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Case Number	20/03153/FUL (Formerly PP-08913098)
Application Type	Full Planning Application
Proposal	Change of use of land to form residential curtilage on land outside nos 26 and 28 Drury Lane.
Location	Land to front of 26 & 28 Drury Lane Sheffield S17 3GG
Date Received	11/09/2020
Team	South
Applicant/Agent	Alex Mylotte And Sophie Douglas
Recommendation	Grant Conditionally

## **Time limit for Commencement of Development**

1. The development shall be begun not later than the expiration of three years from the date of this decision.

Reason: In order to comply with the requirements of the Town and Country Planning Act.

## **Approved/Refused Plan(s)**

2. The development must be carried out in complete accordance with the following approved documents:

Amended Location Plan published 03rd December 2020 (ref: DL\_PA\_0001)

Proposed Site Plan received 11th September 2020 (ref: DL\_PA\_0002)

Highways Record published 17th December 2020 (ref: HR)

Reason: In order to define the permission.

## **Pre Commencement Condition(s) – ('true conditions precedent' – see notes for definition)**

## **Other Pre-Commencement, Pre-Occupancy and other Stage of Development Condition(s)**

4. Details of any boundary treatment shall be submitted to and approved in writing by the Local Planning Authority before any above ground works commence, or within an alternative timeframe to be agreed in writing by the Local Planning Authority and thereafter such means of boundary treatment shall be retained.

Reason: In the interests of the visual amenities of the locality.

5. Before the development is commenced, full details of measures to protect the existing tree to be retained, have been submitted to and approved in writing by the Local Planning Authority and the approved measures shall thereafter be implemented. These measures shall include a construction methodology statement and plan showing accurate root protection areas and the location and details of protective fencing and signs. Protection of trees shall be in accordance with BS 5837, 2012 (or its replacement) and the protected areas shall not be disturbed, compacted or used for any type of storage or fire, nor shall the retained trees, shrubs or hedge be damaged in any way. The Local Planning Authority shall be notified in writing when the protection measures are in place and the protection shall not be removed until the completion of the development.

Reason: In the interests of protecting the identified trees on site. It is essential that this condition is complied with before any other works on site commence given that damage to trees is irreversible.

#### **Other Compliance Conditions**

6. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, or any Order revoking or re-enacting that Order, no walls, fence or other means of enclosure, which would otherwise be permitted by Class A to Part 2 of Schedule 2 to the Town & Country Planning (General Permitted Development) (England) Order 2015 shall be carried out without prior planning permission.

Reason: In the interests of the visual amenities of the Dore Conservation Area.

7. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, or any Order revoking or re-enacting that Order, no provision of a hard surface within the site which would otherwise be permitted by Class F to Part 1 of Schedule 2 to the Town & Country Planning (General Permitted Development) (England) Order 2015 shall be carried out without prior planning permission.

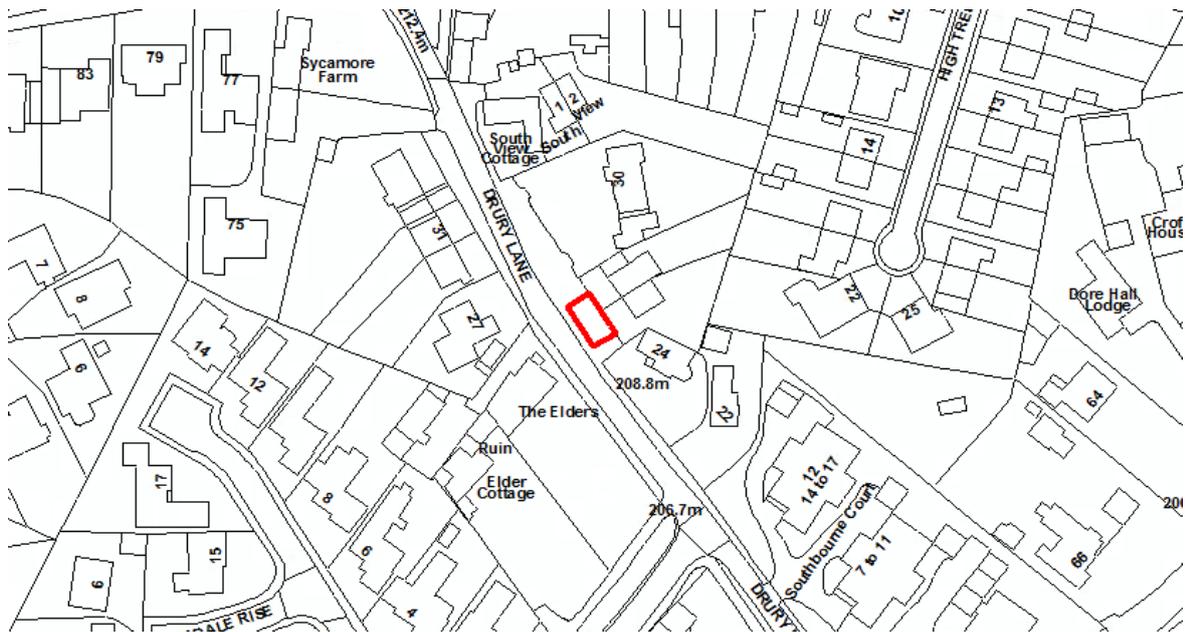
Reason: In the interests of the visual amenities of the Dore Conservation Area.

#### **Attention is Drawn to the Following Directives:**

1. The Local Planning Authority has dealt with the planning application in a positive and proactive manner and sought solutions to problems where necessary in accordance with the requirements of the National Planning Policy Framework.

2. This site contains trees, which are protected by Tree Preservation Orders or Conservation Areas. These trees must be retained and protected and the Local Planning Authority may pursue legal action where vegetation is illegally damaged or removed. The Wildlife and Countryside Act may also be a legal consideration in the removal or works to trees, if the trees are providing a habitat to protected species or a nest site to wild birds.

## Site Location



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## LOCATION AND PROPOSAL

This application relates to a pair of semi-detached dwellings at 26 & 28 Drury Lane situated in a Housing Area as defined in the Sheffield Unitary Development Plan. The property is situated adjacent to Dore Conservation Area, with the Conservation Area boundary following the highway running in front of the dwellings along Drury Lane and includes the grass verge where the change of use is proposed.

The dwellinghouses which are the subject of this application are faced in white render with stone to the lower section of the property and a tiled roof. The properties are situated at a similar land level to the public highway with each having their own drive to access the dwellings.

There is an existing low stone boundary wall to the front of the properties which spans across the front of the plots with an opening for the driveways at either end. Between the stone wall and Drury Lane lies a grass verge with a tree within it.

This planning application seeks consent to change the use of the existing area of grass verge currently maintained by Highways to become an extension of the current domestic curtilage. The applicant's intention is to also re-position the existing stone boundary wall.

The area of land, to which the change of use relates, formerly formed part of the title of the land now occupied by 26 and 28 Drury Lane. The land was given over to highway when the two properties were built, as Drury Lane at the time was subject to a widening Order under Section 30 of the Public Health Act 1925. This Order was subsequently revoked in 1990 and results in an irregular area of highway to the front of the two properties.

The front boundary wall would be moved forward by approx. 5.1 metres to enclose the land, it would be constructed at the same height, using the original stone, and would be approximately 0.9 metres high.

## RELEVANT PLANNING HISTORY

There is no planning history relevant to the determination of this application.

## SUMMARY OF REPRESENTATIONS

Immediate neighbours were notified of the application by letter. 16 representations were received, with 12 objecting to the proposed works and 4 being in support. 13 of the comments are from people living locally, 2 are from local Councillors and 1 from the Dore Village Society.

### Objections

Councillor Martin Smith expressed concerns that the change of boundary of a conservation area would set a worrying precedent for the local area.

Councillor Colin Ross raised great concerns due to the application taking a verge which is part of the conservation area and that granting permission will create a

precedent for other applications in Conservation Areas.

Dore Village Society commented that the land is not part of the existing residential curtilage and is presumably not owned by the properties. This issue needs to be settled by Sheffield City Council. The land falls within the Dore Conservation Area with the boundaries for the properties forming the boundary of the Dore Conservation Area. The change of use will set an unacceptable precedent. The change of use will irrevocably change the character of the section of Drury Lane. Planning permission should be refused.

A summary of the comments received from neighbouring properties is below:

- The grass verge is within the Conservation Area, and the change of use to domestic will impact on the appearance of Dore Conservation Area
- Impact on the highways tree
- No benefit to the community or village amenity if the land is in private ownership
- There are no footpaths at this point on Drury Lane and the grass verge allows pedestrians to avoid traffic
- The grass verge adds to the unique character of Dore

Support

A summary of the comments received is below:

- A verge of 2.5m is retained and is ample for pedestrians
- Most pedestrians use the other side of Drury Lane at this point as this is where the footpath is
- The street scene may be more attractive than poorly kept grass which the owners of the property already maintain given how infrequently the council services it
- Reducing the size of grass verge will not change the character of the area as it's a small strip of grass rather than an architectural or historical feature
- Space remains for pedestrian access

Non-Planning Issues Raised:

- The applicants do not own the land and have no right to apply for a change of use. Public land should remain public
- The authority should ensure the wall is re-built in its former position before considering the application

## RESPONSE TO REPRESENTATIONS

Issues regarding the principle, and highways, are addressed in the Planning Assessment. The remaining issues are addressed below:

- Planning permission is for the use of the land. Ownership is not a determining factor in the outcome of the application.
- This application does not change the Dore Conservation boundary, rather the relocation of a front boundary wall to domestic properties.
- Demolition of the wall does not require planning permission therefore the local authority cannot demand that the wall be re-built.

## PLANNING ASSESSMENT

### Principle of the Use

The application site is located within a Housing Area, as defined in the adopted UDP. UDP Policy H10 'Development in Housing Areas' lists housing (C3) as the preferred use, so the proposed use of the land for residential purposes is clearly acceptable in principle.

Policy H14 relates to conditions of development in housing areas, with (a) and (l) being relevant in this case, which require good design, in scale and character of the area.

### Dore Neighbourhood Plan

The Dore Neighbourhood Plan has reached the Publication Consultation (Reg 16) stage with the consultation period finishing on the 26th October 2020.

Para 48 of the NPPF states: 'Local planning authorities may give weight to relevant policies in emerging plans according to: a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)'

The appointment of an examiner is now being progressed. The policy weight will only change once the examiner's report has been issued. Policies are considered to have limited weight if there is no inconsistency with the NPPF, and no unresolved significant objections. These policies would then need to be considered alongside all other development plan policies and material considerations.

None of the Policies within the Dore Neighbourhood Plan strictly relate to this application, however it is noted that Policy DN12 'Demolition in Dore Conservation Area' ii) relates to the demolition of a gate, fence wall or railing more than one more high next to the highway or public open space; or more than two metres high elsewhere. At present, this policy has limited weight as it is consistent with the NPPF. However, as the existing wall is less than a metre in height, DN12 cannot be applied.

Impact on the Character of the Area, and Conservation Area

Unitary Development Plan Policies H14 ('Conditions on Development in Housing Areas'), and Core Strategy Policy CS74 ('Design principles'), require good quality design in keeping with the scale and character of the surrounding area.

These policies are in conformity with the National Planning Policy Framework and in particular paragraph 127 which states that planning decisions should ensure that developments are visually attractive as a result of good architecture and result in a high standard of amenity.

Policy BE16 states that in Conservation Areas permission will only be given for proposals which contain sufficient information to enable their impact on the Area to be judged acceptable and which would preserve or enhance the character or appearance of the Conservation Area.

Policy BE17 states that in Conservation Areas and Areas of Special Character, a high standard of design using traditional materials will be expected for alterations and extensions to existing buildings.

The NPPF in paragraphs 193 to 196 requires great weight to be given to the significance of heritage assets such as conservation areas.

The change of use includes proposals for the re-location of an existing stone boundary wall which will use the existing stones and be identical in appearance, additionally a grass verge of 2.75 metres and existing highways trees are intended to be retained.

The boundary treatments along Drury Lane are of an irregular and organic nature, with the properties at number 26, 28 and 30 set unusually far back from the highway, with a tree in the verge which largely screens the two properties when approaching from the north. Most other properties within the immediate vicinity are a more traditional distance from the highway, with the front boundary wall of number 24 being approximately 1 metre from the public highway and front boundaries to flats at Southbourne Court and properties directly opposite from the applicant site being similarly setback from the highway as the proposed. Therefore, front boundary treatments closer to the public highway are evident within the immediate vicinity, and the proposal would not form an incongruous feature which is at odds with the character of Drury Lane.

Concerns have been raised regarding the removal and relocation of the existing stone wall at the end of the original garden space. The wall is approximately 8.2 metres from the roadway and is partially screened by vegetation. As above, it's removal could take place without requiring planning permission, and it is not therefore considered it would be reasonable or legitimate to resist granting permission due to impacts relating to the loss or reconstruction of the walling.

Overall, the proposal is considered to have an acceptable impact upon the character of the area and results in no harm to the Dore Conservation Area. therefore, the relevant local planning policies would be satisfied and there would be no conflict with the provisions of the National Planning Policy Framework.

## Highway Issues

The proposals to increase the residential curtilage of both properties raise no highway safety issues.

This development will require an area of highway verge to be permanently stopped up, as shown on the plan number HR\D209. As a result of an Order under Section 30 of the Public Health Act 1925, the original developer of numbers 26 and 28 was required to give up a strip of land that would widen Drury Lane along the frontage of the development. In 1990 this Order was revoked, removing this requirement for future developments on this street. Consequently, this has resulted in an irregular area of highway, which can be seen on the plan, and which for the most part does not serve the purpose of a highway i.e. to pass and repass. The highway verge outside 26-28 Drury Lane is currently approximately 8.2 metres wide. Closure of the subject area will reduce the width of the verge to 2.75 metres, though this is more in keeping with much of this side of Drury Lane.

Therefore, closure of this part of the highway verge should not affect the public's use of Drury Lane as a highway. The closure is necessary for the proposed development and it is considered that it will have no detrimental effect on the surrounding highway network.

The land was previously a grass verge adjoining the front boundary wall of the properties, which is considered of little use to highway users and would not give rise to detrimental impacts, as this would only mirror common situations typical elsewhere along Drury Lane.

Closure of the highway will rationalise the highway boundary at this location, whilst retaining a more than adequate highway verge of 2.75m.

Given these circumstances, the principle of the change of use is not considered to have detrimental impacts in highways terms.

### Impact on Neighbouring Occupiers

The proposed change of use of the land is not considered to result in any negative amenity impact on neighbouring occupiers. Approximately 2.75 metres of highway verge will be available for pedestrians and does not give rise to highways safety concerns as this exceeds the 2m required for a footpath.

### Tree Within the Highway Verge

One of two existing mature trees is situated close to the existing drive at number 28 within the grass verge and contributes both to public amenity and to the character of the Conservation Area. There are no proposed additional hard surfaces in close proximity to the tree, but it is considered necessary to ensure no such works take place in future that would harm the tree and a condition can prevent this.

In addition, if a boundary wall is constructed at the extent of the site closest to Drury Lane, as proposed by the applicant it has the potential to impact on the longevity of the tree because of damage to tree roots. As set out above, the principle of erecting a wall in this location is acceptable but it is essential that it and any future replacement boundary features have no impact upon the tree. Therefore it is considered necessary to prevent the uncontrolled erection of boundary features by the removal through condition of Class A, Part 2, of Schedule 2 permitted development rights which pertain to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

The applicant has not provided full details of the proposed wall in terms of its precise location relative to the tree, construction methods or tree protection measures. A further condition will require full details of any proposed boundary treatment to be submitted for approval before construction. This will enable full consideration of the impact of the boundary on the tree and can ensure both a method of enclosure that would cause no harm to the tree and would be appropriate for the Conservation Area. If a stone wall cannot be constructed in this location without harm to the tree, an alternative form of boundary could be accommodated – for example hedging of an appropriate species.

## SUMMARY AND RECOMMENDATION

### Planning Permission

The proposal for increasing the extent of residential curtilage to the two properties by taking up public highway is acceptable use of the land, raises no highway safety concerns and subject to conditions regarding boundary treatment results in no harm to the character of the Dore Conservation Area.

It is therefore considered that the development would be in accordance with UDP Policies H10, H14, BE16 and BE17 and does not conflict with the provisions of the National Planning Policy Framework, and it is recommended that planning permission be granted subject to the listed conditions.

### Stopping Up of Highway

An Order authorising the stopping up (removal of public rights of way) of any highway can be made, if the Secretary of State is satisfied to do so, to allow development to be carried out in accordance with a valid and relevant planning permission granted under Part III of the Town and Country Planning Act 1990.

The highway to be stopped up must be being developed upon and fall within the planning boundary or be a condition of the planning permission. The Order may also include the provision of new or improved highways as long as these also form part of the planning permission.

A conflict between the planning permission and a public right of way is essential for the grant of a stopping up order. The highway itself does not need to be obstructed by a physical development, a change of use of the land can be sufficient, provided the change of use requires the highway to be closed.

Section 247 of the Town and Country Planning Act 1990 enables the Council to make an order stopping up a highway in its area if it is satisfied that it is necessary to do so in order to enable development to be carried out. The Council's highway officers have considered the application and consider that the stopping up and diversion is acceptable in all material respects to enable development pursuant to planning permission.

Members are therefore requested to confirm that they:

- Raise no objection to the proposed Stopping Up of the areas of highway shown on the plan referenced as HR\D209, subject to satisfactory arrangements being made with Statutory Undertakers with regards to such of their mains and services that may be affected.
- Authorise Legal Services to take all necessary action on the matter under the relevant powers contained within Section 247 of the Town and Country Planning Act 1990.

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