and the materials to be used in the construction of the external walls shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.

Reason: To ensure that the external appearance of the development is satisfactory

CONDITION(S) THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT

6. Notwithstanding the details shown on the approved plans prior to their installation details of all rain water goods shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved details.

Reason: To safeguard the architectural and historic interest of the Conservation Area.

7. Notwithstanding the details on the approved plans, all doors and windows shall be constructed of timber. Prior to the commencement of the relevant work details of all external windows and doors and any other external joinery shall be submitted to and approved in writing by the Local Planning Authority. These shall include full size details, 1:20 sections. All doors and windows shall be stalled in complete accordance with the agreed details.

Reason: To safeguard the amenity of the conservation area and the external appearance of the development.

CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

8. Airborne dust from the construction operations on the site shall be minimised by spraying with water or carrying out other such works that may be necessary to suppress dust.

Reason - To minimise disruption to adjoining occupiers and highway users.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order with or without modification), the following development shall not be undertaken without express planning permission first being obtained from the Local Planning Authority:-

- extension to the dwelling
- free standing building within the curtilage of the dwelling
- addition or alteration to the roof
- erection of a porch
- hard surfacing
- container for the storage of oil
- satellite antenna
- fences, gates or walls
- any windows or dormer windows

Reason: To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building.

10. Construction and demolition works shall not take place outside 7:30 hours to 18:00 hours Monday to Friday and 8:00 hours to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

Reason - In the interests of residential amenity

11. The proposed ground floor windows and doors on the side of the buildings adjoining the highway shall be of a type that does not open in the direction of the highway.

Reason: To prevent the opening of windows/doors over the highway footway in the interests of highway safety.

12. No waste materials generated, as a result of the proposed site preparation or construction operations shall be burnt on the site. All such refuse shall be disposed of by a suitable alternative method.

Reason - In the interest of residential amenity

Informatives

1. The land and premises referred to in this planning permission are the subject of an Agreement under Section 106 of the Town and Country Planning Act 1990.

2. Wales & West Utilities has pipes in the area. Apparatus may be affected and at risk during construction works. The applicant is advised to contact Wales and West Utilities directly to discuss requirements in detail before any works commence on site.

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