



## Notice of a public meeting of

### Area Planning Sub-Committee

- To:** Councillors Galvin (Chair), Shepherd (Vice-Chair), Carr, Craghill, Derbyshire, Gillies, Hunter, Cannon, Looker, Mercer and Orrell
- Date:** Thursday, 3 September 2015
- Time:** 4.30 pm
- Venue:** The George Hudson Board Room - 1st Floor West Offices (F045)

### A G E N D A

**The mini-bus for Members of the sub-committee will leave from Memorial Gardens at 10.00 am on Wednesday 2 September 2015.**

#### 1. **Declarations of Interest**

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

#### 2. **Minutes** (Pages 3 - 8)

To approve and sign the minutes of the last meeting of the Area Planning Sub-Committee held on 6 August 2015.

#### 3. **Public Participation**

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Sub-Committee's remit can do so. Anyone who wishes to register or requires further information is requested to contact the Democracy Officer on the contact details listed at the foot of this agenda. The deadline for registering is **Wednesday 2 September 2015 at 5.00 pm.**

## **Filming, Recording or Webcasting Meetings**

Please note this meeting may be filmed and webcast or audio recorded and that includes any registered public speakers, who have given their permission. The broadcast can be viewed at <http://www.york.gov.uk/webcasts> or, if sound recorded, this will be uploaded onto the Council's website following the meeting.

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## **4. Plans List**

To determine the following planning applications:

- a) **47 Thirkleby Way, Osbaldwick, York YO10 3QA (15/01533/FUL)** (Pages 9 - 18)  
Change of use from dwelling (use class C3) to House in Multiple Occupation (use class C4) [Osbaldwick and Derwent] **[Site Visit]**
- b) **Former Reynard's Garage, 17 Piccadilly, York YO1 1PB (15/01458/FUL)** (Pages 19 - 32)  
Demolition of existing building [Guildhall] **[Site Visit]**
- c) **8 Leven Road, York YO24 2TJ (15/01410/FUL)** (Pages 33 - 42)  
Change of use from dwelling (use class C3) to House in Multiple Occupation (use class C4) [Dringhouses and Woodthorpe] **[Site Visit]**

- d) **16 Farndale Avenue, York YO10 3PE (15/01278/FUL)**  
(Pages 43 - 52)

Change of use from office (use class B1) to restaurant/ cafe (use class A3) [Osbalwick and Derwent] **[Site Visit]**

- e) **31A Rosslyn Street, York YO30 6LG (15/00143/FUL)**  
(Pages 53 - 68)

Erection of 1no. cottage and 2no. flats after demolition of workshop [Clifton] **[Site Visit]**

- f) **Royal Masonic Benevolent Institute, Connaught Court, St Oswald's Road, York YO10 4QA (13/03481/FULM)** (Pages 69 - 106)

This report seeks a decision from Members to enter into a Section 106 Deed of Variation to delete the requirement for an Open Space Commuted Sum Payment of £48.856, and confirmation of the previous decision taken by the Area Sub Committee on 11<sup>th</sup> June 2015 in relation to the proposed development of 14 dwellings under planning application reference 13/03481/FULM to grant planning permission. [Fulford and Heslington]

## 5. **Urgent Business**

Any other business which the Chair considers urgent under the Local Government Act 1972.

### Democracy Officer:

Name: Judith Betts

Contact Details:

- Telephone – (01904) 551078
- E-mail –judith.betts@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim (Polish)  
własnym języku.

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

**AREA PLANNING SUB COMMITTEE****SITE VISITS****Wednesday 2 September 2015**

**The mini-bus for Members of the sub-committee will leave from  
Memorial Gardens at 10.00**

<b>TIME</b> <b>(Approx)</b>	<b>SITE</b>	<b>ITEM</b>
10.15	31A Rosslyn Street	4e
11.00	8 Leven Road	4c
11.30	16 Farndale Avenue	4d
11.50	47 Thirkleby Way	4a
12.20	Former Reynard's Garage, 17 Piccadilly	4b

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City of York Council

Committee Minutes

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Meeting	Area Planning Sub-Committee
Date	6 August 2015
Present	Councillors Galvin (Chair), Shepherd (Vice-Chair), Carr, Craghill, Gillies, Hunter, Cannon, Looker, Mercer and Orrell
Apologies	Councillor Derbyshire

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Site Visited	Visited by	Reason for visit
17 Tadcaster Road	Councillors Cannon, Carr, Galvin, Gillies, Hunter, Mercer and Shepherd.	At the request of Councillor Carr.

## 9. Declarations of Interest

At this point in the meeting, Members were asked to declare any personal, prejudicial or disclosable pecuniary interests not included on the Register of Interests that they might have in the business on the agenda. Councillor Orrell declared a personal non prejudicial interest in plans item 5a (33 Upper Newborough Street) as he knew the applicant's agent who was Councillor Chris Cullwick.

## 10. Exclusion of Press and Public

Resolved: That the press and public be excluded during the consideration agenda Item 7 (Planning Enforcement Cases Update) should members need to discuss individual enforcement cases on the grounds that they are classed as exempt under Paragraphs 1, 2 and 6 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

## 11. Minutes

Resolved: That the minutes of the meeting of the Area Planning Sub Committee held on 9 July 2015 be signed and approved by the Chair as a correct record.

## **12. Public Participation**

It was reported that there had been no registrations to speak under the Council's Public Participation Scheme on general issues within the remit of the Sub-Committee.

## **13. Plans List**

Members considered a schedule of reports of the Assistant Director (Development Services, Planning and Regeneration) relating to the following planning applications outlining the proposals and relevant policy considerations and setting out the views of consultees and Officers.

### **13a) 33 Upper Newborough Street, York. YO30 7AR (15/01033/CLU)**

Members considered an application for a Certificate of Lawful Existing Use from Mr Keith Cullwick for use of the property as a House in Multiple Occupation for up to 4 occupants within use class C4.

Officers asked Members to note a correction to the report. Paragraph 4.8 referred to the applicant's agent being the "brother in law of the applicant". This should in fact read "brother of the applicant".

The Committee was reminded that this application was not an application for planning permission but for the granting of a Certificate of Lawful Existing Use and Members should decide whether its use as a House in Multiple Occupation is in accordance with the law.



Members agreed that, based on the evidence contained in the report, that the property had been occupied as an HMO by up to 4 occupants within the C4 Use Class on the key date of 20<sup>th</sup> April 2012, when the Article 4 direction came into force, and this use had continued until the date of the application.

Resolved: That the application for a Certificate of Lawful Existing Use be granted.

Reason: The Council is satisfied that, on a balance of probability, the property was in use as a House in Multiple Occupation within use class C4 by up to 4 occupants on 20 April 2012, prior to the introduction of the Article 4 Directive removing permitted development rights for changes of use between Use Class C3 (Dwellinghouse) and Use Class C4 (House in Multiple Occupation) and that the use continued as such at the date of this application. A Certificate of Lawful Development for this use is therefore justified.

**13b) 17 Tadcaster Road, Copmanthorpe, York. YO23 3UL  
(15/01287/FUL)**

Members considered a full application from Mr and Mrs Jennings for two storey front and rear extensions, first floor side extensions and the erection of a garage block to the front (resubmission).

Officers advised that there were two main issues with the proposals. The first was the two storey side extension which they felt would reduce the existing visual gap between the host dwelling and 19 Tadcaster Road, which was an important characteristic of the style of properties in the area. The second was the scale of the proposed detached garage block to the front would harm the character of the area and due to its footprint, height and siting in the front garden, would significantly harm the outlook from 19 Tadcaster Road. They asked Members to consider whether the harm identified outweighed the general presumption in favour of sustainable development.

Mr Matthew Pardoe addressed the committee on behalf of the architects in support of the application. The applicant's architect, Kate MacNeill, was also in attendance.

Mr Pardoe advised Members that, if approved, the current ad hoc appearance of the building would be replaced with a cohesive design. The revised scheme addressed the two main concerns raised by officers in relation to the withdrawn scheme. It would not bring the property any closer to the properties to either side than at present, and a similar separation to the road would occur, therefore there would be no significant impact on the amenity of adjacent residents and no neighbour objections had been received. He advised that there would be considerable landscaping around the garage so the outlook for 19 Tadcaster Road would not be significantly affected, nor would the proposed garage have a significant detrimental impact on the area.

One Member questioned whether the garage could be located on the large area of land at back of the house instead of it being at the front of the plot but was advised that there was no access to the rear as the property from the front as the building stretched from one side of the plot to the other as did another six out of eight other substantial houses on the street.

Mr Pardoe explained that due to the change in levels of the sloping site, the house would be elevated in comparison to the garage which would sit at a lower level and this had been the reason for choosing this position for the garage.

One member expressed concern about the impact of the proposed changes on the property's boundaries and concern about the garage.

Members agreed it had been beneficial to go on the site visit. They noted that the property was currently a combination of many different add ons and was not a particularly attractive building, and they felt that these proposals would produce a more coherent appearance. They acknowledged that the garage could not be positioned at the rear of the site due to access issues. They noted however that there was good landscaping around the proposed garage in the form of trees and bushes and considered that the garage would hardly be apparent in the streetscene. The majority of members expressed their support for what they considered was a well thought out scheme which would significantly improve the appearance of the building.

Officers reminded committee members that there was still a week to run on the consultation period and advised that if Members were minded to approve the application subject to the standard conditions, that delegation be given to officers to approve it following the end of the consultation period. Members asked that if any objections were received during the remainder of the consultation period, that this application be brought back to committee for reconsideration.

Resolved: (i) That delegated authority be given to officers to approve the application, subject to standard conditions, following the end of the consultation period on 13 August and subject to no objections being received during the remainder of the consultation period.

(ii) That if any objections were received during the remainder of the consultation period, the application be taken back to committee for reconsideration.

Reason: Members felt that the harm identified in the report would be outweighed by the improvements to the appearance of the building through the proposed scheme.

#### **14. Appeals Performance and Decision Summaries**

Members received a report which informed them of the Council's performance in relation to appeals determined by the Planning Inspectorate from 1 January to 30 June 2015, and which provided them with a summary of the salient points from appeals determined in that period. A list of outstanding appeals to date was also included in the report.

Resolved: That the report be noted.

Reason: To inform Members of the current position in relation to planning appeals against the Council's decisions as determined by the Planning Inspectorate.

**15. Planning Enforcement Cases Update**

Members received a report which provided them with a quarterly update on planning enforcement cases and informed them of a change in the way in which updates on enforcement cases would be presented to Members from now on.

Resolved: That the report be noted.

Reason: To update Members on the number of outstanding enforcement cases within the Sub-Committee's area.

Councillor J Galvin, Chair

[The meeting started at 4.30 pm and finished at 5.20 pm].

**COMMITTEE REPORT**

**Date:** 3 September 2015      **Ward:** Osbaldwick and Derwent  
**Team:** Householder and      **Parish:** Osbaldwick Parish  
Small Scale Team                      Council

**Reference:** 15/01533/FUL  
**Application at:** 47 Thirkleby Way Osbaldwick York YO10 3QA  
**For:** Change of use from dwelling (use class C3) to House of  
Multiple Occupation (use class C4)  
**By:** Miss Luciana Nok Sze Lau  
**Application Type:** Full Application  
**Target Date:** 9 September 2015  
**Recommendation:** Approve

**1.0 PROPOSAL**

1.1 This application seeks planning permission to convert a three bedroom single occupancy dwelling house (Use Class C3) into a four bedroom house in multiple occupations (HMO) (Use Class C4). The current layout provides a lounge/dining room, kitchen and utility on the ground floor with three bedrooms and bathroom room on the first floor. The application site is a semi detached property with an attached garage set back from the public highway and situated with ample gardens to the front and rear.

1.2 This application has been called in to the Area Planning Sub Committee by Councillor Mark Wartens on the basis of neighbour amenity issues.

**PROPERTY HISTORY:**

1.3 The application to construct a single storey rear extension and side dormer at this property has been withdrawn on 03.08.2105 (ref 15/01364/FUL).

**2.0 POLICY CONTEXT**

2.1 Development Plan Allocation:

City Boundary York City Boundary 0001  
DC Area Teams East Area (1) 0003

2.2 Policies:

CYGP1 – Design  
CYH8 – Houses in Multiple Occupation

### 3.0 CONSULTATIONS

#### INTERNAL

##### Planning and Environmental Management

3.1 Within 100m of 47 Thirkleby Way, Osbaldwick, there are currently 2 known HMOs out of 42 properties, 4.76%. At the neighbourhood level there are currently 92 known HMOs out of 746 properties, 12.33%. In accordance with the provisions of the SPD neither the neighbourhood or street level thresholds have been breached.

##### Highway Network Management

3.2 Verbally officers confirm that no proposed traffic calming measures are in place in this location.

#### EXTERNAL:

##### Osbaldwick Parish Council

3.3 The Parish Council object on the following grounds:

- Loss of family homes
- Noise at unsociable hours
- Increased on street parking
- Over load sewage systems
- Inadequate waste disposal
- Unhygienic storage of rubbish in front garden
- Increase in non- tax paying households
- No confidence in accuracy of HMO database with database/ concerns that street levels have been breached

##### Neighbour notification and Publicity

3.4 Objections have been received from 5 neighbouring properties on the following grounds:

- The numbers of HMO properties in Osbaldwick are approaching a point where they are detrimental to local community and create an unbalanced community.
- The street level is breached
- Alter the street from being family orientated
- Increase in HMO could result in a reduction of school places for the families in neighbourhood
- Noise

- Poor Parking
- Safety of Children
- Additional rubbish
- Small Avenue with an existing two HMO property.

3.5 A Petition received from the occupiers of eleven properties in Thirkleby Way raising the following issues:-

- External maintenance of the HMO houses
- Exposed waste/ recycling boxes
- Loss of balanced community
- Parking/ parking in the customer car parks for the nearby shops
- Three houses in a row uses as HMO (if approved)

## 4.0 APPRAISAL

### KEY ISSUES

4.1 The key issues in assessing the proposal are:

- Whether the change would lead to an unacceptable concentration of HMOs in a single location.
- Whether the accommodation is of an appropriate standard and whether the use would impact adversely on local residents.

4.2 The National Planning Policy Framework 2012 (NPPF) sets out the overarching roles for the planning system. In Paragraph 14 it advises that there is a presumption in favour of sustainable development at the heart of the Framework, which should be seen as a golden thread running through both plan-making and decision-taking.

4.3 Paragraph 17 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Paragraph 50 states that in order to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities the local planning authority should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community.

4.4 The Development Control Local Plan was approved for Development Control purposes in April 2005; its policies are material considerations although it is considered that their weight is limited except where in accordance with the NPPF.

4.5 Development Control Local Plan Policy CYH8: Conversions, sets out the criteria by which conversions of houses to HMO's should be assessed.

On this basis planning permission will only be granted for the conversion of a house to a HMO where:

- the dwelling is of sufficient size (min 4 bedrooms) and the internal layout is shown to be suitable for the proposed number of households or occupants and will protect residential amenity for future residents;
- external alterations would not harm the appearance of the area;
- adequate on and off road parking and cycle parking is incorporated;
- it would not create an adverse impact on neighbouring amenity through noise disturbance or residential character by virtue of the conversion alone or cumulatively with a concentration of such uses;
- adequate provision is made for the storage and collection of refuse and recycling

4.6 Draft Supplementary Planning Document (SPD): Controlling the Concentration of Houses in Multiple Occupancy was approved by cabinet on 15 April 2012. This Guidance has been prepared in connection with an Article 4 Direction which the Council made in respect of houses within the defined urban area. It has the effect of bringing the change of use of dwellings (Class C3) to small HMO's occupied by between 3 and 6 people (Class C4), which would otherwise be permitted development, within planning control.

4.7 Paragraph 5.7 of the SPD advises that applications for change of use from dwellings to HMO's will only be permitted where:

- a) The property is in a neighbourhood area where less than 20% of properties are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and
- b) Less than 10% of properties within 100 metres of street length either side of the application property are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and
- c) The accommodation provided is of a high standard which does not detrimentally impact upon residential amenity.

4.8 Paragraph 5.17 of the SPD advises that in assessing planning applications for HMOs the Council will seek to ensure that the change of use will not be detrimental to the overall residential amenity of the area. In considering the impact on residential amenity attention will be given to whether the applicant has demonstrated the following:



- the dwelling is large enough to accommodate an increased number of residents;
- there is sufficient space for potential additional cars to park;
- there is sufficient space for appropriate provision for secure cycle parking;
- the condition of the property is of a high standard that contributes positively to the character of the area and that the condition of the property will be maintained following the change of use to HMO;
- the increase in number of residents will not have an adverse impact on noise levels and the level of amenity neighbouring residents can reasonably expect to enjoy
- there is sufficient space for storage provision for waste/recycling containers in a suitable enclosure area within the curtilage of the property; and
- the change of use and increase in number of residents will not result in the loss of front garden for hard standing for parking and refuse areas which would detract from the existing street scene

#### PRINCIPLE OF CHANGE OF USE:

4.9 The application property falls within a neighbourhood area where 92 out of 746 properties are HMOs (12.33%) and within 100m of the property, 2 out of 42 properties are HMOs (4.76%). The application is in accordance with the provisions of the Draft HMO SPD as the neighbourhood and street level threshold have not been breached. As such the principle of the change of use to HMO is considered to be acceptable.

#### ACCOMMODATION:

4.10 There are three bedrooms proposed on the first floor with one bathroom. The downstairs would provide a living room/ kitchen and utility area. There is one further bedroom proposed by converting the existing dining room located at the rear of the dwelling. The external areas incorporate an attached garage that can be used as vehicle parking, cycle storage and storage for wheeled bins/ recycling boxes. Also additional parking for one car can be achieved on the side driveway. There is an ample sized enclosed rear garden, which can be used as outdoor amenity space and is adequately screened from adjacent neighbouring properties and rear boundary by a close boarded fence. It is noted that the smallest bedroom on the first floor is small but that this was originally designed to be used as a bedroom. The facilities provided are of a sufficient standard to accommodate four individual occupants on a shared basis.

4.11 The property is in close proximity to York University and local public transport links into the city centre, as well as a range of local shops. There would be sufficient car and cycle parking available within the existing garage and side driveway. The proposal conforms to the Council's maximum car parking standards.

RESIDENTIAL AMENITY/ PUBLICITY OBJECTIONS:

4.12 In terms of neighbour amenity the use of the property as a C4 HMO is not in itself a reason to refuse the application on neighbour amenity grounds. However, the objections received from the local neighbourhood have been assessed in connection with suitability of the property, noise, disturbance, pollution and the associated parking and cycle storage facilities.

4.13 In terms of the concerns raised by the residents on issues of additional on-street car parking, there are no car parking restrictions on Thirkleby Way and the width of the highway allows cars to be parked on the roadside whilst also allowing cars to pass. Highway Officers have confirmed that parking problems around the shops occur mostly during deliveries to the local supermarket. Furthermore it is not considered that the HMO use would necessarily generate greater demand for parking than a family dwelling. However, a condition is recommended that the attached garage shall remain and not be converted into additional accommodation, so that acceptable off street car and cycle parking is retained.

4.14 In addressing issues of the lack of property maintenance, the applicant would be required to submit a comprehensive management plan on the grant of planning permission. The management plan would ensure that the property is properly maintained so that it does not detract from the local environment. The Management Plan would also provide information and advice to residents, garden maintenance, refuse and recycling collections and property maintenance issues. It is also the case that this would be controlled by condition, which would provide an opportunity for any problems that may arise to be referred to the applicant.

4.15 In terms of unsociable noise and behaviour from the tenants, the house is shown as offering accommodation for up to four people and this is not excessive. Levels of C4 uses are acceptable in the area so general comings and goings associated with such a use, which can be an issue where there is an unacceptable concentration of such properties should not materialise here. Normal comings and goings from this one property are unlikely to result in such harm to neighbours as to refuse the application. There is no specific evidence to suggest that the occupation of the property as HMO would result in additional noise or disturbance that would adversely affect the character of the area. Issues relating to noise, untidy land, rubbish and late night noise from students could be addressed under separate legislation such as the Environmental Protection Unit.

4.16 In terms of the concerns relating to the loss of family homes for rented accommodation and primarily student housing, this situation is controlled by the Article 4 Direction placed on all houses within the urban areas of York, which is supported by the SPD (Controlling the Concentration of Houses in Multiple Occupancy).

Whilst these concerns are appreciated, nevertheless, the SPD document focuses on avoiding high concentrations of HMO's in particular streets/areas, in order to avoid the undue loss of family homes and maintaining community cohesion and helping the development of strong, supportive and durable communities. Furthermore, within the context of the SPD the aim is to avoid situations where existing communities become unbalanced by narrowing household types which can have a detrimental impact on neighbourhoods.

## 5.0 CONCLUSION

5.1 The property is within the urban area, well served by local facilities and close to public transport routes. The dwelling is considered to be a sufficient size, and with an adequate internal layout, for the ongoing to accommodation of three unrelated individuals. The thresholds within the Council's Supplementary Planning Document have not been exceeded. There is no evidence to suggest a potentially significant impact upon the amenity of existing local residents. As such the proposal is considered to comply with Policy H8 of the Draft Local Plan and subject to conditions is recommended for approval.

## COMMITTEE TO VISIT

### 6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out in accordance with the following plans:-

Existing and proposed floor plans and location plan.

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 HMO1 HMO Management Plan

4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order), unless otherwise agreed in writing with the Local Planning Authority the garage indicated on the submitted drawings shall not be externally altered or converted to living accommodation.

Reason: To ensure that there is adequate cycle parking/storage space at the property and any proposals to increase living accommodation can be assessed on their merits.

**7.0 INFORMATIVES:  
Notes to Applicant**

**1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, The Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) and having taken account of all relevant national guidance and local policies, considers the proposal to be satisfactory. For this reason, no amendments were sought during the processing of the application, and it was not necessary to work with the applicant/agent in order to achieve a positive outcome.

**Contact details:**

**Author:** Sharon Jackson Development Management Assistant

**Tel No:** 01904 551359

15/01533/FUL

47 Thirkleby Way Osbaldwick



Scale : 1:1059

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<b>Organisation</b>	CYC
<b>Department</b>	Not Set
<b>Comments</b>	Site Plan
<b>Date</b>	25 August 2015
<b>SLA Number</b>	Not Set

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**COMMITTEE REPORT**

**Date:** 3 September 2015      **Ward:** Guildhall  
**Team:** Major and      **Parish:** Guildhall Planning Panel  
Commercial Team

**Reference:** 15/01458/FUL  
**Application at:** 17 Piccadilly York YO1 1PB  
**For:** Demolition of existing building  
**By:** City Of York Council  
**Application Type:** Full Application  
**Target Date:** 7 September 2015  
**Recommendation:** Approve

**1.0 PROPOSAL**

1.1 Reynard's Garage, 17-21 Piccadilly comprises a substantial early 20th Century masonry and steel portal framed structure lying within the Historic Core Conservation Area to the south west of the River Foss and the City Centre. It is of some townscape importance as part of a group of early 20th Century industrial buildings and of some historical importance through its association with early aircraft manufacture by Airspeed Ltd and the author Nevil Shute. It was initially constructed as a Trolley Bus Depot but following on from the withdrawal of the network in the early 1930s was converted to industrial use. The building is referred to in the Central Historic Core Conservation Area Appraisal although an attempt to have it Listed as being of Historic or Architectural Interest through Historic England has previously proved unsuccessful due to the lack of survival of its historic detailing and its very poor structural condition. It is in very poor structural repair and has been vacant for approximately 20 years. Planning permission is sought for its demolition.

**2.0 POLICY CONTEXT**

2.1 Development Plan Allocation:

Areas of Archaeological Interest GMS Constraints: City Centre Area 0006  
Conservation Area GMS Constraints: Central Historic Core CONF  
Flood zone 2 GMS Constraints: Flood zone 2  
Flood zone 3 GMS Constraints: Flood zone 3  
Listed Buildings GMS Constraints: Grade 2; Red Lion Hotel Merchantgate York

2.2 Policies:

CYHE3 Development in Conservation Areas

### 3.0 CONSULTATIONS

#### INTERNAL:-

##### Highway Network Management

3.1 No objection.

##### Public Protection

3.2 No objection to the proposal subject to any permission being conditioned to require the submission and prior approval of a Construction Environmental Management Plan (CEMP).

##### Planning and Environmental Management

##### **Conservation Architect**

3.3 Expresses concern in respect of the loss of a significant building and the lack of evidence of marketing of the building for development.

##### **Ecologist**

3.4 No objection.

#### EXTERNAL

##### Guildhall Planning Panel

3.5 Object to the proposal on the grounds that no firm re-development proposal for the site has been brought forward.

##### Historic England

3.6 No objection in principle to the demolition of the building however they draw attention to the requirements of the National Planning Policy Framework (NPPF) at paragraphs 131 to 138 of the National Planning Policy Framework relating to the historic environment. It states the demolition of the building would result in an almost total loss of significance from this site and a modest loss of significance to this part of the conservation area. Concern has however been expressed in respect of the lack of a clear indication of new development to replace the demolished building as required by paragraph 136 of the National Planning Policy Framework.

##### York Civic Trust

3.7 Objects to the proposal on the grounds that no re-development scheme has been brought forward to justify the loss of historical and cultural value embodied in the building.

##### Neighbour Notification and Publicity

3.8 One letter of objection has been received to the proposal expressing concern in respect of the loss of a building of historical and cultural significance.



3.9 Two letters of support have been received expressing concern in respect of the deteriorating condition of the building and the need to secure a sympathetic and viable re-development of the site.

## 4.0 APPRAISAL

### KEY CONSIDERATIONS:-

#### 4.1 KEY CONSIDERATIONS INCLUDE:-

- The proposal and the site
- Legislative and policy context for heritage assets.
- Impact upon the significance of the asset and on the character and appearance of the Central Historic Core Conservation Area.

### STATUS OF THE YORK DEVELOPMENT CONTROL LOCAL PLAN:-

4.2 The York Development Control Local Plan was approved for Development Control purposes in April 2005; its policies remain material considerations in respect of Development Management decisions although it is considered that their weight is limited except where in accordance with the National Planning Policy Framework.

### THE PROPOSAL AND THE SITE

4.3 The application site comprises a large masonry and steel framed Art Deco building of early 20th Century date occupying a long narrow frontage to the east of Piccadilly and to the south of the City Centre. It was constructed initially as the Trolley Bus Depot for the City and following on from the withdrawal of the network in the early 1930s it was used as an aircraft factory. The recent Conservation Area Character Appraisal states whilst it is of historic interest, it is not of outstanding architectural merit. An attempt was made in 2013 to have the building Listed as of special architectural or historic interest and notwithstanding that it represented a rare survival of a depot associated with a form of transport not readily adopted in the United Kingdom, this proved unsuccessful due to the lack of survival of its detailing, the lack of any identifiable evidence of its aviation use by Airspeed Ltd and its very poor structural repair. Various proposals have previously been advanced for the site including a draft allocation for housing in the 2005 Development Control Local Plan, although no firm proposals have ever been brought forward. The building was last actively used in the 1990s as a Laser Quest visitor attraction before that relocated to Clifton Moor.

## LEGISLATIVE AND POLICY CONTEXT FOR HERITAGE ASSETS

4.4 The building is located within a heritage asset, being the Central Historic Core Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on the Local Planning Authority to have special regard to securing the preservation and enhancement of Conservation Areas. Notwithstanding the removal of the previous legislative requirement to secure formal Conservation Area Consent for demolition of Unlisted Buildings in Conservation Areas, it remains a requirement for planning permission to be granted and for the suitability of the proposals to be assessed against the legislative requirements of section 72 of the 1990 Act and government policy contained in Section 12 of the National Planning Policy Framework, notably Paragraphs 131-138.

4.5 Where it is identified that a proposed development will give rise to harm to a heritage asset, recent case law has emphasised that this statutory requirement is in addition to the policy tests contained in the NPPF. It has also emphasised that the desirability of preserving or enhancing the character or appearance of the area should be afforded considerable importance and weight and that the over-arching “special regard” required by section 72 imposes a statutory presumption against the grant of planning permission.

4.6 In terms of national planning policy, the National Planning Policy Framework (NPPF) classes Conservation Areas as “designated heritage assets”. The NPPF advises on heritage assets as follows:

Paragraph 132 advises that “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be” ... “As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.”

Paragraph 133 advises that “Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of four specified criteria apply

Paragraph 134 advises “..Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”.

Paragraph 135 advises that “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

Paragraph 136 advises that Local Planning Authorities should not permit the loss of a heritage asset without taking reasonable steps to ensure that development would proceed after the loss has occurred.

Paragraph 138 advises that loss of a building “which makes a positive contribution to the significance of the Conservation Area ... should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area ... as a whole”.

4.7 The York Development Control Local Plan was approved for Development Control purposes in April 2005. Its policies remain material considerations in respect of Development Management decisions although it is considered that their weight is limited except where they are in accordance with the National Planning Policy Framework.

4.8 Policy HE3 of the York Development Control Local Plan is considered compliant with the NPPF. It sets out a clear policy presumption that permission for demolition of an unlisted building in a Conservation Area will only be forthcoming where there would be no adverse impact upon the character and appearance of the Area.

#### IMPACT UPON THE SIGNIFICANCE OF THE NON DESIGNATED ASSET AND ON THE CHARACTER AND APPEARANCE OF THE HISTORIC CORE CONSERVATION AREA:-

4.9. The building forms part of a group of early 20th Century industrial buildings of some merit at the southern end of Piccadilly which were once highly characteristic of the wider City Centre. It has a long narrow frontage and a clear profile in longer distance views from the City Centre to the north. The Red Lion Public House around the corner on Merchantgate is the nearest listed building (grade II)

4.10 The building provides a clear definition to the eastern edge of Piccadilly. It provides a degree of evidence of an important period of development of York as a modern city and a connection with Neville Shute an important literary figure of the early 20th Century.

However as Historic England (HE) noted in deciding not to list the building recently, the architectural detailing of the building has been marred by the application of roughcast render, and the physical loss of some of the detail through decay; and there is a lack of physical evidence of the use of the building as the start-up premises of Airspeed, and its association with individuals including Cobham, Tiltman and Shute has left no significant identifiable evidence within the building.

4.11 Historic England concludes the loss of the building would therefore give rise to a modest loss of the significance to the conservation area and therefore cause some harm to the character and appearance of the Conservation Area as a whole. Bearing in mind paragraph 135 of the NPPF, whilst the proposed loss of the non designated Heritage Asset is total, the harm to the heritage asset itself, i.e. the Conservation Area, would be modest.

4.12 In accordance with paragraph 138 of the NPPF, taking into account the relative significance of the building itself, which is limited by loss of detailing and the lack of physical evidence of previous uses, and its limited contribution to the significance of the Conservation Area as a whole, (the loss to the significant would be modest as described by HE it is considered the harm to the Conservation Area would be less than substantial. Therefore paragraph 134 of the NPPF applies in this case.

4.13 In considering the impact upon other heritage assets, the affect on the setting of the Red Lion PH has been assessed. This timber framed building with 15<sup>th</sup> century origins has been much altered and extended. It sits at an oblique angle to the northern gable of the application site, and is approximately 15m from it at the nearest point. It is considered that the effect on the setting of the listed building would be neutral to slightly positive in removing the large gable end of the former garage from views of the timber framed public house from the Piccadilly/ Merchantgate junction.

4.14 Detailed structural surveys from 2009 and 2015 have been submitted to support the proposal for demolition. These indicate the presence of significant and intractable structural difficulties in respect of the building. In particular it is indicated that the steel frame has become severely corroded where it reaches ground level and the internal timber supports have substantially decayed, the brickwork in the gables is in extremely poor condition and liable to fall out, at the same time an internal mezzanine floor has partially collapsed. This has substantially compromised the structural stability of the wider building with significant evidence already of movement within the roof with the potential for a major collapse event with severe weather in late Autumn or Winter. With that risk in mind and due to incidences of render falling from the structure, the surroundings of the building have been secured to deter access by the general public to its exterior.

4.15 An assessment has also been submitted by the Authority's Building Control Manager of the potential to re-construct the building to support the proposal.

This indicates that the structural frame would need to be largely replaced and as the masonry walls are largely supported by the frame they would also need substantial reconstruction. At the same time it is unclear to what extent the issues of structural instability within the building are the consequence of problems with the foundations and an assessment would have to be undertaken of the foundations with a potential requirement for underpinning to be carried out. Insulation and fire proofing which would be essential for a viable use to take the building are at the same time negligible and a new system of foul and surface water sewerage would need to be installed. In view of the degree of decay within the steel frame and the consequent evidence of movement within the roof a means of lateral restraint for the external walls needs to be urgently applied in the event of the proposal not being implemented.

4.16 From the above it is clear that the fabric of the building is beyond repair for reuse, and the building is in the short term highly likely to collapse without major intrusive supporting works. Bearing in mind Paragraph 136 of the NPPF as described above, it must be considered whether reasonable steps to ensure new development will proceed.

4.17 The site was initially to be re-developed as part of the wider Castle/ Piccadilly scheme and following on from its dissolution in the envisaged form in September 2013, the site was marketed separately. A number of bids were forthcoming to develop hotels although none envisaged re-use of the existing building. The process was paused to allow for the application for the building to be listed to be considered in early 2014. However the joint developer of the area has subsequently gone into administration and a further programme to redevelop the wider area through the Southern Gateway Project is being developed with an aspiration for a high quality scheme of private rented apartments.

4.18 The Southern Gateway Project seeks to regenerate the area directly to the south of the City Centre whilst improving connectivity between the City Centre and the Fishergate area to the south west. Therefore whilst no firm proposals have yet come forward for permanent redevelopment as part of the scheme, the building remains in the Council's ownership and is taking reasonable steps to ensure new development will proceed after the loss of the building has occurred. The building is in severe disrepair with a credible potential for complete collapse shortly. It is proposed that the application site be secured by a painted or otherwise decorated hoarding prior to proposal being implemented. In view of the size and dimensions of the site, it is recommended that a development scheme to secure the site and to include a detailed landscape scheme should be submitted for the site to be implemented and maintained in advance of a permanent solution to the development of the site being implemented incorporating a degree of historic interpretation relating to the former role of the site. This would be secured by condition as part of any permission for the proposal.

Subject to such a development scheme being in place and taking account of the extreme disrepair of the building it is felt on balance that the requirements of paragraph 136 have reasonably been addressed.

4.19 In considering paragraph 134 of the NPPF as described above, officers are of the view that this harm caused by demolition of the building is outweighed by the public benefits in terms of avoiding the need for supporting framework around the building (which in itself would be harmful to the appearance of the conservation area), the disruption of pedestrian and traffic movements along Piccadilly, the removal of a visually detrimental feature due to its decaying, dilapidated appearance and the opportunity to provide a tidied, landscaped space pending permanent redevelopment.

## **5.0 CONCLUSION**

5.1 In accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 there is an overarching duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

5.2 Two detailed structural surveys of the building have been submitted and an assessment of the feasibility of repair has been undertaken. The severe corrosion in the internal steel sub frame and consequent lack of structural restraint for the external walls present a strong risk of structural failure in the short term in the event of severe weather, with consequent risks to adjacent buildings and passing pedestrians. Furthermore in order to 'repair' the building it would have to be effectively dismantled and rebuilt which would prove uneconomic in the absence of a permanent re-development scheme for the site. In view of the severe structural difficulties with the building and the likelihood of collapse in the near future without significant supporting works (which would render the building unusable and affect pedestrian and vehicular flows along Piccadilly), the less than substantial harm to the character of the Conservation Area caused by its loss would in this case on balance be outweighed by the public benefits set out at 4.17, even when significant weight is attached to this harm

5.3 With regard to Paragraph 136 of the NPPF ( see 4.14 - 4.16 ), the current application site is being considered as part of a wider regeneration scheme linking the southern section of the City Centre with the Fishergate Area known as the Southern Gateway. Whilst no permanent redevelopment proposals have so far been put forward, and the building cannot be retained without major visually intrusive supporting works, it is recommended that any permission be conditioned to require short term development comprising the landscaping of the site including an element of interpretation of its role in the development of the modern City.

5.4 In summary, considerable weight and special regard has been given to the impact of the development on the significance of designated and non-designated heritage assets, the harm that would be caused to these heritage assets and the desirability of preserving the character of the Conservation Area. The proposal leads to less than substantial harm to the heritage asset. Officers are of the view that this harm caused by demolition of the building is outweighed by the public benefits set out 4.17. In reaching this conclusion regard has been had to the duty set out in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

## **COMMITTEE TO VISIT**

### **6.0 RECOMMENDATION: Approve**

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out in accordance with the following plans:-

Drawing Refs:- RBS150034/01; RBS150034/02.

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 No demolition work shall take place on site until the applicant has secured the implementation of a programme of recording of the building to be demolished. The programme including details of deposit and publication of the results shall previously have been approved in writing by the Local Planning Authority

Reason: The building has been identified as of significance terms of the character of the Central Historic Core Conservation Area.

4 No demolition shall take place until there has been submitted and approved in writing by the Local Planning Authority a detailed landscaping scheme for the site which shall illustrate the number, species, height and position of trees, shrubs and hard landscaping. Such details shall also include interpretation materials relating to the previous historic use of the site. This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants 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 next planting season with others of a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species within the site.

5 Prior to the commencement of demolition works on the site, a detailed method of works statement identifying the programming and management of site clearance/preparatory and construction works shall be submitted to and approved in writing by the LPA. Such a statement shall include at least the following information;

- the routing that will be promoted by the contractors to use main arterial routes and avoid the peak network hours
- how vehicles are to access and egress the site
- how pedestrians are to be safely routed past the site
- details of any implications to the highway of demolition and waste removal vehicle operation
- where contractors will park to avoid blocking the highway
- where materials will be stored within the site
- measures employed to ensure no mud/detritus is dragged out over the adjacent highway.

Reason: To ensure that the development can be carried out in a manner that will not be to the detriment of amenity of local residents, free flow of traffic or safety of highway users.

6 Except in case of emergency, no operations which are audible beyond the boundary of the site shall take place on site other than between the hours of 08:00-18:00 Monday to Friday and between 09:00-13:00 on Saturdays. There shall be no working on Sundays or Public Holidays. The Local Planning Authority shall be notified at the earliest opportunity of the occurrence of any such emergency and a schedule of essential work shall be provided.

Reason: To protect the amenity of neighbouring residents during the construction phase of this development.

7 During the construction process heavy goods vehicles shall only enter or leave the site between the hours of 08:00-18:00 on weekdays and 09:00-13:00 Saturdays and no such movements shall take place on or off the site on Sundays or Public Holidays (this excludes the movement of private vehicles for personal transport).



Reason: To protect the amenity of neighbouring residents during the construction phase of this development.

8 LC4 Land contamination - unexpected contam

## **7.0 INFORMATIVES: Notes to Applicant**

### **1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

Details of the Southern Gateway Regeneration Project

### **2. CONTROL OF POLLUTION ACT 1974:-**

The developer's attention is drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be adhered to; failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(a) All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday 08.00 to 18.00

Saturday 09.00 to 13.00

Not at all on Sundays and Bank Holidays.

(b) The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

(c) All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturer's instructions.

(d) The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

(e) All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

(f) There shall be no bonfires on the site

### 3. UTILITIES:-

You are advised that this proposal may have an affect on Statutory Undertakers equipment. You must contact all the utilities to ascertain the location of the equipment and any requirements they might have prior to works commencing.

#### **Contact details:**

**Author:** Erik Matthews Development Management Officer

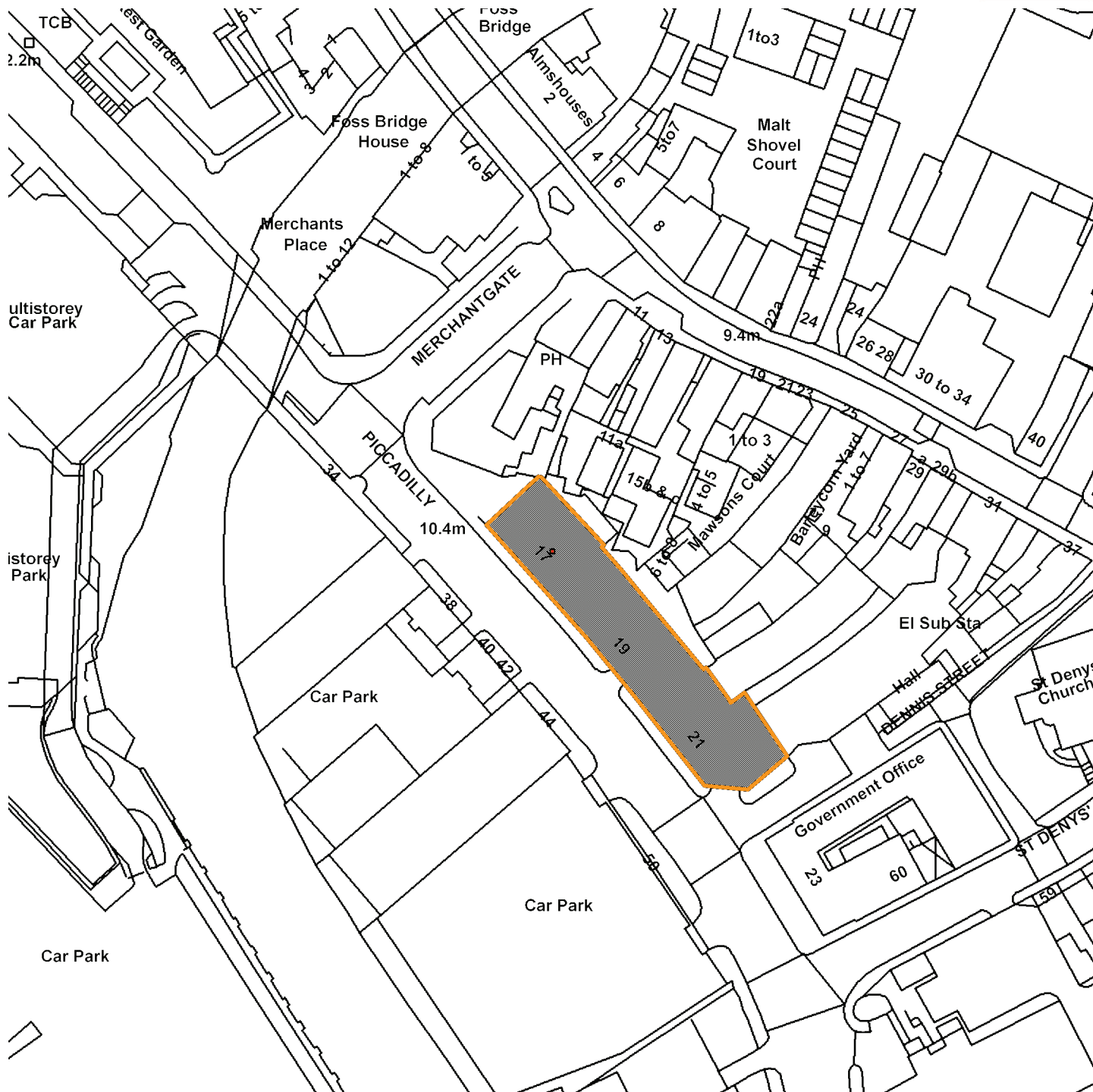
**Tel No:** 01904 551416

15/01458/FUL

17 Piccadilly



GIS by ESRI (UK)



Scale : 1:1059

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<b>Organisation</b>	CYC
<b>Department</b>	Not Set
<b>Comments</b>	Site Plan
<b>Date</b>	25 August 2015
<b>SLA Number</b>	Not Set

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**COMMITTEE REPORT**

**Date:** 3 September 2015      **Ward:** Dringhouses and Woodthorpe  
**Team:** Householder and Small Scale Team      **Parish:** Dringhouses/Woodthorpe Planning Panel

**Reference:** 15/01410/FUL  
**Application at:** 8 Leven Road York YO24 2TJ  
**For:** Change of use from dwelling (use class C3) to House in Multiple Occupation (use class C4)  
**By:** Mr Htoon Aung  
**Application Type:** Full Application  
**Target Date:** 25 August 2015  
**Recommendation:** Approve

**1.0 PROPOSAL**

1.1 The application property is a 3 bedroom semi-detached dwellinghouse. It is located in a predominantly residential area consisting primarily of semi-detached properties. It has a small front curtilage in which there is space to park a car off the road (6m long) and an 11m long by circa 9m wide back garden. There is a detached garage in the rear garden and a drive at the side of the house, however a gate and fence between the side of the house and the side boundary actually prevents vehicular access to the garage.

1.2 This application seeks permission for a change of use from a three bedroom dwellinghouse (Use Class C3) to a four bedroom House in Multiple Occupation (HMO) (Use Class C4).

1.3 The application has been called-in for determination by Sub-Committee at the request of Cllr Fenton because of possible issues of anti-social behaviour.

**2.0 POLICY CONTEXT**

2.1 Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001  
DC Area Teams GMS Constraints: West Area 0004

2.2 Policies:

CYH8 - Conversion to flats/HMO/student accom

## 3.0 CONSULTATIONS

### INTERNAL

#### Planning and Environmental Management

3.1 As stated in the Draft HMO Supplementary Planning Document (SPD), thresholds of 20% of all properties being HMOs across a neighbourhood and 10% at street level have been established as the point at which the mix a community can tip from being considered as balanced to unbalanced. Within 100m of 8 Leven Road, York, YO24 2TJ, there are currently 3 known HMOs out of 36 properties, 8.33%. At the neighbourhood level there are currently 9 known HMOs out of 736 properties, equating to 1.22%.

3.2 Although the HMO SPD does not have development plan status, it can be afforded significant weight as a material planning consideration in the determination of planning applications. The SPD remains a draft until such time as there is an adopted plan in York.

### EXTERNAL

#### Dringhouses/Woodthorpe Planning Panel

3.3 Object on following grounds - the internal layout conflicts with the guidance on room size for HMO's, specifically Room 3 (a bedroom) is less than 6.5 square metres in floor area. In addition there are concerns regarding the safety and visual impact of each of the four occupants having a motor vehicle to park on or near the property. There are concerns that such a change of use will form a pattern and have a negative impact on the character of the local area and concerns if the property was to be occupied by students in term time only there would be a loss in council tax revenue.

#### Publicity and Neighbour Notifications

3.4 Representations have been received from the occupants of 4 nearby properties, making the following objections:

- Sharp increase in HMO's in the street and short term tenants cause problems including noise from garden, playing football in street and door slamming. Several people already go in and out of the property at a weekend and house is used as a 'party location'.
- Concerned at the implications of 4 residents sharing one parking space. Most tenants have cars causing access problems, this proposal will worsen the situation. Landlords should pay to have grass verges removed or to have the Green at the end of Leven Road made into a car park.

- Change from house to HMO will cause extra strain on services (e.g. gas, sewage)

## 4.0 APPRAISAL

### KEY ISSUES

4.1 The key issues in assessing the proposal are:

- Whether the change would lead to an unacceptable concentration of HMOs in a single location.
- Whether the accommodation is of an appropriate standard and whether the use would impact adversely on local residents.

4.2 The National Planning Policy Framework 2012 (NPPF) sets out the overarching roles for the planning system. In Paragraph 14 it advises that there is a presumption in favour of sustainable development at the heart of the Framework, which should be seen as a golden thread running through both plan-making and decision-taking.

4.3 Paragraph 17 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Paragraph 50 states that in order to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities the local planning authority should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community.

4.4 The Development Control Local Plan was approved for Development Control purposes in April 2005; its policies are material considerations although it is considered that their weight is limited except where in accordance with the NPPF.

4.5 Development Control Local Plan Policy CYH8: Conversions, sets out the criteria by which conversions of houses to HMO's should be assessed. On this basis planning permission will only be granted for the conversion of a house to a HMO where:

- the dwelling is of sufficient size (min 4 bedrooms) and the internal layout is shown to be suitable for the proposed number of households or occupants and will protect residential amenity for future residents;
- external alterations would not harm the appearance of the area;
- adequate on and off road parking and cycle parking is incorporated;
- it would not create an adverse impact on neighbouring amenity through noise disturbance or residential character by virtue of the conversion alone or cumulatively with a concentration of such uses;

- adequate provision is made for the storage and collection of refuse and recycling

4.6 Draft Supplementary Planning Document (SPD): Controlling the Concentration of Houses in Multiple Occupancy was approved by cabinet on 15 April 2012. This Guidance has been prepared in connection with an Article 4 Direction which the Council made in respect of houses within the defined urban area. It has the effect of bringing the change of use of dwellings (Class C3) to small HMO's occupied by between 3 and 6 people (Class C4), which would otherwise be permitted development, within planning control.

4.7 Paragraph 5.7 of the SPD advises that applications for change of use from dwellings to HMO's will only be permitted where:

- a) The property is in a neighbourhood area where less than 20% of properties are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and
- b) Less than 10% of properties within 100 metres of street length either side of the application property are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent and are known to the Council to be HMOs; and
- c) The accommodation provided is of a high standard which does not detrimentally impact upon residential amenity.

4.8 Paragraph 5.17 of the SPD advises that in assessing planning applications for HMOs the Council will seek to ensure that the change of use will not be detrimental to the overall residential amenity of the area. In considering the impact on residential amenity attention will be given to whether the applicant has demonstrated the following:

- the dwelling is large enough to accommodate an increased number of residents;
- there is sufficient space for potential additional cars to park;
- there is sufficient space for appropriate provision for secure cycle parking;
- the condition of the property is of a high standard that contributes positively to the character of the area and that the condition of the property will be maintained following the change of use to HMO;
- the increase in number of residents will not have an adverse impact on noise levels and the level of amenity neighbouring residents can reasonably expect to enjoy



- there is sufficient space for storage provision for waste/recycling containers in a suitable enclosure area within the curtilage of the property; and
- the change of use and increase in number of residents will not result in the loss of front garden for hard standing for parking and refuse areas which would detract from the existing street scene

## APPRAISAL

### Background

4.9 As background to the consideration of this application it should be noted that the property is already operating as an HMO. The applicant has advised that he bought the property in 2014 and started using it as an HMO in July of that year. He did not realise that planning permission was required but states as soon as he became aware he submitted a planning application for the use.

4.10 The property currently has 3 bedrooms and a bathroom on the first floor and a lounge, dining room, kitchen/breakfast room and entrance hall on the ground floor. The proposed plan shows the first floor layout would remain as existing. On the ground floor the lounge would be used as a bedroom and the dining room would become a lounge/dining area.

### Evaluation

4.11 The main aim of the Council's SPD is to avoid situations where existing communities become unbalanced by an overconcentration of HMOs within a particular street or the wider area. Paragraph 5.2 of the SPD states a 'threshold based policy approach' is considered most appropriate method for controlling the number of HMO's across the City, as this tackles concentrations and identifies a 'tipping point' when issues arising from concentrations of HMO's become harder to manage and a community or locality can be said to tip from balanced to unbalanced.

4.12 Within 100m of 8 Leven Road, there are currently 3 known HMOs out of 36 properties (i.e. 8.33%). At the neighbourhood level there are currently 9 known HMOs out of 736 properties (i.e. 1.22%). In this respect, although local residents concerns about the number of HMO's in the street, the current street and neighbourhood levels are below the thresholds established by the SPD and, in respect of the latter, considerably below. Therefore in view of the Council's own policy, it is not considered that there are grounds to refuse the application on the basis that it would create an unbalanced community.

4.13 If this application was approved the percentage of HMOs at street level would be 11.11%. However, the SPD guidance for assessing thresholds relates to the percentages appertaining at the time a planning application is submitted, rather than what would result from implementation of an HMO approval.

It should also be noted that recent appeal decisions have advised that the numerical thresholds in the SPD should be applied with a degree of flexibility. In view of this, even if the SPD used the HMO percentage following implementation to assess compliance with the guidance, it is considered that the grounds for refusal in the case of 8 Leven Road would not be strong due to the low level of breach in the street percentage that would occur (i.e. only 1.11% above the threshold) and the fact that the neighbourhood percentage following implementation (i.e. total of 1.35%) would be considerably below the prescribed threshold.

4.14 There remains, however, a need to assess what impact the proposal would have on residential character and amenity in the light of the parameters outlined in the SPD and Local Plan. In this respect, no external alterations are proposed, and there is adequate provision in the rear garden and garage for cycle parking and refuse storage. Residents have complained about on street parking problems but there is the potential to park a car off street at the application property and the level of parking on the street has not reached a level whereby the Council has sought to introduce a Respark scheme. It is not therefore considered that the proposed change of use could be resisted on car parking grounds.

4.15 Objections made by local residents include the adverse impact of weekend comings and goings at the property, being woken up in the early hours, the playing of football in the street and the slamming of doors. The SPD does state that a change of use to an HMO should not create an adverse impact on neighbouring amenity through noise disturbance. However, this issue relates to impact on residential amenity that would be created via comings and goings to the property; it does not relate to the activities of the occupants within the property or its curtilage.

4.16 In this respect, although a resident refers to 'weekend activity' that has already occurred at the property it is not considered that there are grounds to refuse the application on the basis of the impacts of comings and goings associated with a 4 bedroom HMO. However, it is considered that if the application is approved, a condition should be attached to the consent requiring the approval and implementation of a management plan, relating to minimising noise disturbance, the maintenance of external areas and refuse and re-cycling collections, to help mitigate the impact of activities at the property upon the amenities of local residents.

4.17 In respect of other requirements within the Local Plan, the building appears to be well maintained, the internal layout and room size are considered to be acceptable and the property is considered to be large enough for a 4 bedroom HMO operation. There are no Council guidelines on room sizes for HMOs, furthermore the room referred to by the Planning Panel is already used as a bedroom and was originally proposed for this purpose as part of the original design of the dwelling.

4.18 In respect of the Local Plan policy requirement that a property has a minimum of 4 bedrooms if conversion of a house to an HMO is to be granted, it is considered that this aspect of the policy is no longer appropriate as the policy was written at a time when the small HMO use class (3-6 residents) did not exist. At that time an HMO was defined as a property containing 7 or more unrelated people living together and it was generally thought that a property needed to be fairly large to accommodate the amount of people that could occupy it.

## **5.0 CONCLUSION**

5.1 It is considered that the proposal complies with national guidance in the NPPF, Development Control Local Plan Policies and the City of York Council's Supplementary Planning Document (Controlling the Concentration of Houses in Multiple Occupancy). It is therefore considered that planning permission should be granted.

## **COMMITTEE TO VISIT**

### **6.0 RECOMMENDATION:** Approve

1 Within one month of the date of this decision notice a management plan shall be submitted to the Local Planning Authority for written approval. The management plan shall be implemented as approved unless otherwise agreed in writing by the Local Planning Authority. The Management plan shall relate to the following areas:

- Information and advice to occupants, including minimising noise and disturbance for neighbours
- Refuse and recycling facilities
- Property maintenance
- Secure cycle storage

Reason: In the interests of the proper management of the property and the amenity of adjacent residents.

## **7.0 INFORMATIVES:**

### **Notes to Applicant**

#### **1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, The Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) and having taken account of all relevant national guidance and local policies, considers the proposal to be satisfactory.

For this reason, no amendments were sought during the processing of the application, and it was not necessary to work with the applicant/agent in order to achieve a positive outcome

**Contact details:**

**Author:** David Johnson Development Management Assistant

**Tel No:** 01904 551665

15/01410/FUL

8 Leven Road



GIS by ESRI (UK)



Scale : 1:1059

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<b>Organisation</b>	CYC
<b>Department</b>	Not Set
<b>Comments</b>	Site Plan
<b>Date</b>	25 August 2015
<b>SLA Number</b>	Not Set

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**COMMITTEE REPORT**

**Date:** 3 September 2015      **Ward:** Osbaldwick and Derwent  
**Team:** Major and                      **Parish:** Osbaldwick Parish  
Commercial Team                      Council

**Reference:** 15/01278/FUL  
**Application at:** 16 Farndale Avenue York YO10 3PE  
**For:** Change of use from office (use class B1) to restaurant/ cafe  
(use class A3)  
**By:** Martyn Turnbull  
**Application Type:** Full Application  
**Target Date:** 7 September 2015  
**Recommendation:** Approve

**1.0 PROPOSAL**

1.1 The application seeks planning permission for the change of use of the existing office to a restaurant/cafe use. The site is within a small parade of retail/commercial units located in a residential area. Whilst changes to the internal layout of the premises are proposed in order to accommodate the new use, no changes to the external appearance are proposed at this stage.

1.2 The application has been called to committee by Cllr Warters on the grounds that there are no proposed opening hours making it difficult to assess its impact upon amenity. In addition concerns are raised in connection with parking for visitors and staff and deliveries to the site.

Relevant History

1.3 No.14-16 Farndale Avenue - Conversion and change of use of building into 3no. shop and/or office units (use class A1 and A2) - Approved 27.12.2013

1.4 No.16A Farndale Avenue - Change of use from office (use B1) to chiropody and podiatry clinic (class D1) - Approved 30.04.2015

**2.0 POLICY CONTEXT**

2.1 Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001  
DC Area Teams GMS Constraints: East Area (1) 0003

2.2 Policies:            CYS6 - Control of food and drink (A3) uses

### 3.0 CONSULTATIONS

#### INTERNAL

##### Highway Network Management

3.1 No objections. The property is located within a parade of shops and is within walking/cycling distance of local residents. Two car parking spaces have been provided to the rear and an unrestricted lay-by is located to the front of the property which serves the whole parade. Cycle parking may be conditioned. It is not envisaged that an increase in levels of traffic generated from that of the permitted use as retail.

##### Public Protection

3.2 No objections are raised providing there is adequate control over noise and odour from the development. Conditions are proposed in connection with extraction equipment, delivery hours, amplified music, opening hours and facilities for the extraction of cooking odours.

#### EXTERNAL

##### Osballdwick Parish Council

3.3 Object on the following grounds:

- Parking and the volume of traffic is already a strong concern within this area and this new type of establishment will only add to this.
- Parking in this area is already at a minimum and there are insufficient parking spaces for the number of business that are present.
- Insufficient parking bays create highways issues including local peoples drives are blocked, cars are parked unsafely and junctions are blocked
- Given that no opening times have been indicated, the Parish Council feel that there is a serious lack of information provided with the application.
- Litter is already a problem within the area and this type of establishment will only add to this issue.
- The Parish Council also support other concerns raised by residents direct to CYC, including the increase of children hanging around the area this establishment would create and the fact that Osballdwick already has a number of hot food outlets and as such do not see a need or demand for anymore.

##### Neighbour notification and Publicity

3.4 Three letters of objection have been received raising the following concerns:



- Increased number of children hanging around
- It is primarily a residential area
- Limited on road parking at peak shopping times
- Existing problems occur when the Sainsbury's lorry is unloading at the site
- Residents drive ways are often blocked by cars
- Increased litter
- Increased vehicle movements during the evening
- Adequate cafes and take aways in the area already

## 4.0 APPRAISAL

### 4.1 KEY ISSUES

- Highway and parking issues
- Extraction and odour control
- Noise and disturbance

4.2 The National Planning Policy Framework (NPPF) sets out a presumption in favour of sustainable development which, for decision-taking, means approving without delay development proposals that accord with the development plan. Where the development plan is absent, silent or relevant policies are out of date, planning permission should be granted unless: (1) any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or (2) specific policies in the Framework indicate development should be restricted (paragraph 14). Local planning authorities should seek to approve applications for sustainable development where possible and work with applicants to secure developments that improve the economic, social and environmental conditions of the area (paragraph 187).

4.3 The City of York Development Control Local Plan was approved for development control purposes in April 2005. Its policies are material considerations although their weight is limited except where in accordance with the NPPF. The relevant policy is S6. This states that planning permission for the extension, alteration or development of premises for food and drink uses will be granted provided: any likely impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter would be acceptable; the opening hours are to be restricted where this is necessary to protect the amenity of surrounding occupiers; car and cycle parking meets the standards; acceptable external flues and means of extraction have been proposed.

## APPLICATION SITE

4.4 The site lies within a parade of purpose built shops. Numbers 14, 16 and 16A were until recently used as an electrical services/plumbing and heating office for John Wright Electrical, which has relocated to Dunnington. Number 16A has been granted permission to be used as a Chiropodist and has recently opened. Number 14 and 16 remain vacant. The remainder of the parade is occupied by a hairdressers and a Sainsbury's Local. The parade is within a predominantly residential area and predominantly serves the local community. To the rear of the building there are nine off street car parking spaces and two garages are provided within a courtyard; two of these spaces are allocated for number 16. On street parking is available in a lay-by to the front of the site.

## SCHEME

4.5 The application seeks permission to change the use of the building from the existing office use to a restaurant/cafe. The scheme does not propose any external works and only minimal works to remove internal partition walls and brick up doorways leading to the neighbouring units are proposed.

## APPRAISAL

4.6 The proposal does not have an end user so it is unknown whether the unit would be used as a cafe or restaurant. However the unit is small, with an internal seating area for customers measuring approximately 6m by 6m and a kitchen measuring 2.1m by 1.8m (although there is scope to extend the kitchen area).

## PARKING

4.7 Concerns have been raised in connection with potential parking problems arising from the new use. Adequate staff car parking is located to the rear of the site. Off street parking bays are available to the front of the unit although residents state that these are often full. It is considered that the majority of the vehicular movements to the area are generated by the Sainsbury's Local which is at the end of the parade. The proposed cafe/restaurant unit is relatively small and would not be able to accommodate a large number of customers at any one time. It is located within a primarily residential area and the facility is likely to attract local residents, at least some of who would be making a linked trip to the adjacent shops and would arrive on foot. Furthermore, the site has a lawful use for retail purposes and it is considered that a small cafe/restaurant use is unlikely to generate significantly more vehicular movements.

4.8 There have been no complaints made by the public to the Traffic Management Department in connection with unauthorised or illegal parking within the vicinity of the application site.

## KITCHEN EXTRACTION

4.9 The applicant does not have an end user in place and as such no details in connection with extraction/odour control are proposed. The type of extraction and odour treatment required is dependant on a number of factors such as the type of food to be cooked, the level of moisture, grease and smoke and the volumes of food to be produced. As such a condition has been recommended to ensure adequate ventilation and extraction, and also ensures that should there be a change in the occupation of the unit in the future, that the type of food which is to be cooked and the associated odour is adequately controlled.

## NOISE

4.10 The unit is unlikely to be able to accommodate a large number of customers. The Sainsbury's Local store currently operates from 06:00 to 23:00 and it is considered that this is likely to generate the majority of the vehicular movements to and from the parade of shops. Trips to this store are likely to be frequent and relatively short, generating numerous visits. In addition to generating linked trips, a cafe/restaurant use would be likely to result in longer visits to the site and accordingly few trips.

4.11 No opening hours are proposed as there is no end user at present. At the present time the only shop in the parade which opens late in the evening is Sainsbury's, which closes at 23:00 every day of the week. The other units have historically closed earlier in the evening. Given the small scale of the proposed cafe/restaurant, a closing time of 23:00 would appear to be reasonable. An earliest opening time of 08:00 is recommended.

4.12 The proposal is for a cafe/restaurant use and not a hot food takeaway. As such it is considered that it would be unlikely to generate additional litter problems in the area.

## 5.0 CONCLUSION

5.1 The proposal would return the vacant building to a use which is considered as being compatible within this predominantly residential area. It would be in keeping with the character of the area and provide a service to local people. Furthermore it would create a number of new jobs and support the local economy. The use is unlikely to cause a significant nuisance to adjacent occupiers, particularly bearing in mind that the site has been in commercial use (albeit vacant) and is situated within a row of existing retail uses. Adequate car parking is provided to the rear of the site for staff, and visitor parking is available in parking bays to the front of the site. By nature of the use it is considered that it would serve a local need and due to the size of the unit vehicular trips would be likely to be low.

## COMMITTEE TO VISIT

### 6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out in accordance with the following plans and other submitted details:-

Drawing number 607-P23

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 Details of all machinery, plant and equipment to be installed in or located on the use hereby permitted, which is audible at the boundaries of the nearest residential properties when in use, shall be submitted to the local planning authority for approval. These details shall include maximum sound levels (L<sub>Amax</sub> (f)) and average sound levels (L<sub>Aeq</sub>), octave band noise levels and any proposed noise mitigation measures. All such approved machinery, plant and equipment shall not be used on the site except in accordance with the prior written approval of the local planning authority. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Note: The combined rating level of any building service noise associated with plant or equipment at the site should not exceed the background noise level at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics. Whilst it is acknowledged that at background levels of less than 30dB(A) use of BS4142 is inappropriate, EPU consider that in such circumstances the combined rate level of plant inclusive of any character correction should not exceed 30dB(A).

Reason. To protect the amenity of local residents

4 Deliveries to the premises shall be confined to the following hours:

Monday to Saturday 08:00 to 18:00

Sundays and Public Holidays 09:00 to 16:00

Reason: To protect the amenity of local residents

5 The opening hours of the use hereby approved shall be restricted to between 08:00 and 23:00 Monday to Saturday.

09:00 to 23: 00 Sundays and Public Holidays

Reason: To protect the amenity of occupants of the nearby properties from noise

6 Any electronically amplified music emitted from the premises shall be played or reproduced through loudspeakers and a tamper-proof noise limitation device. The device, the levels set and the installation shall be approved in writing by the local planning authority before the use hereby approved commences. Thereafter the approved levels, equipment, installation and position and type of loudspeakers shall be maintained in accordance with the planning approval; at no time shall they be modified without the written approval of the local planning authority.

Reason: To protect the amenity of occupants of the nearby properties from noise.

7 There shall be adequate facilities for the treatment and extraction of cooking odours at all times. Details of the extraction plant or machinery and any filtration system required shall be submitted to the local planning authority for written approval. Once approved it shall be installed and fully operational before the proposed use first opens and shall be appropriately maintained and serviced thereafter in accordance with manufacturer guidelines.

Note: It is recommended that the applicant refers to the Defra Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (January 2005) for further advice on how to comply with this condition. The applicant shall provide information on the location and level of the proposed extraction discharge, the proximity of receptors, size of kitchen or number of covers, and the types of food proposed. A risk assessment in accordance with Annex C of the DEFRA guidance shall then be undertaken to determine the level of odour control required. Details should then be provided on the location and size/capacity of any proposed methods of odour control, such as filters, electrostatic precipitation, carbon filters, ultraviolet light/ozon treatment, or odour neutraliser, and include details on the predicted air flow rates in m<sup>3</sup>/s throughout the extraction system.

Reason: To protect the amenity of future residents and nearby properties.

**7.0 INFORMATIVES:  
Notes to Applicant**

**1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority attached appropriate conditions in order to achieve a positive outcome.

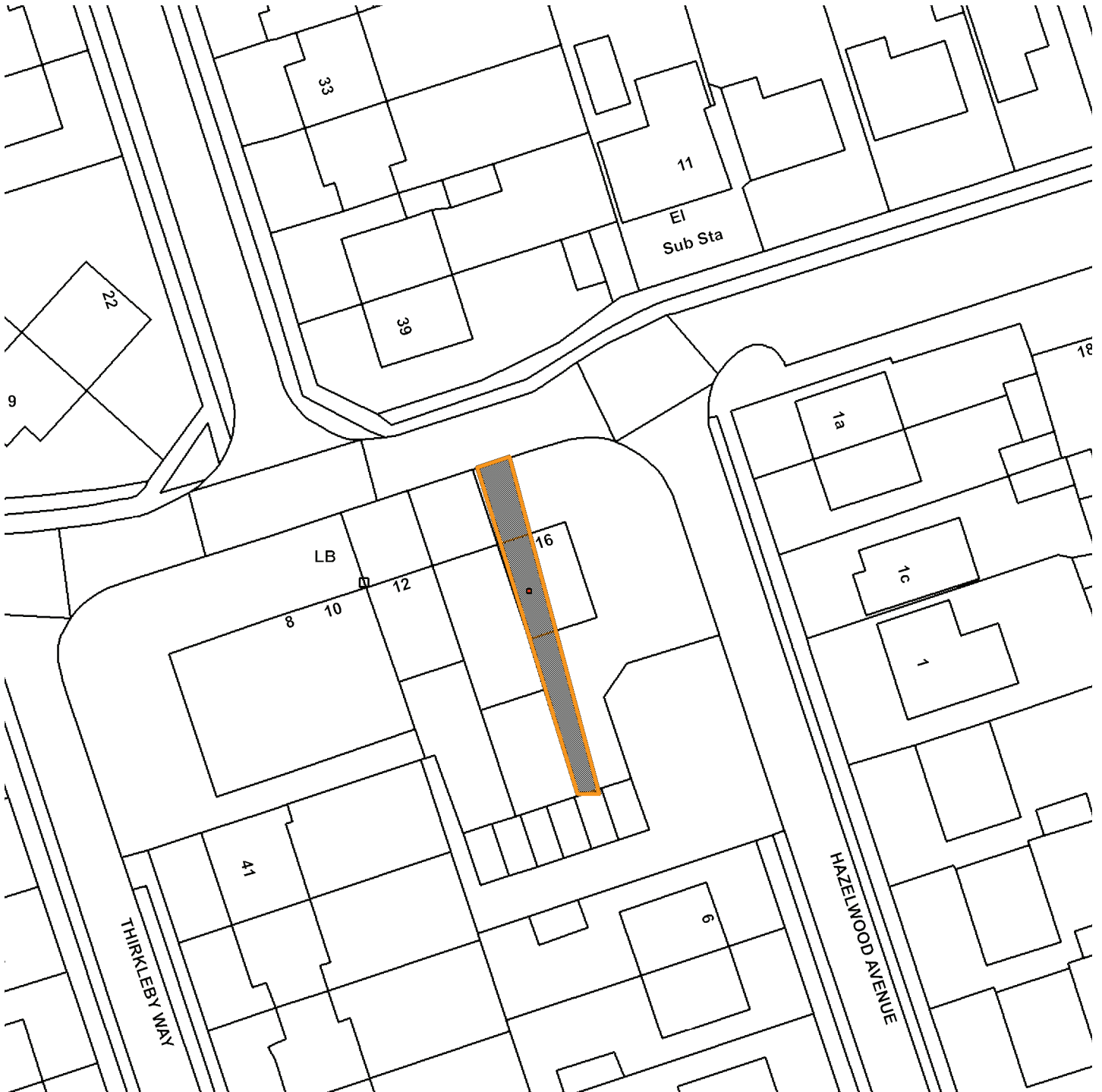
**Contact details:**

**Author:** Heather Fairy Development Management Officer

**Tel No:** 01904 552217

15/01278/FUL

16 Farndale Avenue



Scale : 1:529

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<b>Organisation</b>	CYC
<b>Department</b>	Not Set
<b>Comments</b>	Site Plan
<b>Date</b>	25 August 2015
<b>SLA Number</b>	Not Set

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**COMMITTEE REPORT**

**Date:** 3 September 2015      **Ward:** Clifton  
**Team:** Major and                      **Parish:** Clifton Planning Panel  
                    Commercial Team

**Reference:** 15/00143/FUL  
**Application at:** 31A Rosslyn Street York YO30 6LG  
**For:** Erection of 1no. cottage and 2no. flats after demolition of  
                    workshop  
**By:** Mr D l'Anson  
**Application Type:** Full Application  
**Target Date:** 14 August 2015  
**Recommendation:** Approve

**1.0 PROPOSAL**

1.1 The application seeks full planning permission for the erection of 2 no. two-storey buildings following demolition of two existing buildings. The two new buildings would be sited at each end of the site with the area between being utilised for communal space to accommodate two vehicle parking spaces and outside amenity space. The building to the north-western end of the site would accommodate a single two bedroom dwellinghouse. It would have an open plan living and kitchen area with enclosed cloakroom on the ground floor and two bedrooms and a bathroom on the first floor. The building to the south-eastern end of the site would accommodate 2 no. two bedroom flats, each having an open plan living/kitchen area, two bedrooms and a bathroom. Pedestrian access to the dwellinghouse would be from the communal parking area or via a yard accessed from the lane. Access to the flats would be directly from the lane, with enclosed cycle parking and refuse storage being provided within the building adjacent to the flat entrances. The external materials would be brick with slate roofs, aluminium window frames and timber doors. Permeable paving is proposed for the communal area.

1.2 The proposal has been revised since first submission to address officers' concerns. The changes include:

- setting back of built form adjacent to 10a Compton Street;
- amendments to internal layout of dwelling;
- change to layout of flats to incorporate bike and refuse store and provision of Juliet balcony to first floor flat;
- reconfiguration of communal area with reduction from 3 to 2 car parking spaces and provision of amenity areas for dwelling and ground floor flat.

1.3 The application has been called to Sub-Committee by the previous ward councillor, Councillor King, on the grounds of the overbearing and overshadowing impact of a two storey building adjacent to an adjacent property, and the impact on a lane that presently has no traffic.

## 2.0 POLICY CONTEXT

2.1 2015 Draft Development Plan Allocation:

Areas of Archaeological Interest GMS Constraints: City Centre Area 0006

2.2 Policies:

CYGP1	Design
CYGP3	Planning Against Crime
CYGP6	Contaminated Land
CYHE2	Development in Historic Locations
CYHE16	Archaeology
CYH4A	Windfall sites
CYE3B	Existing employment sites

## 3.0 CONSULTATIONS

INTERNAL

Design, Conservation and Sustainable Development

Conservation Officer

3.1 - No comments made.

City Archaeologist

3.2 This site is within the Central Area of Archaeological Importance and is in an area particularly known for its Roman archaeological deposits. It is possible that groundworks associated with this proposal may reveal or disturb archaeological features particularly relating to the Roman and later periods. It will be necessary to record any revealed features and deposits through an archaeological watching brief on all groundworks. Please place condition ARCH2 on any consent that is granted for this application.

Highway Network Management

3.3 No objections to the development as parking meets the required standard, vehicular access is via a back lane which is as existing and traffic generation will be similar to existing. Request conditions HWAY18 and HWAY19.

3.4 No objections to the revised scheme from a highways point of view. Two off street parking spaces have been created for the three small properties. The property is located within a sustainable location and ward census data indicates low car ownership within the ward. Cycle parking is provided to CYC Appendix E standards. Conditions requested as before.

#### Flood Risk Management

3.5 The development is in low risk Flood Zone 1 and should not suffer from river flooding. No objections in principle subject to a drainage condition being imposed.

#### Public Protection

3.6 No objections as the site is located in an existing residential area and is surrounded by residential properties. Conditions and informatives requested.

3.7 Contaminated Land - A screening assessment was submitted with the application which shows that the derelict building/workshop onsite had been used as a workshop between 1900 and 1970. Given this former use the Council's contaminated land officer has recommended conditions be attached to any approval, if granted.

3.8 Air Quality - In line with paragraph 35 of the National Planning Policy Framework (NPPF) and the Council's Low Emission Strategy, seeks a condition to provide an external electrical socket to allow for vehicle charging to address air quality issues in the City.

#### EXTERNAL

##### Yorkshire Water

3.9 State that comments are not required based on the information provided.

##### Clifton Planning Panel

3.10 Welcomes the proposal to make positive use of rather derelict area for housing, provided that two flats and a cottage are not judged to represent an overdevelopment of the site and that some amenity space can be provided.

##### Neighbour Notification/Publicity

3.11 Responses from 7 no. local residents have been received to the original submission raising the following concerns:

- development of land of this size at end of single lane for three dwellings is excessive;
- development would be over-dominant, overbearing and would overshadow the adjacent house and yard;
- associated traffic (including construction vehicles and those related to dwellings) would cause damage to lane and drain/services underneath;
- impact on boundary wall following removal of existing building;
- party wall issues related to building up to or close to boundary;
- too many extra vehicles on a narrow lane that could cause an obstruction;
- noise from proposed flats adjacent to bedroom;
- increased traffic noise from Bootham, amplified due to erection of building creating 'cave-like' arrangement;
- height of building is higher than neighbouring properties would compromise look and appeal of neighbouring property and outlook from yard and first floor windows;
- other two storey extensions to houses in area have been refused and this development would set a precedent;
- the application states that the building has not been used since 1970s but has been used as a paint store until recently;
- development does not create a safe or accessible environment as required by the NPPF for residents and emergency services;
- there are no flats in Rosslyn Street and this will set a precedent;
- inadequate parking with no provision for deliveries or visitors in an area of unrestricted, congested streets;
- noise on alley from residents and vehicles would be detrimental;
- pavements within the alley should be retained as part of York's heritage and should not be replaced by tarmac;
- gaps between built form will collect detritus and attract vermin;

3.12 Responses from 2 residents to the revised submission, raising the following additional issues:

- two parking spaces for three dwellings is inadequate;
- confusion about deliveries to dwellings with disturbance to residents on Rosslyn Street;
- right to light to property and particularly natural daylight to studio that proposing to erect would be compromised by new wall;

3.13 A further response has been received that agrees with the advisory comments made by the planning panel.

## 4.0 APPRAISAL

### KEY ISSUES

4.1 The main considerations relevant to the determination of this application are:

- principle of development;
- affect on character and appearance of the adjoining conservation area;
- design and visual amenity;
- affect on residential amenity;
- access, parking and highway safety;
- flood risk and drainage;
- impact on archaeological features and deposits.

### POLICY CONTEXT

4.2 Central Government guidance is contained in the National Planning Policy Framework ("NPPF", March 2012). This places emphasis on achieving sustainable development, by establishing a presumption in favour of development that contributes to building a strong, competitive economy and supports a vibrant and healthy community, whilst contributing to the protection and enhancement of our natural and built environments. Paragraph 7 of the National Planning Policy Framework says planning should contribute to the achievement of sustainable development by balancing its economic, social and environmental roles. Paragraph 17 lists twelve core planning principles that the Government consider should underpin plan-making and decision-taking. The principles include: seeking high quality design and a good standard of amenity for all existing and future occupants of land and buildings; encouraging the effective use of land by reusing land that has been previously developed (brownfield land); taking full account of flood risk; contributing to conserving and enhancing the natural environment and reducing pollution; encourage the effective use of land by reusing previously developed land that is not of high environmental value; and, actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling.

4.3 Section 4 of the NPPF promotes sustainable transport. Section 6 sets out the Government's policy for the delivery of homes. Section 7 seeks good design as a key aspect of sustainable development. Section 10 offers advice on meeting the challenge of climate change and flooding. Section 11 contains Government policy that aims to conserve and enhance the natural environment including landscapes, ecology and pollution and land instability.

4.4 Although there is no formally adopted local plan, the City of York Draft Local Plan (DCLP), was approved for Development Control purposes in April 2005.

Whilst it does not form part of the statutory development plan for the purposes of S38, its policies are considered to be capable of being material considerations in the determination of planning applications, where policies relevant to the application are in accordance with the NPPF. The DCLP identifies the site on the proposal map as lying within the main built-up area of the City. Relevant policies are summarised in section 2.2 and of particular relevance are the following policies:

4.5 Policy GP1 'Design' includes the expectation that development proposals will, inter alia; respect or enhance the local environment; ensure residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures, use materials appropriate to the area; avoid the loss of open spaces or other features that contribute to the landscape and incorporate appropriate landscaping.

4.6 Policy GP4a 'Sustainability' seeks, amongst other things, to ensure that development proposals are accessible by other means than the car and be easily accessible for pedestrians and cyclists.

4.7 Policy H4a 'Housing Windfalls' permits the grant of planning permission for residential development on land not allocated on the Proposals Map, where: a) the site is within the urban area and is vacant, derelict or underused; b) the site has good accessibility to jobs, shops and services by non-car modes; c) it is of an appropriate scale and density to surrounding development; and, d) it would not have a detrimental impact on existing landscape features.

## THE SITE

4.8 The application relates to a former commercial site (approximately 200 sq.m.) at the rear of the terraced houses on Rosslyn Street, nos 11-23. The site is accessed via the rear lane serving the yards of the terraced houses. The lane serves two other residential properties that sit either side of the application site in converted buildings. The dwelling to the north-west, 10a Crompton Street, is a one bedroom house over two floors with a small external area to the front behind the boundary wall with the access lane. The dwelling to the south-east, 31a Rosslyn Street, is also a one-bedroom house over two floors that has a yard and parking space. The area is predominantly residential with some commercial properties on Compton Street at the end of the access lane. The site is outside, although immediately adjacent to, the Clifton Conservation Area. The site lies within the Central Area of Archaeological Importance and is within flood zone 1 (low risk).

4.9 There is no relevant planning history for the application site. Planning permission was granted in 1986 for the conversion of the builders workshop and yard to a dwellinghouse at 31a Rosslyn Street, being the adjacent dwelling to the south-east.

## PRINCIPLE OF DEVELOPMENT

4.10 The application site is located in a predominantly residential area within the main built-up area of the City. It is in a sustainable and accessible location, within walking distance of local facilities and public transport routes. It constitutes previously developed land, the re-use of which is encouraged by the NPPF through the effective use of such land providing it is not of high environmental value. The redevelopment of this unused site with an infill development for a use that is compatible with the surrounding area is considered to be acceptable in principle.

## ARCHAEOLOGY

4.11 The site is within the Central Area of Archaeological Importance and an area known for its Roman archaeological deposits. Paragraph 139 of the NPPF states that non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments should be considered subject to policies for designated heritage assets. As the groundworks involved with the proposal may reveal or disturb archaeological features and deposits, a condition requiring an archaeological watching brief is requested by the City Archaeologist.

## CONSERVATION AREA

4.12 The site lies adjacent to the Clifton Conservation Area with the wall enclosing it to the north-east being the boundary of the designated heritage asset. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, places a duty on Local Planning Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Section 12 of the NPPF advises that planning should conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. Paragraph 131, in particular, states that local planning authorities should take account of the desirability of sustaining and enhancing an asset's significance, the positive contribution it can make to sustainable communities and the positive contribution new development can make to local character and distinctiveness. Paragraph 132 establishes the great weight that should be given to an asset's conservation.

4.13 The buildings adjacent to the site that lie within the conservation area on the eastern side of the boundary wall are modern additions. The proposal would be viewed in the context of these buildings. As such, it is considered that the proposal would preserve the character and appearance of the conservation area.

## DESIGN AND VISUAL AMENITY

4.14 Chapter 7 of the NPPF gives advice on design, placing great importance on the design of the built environment.

The NPPF, at paragraph 64, advises against poor quality design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

4.15 The proposal would provide three dwellings in an area of densely built residential properties, predominantly in terraced rows. The proposed buildings are similar in size and scale to surrounding properties, albeit higher than those either side of the site. The roof slopes would run perpendicular to the adjacent properties with gable ends facing the lane, which would provide some visual relief and variety in the views along the lane. The buildings would be of a traditional construction with facing bricks for the walls and slate roofs and, as such, would be in keeping with the predominant materials in the surrounding area. The external appearance of the buildings is considered to be acceptable in the context of buildings of traditional form dating from different periods. There would be limited space on site for soft landscaping, with only a planting bed provided at the end of the parking bays. There would be space for pots to be provided around the seating areas either side of the parking bays. This is not uncharacteristic of other properties in the area, including those dwellings either side of the application site. As such, the proposal is considered to be in keeping with the character and appearance of local environment. The development would add to natural surveillance along the lane and, subject to suitable enclosures, would not give rise to opportunities for crime.

#### RESIDENTIAL AMENITY

4.16 One of the core principles of planning outlined in the NPPF is to seek a good standard of amenity for all existing and future occupants. Objections have been received to the application from local residents on the basis of the adverse impact on their amenity, in terms of over-dominance and overshadowing. The proposal has been revised to address concerns of officers with regard to an increased sense of enclosure and overshadowing to the dwelling and yard of the property to the north-west of the application site, 10a Compton Street. The scheme now includes a yard of comparable size and set back of the building to maintain the openness and outlook from the adjacent property. The dwelling to the south-east, 31a Rosslyn Street faces away from the application site, with its amenity space to the south of a single storey projection that sits against the boundary with the application site. Whilst the first floor elevation of the proposed flats would be visible above the single storey projection, it would not reduce daylight or sunlight (it would be located to the north-west), would not adversely affect the level of outlook (the occupants would still have unobstructed views over their private yard) or be unduly dominant (the height of the wall to eaves above the single storey projection would be approximately 1.6m). There would be limited adverse impacts on the residential properties on Skelton Court due to the distance and position of the proposed properties in relation to them.



4.17 The original scheme had limited communal space to cater for the parking and amenity needs of three dwellings. The revised scheme designates an area adjacent to the house and ground floor flat as private amenity space with direct access from the living areas of the dwellings. This has been at the expense of the first floor flat, which now has no outdoor amenity space, but does have a Juliet balcony providing light and air to the living space. There is provision within the development for refuse and recycling storage to serve the three dwellings. Parking provision would be available for two of the dwellings - the house and ground floor flat - although cycle parking space is included to provide for all three dwellings.

4.18 Residents have raised concern about the impact on party walls and existing flues and vents. These matters are not material to the consideration of the application as they are covered by separate legislation. The effect on property values is, again, not a material consideration.

## HIGHWAY MATTERS

4.19 The NPPF encourages sustainable travel and the location of development in sustainable and accessible locations. The scheme is in such a location and provision is made within the scheme for secure and enclosed cycle parking to serve the three dwellings. The site has an existing lawful use for employment purposes with access via the back lane; local residents in their responses have confirmed that the buildings have been used for storage of paint until recently, evidence of which was noted on site by officers. As such, the removal of this use and replacement with three dwellings is considered, in highway terms, to be acceptable in principle.

4.20 The scheme has been revised to address concerns about the lack of private amenity space to serve the dwellings. The impact of this has been a reduction in the number of vehicle parking spaces from three to two. The spaces would provide one parking space for the house and ground floor flat adjacent to them. No car parking provision is made for the first floor flat or is available for visitors. Residents have raised concern about the impact of this on parking provision and congestion within the surrounding streets. It is noted that there is limited off-street parking, including to the adjacent 10a Compton Street and the majority of properties on Compton Street and Rosslyn Street. However, the Highway Network Management Team has been consulted and do not raise objections to the parking ratio on the basis of the site's sustainable location (close to public transport and cycling routes), cycle parking provision in line with Council standards and the ward census data which indicates low car ownership within the ward. As such, it is considered that it would be difficult to substantiate refusal of the application on the grounds of highway safety or reduced parking provision.

## FLOOD RISK

4.21 Paragraph 103 of the NPPF states that development should be directed to the areas of low flood risk and that development should not result in an increase of flood risk within the site or elsewhere. The majority of the site falls within flood zone 1, which is at lowest risk from flooding. At the present time the site is covered by buildings and hard surfacing, which will also be the case with the proposed scheme, other than a modest planting bed. Foul and surface water drainage is proposed to be discharged to the main sewer. Yorkshire Water have raised no objection to this. The Council's Flood Risk Engineer has not objected subject to a condition being imposed on any approval requiring further details of drainage to ensure that surface water can be disposed of adequately to avoid increased flood risk.

## 5.0 CONCLUSION

5.1 In light of the above, the application is recommended for approval as it accords with national and local planning policies, subject to the imposition of conditions.

## COMMITTEE TO VISIT

### 6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out in accordance with the following plans:-

Drawing no. 14:53:100 rev.D 'Plans and Elevations' dated 23.7.15 and received 27.7.15;

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 ARCH2 Watching brief required

4 DRAIN1 Drainage details to be agreed

5 The dwellings shall not be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles and cycles have been constructed and laid out in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.

INFORMATIVE: A Sheffield style stand shall be provided within the cycle parking area serving the flats and a covered enclosure for one bike shall be provided within the yard serving the dwelling house.

Reason: In the interests of highway safety and to promote use of cycles thereby reducing congestion on the adjacent roads.

6 Notwithstanding any proposed materials specified on the approved drawings or in the application form submitted with the application, samples of the external materials to be used shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the building works. The development shall be carried out using the approved materials.

Note: Because of limited storage space at our offices it would be appreciated if sample materials could be made available for inspection at the site. Please make it clear in your approval of details application when the materials will be available for inspection and where they are located.

Reason: So as to achieve a visually cohesive appearance.

7 No construction work shall take place until there has been submitted and approved in writing by the Local Planning Authority a detailed landscaping scheme which shall provide details of hard and soft landscaping within the site and means of enclosure to the private amenity spaces. It shall illustrate the number, species, height and position of any trees and shrubs. This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants 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 next planting season with others of a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species within the site.

8 Prior to development, an investigation and risk assessment (in addition to any assessment provided with the planning application) must be undertaken to assess the nature and extent of any land contamination. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report shall be submitted to and approved in writing by the Local Planning Authority prior to the start of any building works. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination (including ground gases where appropriate);
- (ii) an assessment of the potential risks to:
  - human health,
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,

- adjoining land,
  - groundwaters and surface waters,
  - ecological systems,
  - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

9 Prior to development, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) must be prepared and shall be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

10 Prior to first occupation or use, the approved remediation scheme must be carried out in accordance with its terms and a verification report that demonstrates the effectiveness of the remediation carried out must be produced and shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems.

11 In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority.

An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

12 Prior to occupation, a three pin 13 amp external electrical socket that is suitable for outdoor use shall be provided for each parking space. The socket shall be located in a suitable position to enable the charging of an electric vehicle on the driveway using a 3m length cable.

Note: Any socket provided must comply with BS1363, or an equivalent standard, Building Regulations and be suitable for charging electric vehicles. It should also have a weatherproof cover and an internal switch should be also provided in the property to enable the socket to be turned off.

Reason: To promote sustainable transport through the provision of recharging facilities for electric vehicles. To promote the use of low emission vehicles on the site in accordance with paragraph 35 of the National Planning Policy Framework.

## **7.0 INFORMATIVES: Notes to Applicant**

### **1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

- revisions to the layout to address residential amenity issues and secure amenity space, cycle and bin storage for the proposed dwellings;
- use of conditions to mitigate any identified harm.

### **2. INFORMATIVE:**

The developer's attention is drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974.

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In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be adhered to, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(a) All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday 08.00 to 18.00  
Saturday 09.00 to 13.00  
Not at all on Sundays and Bank Holidays.

(b) The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

(c) All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturers' instructions.

(d) The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

(e) All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

(f) There shall be no bonfires on the site

**Contact details:**

**Author:** Hannah Blackburn Development Management Officer

**Tel No:** 01904 551325

15/00143/FUL

31A Rosslyn Street



Scale : 1:529

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<b>Organisation</b>	CYC
<b>Department</b>	Not Set
<b>Comments</b>	Site Plan
<b>Date</b>	25 August 2015
<b>SLA Number</b>	Not Set

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**COMMITTEE REPORT**

**Date:** 11 June 2015                      **Ward:** Fulford and Heslington  
**Team:** Major and                      **Parish:** Fulford Parish Council  
                    Commercial Team

**Reference:** 13/03481/FULM  
**Application at:** Royal Masonic Benevolent Institute Connaught Court St  
                    Oswalds Road York YO10 4QA  
**For:** Erection of 14no. dwellings following demolition of existing  
                    bowling clubhouse and garage block  
**By:** RMBI and Shepherd Homes Ltd  
**Recommendation:** A S106 Deed of Variation is entered into to remove the  
                    obligation relating to payment of the open space contribution  
                    of £48,856 given the operation of Regulation 123(3) of the  
                    Community Infrastructure Levy Regulations 2010(as  
                    amended).

**1.0 INTRODUCTION**

1.1 This report seeks a decision from Members to enter into a S106 Deed of Variation to delete the requirement for an Open Space Commuted Sum Payment of £48.856, and confirmation of the previous decision taken by the Area Sub Committee on 11<sup>th</sup> June 2015 in relation to the proposed development of 14 dwellings under planning application reference 13/03481/FULM to grant planning permission.

Background

1.2 Members will recall that a planning permission relating to a site at Connaught Court, Fulford, was the subject of a judicial challenge in the High Court, brought by Mrs Mary Urmston, a local Fulford resident. This challenge was on the grounds that the Council had failed to apply the sequential test in relation to flooding, and misapplied the legal tests in relation to Heritage Assets. The Council conceded that the decision was legally flawed in these respects and a Consent Order was entered into. The application was remitted back to the Council for determination, and the legal flaws were rectified.

1.3 Planning permission was therefore granted at the Area Planning Sub Committee on 11<sup>th</sup> June 2015, and issued on 22<sup>nd</sup> June 2015.

1.4 Mrs Mary Urmston is now seeking leave to judicially review the latest decision on a different ground, and has made an application to the High Court. The Council will be defending the decision.

1.5 The latest ground of challenge relied upon by Mrs Urmston is that she says the Council has unlawfully taken into consideration a S106 Obligation requiring a commuted sum payment of £48,856 relating to Open Space when reaching the decision to grant planning permission. This is because the Community Infrastructure Levy Regulations 2010, Regulation 123(3), which came into force on 1<sup>st</sup> April 2015 (subsequent to the first planning decision), states that (3) "A planning obligation ("obligation A") may not constitute a reason for granting planning permission to the extent that—

(a) obligation A provides for the funding or provision of an infrastructure project or type of infrastructure; and

(b) five or more separate planning obligations that—

(i) relate to planning permissions granted for development within the area of the charging authority; and

(ii) which provide for the funding or provision of that project, or type of infrastructure, have been entered into before the date that obligation A was entered into."

1.6 This now prevents the Council, when granting a planning application, from taking into consideration a S106 obligation where there are 5 or more planning obligations contributing to the same infrastructure entered into since April 2010. On this basis Mrs Urmston seeks an Order of the Court to quash the planning permission and that the decision is remitted back to the Council for decision again.

1.7 The Council concedes that the open space contribution could not have constituted a reason for granting permission because at the time of the second decision, the CIL Regulation 123(3) had come into force and there were more than 5 obligations entered into since 2010 towards the same infrastructure. However, the planning decision will be defended on the basis that it would not in any event have made a material difference to the decision if the open space contribution had been explicitly disregarded. The development has been found to be sustainable, is in a highly accessible location and will make a contribution towards the delivery of market housing where the Council is currently unable to demonstrate a deliverable 5 year supply of housing land. In the planning balance, the decision to grant planning permission was not dependent upon the Open Space contribution.

## **2.0 POLICY CONTEXT**

### **2.1 Policies:**

CYL1C      Open Space in New Developments

### **3.0 CONSULTATIONS**

3.1 None undertaken

### **4.0 APPRAISAL**

#### Variation of the S106 Obligation

4.1 The Developers have requested in light of the above that the S106 Obligation dated 23<sup>rd</sup> October 2014 be varied in order to remove any reference to the Open Space Contribution. As the decision was previously made by the Area Sub Committee, Members are asked to reach a decision in respect of the variation request.

4.2 It is recommended that a S106 Deed of Variation is entered into to remove the obligation relating to payment of the open space contribution of £48,856 given the operation of Regulation 123(3) of the Community Infrastructure Levy Regulations 2010(as amended).

4.3 Members are also invited to consider whether they would have resolved to grant planning permission in the event that the open space contribution of £48,856 could not have been taken into account as a reason for granting planning permission. In coming to this view, Members should consider the most recent committee report which concluded that planning permission should be granted, albeit excluding any reference to the public open space contribution.

**5.0 RECOMMENDATION:** It is recommended that a S106 Deed of Variation is entered into to remove the obligation relating to payment of the open space contribution of £48,856 given the operation of Regulation 123(3) of the Community Infrastructure Levy Regulations 2010(as amended).

#### **Annex**

Report to Committee- 11 June 2015

#### **Contact details:**

**Author:** Gareth Arnold Development Manager

**Tel No:** 01904 551320

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**COMMITTEE REPORT**

**Date:** 11 June 2015                      **Ward:** Fulford and Heslington  
**Team:** Major and                      **Parish:** Fulford Parish Council  
Commercial Team

**Reference:** 13/03481/FULM

**Application at:** Royal Masonic Benevolent Institute Connaught Court St Oswalds  
Road York YO10 4QA

**For:** Erection of 14no. dwellings following demolition of existing bowling  
clubhouse and garage block

**By:** RMBI and Shepherd Homes Ltd

**Application Type:** Major Full Application (13 weeks)

**Target Date:** 7 November 2014

**Recommendation:** Approve

**1.0 PROPOSAL**

1.1 Erection of 14 detached houses on two parcels of land (Area A and Area B) within the grounds of Connaught Court care home. Ten of the houses would have 2.5 storeys; the remaining four houses would have two storeys. The houses would have 4, 5 or 6 bedrooms. All units would have integral or detached garages. An existing internal access road from St Oswald's Road would be widened and the junction improved. A bowling green on the site was recently removed. A bowling pavilion and greenhouse have recently been demolished.

1.2 The application was submitted to the Council in October 2013. On 6 February 2014 the application was deferred by the Area Sub-Committee pending amendments to the design and layout of Area A. The application as amended was returned to the Area Sub-Committee on 8 May 2014. Members resolved, in accordance with the officers' recommendation, to approve the application subject to a Section 106 agreement to secure financial contributions. The application was approved by the Area Sub Committee, and planning permission issued on 7 November 2014 following completion of a S106 agreement. On 17 November 2014 the residents' group Fulford Friends, through Mrs Mary Urmston, sent a pre-action protocol letter to the Council to give notice that they intended to challenge the grant of planning permission on the grounds that:

- The Council failed to take into account the requirement in the National Planning Policy Framework (NPPF) that development within flood zone 2 should be subject to a sequential test; and
- The Council failed in its duty under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing a conservation area; and

- That consequently the decision to grant planning permission was unlawful.

1.3 After careful consideration the Council accepted that a sequential test should have been carried out and that the statutory duty under S72 of the 1990 Act had not been properly applied in the determination of the application. These legal flaws were sufficient to make the decision unlawful. A Consent Order was agreed and the planning permission was quashed by the High Court.

1.4 The same application has therefore been remitted back to the Local Planning Authority for determination. This report applies the correct legal tests in respect of flooding and heritage issues in reaching the Officer recommendation.

## RELEVANT PLANNING HISTORY

1.5 In 2007 the council refused outline planning permission for (principally) the erection of housing, extra care accommodation, an extension to the mentally frail unit, relocation of the bowling green on the site, a new access off Main Street and car parking (05/00022/OUTM). The subsequent appeal was dismissed due to impact on the character and appearance of the area, including Fulford Village Conservation Area. In the current proposal there is no access from Main Street, no replacement bowling green, the housing along the southern boundary of the site has been deleted and there are no proposals for extra care flats to the east of the existing care home. The current proposal is confined to the areas south and east of Atcherley Close.

## 2.0 POLICY CONTEXT

2.1 Draft (2005) Development Plan Allocation:  
Conservation Area GMS Constraints: Fulford CONF  
City Boundary GMS Constraints: York City Boundary 0001  
DC Area Teams GMS Constraints: East Area (1) 0003  
Floodzone 2 GMS Constraints: Floodzone 2  
Floodzone 3 GMS Constraints: Floodzone 3

2.2 Section 38 of the 1990 Act requires local planning authorities to determine planning applications in accordance with the development plan unless material considerations indicate otherwise. There is no development plan in York other than the saved policies of the Regional Spatial Strategy relating to the general extent of the Green Belt. (The application site is not within the Green Belt). Although there is no formally adopted local plan the City of York Draft Local Plan Incorporating the Fourth Set of Changes was approved for Development Management purposes in April 2005.

Whilst it does not form part of the statutory development plan for the purposes of s.38 its policies are considered to be capable of being material considerations in the determination of planning applications, where policies relevant to the application are consistent with those in the NPPF.

### 2.3 The most relevant Draft (2005) Policies are:

CYGP1 Design  
 CYGP4A Sustainability  
 CYGP9 Landscaping  
 CGP15A Development and Flood Risk  
 CYNE1 Trees, woodlands, hedgerows  
 CYNE6 Species protected by law  
 CYHE2 Development in historic locations  
 CYHE3 Conservation Areas  
 CYHE10 Archaeology  
 CYT4 Cycle parking standards  
 CYED4 Developer contributions towards Educational facilities  
 CYL1C Provision of New Open Space in Development

2.4 Following a motion agreed at Full Council in October 2014, the Publication Draft of the York Local Plan (2014) is currently not progressing through its statutory consultation pending further consideration of the Council's housing requirements and how they should be met. The plan policies can only be afforded weight in accordance with paragraph 216 of the NPPF. At the present early stage in the statutory process such weight will be limited. However, the evidence base that underpins the proposed emerging policies is a material consideration in the determination of the planning application. The evidence base includes an assessment of housing requirements undertaken by consultants Arup (Housing Requirements in York: Evidence on Housing Requirements in York: 2014 Update, Arup, 2014), which informed the publication draft of the local plan, as approved by Cabinet in September 2014, and the Council's Site Selection Papers produced to support the emerging Local Plan (Site Selection Paper (2013) City of York Council) in respect of proposed housing allocations.

### 2.5 Relevant emerging policies are:

Policy DP1: York Sub Area  
 Policy DP2: Sustainable Development  
 Policy DP3: Sustainable Communities  
 Policy SS1: Delivering Sustainable Growth for York  
 Policy H1: Housing Allocations  
 Policy D1: Landscape and Setting  
 Policy D4: Conservation Areas  
 Policy D7: Archaeology  
 Policy GI5: Protection of Open Space and Playing Pitches

Policy G16: New Open Space Provision  
Policy ENV4: Flood Risk  
Policy ENV5: Sustainable Drainage  
Policy T1: Sustainable Access

2.6 The National Planning Policy Framework (NPPF) was published in March 2012. It sets out government's planning policies and is material to the determination of planning applications. The sections in the NPPF most relevant to this proposal include:

- 4 - Promoting sustainable transport
- 6 - Delivering a wide choice of high quality homes
- 7 – Requiring good design
- 8 – Promoting healthy communities
- 10 - Meeting the challenge of climate change, flooding and coastal change
- 11 – Conserving and enhancing the natural environment
- 12 - Conserving and enhancing the historic environment

2.7 The NPPF is the most up-to date representation of key relevant policy issues and it is against this Framework that the proposal should principally be addressed.

2.8 The essence of the Framework is the presumption in favour of sustainable development which, for decision-taking, means approving without delay development proposals that accord with the development plan. Where the development plan is absent, silent or relevant policies are out of date, planning permission should be granted unless: (1) any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole; or (2) specific policies in the framework indicate development should be restricted (paragraph 14). A footnote to paragraph 14 gives examples of policies where the presumption in favour of sustainable development does not apply. They include policies relating to designated heritage assets and locations at risk of flooding. Both of these policy areas are relevant to the current application. Therefore, in this case, the presumption in favour of development does not apply. Instead, the application should be judged against, among other things, policies in sections 10 and 12 of the NPPF, which are specific to these areas (flood risk and heritage assets respectively) and which are considered later in this report.

2.9 In addition to policies in the Framework to protect heritage assets the Local Planning Authority has a statutory duty under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Case law has made clear that when deciding whether harm to a Conservation Area is outweighed by the advantages of a proposed development, the decision-maker must give particular weight to desirability of avoiding such harm. There is a "strong presumption" against the grant of planning permission in such cases.



The exercise is still one of planning judgment but it must be informed by that need to give special weight to maintaining the Conservation Area (E.Northants DC v Secretary of State for Communities and Local Government [2014] EWCA Civ137). This means that even where harm is less than substantial (as in this application), such harm must still be afforded considerable importance and weight, i.e. the fact of harm to the Conservation Area is still to be given more weight than if it were simply a factor to be taken into account along with all other material considerations. The local planning authority has a further statutory duty under s.66 of the same Act to have special regard to the desirability of preserve the setting of listed buildings. These duties are considered later in this report.

2.10 As this is an application for housing development, paragraph 49 of the NPPF applies. It states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. However, the NPPF must be considered as a whole, and in this case, the proposal involves heritage assets and flood risk and therefore the presumption in favour of sustainable development set out at paragraph 14 does not apply. Instead more restrictive policies apply set out in Chapter 10 and 12 of the NPPF.

### **3.0 CONSULTATIONS**

#### **INTERNAL**

##### Highway Network Management

3.1 No objections subject to standard conditions and submission of a construction method of works statement.

##### Environmental Protection Unit

3.2 Add conditions re: unsuspected contamination, gas emissions from landfill sites, electrical recharging and hours of construction.

##### Design, Conservation and Sustainable Development (Landscape)

3.3 The building line of properties within Area A is just outside of the recommended root protection area (RPA) of the protected trees located along St. Oswalds Road, however construction operations such as scaffolding and excavations for footings would be within the RPA. The submitted tree protection method statement should be adhered to. Pear trees of the stature of T294, which would be lost, are no longer commonplace so it would be preferable to retain this tree. New tree planting is suggested in the front gardens along the entrance into the site. The planting proposals are fine and include a number of additional trees along the boundary with Area B.

### Design, Conservation and Sustainable Development (Conservation)

3.4 The vehicular areas at plots 3 and 4 (Area A) are extensive and prevent the houses being moved further from the trees along St Oswald's Road. Nevertheless the impact on the conservation area is acceptable. The 2 ½ storey gable wall of the house at plot 9 (Area B) would have a rather overbearing impact on the occupiers of No. 26 Atcherley Close. The council's pre-application advice/guidance to the applicant has been consistent in requesting lower massing in this location. Details of the verge to St Oswald's Road and the proposed gates in the existing railings should be made conditions of approval.

### Design, Conservation and Sustainable Development (Countryside)

3.5 The development is unlikely to have any significant impact on Fulford Ings SSSI. The main habitats on the application site to be affected by the development are amenity grassland with standard trees, species-poor hedgerow, areas of tall ruderal and two buildings. The buildings that have been demolished (a bowling pavilion and garage block) were assessed as having low or negligible potential to support roosting bats. External daytime inspections and evening emergence surveys found no evidence of roosting bats. All of the trees identified for removal have negligible potential to support roosting bats. Fulford Ings and the adjoining habitats along the River Ouse provide excellent foraging habitat for bats and therefore the loss of these habitats on the site would not significantly impact on bats within the wider area. The grassland, hedgerows and ruderal are of low value; their impact would not be significant.

### Communities, Culture and the Public Realm

3.6 As there is no on-site open space commuted sums should be paid to the Council towards off-site provision of amenity open space, play space and sports pitches. Play and amenity open space payments will go toward facilities in Fulford Parish, sports pitch payments will be used within the south zone of the Sport and Active Leisure Strategy. The contribution is to be based on the latest York formula through a Section 106 Agreement. A contribution should also be paid for replacement open space due to the permanent loss of open space at Connaught Court. The contribution should be put towards the improvement of bowling facilities at Scarcroft Green. The investments reflect needs identified by existing and relocated bowlers.

### Forward Planning

3.7 In terms of the Council's 5 year housing land the issue is complicated given the current status of the emerging Local Plan and the very recent release of the Department for Communities and Local Government (DCLG) household projections. The Council does not have an NPPF compliant five year housing supply unless the proposed housing sites within the present general extent of the green belt are included. Such sites cannot be included until the defined boundaries of the Green Belt have been identified through the Local Plan process. Consequently, until the Plan is progressed further, an NPPF compliant 5 year supply cannot be demonstrated.

The site at Connaught Court is included as a draft housing allocation within the Publication Draft Local Plan (2014) - Site H47 and therefore is included and required as part of the five year housing supply. It is not within the general extent of the York Green Belt.

3.8 There is a possibility given the current position in terms of the housing demand figure for the Local Plan that the position in relation to the housing supply may change when the Local Plan recommences its passage to adoption.

3.9 In terms of flood risk, as the site is a draft housing allocation within the emerging local plan document (Publication Draft 2014) A level of assessment against flood risk has already been undertaken through the site selection methodology in line with the requirements set out in York's SFRA as outlined as necessary by the NPPF. This site selection methodology is explained further in a later section (Para 4.12) but involves the exclusion of any land within flood zone 3b or greenfield land within flood zone 3a from development. It also applies a net to gross ratio to sites to allow for areas of flood zone 2 to be used as amenity land rather than part of the development.

3.10 The emerging planning policy in relation to flood risk (ENV4) states that new development shall not be subject to unacceptable flood risk and shall be designed and constructed in such a way that it mitigates against current and future flood events.

3.11 This emerging policy recommends that an assessment of whether there will be increased flood risk either locally or within the wider catchment is undertaken. It also asks that the vulnerability of any development be assessed in line with the SFRA to deem what is and isn't appropriate development on areas at risk of flooding. It states that development will be permitted should the authority be satisfied that any flood risk within the catchment will be successfully managed (through the management and maintenance plan for the lifetime of the development) and there are details of proposed necessary mitigation measures subject to a flood risk assessment being submitted. A further flood risk assessment should also be submitted which takes account of the potential effects of climate change. Areas of greater risk of flooding may be utilised for appropriate green infrastructure spaces.

3.12 The NPPF paragraph 103 asks that development be situated in areas of the site with the lowest flood risk and ensure that they are appropriately flood resilient, allow safe access and escape routes and give priority to the use of sustainable drainage systems.

3.13 In terms of Placemaking and Design there are a number of emerging policies which are relevant to this application including policy D1 landscape and setting, policy D2 placemaking, policy D4 conservation areas and policy D5 listed buildings.

3.14 The most relevant is policy D4 as the site lies entirely within a conservation area and close to another. This policy asks that proposals leave qualities intrinsic to the wider context unchanged, and respect important views and that they are also accompanied by an appropriate evidence based assessment to ensure the impacts of the development are clearly understood. Proposals will be supported where the new use would not significantly harm the special qualities and significance of the place. This level of harm would need to be assessed by the council's relevant Landscape/Heritage and Conservation officers.

3.15 As the site includes a designated Local Green Infrastructure Corridor for wildlife it is important for the site to have open space and garden land to allow for the migration of wildlife through the site. This will be helped by keeping the land to the south of the site open in line with the comments received through the site selection/further sites consultation process. The need to keep this land open in terms of the connection between Fulford Road and Fulford Ings is also addressed in the further sites consultation emerging evidence base document in terms of its landscape value.

## EXTERNAL

### York Natural Environment Panel

3.16 The Panel are glad to see the retention of an open corridor along the southern aspect of the site leading from Main Street down to the Ings. The proposals are contrary to policy GP10, converting what is essentially garden space into building land. The proposals represent a loss of green land when the priority should be for the development of brownfield sites, of which York has a significant provision. There is concern that the build line extends closer to the flood plain, an extent which is likely to expand over time given climate change and the associated increase in flooding incidence.

### Police Architectural Liaison

3.17 No concerns or issues.

### Natural England

3.18 Does not wish to comment on the details of the application as it does not pose any likely or significant risk to those features of the natural environment for which we would otherwise respond.

### Ouse & Derwent Internal Drainage Board

3.19 No objections.

### Environment Agency

3.20 No objections subject to conditions requiring adherence to the submitted flood risk assessment, submission of drainage details (including attenuation) and no erection of structures within flood zone 3.

Conservation Area Advisory Panel

3.21 No objection. The panel commends this much improved scheme.

Historic England (formerly English Heritage)

3.22 No comments.

Fulford Parish Council

3.23 Objection on the following grounds:

- The principle of development on the site.
- The proposed housing would have a detrimental effect on Fulford Village Conservation Area, Fulford Road Conservation Area and the parkland setting.
- The s.106 contributions and housing need are not public benefits that outweigh the harm to heritage assets.
- It is not appropriate to build in flood zone 2 and raise gardens in flood zone 3 when other areas are available.
- Allocation as a housing site should be re-evaluated.
- The appearance of the verge would be further changed by the proposed footpaths crossing it.
- The position of houses 1, 3 and 4 forward of the building line formed by Sir John Hunt Homes would harm both conservation areas.
- Houses 1, 2 and 3 are too close to prominent trees that contribute positively to the character of the conservation area.
- The setting of The Cottage, which is a listed building, would be harmed because the house at plot 3 would have an overbearing effect, due to its location and size.
- Several protected trees would be lost
- Several houses within area B are partly in flood zone 2. Sequential testing should be applied to this [Officers' response - A sequential test has since been applied].
- Raising the level of private gardens would obstruct the floodplain, contrary to guidance.
- The houses at plots 10-14 (Area B) would be very conspicuous from the Ings, which is in the green belt
- No affordable homes are provided, contrary to local planning guidance.
- The submitted bat survey is deficient.
- The proposed site is immediately adjacent to Fulford Ings, an Site of Special Scientific Interest (SSSI). The local authority should ensure that it fully understands the impact of the proposal on the local wildlife site, before it determines the application.
- EIA regulations apply to the development site and an EIA should be carried out.
- The site is not allocated for housing in the consultation draft of the local plan.

Fulford Friends

3.24 Objection on the following grounds:

- Substantial harm to Fulford Village Conservation Area, to the setting of Fulford Road Conservation Area and to the historic character and setting of the City.
- The harm to heritage assets is not outweighed by the public benefits of the scheme.
- The iron railings and the verge contribute greatly to the rural character of the conservation area.
- The application should not include the line of trees or any part of the public verge within the curtilage of the new dwellings [Officers' response - The trees and railings will now remain outside the curtilage of the houses].
- Impact on the setting of the listed cottage.
- The number and height of dwellings at Area B should be reduced to minimise the impact on the local and wider environment.
- The sequential test has not been properly applied to these areas [Officers' response - The sequential test has since been applied].
- Loss of important trees/hedges, especially T294, T298 and T299, which have high amenity/wildlife value and contribute to the conservation area.
- Long-term risk to the trees along the St Oswald's Road frontage.
- Impact on bats should be fully assessed before any planning decision is taken.
- The need for the development does not outweigh the loss of the bowling green, which is a local community asset.
- The scale of development is just below that which would require the provision of affordable housing.
- The site should be treated as greenfield land not brownfield.
- The application should not be determined without a response from Yorkshire Water.
- The site should be fully assessed for allocation in the Draft Local Plan.
- The impact of the proposals on public views from or into the conservation area, particularly from the green belt, has not been taken into account.

### Trustees for Sir John Hunt Memorial Homes

3.25 No objection providing the boundary trees are not adversely affected and that the distance of the nearest house to our mutual boundary is not reduced, nor the house developed with rooms in the roof space. This support is subject to the Highways Department confirming that there would be no noticeable increase in traffic flows that could not be accommodated within the existing highway network.

### Public Consultation

3.26 The initial public consultation period expired on 30 December 2013. A second public consultation exercise was carried out in March/April 2014 following submission by the applicant of revised plans. The public were consulted again following receipt of additional information after the planning permission had been quashed by the High Court. In total, representations have been received from 17 objectors raising the following issues:

- Overdevelopment.
- Impact on the conservation areas.
- Out of keeping with character of the area.
- Increase in traffic.
- Inadequate access.
- Traffic calming required.
- Verge should be kept to prevent kerbside parking in St Oswald's Road.
- Would exacerbate parking problems in St Oswald's Road.
- Loss of attractive open parkland.
- Loss of trees.
- Loss of open views from the river.
- Removal of railings.
- Bowling green should be retained as a community facility.
- There is no oversupply of bowling greens.
- Impact on the adjacent SSSI.
- Increase in flood risk.
- Impact of house 4 on the listed cottage.
- The temporary construction road is unnecessary and would damage protected trees.
- Insufficient mix of housing types.
- Overshadowing and overbearing.
- EIA needed.

## 4.0 APPRAISAL

### 4.1 MAIN ISSUES

Principle of Development for Housing  
 Trees and the Parkland Setting  
 Heritage  
 Recreation and Open Space  
 Highways Issues  
 Flood Risk and Drainage  
 Neighbour Amenity  
 Education Provision  
 Bio-Diversity  
 Archaeology  
 Affordable Housing  
 Environmental Impact Assessment

CONNAUGHT COURT AND THE APPLICATION SITE

4.2 Connaught Court is a 90-bed care home (4.86ha) in a parkland setting, which includes trees protected by Tree Protection Orders (TPO).

The site lies between Main Street, St. Oswald's Road, Atcherley Close, Fulford Park and Fulford Ings. The main vehicular access is from St. Oswald's Road. The site is dominated by a large 2 and 3 storey care home, with associated smaller buildings and dwellings grouped around it. The buildings are mainly grouped towards St. Oswald's Road and Atcherley Close. Most of the remainder of the site is private open space and includes a bowling green. The site contains large number of protected trees, in particular near Main Street.

4.3 The whole of the site lies within the settlement limit of York. The land is mainly flat except at the south-western corner where it falls steeply down towards Fulford Ings and the River Ouse beyond. This part of the site lies in flood zones 3a and 3b (functional flood plain). The whole of the site is in Fulford Conservation Area and abuts, to the north, Fulford Road Conservation Area. The land at Fulford Ings, to the south west (outside the application site) is in an SSSI and the green belt.

4.4 The two parcels of land mainly comprise the current application total 1.28ha of private open space and lie to the east (Area A) and south (Area B) of Atcherley Close. The site area is significantly less than half of the site area of the previous application, which included land to the south and east of the care home buildings.

## PRINCIPLE OF DEVELOPMENT FOR HOUSING

4.5 The National Planning Policy Framework requires local planning authorities to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. The application site is in a sustainable location within the settlement limit of York and with good access to public transport and local services.

4.6 In terms of the Council's 5 year housing land supply, the issue is complicated given the current status of the emerging Local Plan and the uncertainty surrounding the Communities and Local Government (CLG) household projections.

4.7 The Publication Draft Local Plan as approved by Cabinet on 25/9/14 put forward the following position in terms of the Local Plan housing requirement drawing on evidence from the ARUP report published as evidence base. The Publication Draft Local Plan housing requirement was made up of the following components:

- A trend based assessment of household growth to support the Plan's economic ambition of 870;
- Further provision to address the backlog from previous under delivery of 126 dwellings per annum (calculated on a base date of 2004 - RSS start date)



- This equates to an annual housing requirement of 996 dwellings per annum or a total plan requirement of 15,936 dwellings (1 April 2014 to 31 March 2030);
- The application of a 20% buffer for years 1-6 of the Plan. This equates to an additional supply requirement of 174 dwellings per annum for year 1-6 of the Plan.

4.8 This means that the residual annual requirement for years 1-6 of the Plan is 1,170 per annum. The housing supply against this position (based on the Publication Draft Local Plan) is 4,880 dwellings (excluding draft allocations within the draft Green Belt). This equates to a 4.2 year supply, or an undersupply of 969 dwellings/0.8 years in the 5 year supply as correct at the time of the Publication Draft in September 2014.

4.9 The 2012 based household projections were released from CLG (Communities and Local Government) on 27 February 2015. These projections present the latest national statistics on the projected number of households in England and its local authority districts up to 2037. The figures in this release are based upon the 2012-based sub-national population projections, published by the Office for National Statistics (ONS) in May 2014. They replace the 2011-based interim household projections released in April 2013 and will become the starting point for Local Authorities for their calculation of housing requirements for the Objective Assessment of Housing Need (OAHN).

4.10 It should be noted that these household projections effectively provide the demographic starting point for the assessment of housing need. In line with national planning practice guidance an Inspector at examination will expect local authorities when looking at their housing requirement figure to also consider the impact of economic growth and backlog (i.e. under supply in previous years). Work is ongoing on a revised OAHN to incorporate the updated CLG household projections and this will be reported to Members in due course.

4.11 There is a possibility given the current position in terms of the housing demand figure for the Local Plan set out above that the position in relation to the housing supply may also change when the Local Plan recommences its passage to adoption. This response should be seen only in the context of the present application and in the light of the most recently published evidence.

4.12 The proposed site at Connaught Court forms part of the Council's five year supply (draft housing allocation Site H47) and the site assessment is contained within the Council's Site Selection Paper published as evidence base to support the Publication Draft Local Plan in September 2014 (Further Sites Consultation (2014) and Site Selection Addendum (2014) City of York Council). The site is considered to be suitable, available and achievable in accordance with the requirements of NPPF.

4.13 The methodology used to determine the suitability of sites for allocation in the emerging draft Local Plan was set out in the Site Selection Paper (2013) and

subsequent addendums (Further Sites Consultation (2014) and Site Selection Addendum (2014) City of York Council).

These set out a 4-stage criteria methodology to sieve out sites which did not accord with the criteria. The chosen criteria are based upon the spatial principles for York as set out in the Spatial Strategy in the draft Local Plan. The assessment criteria included:

#### Criteria 1: Environmental Assets

- Historic Character and setting (The Approach to Green Belt Appraisal, City of York Council, 2003 and Historic Character and Setting Technical Papers 2011 and 2013),
- Regional green corridors (The Local Plan Evidence Base Study: Open Space and Green Infrastructure, Amec (2014)
- Nature conservation sites (City of York Biodiversity Audit, City of York Council (2013),
- Ancient woodland (The Local Plan Evidence Base Study: Open Space and Green Infrastructure, Amec (2014) and
- High flood risk (flood zone 3b)) (City of York Council Strategic Flood Risk Assessment, Revision 2 (2013)

Criteria 2: Existing openspace;

Criteria 3: Greenfield sites in high flood risk (Flood zone 3a);

Criteria 4a: Access to services; and

Criteria 4b: Access to transport.

4.14 Criteria 4 used defined distances to determine access to the facilities and transport services. A minimum scoring threshold was used to sieve out sites with poor accessibility to ensure that there was sustainable access from these sites to aid the creation of a sustainable community. It was also acknowledged that sites over 100 hectares would be required to provide facilities sufficient to make a new sustainable community. In addition to the criteria assessment the sites were also subject to a Technical Officer Group made up of experts from around the Council who provided more site specific advice on the site. Where officers identified showstoppers for development, these sites were discounted from the list of suitable sites.

4.15 In terms of the application site at Connaught Court (Site 298/H47), it is included as a housing allocation subject to there being no built development within (a) with the strategic open space identified within the further sites consultation appendices document which includes areas of flood zone 3 and allows for a buffer to the regional green corridor of the Ouse (b) the open landscape corridor to the south of the site preserving views and biodiversity routes between Main Street and Fulford Ings. The planning application is in accordance with this draft allocation.

4.16 The site assessment in the Site Selection Paper published to support the emerging Local Plan included a detailed technical officer assessment. This

assessment of the remaining developable area concluded that the site was considered suitable for development. The publication draft of the York Local Plan is currently not progressing through its statutory consultation pending further consideration of the Council's housing requirement and how it should meet those requirements.

4.17 The Council considers the site to be previously-developed land on the basis that Connaught Court has the character of a residential institution (Use class C2 of the Use Classes Order). Class C2 includes such uses as hospitals, nursing homes and residential schools. The applicant and Fulford Friends on the other hand consider that the application site should be treated as part of the residential garden of the care home. The National Planning Policy Framework defines "Previously Developed Land" within the Glossary, and the definition is clear that not all curtilage land should necessarily be treated as previously developed land. Furthermore the Framework requires local planning authorities to consider policies to resist inappropriate development of residential gardens in any event, for example where development would cause harm to the local area. The exclusion of private gardens from the definition of previously developed land was introduced in 2010 to prevent local authorities feeling forced to grant planning permission for unwanted development on garden land simply to reach the government's target for development on brownfield sites.

4.18 Whatever the designation of the land, it is immaterial in this case and does not change officers' consideration of the site's suitability for housing development. The removal of residential gardens from the definition of previously developed land in the NPPF Glossary has not introduced a general presumption against the development of gardens. It merely removes this as a positive factor in determining such applications. Local Planning Authorities are still expected to seek the efficient use of land, which focuses new residential development on sites in sustainable locations, such as Connaught Court. Any scheme still has to be judged against the impact on the character of an area, the impact on adjacent residents and any other material considerations. In this particular case, the change in the definition of previously developed land (which was introduced since the 2005 planning application) does not change officers' opinion that the principle of the use of the site for housing is acceptable.

4.19 All of the houses comprising the application have 5-6 bedrooms, which are larger than is typical for a housing development. In this case the development of a relatively-small number of large houses is preferable to a greater number of more varied houses because it would have less impact on the conservation areas, particularly the site's parkland setting.

## TREES AND THE PARKLAND SETTING

4.20 The National Planning Policy Framework states that planning permission should be refused for development resulting in the loss or deterioration of

irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland unless the need for, and benefits of the development in that location clearly outweigh the loss (paragraph 118).

4.21 One of the key attributes of the care home's setting is the open swathe of parkland between Main Street and Fulford Ings. It helps to preserve the distinction between Fulford Village and the city suburbs. Unlike the 2005 planning application for Connaught Court, this part of the care home site would be left undeveloped. It does not form part of the current application.

4.22 The second key attribute of the parkland setting is the proliferation of mature trees of high amenity value. Most of these trees are at the eastern end of the Connaught Court site, near Main Street. This area is outside the application site. None of the trees in this part of the parkland setting would be affected by the application.

4.23 The application site does contain some attractive, mature trees, notably along the highway frontage facing St Oswalds Road. Whilst all of these frontage trees would abut plots 1, 3 and 4 of Area A they would all be retained. The application as first submitted had the three houses encroaching into the root protection area of these trees. Construction is likely to have caused them unacceptable damage. Furthermore, such close proximity of trees to houses frequently results in pressure on the local planning authority, from the occupiers of the houses, to agree to the trees' removal. Prior to the February 2014 committee revised plans were submitted showing the houses 2.5m further from the trees. This is the minimum distance that would be acceptable without resulting in damage to the trees. Nevertheless the trees would still have to be properly protected during construction. A condition should be attached requiring adherence to the submitted construction method statement, including details of tree protection.

4.24 The applicant initially included a temporary construction access road between two of the trees for use whilst the existing access road into the site was being widened and improved. The proposed construction route has since been amended to avoid having to pass between the trees. As now proposed it would enter the site through the front gate before following a new alignment parallel to the internal access road.

4.25 Eight other trees and four sections of hedgerow would need to be removed, mainly along the perimeter of the bowling green. None of the trees are classed as aged or veteran, as described in the National Planning Policy Framework. Most of the nine trees are category C, of 'minor value'. The remaining two trees are category B, of 'moderate value'. The loss of trees would be compensated for by landscaping, including 60 replacement trees.

4.26 The layout as initially submitted included the loss of a further category C tree, a Pear, close to the private road through the site. The alterations to the layout since

the application was deferred have enabled the tree to be retained, which is welcomed.

## IMPACT ON HERITAGE ASSETS

4.27 The whole of the site is within Fulford Village Conservation Area and abuts the curtilage of The Cottage, a grade II listed building. Immediately to the north of the application site (but entirely outside it) is Fulford Road Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, referred to earlier in this report, imposes a statutory duty on local planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Section 66 of the same Act requires that in determining planning applications for development which would affect a listed building or its setting the LPA shall 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.

4.28 The Courts have held that when a Local Planning Authority finds that a proposed development would harm a heritage asset the Authority must give considerable importance and weight to the desirability of avoiding such harm to give effect to its statutory duties under sections 66 and 72 of the Act. The finding of harm to a heritage asset gives rise to a strong presumption against planning permission being granted. The current application must be judged on this basis.

4.29 In the NPPF listed buildings and conservation areas are classed as 'designated heritage assets'. When considering the impact of proposed development on such assets local authorities should give great weight to the asset's conservation. Any harm or loss should require clear and convincing justification (paragraph 132).

4.30 The Fulford Village Conservation Area Appraisal states that '20th Century development within the park has still left significant large areas of open space, including some fine mature trees and a margin of parkland between Main Street and Fulford Ings which helps to preserve the distinction between Fulford Village and the city suburbs and the open space which encircles the settlement'. Any proposals for the eastern end of Connaught Court would be likely to have a significant impact on the character and appearance of the conservation area. However, the current application does not include this part of the conservation area, which lies to the east of the main care home buildings. Nor would the proposed houses be visible from Main Street. Furthermore, when viewed from Main Street the application would maintain the functional and visual gap between Fulford village and the city suburbs. The development would cause some harm to Fulford Village Conservation Area by allowing built development where there is currently very little, thereby affecting the openness of the overall site; however the landscape character of the boundaries would be preserved and the relative density of the new development would be low. The houses at Area A would inhibit views into the site from St Oswalds Road but

generous spaces between the buildings would allow some views through and the line of mature trees forming the historic boundary would be preserved.

Although the houses at Area B would be partially visible from Fulford Ings they would be seen against a backdrop of the main care home buildings, which are taller than the proposed houses and set at a higher level. The harm is assessed as minor but in these circumstances the council's statutory duty under s.72 gives rise to a strong presumption against planning permission being granted, and considerable importance and weight must be given to the harm, despite it being minor.

4.31 None of the application site lies within Fulford Road Conservation Area (the boundary runs along the centre line of St Oswald's Road) but plots 1, 2 and 3 would abut St Oswald's Road. The conservation area appraisal describes St Oswald's Road as a spacious and quiet residential cul-de-sac with a very strong sense of identity, quite different in character to anything else in the area. It goes on to say that the street has considerable townscape and architectural interest and that most of the houses bordering the site are of positive value to the area. The three proposed houses along the St Oswalds Road highway frontage would cause some harm to the setting of the conservation area by increasing the amount of development along the south side of St Oswalds Road and reducing the openness, at this point, between the two conservation areas. However, the houses would be set well back from the highway boundary and the line of mature trees along the boundary would be retained. All three houses would have a traditional design - two storeys high with brick walls, pitched roofs, traditional detailing and front gardens. The setting to the Conservation Area is therefore assessed as minor.

4.32 Area A abuts the curtilage of The Cottage, a grade II listed building. The building lies adjacent to St Oswald's Road. Since submission of the application the house at plot 3 has been moved 2m further away from the curtilage of the listed cottage (from 3.5m to 5.5m). The house at plot 3 would be set back behind the frontage of the listed building by approximately 11m which, together with the increased separation distance, and the intervening 2m-high boundary wall, the proposed position would be sufficient to prevent any significant impact on the setting of the listed building. Any harm to the setting of the listed building is assessed as minor but the statutory duty under s.66 gives rise to a strong presumption against planning permission being granted. Any harm must be given considerable importance and weight in the planning balance, even where it is minor.

4.33 Whilst harm to heritage assets is assessed as being minor, such harm has been afforded considerable importance and weight in the overall planning balance.

## RECREATION AND OPEN SPACE

4.34 The application requires a contribution of £48,856 towards open space in accordance with policy L1c of the local plan. Such contributions are calculated on the basis of each new dwelling approved. The applicant has agreed to make the contribution and is in the process of submitting a unilateral undertaking to that effect.

4.35 The application proposal would require an existing, but unused, bowling green at Connaught Court to be built over. Paragraph 74 of the National Planning Policy Framework allows existing open space to be built on where the land is surplus to requirements or would be replaced by equivalent or better provision or the development is for alternative sports and recreational provision that clearly outweighs the loss. The Connaught Court bowling green was constructed in the 1970s and was in regular use by care home members. More recently it was used by Connaught Court Bowling Club, which had a wider membership. The green has never been open to the public. For the past few years membership has been in decline so the green was opened to other clubs. Usage continued to decline so the green was closed at the end of 2012. By that time the green was in very poor condition. The council's Leisure officers acknowledge that demand for bowling is in general decline and that there is now an oversupply of bowling greens in the York area. However, there is not a surplus of open space per se. Accordingly the permanent closure of the Connaught Court green would be contrary to paragraph 74 of the National Planning Policy Framework unless it were to be replaced by equivalent or better provision of open space elsewhere. To this end the applicant has agreed to pay the council £19,381, in addition to the contribution required under policy L1c. Both open space payments have already been secured in a completed section 106 agreement.

4.36 Despite the general decline in the demand for bowling there is still a need for high quality facilities for the City's remaining bowling clubs. The council's Leisure officers consider that the best way of catering for this need is to improve existing bowling facilities at strategic locations throughout the city. The £19,381 paid by the applicant for the loss of open space at Connaught Court will therefore be used to improve the existing bowling green at Scarcroft Green.

## HIGHWAYS ISSUES

4.37 Access to the site would be via the existing access from St Oswalds Road. The care home's internal access road would be improved and widened as part of the proposals. Based upon experience of other sites around the city the level of development proposed can be expected to generate in the region of nine vehicle movements during the AM/PM peak network periods. This level of traffic would not have a material impact on the operation of the highway network and could be accommodated by adjacent junctions without detriment to the free flow of traffic or highway safety. The internal layout proposed is capable of being adopted as publicly maintainable highway and would provide turning facilities for servicing traffic. Car parking would be provided within the curtilage of each dwelling and it is not anticipated that the development would lead to a displacement of parking onto the adjacent highway. Sufficient areas exist within the internal layout to accommodate visitors/casual callers.

4.38 The accessible location of the site would encourage the use of sustainable modes of transport.

Fulford Road is serviced by regular bus services to the city centre, and the area is well served by cycle routes along Fulford Road and both sides of the river.

## FLOOD RISK AND DRAINAGE

4.39 The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk but, where development is necessary, making it safe without increasing flood risk elsewhere (paragraph 100). Local plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk by, among other things, applying the sequential test (paragraph 100). The aim of the sequential test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. A sequential approach should be used in areas known to be at risk from any form of flooding (paragraph 101). When determining planning applications local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment (FRA), and following the sequential test, it can be demonstrated that within the site the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location and development is appropriately flood resilient and resistant (paragraph 103). This is the planning policy context within which the application should be judged.

4.40 In the Framework and its associated National Planning Policy Guidance sites in flood zone 2 and 3 are classed as 'areas at risk of flooding'. Zone 2 has a 'medium probability' of flooding; Zone 3(a) has a 'high probability' while zone 3(b) is functional flood plain. Development should not be permitted in zones 2 or 3 if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Of the 14 houses proposed 11 are in flood zone 1 and parts of the remaining three are in zone 2. There would be no houses in zone 3. Most of the gardens are entirely in flood zone 1. Of the remainder all usable areas of garden fall within zones 1 and 2.

4.41 Environment Agency guidance advises that the geographic area of search over which the sequential test is to be applied will usually be the whole of the local planning authority area. Approximately 800 parcels of land have been considered through the Site Selection process following the Call for Sites process undertaken in 2012. These sites have all been assessed through the Site Selection Methodology and those that are considered suitable, available and deliverable, as required by NPPF, have been included as draft allocations within the emerging Local Plan.



4.42 In line with the spatial strategy of the Local Plan areas of high flood risk (flood zone 3b and Greenfield land within zone 3a) have been excluded from consideration or the developable area reduced to exclude this area of land as part of the site selection criteria. Technical officer comments have also been gathered for all sites through the process including comments relating to flood risk and drainage.

4.43 There is insufficient land with a lower risk of flooding (i.e. zone 1) than this site that also meets the other tests (i.e. suitable, available and deliverable) when assessed against the Site Selection methodology to meet the identified housing requirement for years 1-5 of the Plan. As described earlier in this report the Council acknowledges that it does not have a NPPF-compliant 5-year supply of land. In the absence of a 5-year supply, whilst there may be other sites that are at lower risk of flooding, there are not enough such sites to address the 5-year supply. The site at Connaught Court is required in order to meet that supply.

4.44 A retaining wall would be built along the general alignment of zone 3a and would separate the occupiers' main amenity area from their garden land in zone 3. The alignment of the proposed retaining wall, which would be straight for most of its length, does not follow exactly the zone 3 alignment. Nevertheless the variations (between the wall alignment and the zone 3 boundary) would balance and have been agreed with the Environment Agency and the council's flood risk officers.

4.45 The applicant proposes that a planning condition be attached to the planning consent preventing the construction of any structures beyond this line (i.e. in zones 3a or 3b) other than the proposed post and rail boundary fencing. Further conditions of approval should be attached to control finished floor levels of all the houses in Area B and to require fencing details to be submitted for approval.

4.46 Surface water run-off would be to the river Ouse via existing connections. The discharge rate would be attenuated to the Greenfield rate of 5l/s as agreed with the Environment Agency and the internal drainage board. The proposals reduce the surface water run-off by 30 percent (in accordance with the council's Strategic Flood Risk Assessment) and provide further betterment by storing more water underground than required and applying further restrictions to its discharge. Levels across the site would be laid out to allow any flood water to flow away from buildings. The minimum level for roads, paths and escape routes would be at, or above current site levels. Most of the development is in flood zone 1. Permitted development rights would be removed for development in flood zones 3a and 3b. In summary, the whole of Area A and the houses at Area B are not at significant risk of flooding. There remains a risk of flooding to the undeveloped, low-lying garden areas of Area B but this residual risk would be managed by the mitigation measures outlined above. Bearing in mind that there are insufficient suitable and reasonably available sites in York to provide a 5-year housing supply and that the proposal includes appropriate flood mitigation measures officers consider that the

development satisfies the sequential test and is acceptable in terms of flood risk. Details should be made a condition of approval.

4.47 Officers accept that the part of the site that is in zone 2 could be avoided by locating all 14 houses entirely within zone 1. Such a scheme is not before the council. Moreover, such a scheme would be likely to result in a more cramped form of development that would be out of keeping with the character of the conservation area and provide a lower level of amenity for the occupiers. An alternative would be to avoid zone 2 by building fewer houses. Again, such a scheme is not before the council. It would also provide York with fewer much-needed houses. Neither of these options are necessary bearing in mind that the current scheme includes appropriate flood mitigation measures and is acceptable in terms of flood risk.

4.48 The Environment Agency (EA) was consulted at the pre-application stage and the layout modified to reflect discussions between the EA, applicant and local planning authority. The application as submitted was accompanied by a flood risk assessment (FRA) and had a housing layout that reflected those discussions. The EA was consulted on the application as initially submitted and had no objection to the application. Since the planning permission was quashed the applicant has submitted a revised FRA and a sequential test report. The EA and the IDB have been reconsulted and have no objections to the application.

4.49 Fulford Friends argue that the application should not be determined without the council first having received a response from Yorkshire Water because the drainage of the site is partly within the functional floodplain. In response, Yorkshire Water has no role in the surface water drainage of the site.

## NEIGHBOUR AMENITY

4.50 The development of Area A is unlikely to have any significant impact on neighbouring occupiers. The houses in Area B would lie behind houses in Atcherley Close, i.e. nos 11 and 26. Whilst the proposed houses would have two main storeys, additional floorspace would be provided in the roof space, lit by rooflights. Separation distances meet and exceed all normal requirements in relation to distances between habitable room windows, and distances between rear and gable elevations. In response to concern about overbearing raised by residents the house at plot 9 has been moved 6m from the site boundary. The separation distance between the gable wall of the proposed house at plot 9 and the main elevation of the nearest existing house (No.26 Atcherley Close) is now 20.7m. A proposed sewer would run under the 6m strip, requiring an easement which would prevent construction within it - as long as the sewer, as built, follows this alignment. In case it does not, officers recommended that a condition be attached removing permitted development rights in this area.

4.51 There would be no build up of existing ground levels and no significant overshadowing of rear gardens or dwellings.

## EDUCATION PROVISION

4.52 The development would generate the need for four additional places at St Oswald's Junior School and two additional places at Fulford Secondary School. These schools are currently at capacity. Financial contributions totalling £84,053 would therefore be required under policy ED4 of the 2005 local plan. The contribution has already been secured in a completed section 106 agreement.

## BIO-DIVERSITY

4.53 The NPPF states that when determining planning applications local planning authorities should aim to conserve and enhance biodiversity. Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats unless the need for, and benefits of, the development in that location clearly outweigh the loss.

4.54 Fulford Ings Site of Special Scientific Interest (SSSI) is approximately 55m to the south-west of the site at its closet point. Assessed using Natural England's Risk Impact Zones, the development is unlikely to have any significant impact on Fulford Ings SSSI. There are no comparable habitats within the development site, the loss of which could have an indirect impact on the SSSI. However best working practices for construction should be followed e.g. waste water, dust control etc.

4.55 The main habitats on the application site to be affected by the development are amenity grassland with standard trees, species-poor hedgerow, areas of tall ruderal and two buildings a bowling pavilion and garage block (recently demolished). A bat survey was carried out in the Summer of 2012. In 2013 this was supplemented by: a phase 1 habitat assessment of the site; an external visual assessment of the bowling pavilion and garages for roosting bats; and a single nocturnal survey of the bowling pavilion. Due to the construction and condition of the garages they were assessed as having negligible potential to support roosting bats. The bowling pavilion was assessed as having low potential due to limited features which could be used by roosting bats such as a small gap under a ridge tile on western gable end. The bat surveys and inspections in 2012 and 2013 found no evidence of roosting bats. All of the trees identified for removal have negligible potential to support roosting bats and so no further works are necessary. Fulford Ings and the adjoining habitats along the River Ouse provide excellent foraging habitat for bats and therefore the loss of the habitats on site will not significantly impact on bats within the wider area.

4.56 The grassland, hedgerows and ruderal are of low value. The impact on them would not be significant.

4.57 Himalayan balsam was found to be present on site and therefore an informative regarding this invasive species should be attached to any planning permission for the development.

## ARCHAEOLOGY

4.58 An archaeological evaluation of the site was carried out in 2004. It recorded a number of ditches, pits and postholes in Area A dating back to the 1st and 2nd centuries AD. Features of a later Roman date were also found but in less quantity. No archaeological features were found in Area B. In mitigation the applicant proposes to excavate a series of trenches (to coincide with the footprints of the new buildings) and record their findings. The remains would largely be preserved in-situ. A condition should be attached requiring a written scheme of investigation for Area A to be submitted for approval. An archaeological watching brief should be applied to Area B.

## AFFORDABLE HOUSING

4.59 The National Planning Policy Framework states that local planning authorities should set policies for meeting identified need for affordable housing on site. To that end the council seeks to ensure that new housing development of 15 dwellings or more in the urban area will include affordable housing. The current application is for 14 dwellings, thereby not triggering the need for affordable housing.

Whilst the site is large enough to accommodate a greater number of dwellings a balance has to be struck between the provision of housing and protection of the conservation area, particularly its landscape setting. Officers consider that the application achieves this balance.

## ENVIRONMENTAL IMPACT ASSESSMENT

4.60 The local planning authority has carried out a screening opinion and taken into account the EIA regulations, the advice in National Planning Practice Guidance (March 2014), the documentation submitted with the application, consultation responses, the scale and characteristics of the development and knowledge of the site. The authority concludes that the development is unlikely to have significant environmental effects. Accordingly an EIA is not required.

## COMMUNITY INVOLVEMENT

4.61 The application includes a statement of community involvement. It sets out how, following the appeal inspector's decision in 2008, the applicant set out its revised intentions for the site. Pre-application discussions were held with council officers followed by a range of public consultation exercises. The public response was lower than the applicant expected and some changes were made.

## 5.0 CONCLUSION

5.1 The application would provide 14 dwellings in a highly sustainable and accessible location. There would be some minor harm to designated heritage assets, i.e. Fulford Village Conservation Area, the setting of Fulford Road Conservation Area and the setting of the Grade II listed building (The Cottage). Having attached considerable importance and weight to the desirability of avoiding such harm the local planning authority has concluded that it is outweighed by the application's public benefits of providing much-needed housing in a sustainable location. In terms of flood risk the local planning authority has carried out a sequential test and is satisfied that there are no other appropriate, reasonably available sites for the proposed development in areas with a lower probability of flooding. Furthermore that the development would be appropriately flood resilient and resistant. All other issues are satisfactorily addressed. The development would contribute £84,052 towards education, £48,856 towards open space and £19,381 towards improvements to open space (bowling green facilities at Scarcroft Green). These contributions are considered to be:

- (a ) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development,

and therefore comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). These contributions have already been secured in a s.106 Obligation. The application accords with national planning policy set out in the National Planning Policy Framework and with the emerging policies in the Draft York Local Plan (2014 Publication Draft).

## COMMITTEE TO VISIT

### 6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out only in accordance with the following plans: Y81.822.02B, Y81.822.03M, Y81.822.05E, Y81.822.10C, Y81.822.11C, Y81.822.12C, Y81.822.13C, Y81.822.14C, Y81.822.15C, Y81.822.16D, Y81.822.17D, Y81.822.18C, Y81.822.19C, Y81.822.20B, Y81.822.21B, Y81.822.22B, Y81.822.23B, Y81.822.24C, Y81.822.25C, Y81.822.26, Y81.822.27A, R/1496/1C and 34511\_003F.

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 The development hereby approved shall not commence until details of the following matters have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- i/ Public verge along St Oswalds Road
- ii/ Alterations to the railings and gates along St Oswalds Road frontage
- iii/ Footpaths between the houses at plots 1, 2 and 3 and the public highway at St Oswalds Road
- iv/ Post and rail fencing to plots 9-14.

Reason: In the interests of the character and appearance of the conservation area, protected trees and mitigation of flood risk.

- 4 HWAY1 Details roads, footpaths, open spaces req.
- 5 HWAY7 Const of Roads & Footways prior to occup
- 6 HWAY18 Cycle parking details to be agreed
- 7 HWAY19 Car and cycle parking laid out
- 8 HWAY40 Dilapidation survey

9 Prior to the commencement of any works on the site, a detailed method of works statement identifying the programming and management of site clearance/preparatory and construction works shall be submitted to and approved in writing by the local planning authority. Such a statement shall include at least the following information:

- the routing that will be promoted by the contractors to use main arterial routes and avoid the peak network hours
- where contractors will park
- where materials will be stored within the site
- measures employed to ensure no mud/detritus is dragged out over the adjacent highway.

Reason: To ensure that the development can be carried out in a manner that will not be detrimental to the amenity of local residents, free flow of traffic or safety of highway users. The details are required prior to commencement in order to ensure that they are in force during the whole of the construction phase of the development.

- 10 The tree planting scheme shown on submitted plan numbered R/1496/1C shall

be implemented within a period of six months from the completion of the development.

Any plants which within a period of five years from the substantial completion of the planting and development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority agrees alternatives in writing.

Reason: In the interests of the character and appearance of the conservation area and to enhance the biodiversity of the area.

11 Development shall not begin until details of foul and surface water drainage works have been submitted to and approved in writing by the Local Planning Authority, and carried out in accordance with these approved details, which shall include:

- A. Peak surface water run-off from the proposed development to a maximum 5.0 lit/sec.
- B. Consent should be sought from Yorkshire Water to connect additional foul water into their sewers and their easement requirements.
- C. Details of the future management and maintenance of the proposed drainage scheme.

Notwithstanding the drainage details submitted and approved under this condition the drainage works shall be carried out in accordance with the following plans:

- a. Flood Risk Assessment - PR/34511 005A
- b. Drainage Layout - 34511 003F
- c. Plot Drainage Layout - 34511 012B
- d. Catchment Area Plan - 34511 013A
- e. Flow Control Detail-Manhole S5 Sheet 1 of 2 - 34511 015A
- f. Flow Control Detail-Manhole S5 Sheet 2 of 2 - 34511 016A
- g. External Works Plan - Area B Sheet 2 of 2 - 3411 19B
- h. External Works Plan - Area A Sheet 1 of 2 - 3411 14B

The development shall not be raised above the level of the adjacent land.

Reason: So that the Local Planning Authority may be satisfied with the details for the proper drainage of the site. The details are required prior to commencement in order to ensure that groundworks and/or other operations early in the construction process do not prejudice the proper drainage of the site.

12 The finished floor levels on the ground floor of the dwellings hereby approved shall not exceed those shown on plan 34511/019/B received 24 January 2014.

Reason: In the interests of the amenities of neighbouring occupiers and the character and appearance of the conservation areas.

13 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any order revoking and re-enacting that Order with or without modification, no structure shall be erected within Flood Zone 3 (as delineated on drawing no. 34511/004 Rev C) except the 1.2m-high post and rail fencing to plots 9, 10, 11, 12, 13 and 14 shown on approved plan Y81:822.03/M.

Reason: To ensure that there is no loss of flow and storage of floodwater.

14 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 door, window or other opening shall at any time be inserted in the eastern elevation of the house at plot 3, the northern elevation of the house at plot 4 or the northern elevation of the house at plot 9 without the prior written planning permission of the local planning authority.

Reason: In the interests of the amenities of occupiers of adjacent residential properties.

15 In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared, which will be subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

16 Prior to commencement of development: (a) gas monitoring and/or a risk assessment shall be carried out by a competent person to assess landfill gas generation and migration. The findings shall be submitted to and approved in writing by the local planning authority; (b) based on the results of the gas monitoring and/or risk assessment, the detailed design of a gas protection system shall be submitted to and approved by the local planning authority. Prior to occupation of the development, a verification report that demonstrates the effectiveness of the gas protection system shall be submitted to and approved in writing by the local planning



authority.

Reason: To ensure that risks from landfill gas to the future users of the land and neighbouring land are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors. The details are required prior to commencement in order to ensure that they are in force during the whole of the construction phase of the development.

17 For each dwelling the applicant shall install a three pin 13 amp electrical socket in the garage which is in a suitable location to enable the charging of an electric vehicle using a 3m length cable.

Reason: To promote sustainable transport through the provision of recharging facilities for electric vehicles / bikes / scooters

NOTE: Any socket provided must comply with BS1363 or an equivalent standard, Building Regulations, be suitable for charging electric vehicles and should have a weatherproof cover if place outside. Where charging point is located outside an internal switch should be provided in the property to enable the socket to be turned off.

18 All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday	08.00 to 18.00
Saturday	09.00 to 13.00
Not at all on Sundays and Bank Holidays.	

Reason: In the interests of the occupiers of neighbouring occupiers.

19 No work shall commence on site until the applicant has secured the implementation of a programme of archaeological work (an archaeological excavation and subsequent programme of analysis and publication by an approved archaeological unit) in accordance with the specification supplied by the Local Planning Authority. This programme and the archaeological unit shall be approved in writing by the Local Planning Authority before development commences.

Reason: The site lies within an Area of Archaeological Importance and the development will affect important archaeological deposits which must be recorded prior to destruction. The details are required prior to commencement in order to ensure that no archaeological deposits are destroyed prior to them being recording.

NOTE: For Area B a watching brief will suffice.

20 The works hereby approved shall be carried out in accordance with the tree protection measures within the Tree Survey report by CAPITA dated 20 September 2013 (including the construction access alignment shown on plan ref: yfd1404 dated 9 April 2014 and the CAPITA Arboricultural Method Statement revised 28 March 2014 submitted with the application. A copy of each of these documents will at all times be available for inspection on site.

Reason: To protect existing trees which are covered by a Tree Preservation Order and to protect the character and appearance of the Fulford and Fulford Road conservation areas and to enhance the biodiversity of the area.

21 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order), development of the type described in Classes A (enlargements or extensions), B (additions or alterations to the roof) or E(a) (garden buildings or structures) of Schedule 2 Part 1 of that Order shall not be erected or constructed within the curtilage of the house at plot 9 without the prior written planning permission of the local planning authority.

Reason: In the interests of the amenities of occupiers of adjacent residential properties in Atcherley Close the Local Planning Authority considers that it should exercise control over any future extensions or alterations which, without this condition, may have been carried out as "permitted development" under the above classes of the Town and Country Planning (General Permitted Development) (England) Order 2015.

## **7.0 INFORMATIVES:**

### **Notes to Applicant**

#### **1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the local planning authority implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) by seeking solutions to problems identified during the processing of the application. In order to achieve an acceptable outcome the local planning authority sought amendments to reduce the impact on the conservation area and applied appropriate conditions to the planning approval.

#### **2. HIGHWAY WORKS**

You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980. For

further information please contact the officer named: Works to an adopted highway  
- Section 38 - Michael Kitchen (01904) 551336

### 3. STATUTORY UNDERTAKERS EQUIPMENT

You are advised that this proposal may have an affect on Statutory Undertakers equipment. You must contact all the utilities to ascertain the location of the equipment and any requirements they might have prior to works commencing.

### 4. CONTROL OF POLLUTION

The developer's attention is drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be adhered to, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(a) The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

(b) All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturers instructions.

(c) The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

(d) All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

(e) There shall be no bonfires on the site.

### 5. SECTION 106 OBLIGATION

The planning permission is accompanied by an agreement to contribute £84,052 towards education, £48,856 towards open space and £19,381 towards improvements to bowling green facilities in York.

### 6. HIMALAYAN BALSAM

The applicant is reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to introduce plant or cause to grow wild any plant listed on Schedule 9 Part 2 of the Act and prevent further spread of the plant which would

have a negative impact on biodiversity and existing or proposed landscape features.

As Himalayan balsam (*Impatiens glandulifera*) has been recorded on site appropriate measures should be taken to ensure the control of this species within the development area and to prevent its spread.

**Contact details:**

**Author:** Kevin O'Connell Development Management Officer

**Tel No:** 01904 552830

13/03481/FULM

Royal Masonic Benevolent Institute Connaught Court



GIS by ESRI (UK)



Scale : 1:2119

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<b>Organisation</b>	CYC
<b>Department</b>	Not Set
<b>Comments</b>	Site Plan
<b>Date</b>	25 August 2015
<b>SLA Number</b>	Not Set

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