



**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, 15 October 2015
- Time:** 4.30 pm
- Venue:** The George Hudson Board Room - 1st Floor West Offices (F045)

AGENDA

The mini-bus for Members of the sub-committee will leave from Memorial Gardens at 10.00am on Wednesday 14 October 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 - 12)

To approve and sign the minutes of the last meeting of the Area Planning Sub-Committee held on Thursday 3 September 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 at **5.00pm on Wednesday 14 October 2015**.

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4. Plans List

To determine the following planning applications:

- a) **RMBI, Connaught Court, St Oswalds Road, (Pages 13 - 50)
York (13/03481/FULM)**

Erection of 14no. dwellings following demolition of existing bowling clubhouse and garage block. [Fulford and Heslington Ward]

- b) Lodge Cottage, Selby Road, York, YO19 4SJ (14/02602/FUL)** (Pages 51 - 64)
Change of use from workshop to farm shop and erection of fence to front (retrospective). [Fulford and Heslington Ward] **[Site Visit]**
- c) Former Garage Site, 172 Fulford Road, York, YO10 4DA (15/00462/FUL)** (Pages 65 - 86)
Erection of petrol service station with retail unit. [Fishergate Ward] **[Site Visit]**
- d) Land to the North of 37 And 38 St Marys, York, YO30 7DD (15/01157/FUL)** (Pages 87 - 100)
Erection of two storey detached dwelling [Guildhall Ward] **[Site Visit]**
- e) 16 Farndale Avenue, York, YO10 3PE (15/01278/FUL)** (Pages 101 - 110)
Change of use from office (use class B1) to restaurant/ cafe (use class A3 [Osbalwick and Derwent Ward]
- f) 29 Deramore Drive, York, YO10 5HL (15/01539/FUL)** (Pages 111 - 120)
Single storey side and rear extension. [Hull Road Ward] **[Site Visit]**
- g) 32 Tranby Avenue, Osbalwick, York, YO10 3NB (15/01718/FUL)** (Pages 121 - 130)
Change of use of dwelling house (use class C3) to a house in multiple occupation (use class C4) [Osbalwick and Derwent Ward] **[Site Visit]**
- h) Lidgett House, 27 Lidgett Grove, York, YO26 5NE (15/01924/OUT)** (Pages 131 - 144)
Erection of two storey dwelling [Acomb Ward] **[Site Visit]**

- i) **9 Philadelphia Terrace, York, YO23 1DH** (Pages 145 - 150)
(15/01972/FUL)

Single storey side extension. [Micklegate Ward]

5. Urgent Business

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

Democracy Officers:

Name: Louise Cook/Catherine Clarke (job-share)

Contact Details:

- Telephone – (01904) 551031
- E-mail louise.cook@york.gov.uk/catherine.clarke@york.gov.uk

(When emailing please send to both email addresses)

For more information about any of the following please contact the Democratic Services Officers 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 własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

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

 **(01904) 551550**

AREA PLANNING SUB COMMITTEE**SITE VISITS****Wednesday 14 October 2015**

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

TIME (Approx)	SITE	ITEM
10.15	32 Tranby Avenue Osbaldwick	4g
10.35	29 Deramore Drive	4f
11.05	Lodge Cottage Selby Road	4b
11.30	Former Garage Site 172 Fulford Road	4c
12:15	Lidgett House 27 Lidgett Grove	4h
12.45	Land to the North of 37 And 38 St Marys	4d

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City of York Council

Committee Minutes

Meeting	Area Planning Sub-Committee
Date	3 September 2015
Present	Councillors Galvin (Chair), Shepherd (Vice-Chair), Carr, Craghill, Derbyshire, Gillies, Hunter, Cannon, Looker, Mercer and Cuthbertson (Substitute for Councillor Orrell)
Apologies	Councillor Orrell

Site Visited	Visited by	Reason for Visit
47 Thirkleby Way	Cannon, Carr, Craghill, Galvin, Gillies, Hunter, Mercer and Shepherd	As objections had been received and the Officer recommendation was to approve.
Former Reynard's Garage, 17 Piccadilly	Cannon, Carr, Craghill, Galvin, Gillies, Hunter, Mercer and Shepherd	As objections had been received and the Officer recommendation was to approve.
8 Leven Road	Cannon, Carr, Craghill, Galvin, Gillies, Hunter, Mercer and Shepherd	As objections had been received and the Officer recommendation was to approve.
16 Farndale Avenue	Cannon, Carr, Craghill, Galvin, Gillies, Hunter, Mercer and Shepherd	As objections had been received and the Officer recommendation was to approve.
31A Rosslyn Street	Cannon, Carr, Craghill, Galvin, Gillies, Hunter, Mercer and Shepherd	As objections had been received and the Officer recommendation was to approve.

16. Declarations of Interest

At this point in the meeting Members were asked to declare any personal, prejudicial or disclosable pecuniary interests that they might have had in the business on the agenda.

Councillor Gillies declared a personal non prejudicial interest in agenda item 4b) (Former Reynard's Garage) as a member of the Executive who had recently discussed a matter on the site. As this decision at the Executive meeting related to a financial decision and not a planning decision, he clarified this was a personal and not a prejudicial interest.

Councillor Carr also declared the same interest as an Executive Member.

Councillor Craghill declared a personal non prejudicial interest in Agenda Item 4c) 8 Leven Road as she knew a local resident who was Councillor Kramm. He had submitted comments on the application.

No other declarations were made.

17. Minutes

Resolved: That the minutes of the Area Planning Sub Committee held on 6 August 2015 be signed and approved by the Chair as a correct record.

18. Public Participation

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.

19. Plans List

19a) 47 Thirkleby Way, Osbaldwick, York YO10 3QA (15/01533/FUL)

Members considered a full application from Miss Luciana Nok Sze Lau for a change of use from a dwelling (use class C3) to a House in Multiple Occupation (HMO) (use Class C4).

In the Officer's update it was reported that following the site visit further investigation had taken place in respect of the number of HMO's on the street, whilst the Officer's report referred to two in the database it was likely that there were actually three HMO's. Using the Council's Draft Supplementary Planning Document there would be a percentage of 9.5% out of the properties remaining on Thirkleby Way if planning permission were granted, meaning that the 10% threshold outlined in the policy had not been breached. It was also reported that not all HMO's were occupied by students, and that data used to identify which properties were HMO's was collated from site visits, licensing, planning records and local knowledge.

Representations in objection were received from the Ward Member, Councillor Warters. He felt that the figures used in the report were incorrect and that there were additional HMO's on Thirkleby Way. He felt that Members should consider the parking facilities and the residential amenity.

During debate the following points were raised;

- That some Members felt that the Article 4 Direction did not take into account local areas.
- That the road was very narrow and had not been widened since 2010.
- Three HMO's in a row on a street would mean having twelve people living a small area and this would mean a detrimental impact on neighbours.
- One of the rooms was particularly small, and had four doors within it.

Councillor Gillies moved refusal of the application on the cumulative effect of three properties in a row being HMO's.

Councillor Derbyshire seconded refusal.

The Chair cautioned that the application should be considered within the legislation, which was why he could not support refusal.

On being put the vote it was;

Resolved: That the application be refused.

Reason: The proposal would result in a concentration of three houses in multiple occupation in a row. The cumulative impact of this cluster of houses in multiple occupation will result in a significant negative impact on the existing living conditions of nearby residential properties by reason of a more intensive occupation, noise between dwellings at all times and especially at night in particular from the comings and goings of occupiers which are likely to be more often than those associated with more conventional C3 houses and which will be more noticeable, and therefore more harmful, in what is a quiet residential street. It is therefore contrary to paragraph 50 of the National Planning Policy Framework 2012 which seeks to create sustainable, inclusive and mixed local communities. It also conflicts with Local Plan policy H8 of the Development Control Local Plan which seeks to ensure that HMOs do not have an adverse impact on the residential character of an area by virtue of the proposal alone or cumulatively with a concentration of such uses and fails to meet the standards set out in the Draft Supplementary Planning Document: Controlling the Concentration of Houses in Multiple Occupation 2012.

19b) Former Reynard's Garage, 17 Piccadilly, York YO1 1PB (15/01458/FUL)

Members considered a full application from City of York Council for the demolition of an existing building.

Some Members questioned if Officers had stated that the building would collapse.

They clarified that this was in the Officers' professional opinion as the steel frame had structural weaknesses in it, and they had concerns about the foundations about the building itself.

The applicant, the Council's Head of Commissioning and Design Services, spoke about how the external walls would need to be taken down to repair the steel frame. It was thought these repairs would cost around several thousands of pounds.

It was confirmed that the costs to make the entire building safe, which had been presented to the Executive were approximately £95,000.

Other Members asked if asbestos from an opening in the roof would cause a health hazard if parts came down into the street.

The applicant stated that if the wind blew in the right direction that this could be a possibility.

Representations in objection were received from Councillor Taylor who referred to a consultant's report from 2009 said that the building was not unsafe, nor dangerous, and another from 2015 where little had changed in the situation. He added that minutes from the Conservation Area Advisory Panel said that it would breach the Council's policy to pull the building down. He also added that in the Officer's report that Paragraph 133 was incomplete and did not inform Members of the specified criteria that applied including;

- The nature of the heritage asset itself prevents all reasonable use of the site- he felt this was not true
- No viable use of the heritage asset itself can be found in the medium term through marketing site-surveys had been submitted, but they had not been shown to Members.

He felt that the application should be refused as no case had been made pending a replacement scheme and it was contrary to Council policy HE5 and was against the National Planning Policy Framework Policies Paragraphs 133 and 134.

He also made reference to a bid to a possible future development from the Yorkshire Air Museum on the site. One Member suggested that this bid was not dependent on the current structure remaining on the site.

Further representations in objection were received from David Fraser, the Chief Executive of York Civic Trust. He felt that it was unnecessary and premature as demolition should be considered at the same time as development on the site. He added that the Civic Trust felt that the Committee had not been provided with adequate information on the development value of the building, on its marketing, or the minimal costs of repair to make the building safe, which was not asked in 2009 or 2015. He asked the Committee on behalf of the Civic Trust reject it or defer it.

Members asked the following questions to the Chief Executive of York Civic Trust and Officers;

- Why the building was not listed by Historic England and why was there a lack of surviving historic detailing?
- Why was fencing put up after the Executive made the decision to put props up?

In response the Chief Executive felt that it still had some historic merit in relation to the aviation industry. In relation to the lack of surviving historic detailing, this was due to the nature of the industrial use of the building.

Officers explained that fencing had been erected as a protective measure due to render falling from the walls, but that this was not due to the walls falling down.

In response to a question about the marketing of the site, Officers did not know how many bids had been received for the site. In regards to the Southern Gateway project, which included the site amongst its development area, a report would be due on this in late 2015.

Some Members felt that there would be significant costs to make the building safe, particularly in the case of bad weather and supported demolition. Others felt nervous about keeping the building in its current state particularly in regards to trespassers and thought that it would be highly unlikely to attract investors. The materials used in the building, particularly the asbestos sheeting on the roof and the single skinned brick wall were also a concern for some Members.

One Member proposed deferral of the application as she felt a decision would be premature given that Members did not have all the information available about the site and when read in conjunction with the upcoming Southern Gateway report to the Executive, they were likely to get more. She also felt that limited opportunities had been taken to market the site and that there had been disparities between the structural surveys and the Officer's report.

Resolved: That the application be approved.

Reason: 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.

19c) 8 Leven Road, York YO24 2TJ (15/01410/FUL)

Members considered a full application from Mr Htoon Aung for a change of use from a dwelling (use Class C3) to a House in Multiple Occupation (use Class C4).

Representations in objection were received from Councillor Warters he made reference to the increase in the percentage of HMO's if the application was approved, magnified by being in a neighbourhood with a low percentage of HMO's. He added that as this was a retrospective application this should have been made clearer at the start of the report.

During debate some Members stated that due to the semi detached nature of the property there could be the potential for magnified noise but that they could not see any specific circumstances for refusing the application. As a point of information, the Chair stated that the HMO would serve students studying at York College.

Resolved: That the application be approved.

Reason: It is considered that the proposal complies with national guidance in the National Planning Policy Framework, Development Control Local Plan Policies and the City of York Council's Supplementary Planning Document (Controlling the Concentration of Housing in Multiple Occupancy).

19d) 16 Farndale Avenue, York YO10 3PE (15/01278/FUL)

Members considered a full application from Mr Martyn Turnbull for a change of use from office (use class B1) to restaurant/café (use class A3).

In the Officer Update, Members were informed that they could not make it a requirement for people using the building's facilities to use the parking attached to it. However, a condition could be attached to planning permission, to say that parking could be used for no other purpose than for visitors. Representations in objection were received from the Ward Member, Councillor Warters. He spoke about the parking situation and the opening hours. He noted that when the Members had arrived on the site visit that the barrier to the car park was down and locked, and suggested that it needed to be conditioned for staff and customer usage only and that cycle racks needed to be put in. He informed the Committee that he felt that the opening hours applied for should be reduced from 11pm to 9 pm on week days and 6 pm on Sundays. He felt this application would turn into a takeaway restaurant.

Some Members felt that Councillor Warters raised some good points in relation to cycle parking racks but felt that the opening hours were not unreasonable in an urban area. One Member pointed out that the car park was empty for most of the day as the barrier had been down.

Discussion took place around how a condition could be added to ensure that the parking spaces in the car park could be used by customers and staff. Members felt that the application should be deferred for Officers to discuss the use of the car parking area with the applicant.

Resolved: That the application be deferred.

Reason: In order that discussions can take place with the applicant to resolve the concerns over parking.

19e) 31A Rosslyn Street, York YO30 6LG (15/00143/FUL)

Members considered a full application from Mr D l'Anson for the erection of 1no. Cottage and 2no. Flats after demolition of workshop.

Members were informed that the address listed for the application was incorrect. The correct address was 10A Rosslyn Street.

One Member questioned why one cottage and two flats had been proposed rather than two dwellings. The Officer responded that that was the scope of the application which had been submitted. Although one of the flats did not get a parking space it was close to local amenities and the city centre, the standard cycle provision of two cycle spaces would also be provided.

Resolved: That the application be approved with the following additional condition;

13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order), no door, window or other opening additional to those shown on the approved plans shall at any time be inserted in any elevation of the properties.

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

Reason: It is considered acceptable as it accords with national and local planning policies subject to the imposition of conditions.

19f) Royal Masonic Benevolent Institute, Connaught Court, St Oswald's Road, York YO10 4QA (13/03481/FULM)

Members considered a report which asked them to consider a recommendation to enter into a Section 106 Deed of Variation to remove the obligation relating to the 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) and to confirm a previous decision taken on 11 June 2015 in relation to the proposed development of 14 dwellings on the site at the Royal Masonic Benevolent Institute, Connaught Court (13/03481/FULM).

It was reported that representations had been received from Fulford Parish Council and Mrs Urmston which included a request for the Committee to defer the decision so that further public consultation could take place on the application.

Resolved: That the application be deferred.

Reason: To provide the Parish Council and Mrs Urmston further time to comment in light of their representations to the Committee.

Councillor J Galvin, Chair

[The meeting started at 4.35 pm and finished at 6.55 pm].

COMMITTEE REPORT

Date: 15 October 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 11th June 2015 in relation to the proposed development of 14 dwellings under planning application reference 13/03481/FULM to grant planning permission.
- 1.2 The item was deferred from the September 2015 sub-committee meeting to the next available sub-committee to allow further time for Fulford Parish Council and the Claimant in the ongoing judicial review application to submit comments. At the time of writing no further comments have been received. However, should any be received prior to the sub-committee these will be verbally reported to Members.

Background

- 1.3 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 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.

- 1.4 Planning permission was therefore granted at the Area Planning Sub Committee on 11th June 2015, and issued on 22nd June 2015.
- 1.5 Mrs 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.
- 1.6 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 1st 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."
- 1.7 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 for the planning application to be remitted back to the Council for decision again.

2.0 POLICY CONTEXT

- 2.1 2005 Draft Development Plan Policies:

CYL1C Open Space in New Developments

3.0 APPRAISAL

- 3.1 The Developers have requested in light of the above that the S106 Obligation dated 23rd 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.

- 3.2 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.
- 3.3 An alternative to seeking a financial contribution would have been to require the three types of open space specified in 2005 draft policy L1c to be provided on site. The three types are outdoor sports facilities, amenity open space and children's play space. Officer's view is that there is insufficient space to provide feasible outdoor sports facilities on site. Although the site is large enough for amenity open space and children's play space to be provided (1.28ha in total), because the land would need to be provided in two separate parcels, this separation prevents open space being provided in any sensible or feasible way.
- 3.4 Furthermore, the absence of open space on site would cause less than substantial harm to the local area in this instance. In 2013 the Council commissioned an open space and green infrastructure study for the emerging local plan (Local Plan Evidence Base: Open Space and Green Infrastructure, AMEC). The study found that Fulford Ward has reasonable provision across the majority of open space categories considered in the analysis with facilities in adjacent wards compensating for deficiencies. Officers consider that the absence of on site open space provision does not give rise to a level of harm that would have warranted refusal of the application.

4.0 CONCLUSION

- 4.1 As the alternative of a commuted sum payment could not be taken into account in determining the planning application, Members are 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.

- 4.2 Members are also invited to consider whether they would have resolved to grant planning permission in the absence of open space provision on site having regard to the other issues in the planning balance outlined at 3.2 above.
- 4.3 As the commuted sum payment could not be taken into account in the grant of planning permission, the developer's request that the S106 obligation relating to the payment of the open space contribution of £48,856 should be removed by way of Deed of Variation, should be acceded to.

5.0 RECOMMENDATION:

- 5.1 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

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 Section106 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

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Policy D1: Landscape and Setting
Policy D4: Conservation Areas
Policy D7: Archaeology
Policy G15: 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

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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

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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

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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 closest 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

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(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

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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.

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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

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"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:

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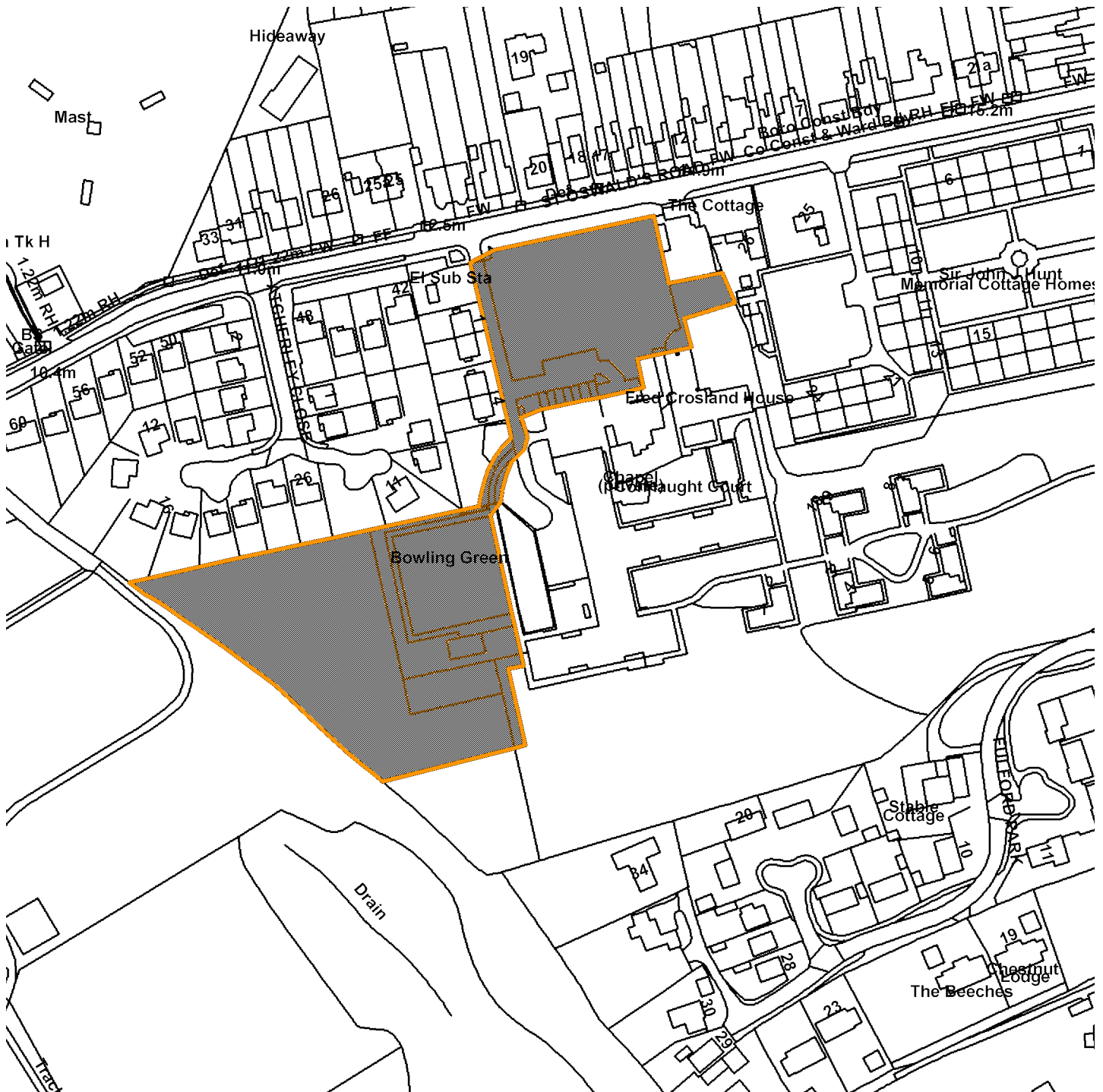
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Connaught Court, St Oswalds Road



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Organisation	City of York Council
Department	CES
Comments	Site Plan
Date	06 October 2015
SLA Number	Not Set

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COMMITTEE REPORT

Date: 15 October 2015 **Ward:** Fulford and Heslington
Team: Major and **Parish:** Fulford Parish Council
Commercial Team

Reference: 14/02602/FUL
Application at: Lodge Cottage Selby Road York YO19 4SJ
For: Change of use from workshop to farm shop and erection of fence to front (retrospective)
By: Miss Alison Owens
Application Type: Full Application
Target Date: 19 January 2015
Recommendation: Approve

1.0 PROPOSAL

1.1 The proposal is a retrospective planning application to change a small workshop building to a farm shop and erect a 1.5m close boarded timber fence along the front boundary of the site. It is understood that the shop has existed in some shape or form for around 4 or 5 years. The site is located on Selby Road adjacent to Strawberry Fields Cafe. It is within the Greenbelt and outside the defined settlement limit. The location is approximately equidistant between Wheldrake, Escrick, Naburn and Fulford.

1.2 Although the shop is referred to as a farm shop it is not actually associated with an individual farm. The owners have chickens and grow some herbs on site, however, the majority of produce is sourced from a range of farms and producers within Yorkshire.

1.3 The farm shop is located in a pitched roof building approximately equivalent in scale to a large double garage (40 sq. m). The building is located within the curtilage of Lodge Cottage, a bungalow. The occupants of Lodge Cottage own and run the shop. The use currently has no clearly defined off street car parking for customers. As part of the proposals, part of the rear garden of the site is to be used to create 4 parking spaces. The spaces would allow tandem parking. The two spaces furthest within the site would be for the residents use and for their delivery vehicle. The two spaces by the access would be for customers and external delivery vehicles. A cycle stand is proposed to the side of the workshop.

1.4 The area of curtilage to the front of the shop is used to store and display produce, the extent of display varies with the seasons.

1.5 The application is called in at the request of Cllr J Galvin because of local concerns about car parking provision and highway safety.

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)
CYGB1 (Development on the Green Belt)
CYGB3 (Green Belt - Reuse of buildings)
CYGB12 (Green Belt - Shopping Development)
CYS10 (New Local or Village Shops)

3.0 CONSULTATIONS

INTERNAL

Planning and Environmental Management

3.1 Farm shops may be acceptable out of settlements, though would expect to see significant sales of their own produce. It is noted that a large proportion of goods are from local farms and the use reduces the length of car journeys in rural area. If the application is approved it is recommended the product range sold is conditioned and the maximum floor area controlled.

Highway Network Management

3.2 No objections. The parking area will provide piggyback parking for the residential use/ staff and visitor parking. Staff will be essentially locked into their spaces by visitors. We feel that this will work given the scale and nature of the operation. It is understood that the owner also collect goods as well as takes deliveries. The delivery vehicles will be able to pull in to the access road off the A19, wait alongside the property until a space is made clear in the car park to offload. Such use of the access road will be sporadic and of a temporary nature so as not to unduly restrict access to the nearby properties.

3.3 It is necessary to ensure that no produce, racks etc are stored to the side of the shop to ensure that any waiting vehicles do not compromise access past the site.

Environmental Protection Unit

3.4 No objections.

EXTERNAL

Fulford Parish Council.

3.5 Support

Neighbour Notification/Publicity

3.6 Objections or comments raising reservations have been received from the occupants/ representatives of four properties/landowners.

The specific issues raised are:

- There are more suitable locations for a farm shop.
- The turning into and out of the site is not of a good standard in terms of safety.
- Customers parking is a hazard to vehicles coming off the A19 and also blocks access to the adjacent farm track.
- Sewage from the site drains to the adjacent field.
- Inadequate parking is available for customers who use therefore park on the private road or private cafe car park instead. The cafe can lose trade through their customers having inadequate space to park.
- Storage racks to the side of the shop limit the access width.
- The new fence obscures visibility. The hedge was previously managed at an acceptable height.
- The fence should be erected behind a hedge.

3.7 Letters of support have been received from 13 people and a petition signed by 176 people to support the retention of the shop has also been received.

The main issues raised are as follows:

- The shop provides an excellent service, is welcoming and particularly important to elderly people who do not want to drive long distances. Is also easy to access when passing. There is no

similar facility nearby and it would be sadly missed. A number of local villages have no shops and the villages that do have a shop such as Wheldrake and Escrick do not serve a similar role in terms of fresh vegetables, fruit, meat and dairy products.

- It reduces travel, food miles and is healthy.
- Deighton and Crockey Hill Parish Council support the use as there is nothing similar in the area and it provides local produce.
- Parking concerns can be overcome. A local resident considers that although there have been numerous accidents on the A19, none relate to the shop and that problems are typically caused by businesses on the opposite side of the road and is not aware of any issues with access or parking at the shop. Consider can park on the site without obstructing traffic or using the cafe car park.
- Consider that opposition to the shop is based on commercial grounds relating to planned business or residential schemes in the vicinity.

4.0 APPRAISAL

4.1 The key issues in assessing the proposal are:

- Acceptability in respect to Greenbelt policy.
- Acceptability in respect to retail policy.
- Impact on streetscene.
- Impact on neighbouring uses.
- Impact on highway safety.

4.2 The National Planning Policy Framework 2012 (NPPF) sets out the Government's overarching planning policies. At its heart is a presumption in favour of sustainable development. A principle set out in paragraph 17 is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

4.3 There are several sections that have a relevance to the farm shop use. Paragraphs 79 - 92 relate to protecting Green Belt land. It states that when considering any planning application, local planning authorities should ensure that substantial weight is given to harm to the Green Belt. Paragraph 90 states that the re-use of buildings is not inappropriate in the Green Belt providing that the buildings are of permanent and substantial construction.

4.4 The site is within a rural area and given its focus on the sale of farm produce has a relationship with the rural economy. Paragraph 28 of the NPPF relates to supporting a prosperous rural economy. It states that sustainable growth of rural business and enterprise should be supported though also states that it should promote local shops in villages.

4.5 The NPPF promotes sustainable transport, however, paragraph 29 states that the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.

4.6 Section 2 of the NPPF promotes the vitality of town centres. It states however (paragraph 25) that the sequential approach to the location for development that priorities town centre locations should not be applied to small scale rural development.

4.7 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 content of the NPPF.

4.9 Local Plan Policy GP1 'Design' states that development proposals will be expected to respect or enhance the local environment and be of a density, layout, scale, mass and design that is compatible with neighbouring buildings, spaces and vegetation.

4.10 Policy GB1 gives general guidance on development in the Green Belt. The re-use of existing buildings is not considered inappropriate development.

4.11 Policy GB3 relates to the re-use of buildings in the Green Belt. Of significance to the farm shop application is the requirement for the reuse not to have a materially greater impact than the previous use on openness and that the re-use will generally take place within the fabric of the building.

4.12 Policy GB12 refers to shopping development outside settlement limits. Criterion 'a' requires that the applicant demonstrate that all potential locations in existing centres have been assessed. Criterion 'b' requires the use to be small scale and ancillary to an existing use such as agriculture. Criteria 'c' and 'd' require the proposal to involve the re-

use of an existing building and criterion 'd' that it would not undermine the vitality of the city centre or district centres.

4.13 Policy S10 relates to new local shops. It states amongst other criteria that the proposal is within defined settlement limits.

Acceptability in respect to Greenbelt policy.

4.14 The proposal is a re-use of a detached building. The applicants' state that it was previously used as a commercial motorcycle repair workshop, though there is no planning history regarding this. The NPPF states that the re-use of buildings in the Green Belt is acceptable providing the buildings are of a permanent and substantial construction. The change to a farm shop has taken place without the need for significant repair works.

4.15 It is noted that two customer car parking spaces are proposed in the current rear garden. It is considered in the context of the location that this would not detract from openness. It is noted that the area is used for car parking for the adjacent cottage and that when viewed from the open countryside it will be largely viewed against existing buildings.

4.16 The City of York Local Plan includes policies relating to retail uses in the Green Belt. It has two criteria that the proposal conflicts with. The applicant has not demonstrated that all potential locations in existing centres have been thoroughly assessed and it is not ancillary to agriculture. The supporting text to policy GB12 makes reference to selling products direct to the public in countryside locations. In assessing such proposals it states that the use should not detract from the character of the open countryside and that the shop should be ancillary to an existing use such as agriculture.

4.17 It is considered that little weight can be given to Policy GB12 as it pre-dates the NPPF. The NPPF does not include any similar text relating to retail uses in the Green Belt. Accordingly, it is considered that the reuse of the workshop for retail sales is not inappropriate in the Green Belt.

Acceptability in respect to retail policy

4.18 Paragraph 28 of the NPPF states that the sustainable growth of all rural businesses and enterprises should be supported. In assessing the farm shop the key consideration is whether it is a sustainable location.

The fourth bullet point of paragraph 28 refers to local shops being promoted in villages. The shop is very small in scale and would not require an assessment of the impact on existing uses. It is considered that the central point is whether the use should be located within a village to discourage car use and allow access for people without cars. There are around 15 houses located in Crockey Hill around 500m away from the site and some commercial uses in the vicinity, however, the site is not convenient to non-car users as a whole. The petition and letters that were submitted in support of the use indicated that a number of customers came from villages such as Deighton, Stillingleet and Naburn where there are no general stores selling food. In addition, it appears that a number of customers come from Wheldrake and Escrick. Both villages have a small supermarket selling a range of food and convenience goods. The shop on the edge of Escrick is part of the BP garage that was recently developed. The Spar store is relatively large however, at the time of the case officer's visit the amount of shelf space given to fresh fruit and vegetables was very limited. It is considered that the application property provides a food and drink offer distinct from a modern small supermarket and would not typically compete with the retailer to the detriment of local village services.

4.19 On balance taking account of the limited number and range of existing food shops south of the urban area of York, the number of villages without stores and the convenient location on the A19 close to junctions with roads leading to Wheldrake and Naburn, the proposal is reasonably sustainable. In considering the sustainability of the proposal it is considered regard should be given to the fact that the NNPF states sustainable development has a social role as well as an economic and environmental one.

Impact on streetscene.

4.20 The changes to the windows of the workshop are modest and do not have a significant impact on the streetscene. It is noted that produce is sometimes sold within the front curtilage. It is not considered that this appears out of character and it is largely screened by the boundary fence. The site is on the edge of a relatively commercial area of the A19 adjacent to a cafe and close to a commercial garage and veterinary surgery on the opposite side of the road.

4.21 The fence that has been erected is close boarded and 1.5m in height. It is considered that the scale and materials are acceptable in the location adjacent to a semi-commercial section of the A19. The

applicant's have indicated that they intend to stain this. A suitable condition is recommended.

Impact on neighbouring uses.

4.22 The key consideration is whether vehicles associated with the farm shop would obstruct access to the lane leading to Tilmire Farm or impact on the adjacent cafe. The applicant proposes two parking spaces for customers and two spaces for the shop/cottage occupants. It is considered that this is acceptable for a relatively low key use. The lane to the side of the shop is an adequate width to allow vehicles to wait without causing undue conflict with any vehicles seeking to pass by.

Parking and impact on highway safety.

4.23 The shop currently has no designated customer parking that is confirmed to be wholly within its ownership. Cars tend to park informally to the side of the shop. It is understood that cars also sometimes park within spaces associated with the nearby cafe, even when users are not also stopping to eat.

4.24 The maximum parking standards in the Local Plan for shops are 1 space per 30 sq. m. for customers and 1 space per 100 sq. m for staff. As the shop is only around 40 sq. m. in size and the external sales/storage area is limited, the future provision of 2 spaces for customers and 2 spaces for the owners of the shop/residents is considered reasonable. The scale of the proposed parking area (13m deep and 7m wide) is such that it can also accommodate delivery vans. Highway Network Management are satisfied that if on occasions the car park is full and car borne visitors or delivery vans can not immediately park within it there will be no conflict with highway safety or vehicle access to adjoining land uses. It is recommended that a condition is included with any consent requiring signage to be erected informing customers of the parking to the rear.

4.25 It is noted that the comments of Highway Network Management regarding parking provision and highway safety are related to the specific small scale use. Accordingly conditions are recommended to control the scale and nature of the shop. These include controls over:

- The use of the shop being linked to the occupants of the cottage.
- The nature of produce that can be sold to be restricted largely to fresh foods.

- No cafe to be allowed.
- No extensions to the shop to be allowed.

5.0 CONCLUSION

5.1 The shop subject to the planning application is small in scale and largely sells fresh food from the local area. It is considered that the re-use of an existing building is in compliance with national Green Belt policy. The Local Plan has a policy requiring rural shops to be ancillary to other uses such as agriculture. However, this is not a requirement of the NPPF. In the context little weight can be attached to this policy of the Local Plan.

5.2 It would appear that the shop is seen as a significant asset to many people living to the south of the urban area of York. Some residents argue in letters received, that if the shop closed they would not have convenient access to the range of fresh local produce that it currently sells. Although local shops are encouraged in settlements it is considered that the location of the premises on a main road and between several small settlements where a local shop has not been sustained is sustainable in the context.

5.3 The applicant intends to provide parking to the rear of the property for 4 vehicles. Two spaces would be for customers and the space would also be practical for delivery vehicles. Highway Network Management are satisfied that if on occasions the car park is full and car borne visitors wait to the side of the shop, there will be no conflict with highway safety.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 The shop shall only be operated by the permanent occupants of the adjacent house (Lodge Cottage).

Reason: To ensure that the agreed car parking configuration remains practical in the interests of highway safety.

2 The approved shop can sell fresh fruit, fresh vegetables, meat and poultry, dairy products and bread, cakes and pies. The shop shall not sell alcoholic drinks, tobacco products, clothing, newspapers, toiletries or cosmetics. The sale of other goods not listed above (such as plants, firewood and tinned or packaged non-fresh food) shall not exceed 15%

of the total sales of goods from the premises. Records shall be maintained of the goods sold.

It shall not be used for any other purpose, including any other purpose in Class A1 in the Schedule of the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting that Order.

Reason: It is considered that the range of products that can be sold from the premises shall be controlled to ensure that the use relates to the rural economy and supports the food needs of local communities. A record of sales shall be kept and made available for the scrutiny of the Local Planning Authority should the type/amount of goods sold need clarification at any future date.

3 There shall be no consumption of food and drink on the premises and the premises shall not be used as a cafe even if the cafe is ancillary to the main use of the premises.

Reason: To ensure that the use relates to the retail food needs of local communities and minimises the need for additional parking spaces for longer visits.

4 Notwithstanding the provisions 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 Schedule 2, Part 3 (changes of use), Part 7 (non domestic extensions etc) and Part 4 (temporary buildings and uses) shall not be undertaken.

Reason: To ensure that any proposal to enlarge the premises or intensify its commercial use can be assessed on its merits.

5 Within 8 weeks of the date of this permission, the provision of parking spaces for 4 vehicles (and 1 cycle) and associated signage shall be constructed and laid out in accordance with plans and details that shall be submitted to and agreed by the Local Planning Authority and thereafter such signage and parking areas shall be retained and remain fully functional/ accessible for such purposes.

Reason: In the interests of highway safety.

6 Within 8 weeks of the date of this permission, plans and details showing the area of land to be used for external sales and storage

associated with the farm shop shall be submitted to and approved in writing with the Local Planning Authority. Following approval all land not proposed for storage or sales shall remain free of any uses associated with the farm shop.

Reason: To ensure that the scale of use is appropriate to the location and to protect the visual amenity of the area.

7 At all times that the shop is open, the area of land between the side of the shop/side fence and the access road leading to Tilmire Farm shall remain free from obstruction.

Reason: To ensure that storage does not restrict passing space adjacent to the application premises.

8 Within 8 weeks of the date of this permission the approved fence shall be stained dark brown.

Reason: To ensure that the fence is appropriate to its surroundings.

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 an acceptable outcome:

Revised drawings submitted to address parking provision issues.

Contact details:

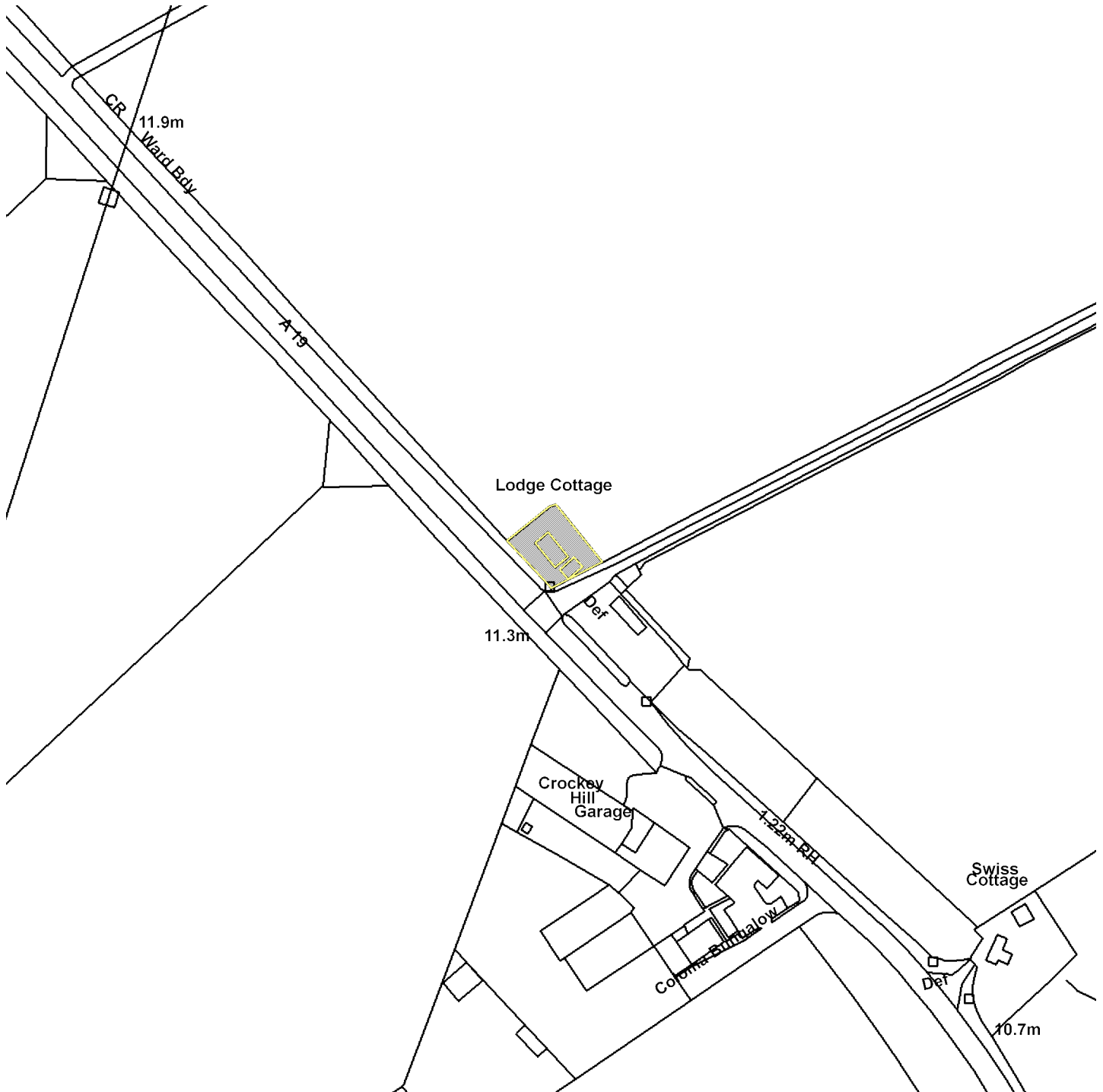
Author: Neil Massey Development Management Officer
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14/02602/FUL

Lodge Cottage, Selby Road, YO19 4SJ



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Organisation	City of York Council
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Comments	Site plan
Date	05 October 2015
SLA Number	Not Set

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COMMITTEE REPORT

Date: 15 October 2015 **Ward:** Fishergate
Team: Major and **Parish:** Fishergate Planning
Commercial Team Panel

Reference: 15/00462/FUL
Application at: Former Garage Site 172 Fulford Road York YO10 4DA
For: Erection of petrol service station with retail unit
By: Valli Forecourts
Application Type: Full Application
Target Date: 12 October 2015
Recommendation: Refuse

1.0 PROPOSAL

1.1 Planning permission is sought for the erection of a petrol filling station and retail unit at 172 Fulford Road York.

1.2 The site is located on the west side of Fulford Road and was formerly a petrol filling station (PFS). The PFS was closed in 2003 and the buildings subsequently demolished and below ground tanks removed. The site has been fenced off since about 2006. To the north of the site is a veterinary clinic, to the south is a former office building now converted to flats (this is a grade II listed building) to the west is the rear areas of properties fronting Alma Grove and to the east is Fulford Road. There is further residential development opposite the site across Fulford Road. The site is located within Fulford Road Conservation Area.

1.3 The development, which has been amended since first submission comprises the erection of a new forecourt with three petrol pumps and petrol canopy over to the front of the site; a new retail unit providing approximately 420 sqm of gross floor space in a building measuring 31 metres by 14 metres with a height of 4.6 metres. Associated car and cycle parking, landscaping and ATM machine are also proposed. It was originally proposed for the station to be open 24/7 however as amended the scheme proposes to operate between 06:00 and 23:00 hours

1.4 The application has been called into committee by Cllr D'Agorne. Cllr D'Agorne has concerns about the impact of the development on the conservation area and considers the proposal contrary to the draft allocation for housing in the emerging plan.

PLANNING HISTORY

1.5 The history considered to be most relevant to this development is as follows:-

- Planning permission was refused for the erection of a petrol filling station following the demolition of existing petrol filling station buildings at the site in 2003 (planning reference 02/00828/FUL). The reasons for refusal were impact of the proposed canopy and buildings on the character of Fulford Road Conservation Area; harm to the setting of adjacent buildings; impact on the living conditions of adjacent properties caused by increased activity at the site.
- In December 2003 conservation area consent was granted for the removal of the petrol filling station canopy (planning reference 03/03910/CAC).
- Permission was granted for the remaining buildings to be removed and a fence constructed around the site in July 2006(planning references 06/01680/FUL and 06/01681/CAC).

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Conservation Area Fulford Road CONF

City Boundary York City Boundary 0001

DC Area Teams East Area (1) 0003

2.2 Policies:

GP1 'Design'

HE2 'Development in Historic Locations'

HE3 'Conservation Areas'

HE4 'Listed buildings' GP4a 'Sustainability'

E4 'Employment Development on Unallocated Sites'

3.0 CONSULTATIONS

INTERNAL

Highway Network Management

3.1 No objections to the proposed petrol station including retail unit. Conditions are requested to ensure that cycle parking is appropriately provided and entrance crossing points appropriately designed.

Planning & Environmental Management (Conservation Officer)

3.2 Objects to the application. Proposals would be harmful to the character and appearance of the conservation and to settings and views of the attractive Victorian houses to each side of the site.

Planning & Environmental Management (Landscape Architect)

3.3 The strip of planting to the rear should be increased to provide greater separation between the rear of properties on Alma Grove and the proposed building, and to provide more suitable planting conditions and a more comfortable physical and visual arrangement. The site entrance is also a little bleak given its location within the conservation area, amongst a more residential setting. It would be helpful if large beds could be created at the entrance that would support some large species trees that would contribute to the amenity of Fulford Road. Commenting on the amended scheme - frontage planting is still unlikely to support thriving tree growth and the rear planting will be overpowering to adjacent properties.

Planning & Environmental Management (Archaeologist)

3.4 This site lies outside the Area of Archaeological Importance. However, archaeological work north of this site from Grange Garth through to the City Walls has indicated extensive Roman, Anglian and medieval deposits. These deposits represent a probable Roman road and associated cemeteries, Anglian settlement features (pits, postholes, etc), a previously unknown medieval cemetery and a series of medieval pottery or tile kilns. It is possible that this range of archaeological deposits extends along Fishergate into Fulford Road. Therefore it will be necessary to excavate archaeologically all extensive or deep ground disturbances (storage tanks, petrol interceptor, foundations for new buildings, etc) and maintain an archaeological watching brief on all deep excavation work. Conditions are requested.

Planning & Environmental Management - Policy

3.5 No objections to the retail shop there will be no significant adverse impact on existing centres. Conservation Issues should be considered in light of policies in the emerging plan.

Environmental Protection

3.6 Noise associated with the plant, customer vehicle movements and parking and delivery noise are all considered to be at acceptable levels based on the submitted noise report. No objections are raised on noise grounds subject to conditions. Conditions related to land contamination are requested. The impacts of the proposed development are unlikely to have any detrimental impact on air quality, even though the site is adjacent to the Fulford Road AQMA. A rapid charge electric point is requested to be placed within the site to accord with the requirements of paragraph 35 of the NPPF and the Council's low emissions strategy.

Flood Risk Management

3.7 No objections subject to conditions

EXTERNAL

Fishergate Planning Panel

3.8 There have been fundamental changes in the area in the ten years since this property was last used as a garage which make this development no longer appropriate for the area.

- The area is now significantly more residential than previously.
- There has been a significant increase in traffic density on Fulford Road, including a substantial amount of (blue light) emergency vehicles.
- The relatively newly installed cycle track would have to be cut twice to allow for the entrance and exit. This would add to the dangers to cyclists from crossing traffic and further discourage cyclists.
- There have been significant increases in the number of school children waling to school past the site. This development would create two new dangerous and busy entrances for the children to negotiate.
- There is no need or commercial justification for a petrol filling station on this site.
- In comparison to ten years ago there are many more local shops, which have long opening hours, offering the sorts of goods suggested for this site.
- This brown field site would be ideal for residential development and use, which would be in line with the needs and plans of the city.

3.9 Further comments have been received from Fishergate Planning Panel following the submission of amendments. The Panel consider the amended plans fail to deal with the following:

- A petrol station, with canopy, signage and all the related lighting will be a blot on the landscape and permanently ruin the look of the conservation area.
- This is an inappropriate commercial use of a site that is in the middle of a residential area.
- There is a serious risk to the safety of school children
- The proposed southern road entrance to the development is directly over the safety zone for the traffic light controlled pedestrian crossing.

Fulford Parish Council

3.10 The Council has no objections to this application, although there are concerns regarding the following: Adverse impact upon the CA due to unsympathetic design and inappropriate materials; the safety of pedestrians and cyclists due to the nearby crossing point and because of general difficulties for vehicles exiting the site across a busy carriageway; adverse impact on neighbouring amenity due to noise and nuisance caused by the night-time opening hours; the need for such a large retail unit has not been demonstrated; possible impact upon air quality within an AQMA.

Yorkshire Water

3.11 Conditions are requested to ensure the appropriate drainage of the site.

Environment Agency

3.12 No objections in principle subject to conditions relating to groundwater and land contamination.

Police Architectural Liaison Officer

3.13 Crime prevention has been considered as part of the application and is considered acceptable. The area around the ATM must be well lit and specifically covered by CCTV.

York Civic Trust

3.14 A petrol Filling Station is not the optimum use for the site. The site would represent a greater potential benefit as a residential development, which would be more appropriate for the setting of the conservation area and would contribute sustainably to the City's housing targets. Particularly in the absence of an agreed local plan and five year land supply. Brownfield sites should be used for sustainable housing development. The public benefit from a petrol station at this site can be judged to outweigh the negative effect on the conservation area, as there are other petrol stations nearby.

Neighbour Notification/Publicity

3.15 68 letters of objection have been received covering the following points:-

- Increase risk of crime - the site will be open 24 hours all year and will have ATM machines
- Risk of explosion and contamination in a residential area
- Serious danger to pedestrians and cyclists
- Access to local shops will be less easy and businesses will be affected - The develop threatens the vibrant local economy
- Will not be sustainable development
- Will be damaging to the environment
- It will increase light, noise and air pollution
- Site is within the Conservation Area and the effect on the setting of the adjacent listed building has not been considered.
- Trees with nesting birds will be removed - development should aim to sustain bees and birds
- Development will be intrusive to neighbours
- Use is unnecessary in the area; there are alternative petrol filling stations nearby
- The flow of traffic along Fulford Road will be disrupted
- Site should be developed for housing

- Conservation area appraisal says the site needs sensitive infill - the proposals will have a direct impact on heritage significance
- Historical use of the site as a garage is irrelevant
- Design and materials out of place adjacent to a listed building
- 24 hour operation inappropriate for a residential area
- The retail unit will be unhelpful competition to other shops
- No local benefit
- Properties on Alma Grove will be directly impacted by the development
- Noise, litter and light pollution will be caused by convenience store.
- The previous petrol station on this site failed commercially and there is no evidence that another would be sustainable.
- Air quality will suffer - worsening air pollution that already exceeds safe limits set by the EU.
- Antisocial behaviour caused by late night opening
- Putting back a petrol station after putting time and money into have the land decontaminated seems a complete waste of effort.
- Attracting traffic into the city is completely at odds with York aims in the third air quality action plan to reduce No2 and remove area from Air Quality Management Area.
- Proximity to the army barracks and police station presents a risk to security.
- Development will spoil the local environment for residents and visitors.
- Contravenes guidelines set out in Conservation Area document; inadequate screening from main road.
- There will be the smell of petrol in the air and the required signage will visually pollute the area
- More eco-friendly methods of travel should be being promoted.
- Maida Grove the 'private' cul-de-sac is constantly being used by delivery vans, L-plate learner companies, taxis and cars to 'turn round', causing much damage to the 'private' road this is dangerous and will be exacerbated by the development.
- The presence of a petrol filling station would encourage more Lorries to use the road.
- The chair of Governors and the head teacher at Fishergate primary school are concerned that the petrol filling station will reduce the safety of the western side of Fulford Road so that school pupils will be endangered and older children will not be able to walk independently. If the route is perceived as unsafe by parents more children may be taken to school in the car.
- The shop should have a safe route for pedestrians across the forecourt.

3.16 Following re-consultation on the amendments to the proposal 45 additional concerns have been raised as follows:-

- All previous objections are restated

- The amendments do not include any improvements for pedestrian and cycle users of the highway.
- Minor improvements in design do not tip the scales in favour of the development.
- It has not been shown that there is a need for the petrol or retail use.
- The land and water course, including the River Ouse, will be contaminated (Environment Agency 2015) causing health risks to residents, nature and local wildlife.
- There are trees currently on the site which have not been included/acknowledged in the drawings/plans and should not be removed/destroyed.
- The row of shops is becoming lovely local facilities and should not be affected by a petrol station.
- The council has a duty of care to the local residents.
- Air pollution has not been addressed in the amendments
- The noise and light will be detrimental to houses around the petrol station (as it was when there was a station there formerly).
- The plans for the proposed buildings are extremely unattractive and not in keeping with the look and feel of the conservation area.
- The site will not have a very long economic life and the site may be left derelict.
- Proposal vastly out of proportion and not in character at all with the area.
- Traffic flow will increase in density and complexity.
- Remains a proposal to site a 21st century petrol filling station in a Conservation Area that retains some characteristic 19th century residential development and objectors remain opposed to this retrogressive and incongruous development.
- If we are to protect the green belt then we need sites such as this one for much needed housing.
- It has suited the purposes of the authors of this application to sometimes weigh its merits against the refused application of 2002, and at other times, against the present condition of the site. Perhaps it should more appropriately be weighed against what might be done to best meet the city's need for 'sensitive infill'.
- Petrol Stations are pseudo-industrial constructions and such a building is not appropriate in a pleasant residential area.

3.17 Four letters of support have been received covering the following points:-

- The garage existed previously and did not cause problems to the existing infrastructure - the road layout remains largely the same.
- The loss of the petrol filling station with the loss of other facilities at that time put pressure on other garages in the area. The scheme would help to rebalance the area.

- The additional and competing shop facilities will be useful.
- The site is derelict and largely contains non-native species the loss of which will not pose a significant risk to wildlife.
- I would encourage investment in the area, especially on a main road where the impact is probably minimal (even in a conservation area).
- Many objectors refer to the increasing number of residents as reason to object, the supporter sees it as a reason to support; more residents require more facilities.
- The new station may reduce the traffic chaos that often occurs outside Sainsbury's and the Police Station.
- There will be ample opportunity to use the station outside peak traffic flows
- The design is acceptable in the Conservation Area.
- Whilst 24 hour opening is a concern reduced hours could be conditioned.
- Landscaping could be incorporated into the design to reduce its visual impact.
- The economics and functional benefits of the scheme for residents living around the wider area should also be factored into the equation.
- Not everything built in York can be housing without the need also for services and facilities to support the existing population.

4.0 APPRAISAL

4.1 Key Issues

- Policy
- Principle of the development
- Design and layout and heritage assets
- Retail
- Highways access and parking arrangements
- Residential amenity
- Drainage

The Planning (Listed building and Conservation Areas) Act 1990

4.2 Section 72(1) of the Act, with respect to any buildings or other land in a conservation area, places a duty on Local Planning Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Section 66 of the Act says, in relation to the protection of listed buildings and their setting, that 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.

PLANNING POLICY

National Planning Policy Framework (NPPF)

4.3 Paragraph 14 says that at the heart of the NPPF is a presumption in favour of sustainable development for decision taking this means that where the development plan is absent, silent or relevant policies are out-of-date granting planning permission unless specific policies in the framework indicate development should be restricted. (Foot note 9 indicates restrictions include designated heritage assets).

4.4 The core planning principles at Paragraph 17 include the expectation that planning should not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives; always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings; take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it; 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;

4.5 In terms of employment paragraph 19 of the NPPF says that planning should encourage and not impede sustainable growth therefore significant weight should be placed on the need to support economic growth through the planning system.

4.6 Paragraph 23 indicates that needs for retail, leisure, office and other main town centre uses should be met in full and should not be compromised by limited site availability.

4.7 Local planning authorities at paragraph 24 are directed to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. Paragraph 26 states that when assessing applications for retail development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floor space threshold (if there is no locally set threshold, the default threshold is 2,500 sq m).

4.8 Section 7 of the NPPF requires good design. Paragraph 56 says good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Although visual appearance and the architecture of individual buildings are very important factors,

securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment (Para 61).

4.9 Section 12 of the NPPF is relevant to the site's Conservation Area Status. Paragraph 129 says Local Planning Authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including any development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Paragraph 134 says that 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 benefit of the proposal, including its optimum viable use.

4.10 The NPPF says at Annex 1 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the Framework policies, the greater the weight that may be given). Weight may also be given to relevant policies in emerging plans according to the stage of preparation (the more advanced, the greater the weight that may be given), the extent to which there are unresolved objections (the less significant, the greater the weight) and the degree of consistency of the relevant emerging plan policies to the Framework policies (the closer they are, the greater the weight).

Local Plan Policy

4.11 Policies in the DCLP are considered to be relevant to this development where they are consistent with the advice within the NPPF. In this respect the most relevant policies to the proposal are GP1 'Design', HE2 'Development in Historic Locations' and HE3 'Conservation Areas', He4 'Listed buildings' GP4a 'Sustainability' and E4 'Employment Development on Unallocated Sites'

Emerging Plan Policy

4.12 The emerging Local Plan policies can only be afforded weight in accordance with annex 1; paragraph 216 of the NPPF and 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.

4.13 The most relevant evidence base is the Retail Study Update (2014). It considers that the retail hierarchy in the emerging plan represent sound tiers for planning for future community needs.

4.14 The site was identified through the call for sites process as a site suitable for housing however a proposed allocation was not pursued as the owner of the site was unwilling develop the site for residential purposes.

4.15 The site is shown as being within the built up area of York with no specific allocation in the existing and emerging local plans.

FULFORD ROAD CONSERVATION AREA APPRAISAL (HCAA)

4.16 The site falls within the northern half of the Fulford Road conservation area which was designated in 1975 and extended to include Alma Grove to the rear of the site in 2010. The Conservation Area Appraisal identifies the veterinary building and the properties on Alma Grove as buildings of positive value to the area and identifies the site itself as a feature of detriment to the area.

PRINCIPLE

4.17 The site is located within Fulford Road conservation area and affects the setting of heritage assets. In accordance with footnote 9 to paragraph 14 of the NPPF the presumption in favour of development does not apply to this site.

4.18 The site is located within York's main urban area and is a previously developed site. The principle of redeveloping the site for an employment use is considered to accord with the aims and objectives of the NPPF and with the aim of policies in the existing and emerging local plans.

4.19 The last use of the site was a petrol filling station (PFS). The PFS was closed in 2003 and the buildings, following a grant of consent, were removed from the site in 2006. Without a further grant of planning permission for erection of buildings it would not be possible to reintroduce the former use as a PFS. The current application should be considered on its own merits; the former use could be considered to have been abandoned.

DESIGN, LAYOUT AND HERITAGE ASSETS

4.20 The site falls within the northern half of the Fulford Road Conservation Area which was designated in 1975. It is a deep site adjacent to the main road which forms the spine of a linear conservation area and also its eastern boundary in this location. In 2010 the conservation area was reappraised and the western boundary was extended adjacent to the site to include Alma Grove, a formal complex of early small scale council housing dating from 1913. The site is sandwiched between

substantial Victorian villas set behind plinth walls and railings of which the paired mid C19th houses to the south are listed at grade II.

4.21 The conservation area focuses on a major road leading into the city centre as it passes through the city's suburbs. Its distinctive character and appearance derives from the establishment of important army barracks along the route in the C18th and C19th. The remaining military buildings visible from the street are defensive in character and these sites are still protected by high boundary walls. The military presence spawned other building types in the area and contributed to the exceptional diversity of housing on this strategic route. This includes C19th former rural villas, substantial Victorian houses, late C19th large scale military housing, Victorian terraces, early C20th detached and semi-detached houses and early C20th council housing. It is the range and quality of the C19th and C20th housing which adds to the special interest of the area. In addition the importance of the road is signified by strong boundaries, grass verges and lines of street trees. Trees within front gardens and screened commercial sites also enhance the area.

4.22 The site has been vacant for several years and the rough timber fence enclosing it hides informal vegetation that has grown up in the meanwhile. The conservation area appraisal identifies the site as being detrimental to the character and appearance of the conservation area. It presents a wide gap in a sequence of fine Victorian villas set back behind garden forecourts with boundary walls, railings and gate-piers. A line of mature trees continues the enclosure to the south and screens the 1970s block of flats adjacent to nos 180 & 182 Fulford Road, enhancing views along the road. Smaller Victorian terraces to the north have recently been included within the conservation area boundary as they form an attractive visual stop to the area and their curved layout strengthens the distinctive enclosure and appearance of the road.

4.23 The proposed scheme has been amended since first submission but the principle layout of the site is the same and typical of a PFS layout. It is proposed to construct a single storey flat roofed building measuring 31 metres by 14 metres (approximately) on the western side of the site set between 4 and 5 metres from the rear boundary. The building stands 4.6 metres high from ground level. The site has a slope and the building is to be built from a level 0.5 metre above the rear boundary and 0.5 metre below the level of the proposed forecourt. To the front of the building will be forecourt area where a canopy measuring 8.5 metres by 23.5 metres is proposed. The canopy is orientated with its narrow elevation to the road frontage to minimise its form, the box profile of the canopy is also to be minimised and the front edge raised to allow view through to the listed building to the south of the site. Within the forecourt there are 14 parking spaces, a row of three petrol pumps, air and water facilities and cycle parking as well as dedicated pedestrian access route to the shop. The boundaries are to be landscaped and a strip of landscaping is proposed along the frontage of the site.

4.24 The applicant's heritage statement says that the site has a negative impact on the setting of the listed building to the south. The statement says that redevelopment will provide an opportunity to secure enhancement. However the statement acknowledges that there will be harm associated with the siting of the proposed canopy and signage but that this will not be substantial harm. Harm, it is considered, can be mitigated with boundary planting and walling. Such harm it is argued is balanced by bringing the site back into use.

4.25 In terms of the conservation area the applicant argues that the harmful impacts of the signage and canopy is outweighed by the public benefits associated with the redevelopment of the site. 170 Fulford Road, the vet practice to the north of the site, is identified as a building that contributes positively to the conservation area. The heritage statement acknowledges the harmful impact of the development but says that such impacts are outweighed by the positive benefits of securing the redevelopment of the site.

4.26 Officers conclude that the proposals would be harmful to the character and appearance of the conservation and to settings and views of the attractive Victorian houses to each side of the site. The uncharacteristic gap in the sequence of houses would become a more permanent feature of the conservation area, enclosure of the street would be untypically weak, and further harm would be added by the introduction of the large scale canopy and signage in an otherwise residential area of attractive buildings with landscape forecourts behind boundary walls and railings.

4.27 In general terms paragraph 131 of the NPPF says that in determining applications in historic environments Local Planning Authorities should take account of 'the desirability of new development making a positive contribution to local character and distinctiveness' at paragraph 9 the NPPF says that sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment and paragraph 64 says that 'permission should be refused for development that fails to take the opportunities available for improving the character and quality of an area and the way it functions'.

4.28 Paragraph 133 says that if development will lead to substantial harm to a designated heritage asset the LPA should refuse consent unless the loss is necessary to achieve substantial benefit. Paragraph 134 says that where development leads to less than substantial harm this harm should be weighed against the public benefit of the proposal including securing its optimum viable use.

4.29 National Planning Policy Guidance (NPPG) says that substantial harm will be a judgement for the decision taker, having regard to the circumstances of the case and the policies in the NPPF. Guidance says that in general terms substantial harm is a high test so it will not arise in many cases.

4.30 The applicant and the Conservation Officer both identify that harm will be caused to the character and appearance of the conservation area and the setting of the adjacent listed buildings/ non-designated heritage assets. Officers consider that the harm is less than substantial and therefore harm should be weighed against the public benefit. The applicant argues that the identified harm is outweighed by securing a use for the site. The site is in a sustainable location where options for the site use as a residential or low key employment use could, in principle, be supported. In Officer opinion, as advised in the NPPG, if there is a range of alternative viable uses, the optimum use is the one likely to cause the least harm to the significance of the asset. The development is agreed by both the applicant and the conservation officer as causing harm therefore the proposed use is not that most compatible with the long-term conservation of the asset as such little weight can be attached to the public benefit of bringing the site back into use as a PFS.

4.31 Furthermore the Planning (Listed building 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 and pay special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. In this case harm is identified to both the setting of a listed building and the character and appearance of the conservation area and in paying special attention/paying special regard to this harm there is no overriding interests that would outweigh the harm identified in this case.

RETAIL

4.32 The scheme includes a shop with a retail floor area of 330 sqm and a gross floor space of 420 sqm.

4.33 The Retail Study Update 2014, which forms part of the evidence base to the emerging local plan, identifies that there are two neighbourhood parades located near to the application site. These are Fishergate and Carey Street, Fishergate. The retail and service units present at each of these locations serves a highly localised catchment area. The neighbourhood parades provide an important role in catering for the day to day needs of the local community; however the range of goods and services available at these locations is limited and primarily focused on convenience goods provision and services such as hairdressers and takeaways.

4.34 The retail study recommends that neighbourhood parades should be included as a fourth tier within the retail hierarchy. The creation of a network of centres within the City of York will ensure that the retail and community needs of residents and visitors are met. It is also recommended that the Council should seek to protect the vitality and viability of the defined neighbourhood parades. However, unlike city, district and local centres, it is recommended that neighbourhood parades should not be considered 'in centre' locations for the purposes of the sequential and impact

tests. This approach accords with Annex 2 of the NPPF, which sets out that references to town centres or centres applies to city centres, town centres, district centres and local centres but excludes small parades of shops of purely neighbourhood significance.

4.35 The applicant has submitted an assessment of the proposals impact on nearby neighbourhood parades. The assessment says that it is expected that the vast majority of trade in the shop will be associated with those customers using the petrol filling station although there may be some limited additional trade associated with the local catchment areas. Given the nature of the offer at the Fishergate centre it is considered that very little, if any measurable amount of trade would be diverted from the centre to the proposed development and there would be no significant adverse impact on the centre. The application site is located slightly closer to the Carey Street centre. It is likely that the application site will draw some trade from the Carey Street catchment although the applicant considers it would draw a very limited amount of trade from the existing Sainsbury's local store. Sainsbury's is a strong national brand offering good quality convenience shopping at neighbourhood level. The offer of the PFS shop would be more limited and will include the sale of other goods such as car care accessories. It is anticipated that the use of the PFS shop will primarily relate to those purchasing fuel. Overall it is considered that the PFS associated convenience shop would not lead to significant adverse impact on existing centres (the NPPF test).

4.36 Officers agree with the conclusions of the retail assessment. There is no policy objection to the principle of the proposed retail element of the PFS in this location.

HIGHWAYS ACCESS AND PARKING ARRANGEMENTS

4.37 A significant number of the objections raise concerns about highway safety particularly, although not exclusively, because of the number of vehicular movements that will interrupt the passage of pedestrians and cyclists along the footpath and cycle lane outside the site. The site is a well used pedestrian route for the local school. The cycle lane and the pedestrian crossing have both been introduced since the site was last in use.

4.38 Highway Network Management does not object to the application. The location is on the main arterial road into York providing local facilities to the surrounding area and services to travelling public. The retail unit is in a sustainable location attracting customers on foot and cycle from the surrounding residential area. The site is accessed using two existing vehicular access onto Fulford Road (previously serving a filling station). The accesses are to be slightly modified to provide better pedestrian visibility. Visibility is in accordance with national guidance. Details of the entrance, including crossing points, may be conditioned. The level of traffic which could be reasonably anticipated to be generated by both the existing and proposed uses is based upon the nationally recognised TRICS database, which is based upon

survey data of similar sites around the country. The majority of vehicles accessing the site will already be on the network and simply diverting into the site before returning to their original destination. As a result the site will not generate a noticeable increase in traffic flows on the local highway network, particularly as existing flows are high. 14 Parking spaces have been provided. This is below the maximum parking standards. Due to the sustainable location, close to residential areas, officers feel that the level of parking provided on site is reasonable, appropriate and not likely to lead to the displacement of parking onto the adjacent highway. A Customer cycle parking area has been provided though details have not been submitted. Staff cycle parking has not been detailed. These details may be conditioned.

RESIDENTIAL AMENITY

4.39 The site is located within a mixed use area with a busy main road to the site frontage. Nevertheless since the site was last in use there have been a number of changes to the surrounding buildings which has increased the level of residential accommodation in close proximity to the site.

4.40 On the east side of Fulford Road former commercial uses have converted to residential use and 180 to 182 Fulford Road (now known as 1 to 12 Augure House), to the south of the site, formerly in office use has been converted to 12 residential flats. There are living areas and bedrooms on the ground, first and second floor of the former office building which has windows facing the site at a distance of about 4 metres. Properties on Alma Grove, to the west of the site are terraced two storey properties located about 4 metres from the rear site boundary.

4.41 The NPPF seeks, through the core planning principles, to secure a good standard of amenity for all existing and future occupants of land and buildings; to ensure new and existing development is protected from the adverse effects of noise (Paragraph 109); and to ensure that decisions avoid noise from giving rise to significant adverse impacts.

Noise

4.42 Of principal concern is noise associated with plant, noise from deliveries, and noise from customer vehicle movements and parking. Construction noise will be time limited and may be controlled through environmental protection legislation and where appropriate planning conditions.

Plant (ventilation and extraction systems)

4.43 Additional information submitted shows that the plant associated with the retail building will be located on the north side of the building adjacent to the veterinary practice car park. The plant and equipment is to be acoustically insulated and will be

shield from adjacent sites by existing boundary treatment. Subject to a condition ensuring the equipment is properly installed there is no demonstrable harm associated with the placing of the plant and equipment.

Delivery and customer movements

4.44 Initially the proposal was to operate the petrol filling station on a 24 hour basis. The amendments to the scheme have confirmed that it is now proposed to operate the site between 6am and 11 pm. The application is supported by a noise report which includes background noise monitoring.

4.45 Properties on Alma Grove are largely protected from the forecourt operation by the position of the retail building. The main residential properties affected by the operation of the forecourt and traffic and pedestrian movements to the ATM and shop are the flats to the south of the site. Environmental Protection are satisfied that the noise report shows that, with the existing background levels, the flats will not suffer a loss of amenity. This is because of the high background noise levels associated with the sites proximity to the Fulford Road.

4.46 Loss of amenity to properties on the south side is also a concern in relation to the lighting of the site and the operation of the ATM machine. Provided lighting levels are conditioned and the ATM is restricted to use during opening times only (6am to 11pm) Officers are satisfied that the development will not be detrimental to the residential amenity of the adjacent flats. During the hours of 6am to 11pm properties on the east side of the site, which are separated from the site by Fulford Road, would not be affected by the development because of the distance between the properties and the site and because of the noise generated by the road itself and the general levels of lighting in the area.

Residential Amenity - Siting of the Retail Building

4.47 The building is located to the rear of the site; it is set a minimum distance of 4 to 5 metres from the rear boundary and stands 4.6 metres high. Intervening trees are proposed between the building and the rear boundary of the site. Properties on Alma Grove backing on to the site do so at a distance of approximately 4 metres. Alma Grove houses are built approximately 1 metre below the land level of the application site so that the rear yards have high retaining walls on the joint boundary with fence enclosing the site above. The site is on the east side of the garden areas. The proposed building will further increase the sense of enclosure to the rear area of 19 to 22 Alma Grove, which adjoin the site, and reduce the level of morning light to windows and rear yard areas. The introduction of formal landscaping to the area between the building and the boundary will add to the sense of enclosure and loss of light and affect the outlook from the ground and first floor windows. Officers consider that the development will cause an unacceptable loss of amenity to 19 to 22 Alma Grove as a result of the siting and design of the building.

DRAINAGE

4.48 The site is located within Flood Zone 1, low risk and should not suffer from River flooding. The application is supported by a drainage report which indicates that surface water run off will be attenuated. The Flood Risk Management team are satisfied with the details submitted and raise no objections subject to the details in the submitted drainage report being conditioned.

5.0 CONCLUSION

5.1 The presumption in favour of sustainable development (paragraph 14 NPPF) does not apply to the application site because the site is located within Fulford Road Conservation Area and is within the setting of a Grade II listed building.

5.2 172 Fulford Road is situated within the northern half of the Fulford Road conservation area. The character of the area is derived from the range and quality of the C19th and C20th houses, strong boundaries, grass verges and lines of street trees. Trees within front gardens and screened commercial sites also enhance the area. The layout and design of the PFS would be untypical of the grain of development within the conservation area and harmful to its character or appearance. The uncharacteristic gap in the sequence of houses would become a more permanent feature of the conservation area, enclosure of the street would be untypically weak; further harm would be added by the form, size, height, scale and materials of the canopy and signage in an area of attractive buildings with landscape forecourts behind boundary, walls and railings. Furthermore 172 Fulford Road is situated within the setting of a grade II listed building located to the south of the site (formerly 180 to 182 Fulford Road now 1 to 12 Aurega House) and within the setting of 170 Fulford Road an undesignated heritage; the size and scale of the canopy to be erected over the forecourt of the proposed petrol filling station would be an uncharacteristic feature within the immediate setting of the listed building and it would adversely affect views of the buildings. The development would harm the setting of the adjoining listed building and affect the significance of a non-designated heritage asset. The harm identified would be less than substantial harm (paragraph 134 of the National Planning Policy Framework), no public benefits have been identified that would outweigh this harm. The proposal fails the duty to preserve or enhance the character or appearance of the conservation area under s.72 of the Planning (listed building and Conservation area) Act 1990 and fails the duty to have regard to the desirability of preserving the listed building or its setting under s.66 of the Act, guidance contained within the National Planning Policy Framework (paragraphs 9, 64, 131, 132, 134) and policies HE2, HE3 and HE4 of the Development Control Local Plan.

5.3 Officers consider that the development will cause an unacceptable loss of amenity to 19 to 22 Alma Grove as a result of the siting and design of the retail

building contrary to the core planning principles in the NPPF a good standard of amenity for all existing and future occupants of land and buildings and GP1 of the DCLP.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Refuse

1 No. 172 Fulford Road is situated within the northern half of the Fulford Road Conservation Area. The character of the area is derived from the range and quality of the C19th and C20th houses, strong boundaries, grass verges and lines of street trees. Trees within front gardens and screened commercial sites also enhance the area. The layout and design of the petrol filling station would be untypical of the grain of development within the conservation area and harmful to its character or appearance; further harm would be added by the form, size, height, scale and materials of the canopy and signage in an area of attractive buildings with landscape forecourts behind boundary, walls and railings. The harm identified would be less than substantial harm (paragraph 134 of the National Planning Policy Framework), no public benefits have been identified that would outweigh the harm. The proposal fails the duty to preserve or enhance the character or appearance of the conservation area under s.72 of the Planning (listed building and Conservation area) Act 1990, guidance contained within the National Planning Policy Framework (paragraphs 9, 64, 131, 132, 134) and policies HE2 and HE3 of the City of York Development Control Local Plan adopted for development control purposes in April 2005.

2 No. 172 Fulford Road is situated within the setting of a grade II listed building located to the south of the site (formerly 180 to 182 Fulford Road now 1 to 12 Aurega House) and within the setting of 170 Fulford Road an undesignated heritage; the size and scale of the canopy to be erected over the forecourt of the proposed petrol filling station would be an uncharacteristic feature within the immediate setting of the listed building and it would adversely affect views of the buildings. The development would harm the setting of the adjoining listed building and affect the significance of a non-designated heritage asset. The harm identified would be less than substantial harm (paragraph 134 of the National Planning Policy Framework) There are no public benefits identified that would outweigh the harm. The proposal fails the duty to have regard to the desirability of preserving the listed building or its setting under s.66 of the Planning (listed building and Conservation area) Act 1990, guidance contained within the National Planning Policy Framework (paragraphs 9, 131, 132, 134, 135) and policies HE2 and HE4 of the City of York Development Control Local Plan adopted for development control purposes in April 2005.

3 Nos. 19 to 22 Alma Grove are a row of terraced properties orientated east /west and 4 metres from the rear of the application site. The proposed siting of the retail building will introduce development close to the joint boundary on a land level above the adjacent houses and a structure that is 4.6 metres above site ground level. It is considered that the siting of the building and associated landscaping would be detrimental to the outlook to the rear of 19 to 22 Alma Grove and will reduce light into rear garden areas and would be detrimental to the occupiers residential amenity. The proposal is considered contrary to the core planning principles in the National Planning Policy Framework which seek to ensure a good standard of amenity for all existing and future occupants of land and buildings and GP1 of the City of York Development Control Local Plan adopted for development control purposes in April 2005.

7.0 INFORMATIVES:

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 an attempt to achieve a positive outcome:

- Provision of written advice about the concerns raised by the scheme
- Meeting to discuss development
- Consideration of amendments

However, the applicant/agent was unwilling to withdraw the application, resulting in planning permission being refused for the reasons stated.

Contact details:

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15/00462/FUL

Former Garage site at 172 Fulford Road, YO10 4DA



GIS by ESRI (UK)



Scale : 1:1059

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Organisation	City of York Council
Department	CES
Comments	Not Set
Date	05 October 2015
SLA Number	Not Set

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COMMITTEE REPORT

Date: 15 October 2015 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
Commercial Team

Reference: 15/01157/FUL
Application at: Land to the North of 37 And 38 St Marys York YO30 7DD
For: Erection of two storey detached dwelling
By: Mr and Mrs D Coidan
Application Type: Full Application
Target Date: 16 October 2015
Recommendation: Approve

1.0 PROPOSAL

1.1 The application site comprises a detached former garden area associated with 38 St Mary's, most recently occupied by a bank of 8 concrete panel garages and used for parking for Bootham School. No. 38 St Marys comprises a substantial four storey brick built Grade II Listed Mid 19th Century brick built villa occupying a prominent location within the Historic Core Conservation Area at the corner of Bootham and St Mary's. The property has associations with Joseph Rowntree and has recently been converted back to residential use having formerly been used as a boy's boarding house for Bootham School. Planning permission is now sought for erection of a single dwelling house on the former parking area to the rear to a contemporary design with access taken from the back lane. The proposal has been amended since submission to alter its skyline by removing a chimney and to clarify the visual relationship with the adjacent properties to the south.

Planning History

1.2 Outline planning permission has previously been given for two cottage style mews houses within the current application site in 2010 (10/00016/OUT). Reserved Matters Consent has subsequently been given for the development in 2013 (13/00055/REM). The permissions establish the principle of residential development of the site and the recent demolition of the previous block of 8 concrete panel garages keeps the earlier permissions alive in the event that the current proposal is not implemented.

Call-in

1.3 The proposal has been called in to Committee for Member's determination by Councillor Denise Craghill because of concerns in terms of the impact of the proposal upon the character and appearance of the Conservation Area, creation of a

potential precedent for other similar developments in the locality and potential adverse impact upon the residential amenity of adjacent properties.

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
Listed Buildings Multiple (Spatial)

2.2 Policies:

CYGP1 Design
CGP15A Development and Flood Risk
CYH4A Housing Windfalls
CYHE2 Development in Historic Locations
CYHE10 Archaeology

3.0 CONSULTATIONS

INTERNAL

Highway Network Management

3.1 No objection to the proposal.

Environmental Protection Unit

3.2 No objection to the proposal subject to the provision of a recharge point for an electric vehicle within the curtilage of the new property.

Design, Conservation and Sustainable Development (City Archaeologist)

3.3 No objection in principle to the proposal subject to any permission being conditioned to require a full archaeological investigation of the site through its proximity to a known extra-mural Roman cemetery.

Strategic Flood Risk Management

3.4 Any response will be reported verbally.

EXTERNAL

Guildhall Planning Panel

3.5 Object to the proposal on the grounds of adverse impact upon the character and appearance of the Historic Core Conservation Area.

Yorkshire Water Services Ltd

3.6 Raise no objection to the proposal.

Foss Internal Drainage Board

3.7 Raise no objection to the proposal.

York Civic Trust

3.8 Raise no objection in principle to the proposal but indicate that the proposal should be subservient to the much higher buildings surrounding it, a high quality and respectful palette of materials should be adopted and a full pre-development archaeological evaluation should be undertaken of the site.

Neighbour Notification/Publicity

3.9 Nine letters of representation have been submitted in respect of the proposal, 6 letters of objection and three of support.

3.10 The following is a summary of the letters of support:-

- Support for the scale of the development relative to the surrounding buildings and wider street scene;
- Support for the "sensitive" use of a Modern idiom and palette of materials;
- Support for the layout of the proposal which is felt to safeguard the amenity of neighbouring properties.

3.11 The following is a summary of the letters of objection:-

- Concern in respect of the impact of the proposal upon the visual amenity of the wider street scene, notably Bootham Terrace to the north and the junction of St Mary's with Bootham to the south west;
- Concern in respect of the inappropriate use of a Modern pattern of scale and massing and palette of materials;
- Concern in respect of the impact of the proposal upon the residential amenity of properties directly to the south by virtue of overlooking, over-dominance and loss of privacy;
- Concern in respect of the impact of the proposal upon the character and appearance of the Central Historic Core Conservation Area and a failure to comply with the requirements of Section 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act in respect of the preservation or enhancement of the Conservation Area;
- *Concern in respect of the impact of the proposed building upon the setting of a number of Listed Buildings in the near vicinity notably Penn House itself and failure to comply with Section 66 of the 1990 Planning (Listed Buildings and Conservation Areas) Act in respect of safeguarding the setting of Listed Buildings.

4.0 APPRAISAL

KEY CONSIDERATIONS:-

4.1 KEY CONSIDERATIONS INCLUDE:-

- Impact upon the character and appearance of the Central Historic Core Conservation Area;
- Impact upon the setting of Penn House and other nearby Listed Buildings;
- Impact upon the residential amenity of neighbouring properties.

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 arriving at Development Management decisions although it is considered that their weight is limited except where in accordance with the National Planning Policy Framework.

IMPACT UPON THE CHARACTER AND APPEARANCE OF THE CENTRAL HISTORIC CORE CONSERVATION AREA:-

4.3 Section 72 of the 1990 Planning (Listed Buildings and Conservation Areas Act sets out a clear statutory duty to Local Planning Authorities to have special regard to the desirability of preserving and enhancing the Conservation Area. Policy HE2 of the York Development Control Local Plan sets out a firm policy presumption that within or adjacent to Conservation Areas and within the setting of Listed Buildings development proposals must respect adjacent buildings, open spaces, landmarks and settings and have regard to local scale, proportion, details and materials. Central Government planning policy as outlined in paragraph 132 of the National Planning Policy Framework urges Local Planning Authorities to give particular weight to the desirability of new development making a positive contribution to local character and distinctiveness.

4.4 The Central Historic Core Conservation Area Character Appraisal(2013) identifies the area as being one of a mix of Georgian and Victorian Terraced housing designed for occupation by professional people with the surrounding dwellings either separately Listed or individually of merit within the Conservation Area. Areas identified as being suitable for redevelopment are few with the application site being one. In securing the character of the Conservation Area the need to secure the characteristic local skyline is seen as being of particular importance as is the need to secure new architecture of a suitable quality for the principal approaches to the Historic City. The application site comprises a former walled garden separated from the main house by a back lane providing rear access to the properties on the western side of Bootham. It lies approximately 2.5 metres above the level of the gardens of Constantine House and its neighbour directly to the west and was

previously occupied by a grouping of precast concrete panel garages dating to the 1970s. A series of brick garages and a workshop of substantial construction separate the site from the properties facing Bootham in the characteristic location of stables and coach houses in earlier times. Outline planning permission was previously given for erection of two cottage style dwellings on the application site in 2010.

4.5 The application envisages the erection of a single dwelling house to a contemporary design but reflecting the palette of materials present in the direct locality including mid red brick, render and a zinc cladding. In terms of roof form it incorporates a series of flat roofed with parapet and mono-pitch elements with an angular massing facing St Mary's. A glazed wall would be constructed to light the principal living rooms aligned along the rear of St Mary's with the building partially recessed into the site in order to minimise impact upon the residential amenity of the adjoining properties. An external terrace would be provided at ground floor level to the west to provide external amenity space which would be sheltered from the adjacent property by the existing wall. Parking would be via garage within an integral flat roofed block accessed from the adjacent back lane with a flat green roof laid above. The building would have a maximum ridge height of 5.8 metres comparable with the garage/workshop building directly to the east.

4.6 Concern has been raised by objectors in respect of the visual relationship of the proposal to the principal views through the Conservation Area south from Bootham Terrace and north west from the junction of St Mary's with Bootham. The principle of residential development of the site is however, firmly established by the previous Outline Planning Permission. The proposal is also physically separated from St Mary's by the substantial walled garden of Penn House and longer distance views from the south and south east are physically disrupted by landscaping within the gardens of Penn House. Views from Bootham Terrace are largely mitigated by mature landscaping along the alignment of the York/Scarborough railway. Concern has also been expressed in terms of the visual relationship between the building and the adjacent housing of significant townscape merit. The sky line of the building has however been designed so as not to be in competition with its higher more formal neighbours surrounding. It would also not be seen within the same view plane as the adjacent buildings as it would be set back and to one side of Constantine House and its neighbour and is physically separated from the properties facing Bootham by the large workshop building directly to the east. The building would also be recessed into the site with a strip of landscaping including a semi mature tree fronting the back lane directly to the south. In terms of the palette of materials a smaller extension using an identical roof form and mix of render and cladding was constructed to the rear of a property along the Bootham frontage directly to the north some ten years ago and has weathered into the surrounding townscape. It is therefore considered that the proposal would not harm the character and appearance of the Conservation Area rather in view of the design of its skyline and relationship to its surroundings its impact would be broadly neutral. It is therefore felt

in terms of the requirements of Section 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act that it would preserve or enhance the character and appearance of the Conservation Area.

IMPACT UPON THE SETTING OF PENN HOUSE AND ADJACENT LISTED BUILDINGS

4.7 Section 66 of the 1990 Planning (Listed Buildings and Conservation Areas) Act sets out a statutory duty to Local Planning Authorities to have special regard exercising their planning functions to safeguarding the setting of Listed Buildings. The application site lies within the setting of Penn House, 38 St Mary's and Constantine House 37 St Mary's both Listed Grade II as good examples of substantial brick built Mid Victorian villas characteristic of the surrounding area. Indeed it was originally laid out as a detached walled garden to serve Penn House. The proposed building as amended has been designed to sit low within the adjacent skyline and not to attempt to compete with either Penn House or its immediate neighbours within the Bootham street frontage which are narrow in relation to their height. In terms of the relationship to Constantine House it has again been designed to sit low within its surroundings and not to act in visual competition. It is also offset in views of Constantine House and would not readily impinge upon its context in views from the surrounding area outside. In terms of the relationship to Penn House it is detached by the back lane serving the properties along the western side of Bootham and the visual relationship is further disrupted by the recent landscaping works undertaken in the rear garden of Penn House. Further landscaping works are envisaged along the southern boundary of the site including the planting of a semi-mature tree, which would result in the proposed building being recessed into the site. The proposal is also wholly contained within the former detached walled garden thereby retaining the historic pattern of property boundaries and safeguarding the context of neighbouring properties. In view of the design of the skyline of the proposed property and its visual relationship to the adjacent Listed Buildings it is felt that their setting would not be harmed and that the requirements of Section 66 of the Act can therefore be achieved.

IMPACT UPON THE RESIDENTIAL AMENITY OF NEIGHBOURING PROPERTIES

4.8 Policy GP1 of the York Development Control Local Plan sets out a firm policy presumption in favour of new development which respects or enhances the local environment, is of a scale, density, scale, mass and design that is compatible with neighbouring buildings, spaces and the character of the area and ensures that residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures. Central Government planning policy as outlined in paragraph 17 of the National Planning Policy Framework "Core Planning Principles" indicates that Local Planning Authorities should give significant weight to the need to secure a good standard of amenity for all new and existing occupiers of land and buildings.

4.9 Objections have been received from neighbours in respect of the impact of the proposal upon the residential amenity of the adjacent property Constantine House 37 St Marys. This is primarily in two respects, the possibility of overlooking and loss of privacy arising from the relationship of the flat green roof above the garage and its potential for use as a roof terrace and the potential for overlooking and loss of privacy arising from usage of the proposed sunken garden area adjacent to the boundary with Constantine House. The possibility of overlooking through the glazed west wall of the building of the garden area of Constantine House is also of serious concern. The applicant has submitted amended drawings to clarify the visual relationship between the garden and principal living rooms of the proposed building and the garden area of Constantine House. This illustrates the principal views between the site and the neighbouring property Constantine House taking account of the proposed landscaping at the site boundary and the degree to which the proposed external amenity space would be recessed into the site. This indicates that views from the external amenity area to the west of the site into the adjacent garden would be negligible given the retention of the brick boundary wall to a height of 2 metres from the ground level within the central section of the amenity area. The exterior of Constantine House would be some 11.5 metres to the south west from the amenity area at its closest point and any views would be oblique. In terms of overlooking from within the proposed building the principal living areas would be recessed behind a substantial glazed wall facing south west with any potential being minimised by the topography of the site as completed and the retention of the brick boundary wall. Any views of Constantine House itself would again be oblique and heavily disrupted by the topography and boundary treatment of the finished site.

4.10 Objections have separately been expressed in terms of the relationship of the proposed green roof to the garage and the adjacent first floor bedroom and any resulting loss of privacy and overbearing impact on account of the location of the building relative to the site boundary. The additional height of the garage would however be 2.5 metres above the level of the existing maximum height of the wall at a recess of 0.5 metres which is not felt in the context of a densely developed area to be overbearing. In terms of views from the bedroom any views of the adjacent garden and Constantine House itself would be disrupted by the local topography and the proposed parapet for the green roof to allow for maintenance. Detailed concern has also been expressed in respect of the potential for use of the green roof in view of the location of the adjacent bedroom windows and a parapet as a roof terrace or amenity. Such use would be clearly unacceptable in terms of its impact upon the residential amenity of the adjacent property Constantine House and a detailed submission has been made by a neighbour to demonstrate this. However, the applicant has confirmed that to use the green roof as a terrace would lead to its plant cover dying and potential problems of ingress of water below. The proposed parapet would also be only 0.8 metres high which would render amenity usage extremely hazardous. The applicant has furthermore confirmed that a condition restricting access to the roof for maintenance purposes only would be acceptable.

4.11 Taking account of the alignment of the proposed property and the local topography as altered the proposal is felt to be acceptable in terms of its impact upon the residential amenity of neighbouring properties and highly characteristic of such locations in densely developed urban areas.

OTHER ISSUES

4.12 Objections have been raised in respect of the relocation of the parking spaces associated with Penn House and currently located within the application and the potential for additional pressure on the restricted quantity of on-street parking. The applicant has laid out a hard surfaced parking area within the garden of Penn House utilising his permitted development rights which is adequate to accommodate the parking displaced.

5.0 CONCLUSION

5.1 The application site comprises a former detached walled garden associated with 38 St Mary's, most recently used as parking area with a block of 8 concrete panel garages. 38 St Marys comprises a substantial four storey brick built Grade II Listed Mid 19th Century brick built villa occupying a prominent location within the Historic Core Conservation Area at the corner of Bootham and St Mary's. The property has associations with Joseph Rowntree and has recently been converted back to residential use having formerly been used as a boy's boarding house for Bootham School. Outline Planning permission ref:-10/00016/OUT has previously been given for two cottage style dwellings on a former detached parking area associated with the property to its south west beyond the adjacent back lane.

5.2 Planning permission is now sought for erection of a single dwelling house on the former parking area in a contemporary architectural form with access taken from the back lane. The proposal as amended would sit low within the townscape and would be of a comparable scale and massing to surrounding buildings. It would also be detached in key long and short distance views within the Conservation Area and the setting of adjacent Listed Buildings. Whilst constructed in a modern idiom, materials that find reference in the locality are also used. It is felt that the requirements of Section 66 and Section 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act in respect of preserving and enhancing the character and appearance of the Conservation Area and the setting of adjacent Listed Buildings are achieved. The proposal is therefore felt to be acceptable on that basis.

5.3 Objections been received in terms of the potential impact of the proposal upon the residential amenity of the adjacent property Constantine House which is presently in the process of being refurbished for return to use as a single residential unit. The applicant has however demonstrated that providing the proposed flat green

roof above the garage area is not used as terrace then there would not be any material harm to the residential amenity of the adjacent property.

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:- 1192_AR50_03_A; 1192_AR50_01_B; 1192_AR50_02_B.

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

3 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 development above foundation level. The development shall be carried out using the approved materials.

A sample panel of the brickwork to be used on this building shall be erected on the site and shall illustrate the colour, texture and bonding of brickwork and the mortar treatment to be used, and shall be approved in writing by the Local Planning Authority prior to the commencement of the development above foundation level. This panel shall be retained until a minimum of 2 square metres of wall of the approved development has been completed in accordance with the approved sample.

Reason: So that the Local Planning Authority may be satisfied with the finished appearance of these details in view of their sensitive location.

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.

4 None of the boundary walls enclosing the site shall be lowered or breached without the prior written consent of the Local Planning Authority.

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

5 Details of all means of enclosure to the site boundaries shall be submitted to

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and approved in writing by the Local Planning Authority before the development commences above foundation level and shall be provided before the development is occupied.

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

6 No development shall take place above foundation level until there has been submitted and approved in writing by the Local Planning Authority a detailed landscaping scheme which shall illustrate the number, species, height and position of trees, shrubs and hard landscaping. 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.

7 ARCH1 Archaeological programme required

8 ARCH2 Watching brief required

9 EPU1 Electricity socket for vehicles

10 Prior to the development commencing details above foundation level of the cycle parking areas, including means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority. The building shall not be occupied until the cycle parking areas and means of enclosure have been provided within the site in accordance with such approved details, and these areas shall not be used for any purpose other than the parking of cycles.

Reason: To promote use of cycles thereby reducing congestion on the adjacent roads and in the interests of the amenity of neighbours.

11 HWAY19 Car and cycle parking laid out

12 Prior to the development coming into use, the initial 3 m of the vehicular access, measured from the back of the public highway, shall be surfaced, sealed and positively drained within the site. Elsewhere within the site all areas used by vehicles shall be surfaced and drained, in accordance with the approved plans.

Reason: To prevent the egress of water and loose material onto the public highway.

13 Notwithstanding the provisions of Article 3 of the Town and Country Planning

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(General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order), development of the type described in Classes A, B, C, E and G of Schedule 2 Part 1 of that Order shall not be erected or constructed.

Reason: In the interests of the amenities of the adjoining residents and safeguarding the character and appearance of the Central Historic Core Conservation Area 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) Order 1995.

14 Prior to the commencement of the development hereby authorised above foundation level full details of the proposed means of surface water disposal for the site including hard surfaced areas, calculations and invert levels shall be submitted to and approved in writing by the Local Planning Authority. Such details shall allow for discharges to be attenuated to 70% of existing levels and shall make due allowance for 1in 30 and 1 in 100 year severe rainfall events. The details shall be fully implemented prior to first occupation of the dwelling house.

Reason:- To ensure that the site is safely and efficiently drained.

15 The roof of the garage shall not be used as a roof terrace or an external amenity area.

Reason: - To safeguard the character and appearance of the Historic Core Conservation Area and the residential amenity of neighbouring 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 took the following steps in order to achieve a positive outcome:

- i) Sought clarification of the visual relationship with the adjacent property Constantine House.
- ii) Sought an amended design for the roofscape of the proposal.

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 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

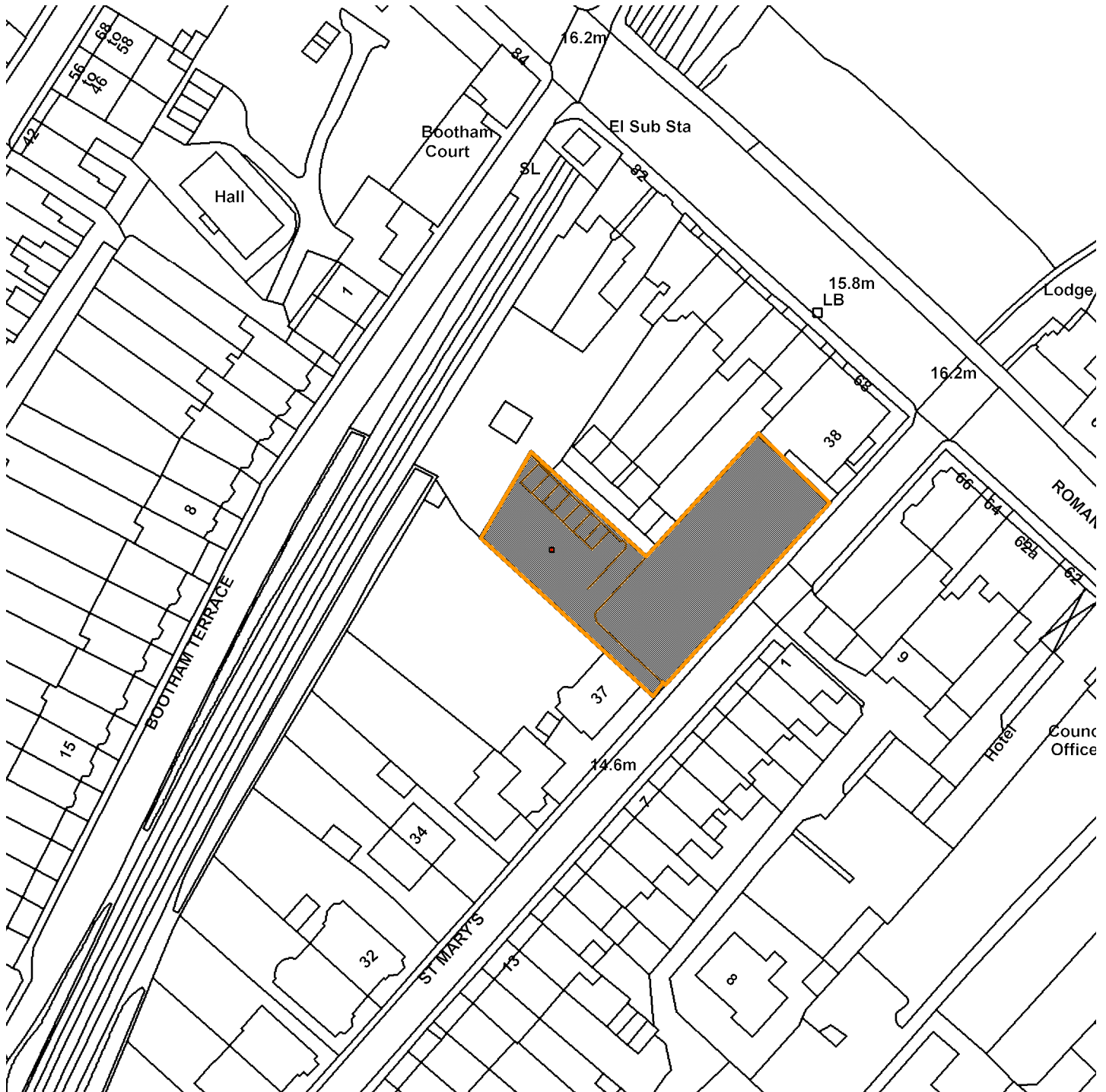
Contact details:

Author: Erik Matthews Development Management Officer

Tel No: 01904 551416

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land to N of 37 and 38 St Marys, YO30 7DD



Scale : 1:1059

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Organisation	City of York Council
Department	CES
Comments	Not Set
Date	05 October 2015
SLA Number	Not Set

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COMMITTEE REPORT

Date: 15 October 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 Wartens 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.

1.3 The application was deferred from the September 2015 committee in order for the proposed car parking arrangements to be examined further. Revised plans have been submitted which now indicate three car parking spaces to the rear of the site to be used by staff and visitors, an increase of one space.

Relevant History

1.4 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

1.5 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: CY56 - 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. Three 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 businesses that are present.
- Insufficient parking bays create highway 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 Osbaldwick 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; three of these spaces are now 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 Since previously being presented to Committee revised plans have been secured which indicate three car parking spaces being provided within the car park to the rear of the site, an increase of one space. The applicant has confirmed that all occupiers of the units have keys to the barrier to the rear car parking area and as such it could remain available for parking until the last unit closes. The occupiers would be responsible for the daily locking and unlocking of the barrier.

4.9 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

4.10 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

4.11 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.

4.12 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.

4.13 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. 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.

5.2 Following the November Planning Sub Committee revised plans have been submitted which indicate three car parking spaces to the rear to be used solely by staff and visitors. Condition 9 has been attached which prevents the spaces from being used for any purpose other than as staff and visitor parking in connection with the application site.

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 revision A received 17th September 2015

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 (LA_{max} (f)) and average sound levels (LA_{eq}), 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/ozone treatment, or odour neutraliser, and include details on the predicted air flow rates in m³/s throughout the extraction system.

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

8 Prior to the development coming into use details of cycle parking for use by staff and visitors shall be submitted to and approved in writing by the Local Planning Authority. The building shall not be occupied until the cycle parking has been provided within the site in accordance with such approved details, and these areas shall not be used for any purpose other than the parking of cycles.

Reason: To promote use of cycles thereby reducing congestion on the adjacent roads and in the interests of the amenity of neighbours.

9 The car parking spaces identified on the approved drawing reference 607-P23 REV A shall be made available during the opening hours of the unit and shall be retained solely for use by staff and visitors in connection with the approved use at 16 Farndale Avenue and for no other purpose.

Reason: In order to reduce on street parking within the immediate vicinity

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:

Secured revised plans indicating off street parking for staff and visitors
Attached appropriate conditions

Contact details:

Author: Heather Fairy Development Management Officer

Tel No: 01904 552217

15/01278/FUL

16 Farndale Avenue, YO10 3PE



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Scale : 1:1059

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Organisation	City of York Council
Department	CES
Comments	Site plan
Date	05 October 2015
SLA Number	Not Set

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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:

CYH7 Residential Conversions

CYGP1 Design

3.0 CONSULTATIONS

Cllr N Barnes

3.1 Concerns regarding the high number of existing HMO's in Badger Hill. The increase in purpose built student blocks may lead to a significant drop in student demand for HMO's. The enlarged HMO would no longer prove suitable for family accommodation if no longer needed as a HMO. Concerns regarding the impact that the proposal will have on neighbouring living conditions and parking conditions.

Neighbour Notification and Publicity

3.2 Six objections were received along with concerns expressed from Badger Hill Residents Community Group. The following issues were raised:

- The enlargements will mean the property is no longer suited to family use in a location ideally suited to families.
- There is a high concentration of HMO's in the immediate vicinity which impact on neighbours. Around 33% within 100m. The 10% threshold has been breached.
- The proposal will increase parking on a blind spot.
- The proposal will lead to the over-development of the rear garden and the loss of access for bikes and bins.
- The extension will detract from the immediate neighbour and the loss of the rear access will lead to bins remaining to the side of 27. The increase in occupants will make smells from bins worse.
- The property does not have permitted development rights.
- The increase in the number of occupants in existing HMO's further imbalances the community/demographic balance.

4.0 APPRAISAL

4.1 The key issues in assessing the proposal are:

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- The impact on the streetscene.
- The impact on neighbours' living conditions.
- Parking and highway safety.
- Permitted development rights and HMO's.
- The impact of the enlargement of a HMO on noise and local character.

National Planning Policy Framework

4.2 The NPPF sets out the Government's overarching planning policies. At its heart is a presumption in favour of sustainable development. The framework states that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. A principle set out in paragraph 17 is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

4.3 Paragraph 187 states that Local Planning Authorities should look for solutions rather than problems and decision takers at every level should seek to approve applications for sustainable development where possible. The NPPF states that there are three dimensions to sustainable development - an economic role, a social role and an environmental role. In considering proposals for new or improved residential accommodation, the benefits from meeting peoples housing needs and promoting the economy will be balanced against any negative impacts on the environment and neighbours' living conditions.

Development Control Local Plan

4.4 The DCLP 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 content of the NPPF.

4.5 Policy H7 'Residential Extensions' sets out a list of design criteria against which proposals for house extensions are considered. The list includes the need to ensure that the design and scale are appropriate in relation to the main building; that proposals respect the character of the area and spaces between dwellings; adequate amenity space is retained and that there should be no adverse effect on the amenity that neighbouring residents could reasonably expect to enjoy.

4.6 Policy GP1 'Design' states that development proposals will be expected to respect or enhance the local environment and be of a density, layout, scale, mass and design that is compatible with neighbouring buildings, spaces and vegetation. The design of any extensions should ensure that residents living nearby are not

unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures. Suitable private space should be protected.

Supplementary Planning Documents (SPD)

4.7 The SPD for House Extensions and Alterations was subject to consultation from January 2012 to March 2012 and was approved at Cabinet on 4 December 2012. It is described as a draft as the City of York Council does not have an adopted Local Plan. The SPD offers overarching general advice relating to such issues as privacy and overshadowing as well as advice which is specific to particular types of extensions or alterations. The underlying objectives of the document are consistent with local and national planning policies and the advice in the SPD is a material consideration when making planning decisions.

4.8 The Council has a Supplementary Planning Document (SPD) for controlling the concentration of HMO's. Paragraphs 2.2-2.4 of the documents sets out the documents scope. It states that the guidance relates to changes of use from dwellings to HMO's. It does not state or imply that the document relates to proposals to extend an existing small HMO. The central aim of the document is to control the concentration of HMO's.

The impact on the streetscene.

4.9 The rear part of the extension is not prominent when viewed from public areas. The side part of the extension is set back from the front elevation of the house. As the flat roof is slightly higher than the eaves height of the main house the extension will look a little unusual, however, its prominence is not considered to be such that it could be argued to harm the appearance of the street.

The impact on living conditions.

4.10 The main assessment is the impact on 27 Deramore Drive. This property has a bathroom window on the side elevation along with two secondary living room windows. On balance given the function of the side windows it is not considered that undue harm will be caused by the slight increase of development opposite. The proposed rear extension will project past the rear bedroom window of no. 27. It is not considered that the level of projection (3m) is unacceptable taking account of the low height of the proposed structure and degree of separation to the large area of rear facing glazing serving the bedroom window on the adjacent property.

4.11 It is noted that the proposed rear openings in the application property will be relatively close to the side of 27 Foxthorn Paddock, however, the relationship is not such to harm privacy given the extension is at ground floor level and faces towards the side elevation of the neighbour's garage.

Parking and highway safety.

4.12 The applicant has sent revised plans indicating the retention of two tandem parking spaces on the existing drive and the provision of one additional space within the front garden. It is considered that this will meet reasonable parking needs and complies with the Council's maximum parking standards. It is noted that some other front gardens in the vicinity have been adapted to provide additional parking. It can be conditioned that the existing and proposed parking spaces are provided and retained.

4.13 Because the re-development of the garage increases the width of the house it removes the external pedestrian access to the rear garden that is adjacent to the existing garage. There will remain a very narrow access along the other side of the house, however, this would not be particularly practical to access with bikes. It is around 50cm wide adjacent to the chimney breast. Dependent on the design of the bike it may be possible to manoeuvre a bike along the route, though it is not of a standard that would typically be considered acceptable.

4.14 It is also noted that the access would be very tight for manoeuvring wheelie bins. It is the case however, that there is space to leave them at the side of the property and because the communal entrance door is to the side of the house this is where people would often be expected to access bins. The siting of bins here does not detract significantly from the streetscene.

4.15 The proposed internal layout is such that three of the proposed bedrooms abut the rear garden. One of the bedrooms contains a pedestrian door linking to the rear garden, however, no access to the garden is introduced from a communal area. This is obviously not an ideal layout for a HMO. The case officer asked if this could be changed. No changes have been forthcoming, however, it is not considered that this would justify refusal of the application.

Permitted Development Rights

4.16 Initially, following the introduction of the C4 use class there was some uncertainty locally and nationally in respect to whether HMO's enjoyed permitted development rights. Clarification on this matter was provided by the Planning Inspectorate in January 2014 in advice they issued for use by its Inspectors. This indicated that a HMO can benefit from permitted development rights providing it is considered also to be a dwelling house. The living arrangements proposed at 29 Deramore Drive (5 bedrooms, shared bathrooms and shared kitchen and living accommodation) are consistent with a dwelling house used as a HMO.

4.17 The existence of permitted development rights can be a material planning consideration when assessing planning applications. It is particularly pertinent when the 'fall back' permitted development options could lead to development that would

have a more significant impact than that submitted through a planning application. A detached bungalow could typically be extended to the rear by up to 4 metres without the need to apply for planning permission and extensions to the side can also be exempt from planning controls.

4.18 As set out in the report the submitted scheme does have weaknesses in that it removes convenient external access to the rear and the layout does not allow internal access to the rear garden through a communal area. However, it is considered in the light of the property's intact permitted development rights that the harm is not such to justify refusing the application.

4.19 The retention of parking can be controlled by condition which would not be possible if works were undertaken using permitted development rights. In addition, a planning permission can include a condition requiring a Management Plan is submitted to try and ensure that the owner manages the property in a way that helps to reduce conflict with neighbours.

The impact of the enlargement of a HMO on noise and local character.

4.20 It could be envisaged that if an existing small HMO (or family dwelling) were enlarged to increase the number of bedrooms there would be potential for more noise. It is not however considered that this is grounds to refuse this application providing no more than 6 people reside in the property.

4.21 It is also noted that the enlargement would increase the number of people in Badger Hill who live in HMO's. The proposal would not however, reduce the number of remaining 'family' dwellings and as such would not conflict with guidance that seeks to maintain an acceptable balance in terms of the percentage of HMO's in an area.

5.0 CONCLUSION

5.1 The proposal is an enlargement of an existing small HMO and does not conflict with guidance that seeks to avoid the concentration of such uses.

5.2 It is considered that the design of the extension is acceptable in respect to the impact on the appearance of the streetscene and the light, outlook and privacy enjoyed by neighbours.

5.3 The proposal does make a relatively intensive use of the site as a HMO, and there are some concerns regarding the availability of access to the rear garden for cycle storage and for the general amenity of the occupants.

5.4 In considering the acceptability of the proposal it is considered that a pragmatic approach should be taken having regard to permitted development rights that exist to extend the existing HMO. If the proposal were refused the owner could still

extend the property and increase the number of bedrooms. This would likely to be a more contrived scheme that could have a less satisfactory impact on the streetscene and neighbours' amenity. In addition, the Local Planning Authority would have no controls over the retention, or provision of off street car parking.

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:-

Revised drawing 249.001 Revision 'A' received by the Local Planning Authority on 17 August. 2015.

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 additional car parking shown on the approved plan shall be provided prior to the occupation of the extra approved accommodation and all car parking shown on the approved plan shall thereafter be retained.

Reason: To minimise on street car parking.

4 The additional car parking shall be constructed of a porous material, or water falling on the new surface shall drain onto the existing garden.

Reason: To avoid increasing flood risk

5 Prior to the dwelling being occupied as a House in Multiple Occupancy, a management plan shall be submitted to and agreed in writing by the Local Planning Authority and shall be implemented as agreed unless otherwise agreed in writing by the Local Planning Authority. The Management plan shall relate to the following areas:

- i) Information and advice to occupants
- ii) Garden maintenance
- iii) Refuse and recycling facilities
- iv) Property maintenance

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

7.0 INFORMATIVES:

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Item No: 4f

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 an acceptable outcome:

Revised drawings submitted to address the provision of car parking.

Contact details:

Author: Neil Massey Development Management Officer (Mon/Wed/Fri)

Tel No: 01904 551352

15/01539/FUL

29 Deramore Drive, YO10 5HL



Scale : 1:1059

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Organisation	City of York Council
Department	CES
Comments	Not Set
Date	05 October 2015
SLA Number	Not Set

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COMMITTEE REPORT

Date: 15 October 2015 **Ward:** Osbaldwick and Derwent
Team: Householder and **Parish:** Osbaldwick Parish
 Small Scale Team Council

Reference: 15/01718/FUL
Application at: 32 Tranby Avenue Osbaldwick York YO10 3NB
For: Change of use of dwelling house (use class C3) to a house
 in multiple occupation (use class C4)
By: Mr and Mrs K Blade
Application Type: Full Application
Target Date: 19 October 2015
Recommendation: Approve

1.0 PROPOSAL

1.1 The application site is a semi-detached property and permission is sought for its use as a house in multiple occupation.

1.2 Planning permission was granted on 9 January 2015 for a two storey side and single storey rear extension to the property. This permission has not been implemented to date. The applicant has indicated that the extension will be built. Whilst technically the current application relates only to the house as existing, the extension when built, would also benefit from a permission for an HMO within the C4 use class should Members be minded to grant permission. As such this report considers the impact of a four bedroom house in multiple occupation (HMO) within use class C4) incorporating the permitted extension.

MEMBER CALL-IN

1.3 The application has been called-in for consideration by Sub-Committee by Councillor Warters for the following reasons:

- Accuracy of the CYC HMO database and the validity of the threshold calculation in relation to this application.
- Impact on neighbourhood amenity over the potential establishment of another HMO on this road.
- Impact on public highway over the potential establishment of another HMO on this road in terms of displaced parking.

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:

CYGP1 Design

CYH8 Houses in Multiple Occupation

3.0 CONSULTATIONS

INTERNAL:

Planning and Environment Management

3.1 Within 100m of 32 Tranby Avenue , Osbaldwick, there are currently 2 known HMOs out of 32 properties, 5%. At the neighbourhood level there are currently 70 known HMOs out of 731 properties, 9.58%. In accordance with the provisions of the SPD neither the neighbourhood or street level thresholds have been breached. An assessment of residential amenity (bin storage, parking etc.) and the ability of the area to absorb further change of use should also be undertaken.

EXTERNAL:

Osbaldwick Parish Council

3.2 The Parish Council object on the following grounds:

- Loss of family homes
- Noise at unsociable hours
- Increased on street parking
- Over load sewerage 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

3.3 One objection has been received on the following grounds:

- Inaccuracy with data base/ concerns that there are more rented houses in this location.

4.0 APPRAISAL

PLANNING POLICY

4.1 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.

4.2 Paragraph 7 advises that there are three dimensions to sustainable development, which gives rise to the need for the planning system to perform the following roles:

- economic - contributing to building a strong, responsive and competitive economy
- social - supporting strong, vibrant and healthy communities
- environmental - contributing to protecting and enhancing the natural, built and historic environment

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 Development Control Local Plan Policy H8 - "Conversions". Where a material change of use has occurred, for properties changing use from C3 (dwelling house) to the new use class C4 (H.M.O). Policy H8 sets out the current criteria in conjunction with the new (SPD) 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.

4.5 Development Control Local Plan Policy GP1 states that development proposals will be expected, amongst other things, to respect or enhance the local environment, be of a density, layout, scale, mass and design that are compatible with neighbouring buildings, and ensure that residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures.

4.6 Supplementary Planning Document - Controlling the concentration of Houses in Multiple Occupancy. This document was approved by cabinet members on 15 April 2012. This guidance has been prepared in connection with an Article 4 Direction that City of York Council placed on all houses within the defined urban area, bringing within planning control the change of use of dwellings (Class C3) to small HMO's occupied by between 3 and 6 people (Class C4). The new SPD advises applications for change of use from dwellings to HMO's will 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.

PRINCIPLE OF CHANGE OF USE

4.7 A key issue in determining this application is an analysis of the amount of shared houses within the street and neighbourhood, in accordance with the Council's SPD. The aim of this percentage based criteria is to avoid high concentrations of HMOs developing in an area. This is important for maintaining community cohesion and helping the development of strong, supportive and durable communities (paragraph 5.1). The document considers that the 10% street level and 20% neighbourhood level figure represents a 'tipping point' beyond which the make-up of the community becomes unbalanced.

4.8 No. 32 Tranby Avenue falls within a neighbourhood area where 70 out of 731 properties are HMOs (9.58%) and within 100m of the property 2 out of 32 properties are HMOs (5%). The application is in accordance with the provisions of the Draft Supplementary Planning Document as the neighbourhood and street level threshold have not been breached. As such the principle of the change of use is considered to be acceptable.

IMPACT ON THE CHARACTER OF THE AREA AND RESIDENTIAL AMENITY

4.9 The extended property would remain domestic in appearance, and would effectively function as a single household albeit as a shared house. The surrounding neighbourhood is characterised by traditional semi detached dwellings, many of which have been extended.

4.10 In terms of the impact on neighbouring living conditions from unsociable noise and behaviour from the tenants, the house is shown as offering accommodation for four people and this is not considered to be excessive. It is acknowledged that a C4 use would allow for up to six persons and in this instance there would be the possibility for the applicant to convert one of the downstairs rooms into a bedroom. There is no undue concentration of HMOs in either the street or the neighbourhood so general comings and goings associated with such a use, which can be an issue where there are a number of such properties in close proximity should not materialise here. Normal comings and goings from this one property are unlikely to result in such significant harm to neighbours as to justify the refusal the application. There is no specific evidence to suggest that the occupation of the property as a HMO would result in additional noise or disturbance that would adversely affect the character of the area. Issues relating to harmful noise, untidy land, rubbish and late night noise from students can be addressed under separate legislation as well as through enforcement of a recommended management condition.

4.11 In terms of the concerns relating to the loss of family homes for HMO accommodation, 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). The application of the thresholds in the SPD to decision making avoids the undue loss of family homes within the C3 use class .

PROPOSED ACCOMMODATION

4.12 The approved plans for the extended property have been considered and illustrate that the internal areas of extended property would provide bedroom accommodation for up to four people .The layout shows that there would be communal areas on the ground floor level including kitchen, family room, dining and sitting room. In addition there would be a ground floor WC, bathroom and shower room at first floor. In addition the layout would include a garage for the storage of one car, access to the rear garden is retained.

4.13 In addressing issues 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.

HIGHWAYS AND PARKING

4.14 The submitted drawings show an extended hard surface to accommodate two cars, however the existing dropped kerb and crossover of the grass verge is not shown to be extended in width which would limit the effective use of the hardstanding. The parking spaces shown (including the garage) would be in accordance with the Council's maximum car parking standards for HMOs. There are no car parking restrictions on Tranby Avenue and the width of the highway allows cars to be parked on the roadside whilst also allowing cars to pass. It is not considered that the HMO use would necessarily generate greater demand for parking than a family dwelling. However, in order to address issues of off street parking a suitable condition is recommended for the attached garage to remain and not converted into habitable accommodation.

4.15 A new cycle store is shown in the rear garden which can be secured by condition. Tranby Avenue is on the no.4 bus route to the University and City Centre which has a 10 minute frequency during the day.

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. It is not considered that that normal comings and goings from this one property would result in significant harm to neighbours. The thresholds within the Council's Supplementary Planning Document have not been exceeded. As such the proposal is considered to comply with Policy H8 of the DCLP Plan and subject to conditions is recommended for approval.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Householder Approval

1 TIME2 Development start within three years

2 Prior to the development hereby approved being brought into operation, a management plan shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented as approved unless otherwise agreed in writing by the Local Planning Authority. The Management plan shall relate to the following areas:

i) Information and advice to occupants about noise and consideration to neighbours

- ii) Garden maintenance
- iii) Refuse and recycling facilities
- iv) Property maintenance

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

3 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.

4 HWAY18 Cycle parking details to be agreed

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:

The imposition of appropriate planning conditions.

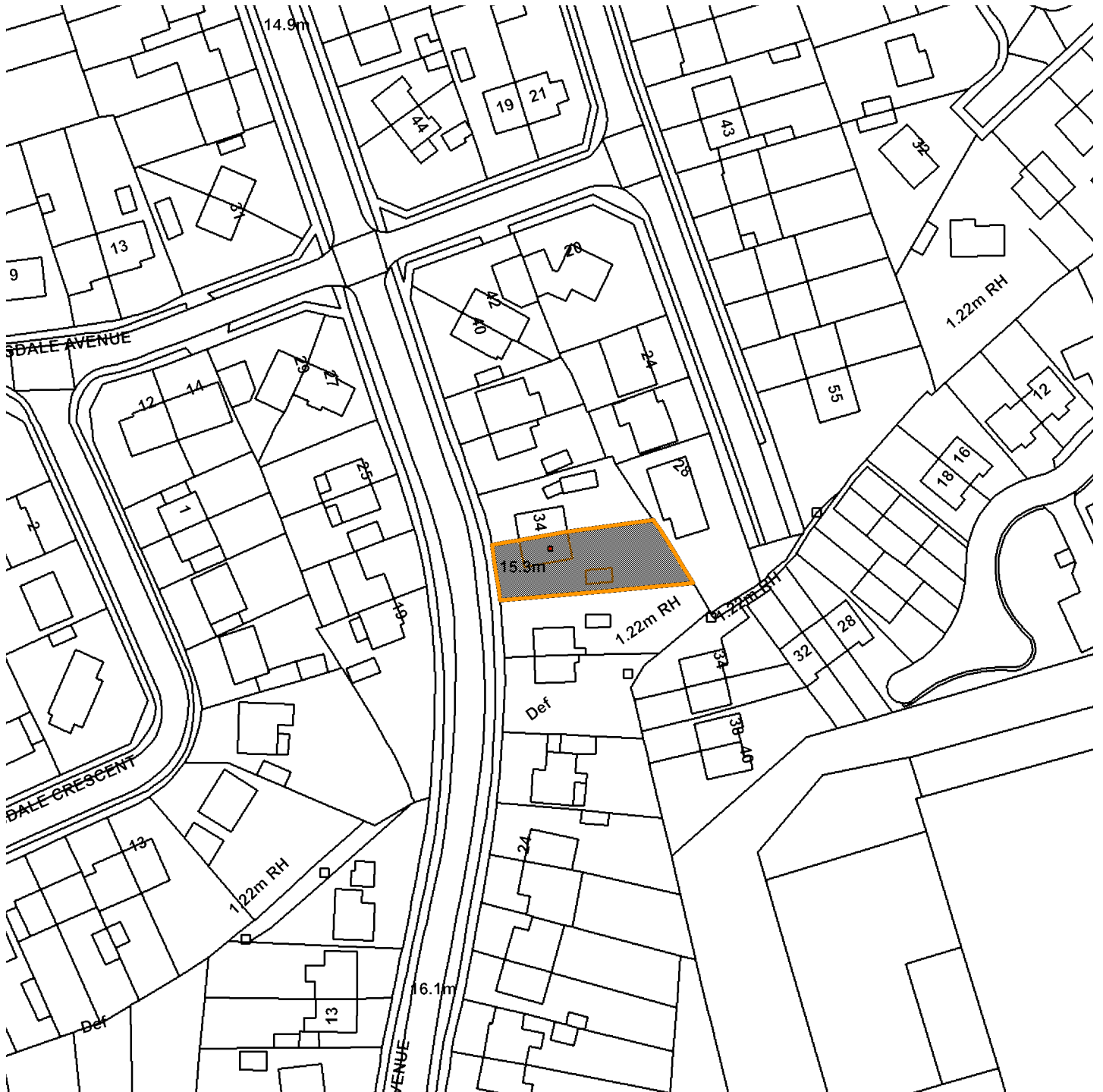
Contact details:

Author: Sharon Jackson Development Management Assistant
Tel No: 01904 551359

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15/01718/FUL

32 Tranby Avenue, YO10 3NB



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Organisation	City of York Council
Department	CES
Comments	Site Plan
Date	06 October 2015
SLA Number	Not Set

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COMMITTEE REPORT

Date: 15 October 2015 **Ward:** Acomb
Team: Major and **Parish:** No Parish
Commercial Team

Reference: 15/01924/OUT
Application at: Lidgett House 27 Lidgett Grove York YO26 5NE
For: Erection of two storey dwelling
By: Cllr Keith Myers
Application Type: Outline Application
Target Date: 20 October 2015
Recommendation: Refuse

1.0 PROPOSAL

1.1 The site is a corner plot at the junction of Lidgett Grove with Beckfield Lane. The existing house is a double fronted, 'L' shaped period 1930s/50s property with garden areas to three sides and a small rear patio area. A detached brick built single storey garage with hipped tiled roof is situated to the side of the property, adjacent to the boundary with No. 25 Lidgett Grove.

1.2 The neighbourhood is characterised and dominated by semi-detached properties with long, rear gardens. The properties are set back from the road by front gardens and driveways leading to single storey garages to the side and behind the houses. Larger, double fronted detached properties (such as this site) are often situated on corner plots at the junctions of roads. Many of the properties have been extended to the side to varying extents.

1.3 Outline planning permission is sought for the erection of a detached, two storey three-bedroom dwelling to the side of the host dwelling. All matters have been reserved. However, information accompanying the application shows the dwelling on the site of the existing garage and continuing the building line of its neighbours on Lidgett Grove. The existing drive will be retained to provide off-street parking in front of the new dwelling with a new driveway to the host dwelling.

Planning History

1.4 A summary of the planning history of the site is provided below.

- 7/01/7566/PA - A detached double garage with games room - Refused 1991 - Appeal allowed 1992.

- 02/02137/FUL - Change of use of ground floor of dwelling to nursery and erection of single storey pitched roof rear extension and conservatory to side – No decision made
An appeal was dismissed on grounds of increased traffic, noise and disturbance to neighbours.
- 14/00990/OUT - Outline application for a two-storey, three bedroom dwelling to the east of the host dwelling. Refused. The loss of an important gap in the street scene resulting in a loss of openness and form of development that is uncharacteristic of the area; the unduly oppressive and overbearing nature of a two storey dwelling in close proximity to the boundary of the rear garden at 231 Beckfield Lane; insufficient information of the means of surface water drainage to enable its impacts to be assessed and the lack of open space or a scheme for provision of off-site open space were identified as the reasons for refusal.

1.5 This application is being determined at sub-committee as the applicant is an elected Councillor for the Acomb Ward.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Air safeguarding GMS Constraints: Air Field safeguarding 0175

2.2 Policies:

CYGP1: Design

CYGP10: Subdivision of gardens and infill development

CYGP15: Protection from flooding

CYH4A: Housing Windfalls

CYT4: Cycle parking standards

3.0 CONSULTATIONS

INTERNAL

Highway Network Management

3.1 Any response will be reported verbally.

Flood Risk Management

3.2 Any response will be reported verbally.

Public Protection

3.3 No objections. However a condition on the installation of a three pin 13 amp external electrical socket which is suitable for outdoor use is recommended. Informatives on land contamination, and construction and demolition work are also sought.

EXTERNAL

Yorkshire Water

3.4 Any response will be reported verbally.

Acomb Planning Panel

3.5 Any response will be reported verbally.

Neighbours Notification/Publicity

3.6 At the time of writing, objections have been received from four neighbours. In summary, the following issues have been raised. Any further responses will be reported verbally.

- The outline application for the erection of the dwelling is very similar to the application that was refused last year (ref. 14/00990/OUT). The application should be refused for the same reasons as last time.
- There is no need for additional housing in the area. The British Sugar and Civil Service sites will provide new housing in this part of York.
- Inadequate on-site parking for residents and their visitors adding to the existing congestion on-street. Parents park to walk to the school nearby.
- Highway safety concerns are raised as a result of the proximity of a second driveway to the junction of Lidgett Grove with Beckfield Lane.
- The erection of the new dwelling would have an impact on the existing trees.
- The loss of trees and the planting and construction of a high hedge/wall is not welcome.
- The proposed dwelling is too close to No.25 Lidgett Grove and will impact on privacy to all three of the neighbouring properties
- The negative impact of the new dwelling and the loss of openness on the established character of the street.
- Small gardens proposed are out of character with the area.
- The proposed dwelling would not have adequate natural light. The windows to the front would be north facing. There are limited other window openings proposed with little outlook.

- House opposite is a mirror of the host property. Clearly new dwelling and parking arrangements would be out of character in the 1930s street.
- Concerns over the impact of construction traffic and the storage of building materials on highway safety.

4.0 APPRAISAL

Key Issues

4.1 The main considerations are:

- Principle of development
- Visual impact
- Residential amenity
- Transport and highways issues
- Drainage
- Precedents

Planning Policy

National Planning Policy Framework (March 2012)

4.2 The NPPF sets out the Government's overarching planning policies, paragraph 14 advises that at its heart is a presumption in favour of sustainable development. The NPPF at paragraph 9 explains that pursuing sustainable development, amongst other objectives, involves seeking positive improvements in the quality of the built, natural and historic environment in addition to people's quality of life.

4.3 At paragraph 17, twelve core planning principles are identified including proactively supporting sustainable economic development to deliver the homes, business and infrastructure needed; always seeking high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Planning should take account of the different roles and character of different areas, promoting the vitality of the main urban areas and protecting the Green Belts around them. Planning should actively manage growth to make the fullest possible use of public transport, walking and cycling.

4.4 Housing applications should be considered in the context of the presumption in favour of sustainable development. However, paragraph 53 also advises that local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

4.5 Section 7 explains that the government attaches great importance to the design of the built environment and is a key aspect of sustainable development. Paragraph 58 explains that planning decisions should aim to ensure that developments will function well and add to the overall quality of the area; establish a strong sense of place using streetscapes and buildings to create attractive and comfortable areas to live; respond to local character, reflect the identity of local surroundings and materials and create safe environments. Paragraph 64 states permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Development Control Local Plan (DCLP)

4.6 The DCLP (April 2005) has been adopted for Development Control purposes. Its policies carry limited weight except where they accord with the NPPF.

4.7 Policy GP1: Design states that development proposals will be expected to respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with neighbouring buildings, spaces and character of the area, using appropriate building materials; avoid the loss of open spaces and important gaps within development, retain townscape features which make a significant contribution to the character of the area, provide and protect private, individual or communal amenity space; and provide individual storage space for waste recycling and litter collection. Development proposals should ensure residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures.

4.8 Policy GP10: Subdivision of gardens and infill development, explains that planning permission will only be granted for the sub-division of existing garden areas or infilling where this would not be detrimental to the character and amenity of the local environment. Further, the DCLP continues stating that space between and around existing buildings often contributes to the character of an area and to residential amenity.

4.9 Housing policy H4a Housing Windfalls, states that proposals for residential development on unallocated sites will be granted planning permission providing that the site is within the urban area and is vacant, derelict or underused or it involves infilling, the site has good accessibility to jobs, shops and services by non-car modes and it is of an appropriate scale and density to surrounding development and it would not have a detrimental impact on existing landscape features.

4.10 Policy GP15a on Development and flood risk explains developers must satisfy the LPA that any flood risk will be successfully managed and that the site can be safe. The use of sustainable drainage systems will be encouraged. Discharges from new development should not exceed the capacity of existing and proposed receiving

sewers and watercourses and should always be less than the level of pre-development rainfall run-off.

4.11 Policy T4 on cycle parking standards explains that in all new developments, cycle parking provision will be required in accordance with the standards set out in Appendix E. For dwellinghouses this is 1 covered space per 1/2 bedroom dwelling and 2 spaces per 3-bed dwelling. The same level of car parking provision is also required (1 space per 1/2 bedroom dwelling and 2 spaces per 3-bed dwelling). A visitor parking standard equal to 1 space per 4 dwellings will be required and this can be provided on-street.

Consideration

Principle of development

4.12 The site is within the urban area in a residential neighbourhood close to shops and other local facilities. Public transport bus services run along Beckfield Lane and Boroughbridge Road (A59). The NPPF generally sets a presumption in favour of residential development in sustainable locations. The principle of residential development in this general location is acceptable.

Visual impact

4.13 The established character of the area is set by the 1930s/50s detached and semi-detached dwellings, with properties set back from the street by front gardens and driveways with generally low boundary treatment giving the street a wide open feel. The pattern of development is fairly uniform with dwellings maintaining an established building line. Properties are set on relatively large plots, benefitting from large back gardens, generally 20 to 25m in length. Corner properties are usually detached, double fronted with generous front and side gardens. Properties often have detached single garages, set back behind the dwelling frontage. This open character and gaps between dwellings enable views of the rear garden areas, adding to the suburban, green open character which is an important feature of the area.

4.14 No. 27 Lidgett Grove is such a detached dwelling on a corner plot, with No. 30 Lidgett Grove across the street mirroring it in style and layout. The insertion of a new dwelling into the garden area of the application site will reduce the openness of the site by closing a gap in the established development form. Whilst it is recognised that the high hedges and trees on the street boundaries do provide some screening of the host site, it is also these views of garden vegetation and trees that add to the open suburban character of the area. A two storey dwelling in this location is permanent and substantial built development which would close the gap between dwellings, views to garden areas and reduce the sense of openness in the neighbourhood.

4.15 Moreover, both the host and new dwelling would subsequently have relatively small outdoor amenity space compared with what is typical for the area. A fair proportion of the retained front garden areas would be given over to the off-street parking of vehicles, which would not be typical of the character of these more substantial detached dwellings on corner plots. The proposed dwelling would have no rear garden at all with a 2m high timber fence 1.1m from the rear elevation and a dense landscape screen immediately in front of the fence adjacent to the rear elevation. The proposed dwelling would have a side garden to the west just 6m in width and the front garden space would be half given over to parking leaving a front garden area approximately 7.5m by 7.5m. The host dwelling would retain its front garden and side garden areas, which although not unreasonable in size, it is uncharacteristic of the pattern of development in the area where corner properties sit grandly within their corner plots with garden space to the front and sides. The construction of the new dwelling would result in almost all the larger side garden to the east of the property lost to development. It is considered that the proposed dwelling and its host would look cramped and discordant in relation to other properties in the area which are generally spaced with the large garden areas. The high boundary treatments proposed, particularly to the front and side, would emphasise the development as being uncharacteristic of the area.

4.16 Policy GP10 on subdivision of gardens and infill development in the DCLP is clear that space between and around existing buildings often contributes to the character of the area and residential amenity. This is one such neighbourhood where it is important. The NPPF explains that planning should take account of the character of different areas. At paragraph 53 it explains that LPAs should consider setting policies to resist inappropriate development of gardens where it would harm the area. Paragraph 9 states that development should positively improve the quality of the built environment. A key principle is that planning should take account of the character of difference areas. There is clear policy support for the resistance to development which does not make a positive contribution to the quality of neighbourhoods and particularly where it would be considered as inappropriate development of garden areas. Policy GP1 Design states that development should avoid the loss of open spaces and important gaps within development and to retain townscape features which make a significant contribution to the character of the area. The proposals are found therefore to not accord with the above planning policy and would give rise to significant harm to the character of the area.

4.17 The applicant has made reference to the appeal decision (see 1.4 above) where planning permission was allowed for the erection of a detached double garage with games room over in 1992. The permission has not been implemented but the applicant has highlighted how the footprint of the two storey building was very similar to the footprint of the proposed dwelling being the subject of this application.

4.18 Respecting the Inspector's decision in this case, this planning permission was for a building incidental to the enjoyment of the host dwelling. It was not for a new dwelling which is a quite separate unit with new boundaries and levels of activity rather than an outbuilding ancillary to a dwelling. Moreover, it was a decision taken over 23 years ago. Planning policies have changed since this time in particular the introduction of GP10 supported by paragraph 53 of the NPPF. It is not considered that the Inspector's decision can reasonably be used as a precedent for the current application.

4.19 Of note, a planning application for the erection of a detached dormer bungalow to the side of no.2 Wheatlands Grove(ref. 10/01986/FUL) was refused in 2010. The application site was a similar large detached property on a corner plot. A subsequent appeal was dismissed, and the Inspector noted Policy GP10 and concluded:

"The footprint of the dwelling would occupy a substantial proportion of this restricted site resulting in a relatively small outdoor amenity space compared with what is typical for the area, as would the host dwelling.As a consequence, I consider the proposed dwelling would appear cramped in relation to other properties in Wheatlands Grove and Boroughbridge Road which tend to be generously spaced with deep back gardens. "

Residential Amenity

4.20 The new dwelling is set just 1.1m from the property boundary with No. 231 Beckfield Lane. Whilst this is approximately 15m from the rear elevation of No.231 Beckfield Lane and is to the north of the garden, a two storey elevation at the property boundary would appear dominating, overbearing and oppressive from within the garden area. It would therefore have a significant adverse impact on residential amenity for the neighbour of this property.

4.21 No. 25 Lidgett Grove is the property immediately to the east of the application site. At ground floor, the proposed dwelling would abut the property boundary as a slim one-storey side 'extension' 1.6m in width. The main two-storey elevation is then 4.4m from the side elevation of No.25 at first floor level. No.25 has a side window in this elevation orientated towards the application site, although this window appears to light non-habitable space as the window contains opaque glazing. The new dwelling to the east would have an impact on natural light to this room/space, particularly in the afternoon and evening however this would not be unduly harmful. With the two storey dwelling to the north-west of the property's long rear garden, and due to the house already benefitting from a side and rear extension, no particular loss of light or shadowing is anticipated to its long garden.

4.22 Whilst it is an outline application with all matters reserved, the applicant has advised that there would be no rear facing windows at first floor level. This could be secured by planning condition.

4.23 To the east, side elevation, the ground floor would adjoin No.25 Lidgett Grove and first floor elevations would be just 4.4m apart. To the west, side elevation, windows from habitable windows at first floor may also raise concerns with opportunities for overlooking of the host property side garden areas and ground floor main habitable rooms. Ground floor windows to the rear and east would have a very restricted outlook. Whilst there are concerns about the quality of living accommodation for the residents of the proposed dwelling this could be overcome with careful design and space planning.

4.24 The proposals are contrary to key principles of sustainable development in the NPPF at paragraph 9 which states that development should positively improve the quality of the built environment and people's quality of life. Paragraph 64 of the NPPF specifically states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Core planning principles include the need to always seek high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy GP1 in the DCLP states that development proposals should ensure residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures and the proposals conflict with this policy.

Transport and Highways Issues

4.25 It is not considered that the addition of a single dwelling would have an unacceptable impact on the highway network. From a highway safety perspective, the additional driveway is set far enough from the junction at 19m to be acceptable. Off-street parking is available to comply with maximum standards and visitors are able to park on-street. Should the application be approved, conditions could be applied relating to the layout of parking areas and cycle parking provision prior to occupation.

Drainage

4.26 The application is supported by a drainage layout plan, drainage calculations and drainage and water enquiry documents. A storm-water attenuation tank is shown on the submitted plan.

4.27 The Council's flood risk management engineer has been consulted and a response yet to be received. An update will be provided to Committee if available. It is noted that the lack of information was cited as a reason for refusal of the previous application.

5.0 CONCLUSION

5.1 The erection of a dwelling within the garden area to the side of the host property being No.27 Lidgett Grove causes harm to the established character and pattern of development in the area through the loss of an important gap in development and openness in the street scene. The proposals are therefore found to be contrary to key principles of sustainable development set out in the NPPF at paragraphs 9, 17 and 64 which seek to ensure development positively enhance rather than harm residential amenity and the character and quality of the built environment.

5.2 The overbearing and oppressive nature of a two storey dwelling just 1.1m from the property boundary and garden area of No. 231 Boroughbridge Road is found to be contrary to policies GP1 Design and GP10 Subdivision of gardens and infill as the proposals are found to be detrimental to the character of the area and neighbouring residential amenity at No. 231 Boroughbridge Road.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Refuse

1 The erection of the proposed dwelling would result in the loss of an important gap in the street scene, resulting in a loss of openness and a form of development that is uncharacteristic of the established layout and pattern of development in the locality. The proposed dwelling would have no rear garden, a small side garden and front garden half given over to the parking of vehicle(s). The host dwelling would be left with a side/front wrap-around garden only which would be uncharacteristic of the local area, some of which would be for parking of vehicle(s). The incongruous nature of the development would be further emphasised by the tall boundary treatment to the front and sides which is out-of-character in the neighbourhood. Together, these elements would be in stark contrast with the established character and pattern of development.

The proposals therefore conflict with the principles set out in the National Planning Policy Framework (NPPF) (2012), particularly paragraphs 9, 17, 53 and 58 and the objectives of Policies GP1, GP10 and H4a of the City of York Draft Local Plan adopted for development control purposes (2005). These policies seek to protect spaces between and around buildings that contribute significantly to the character of an area and for residential amenity. For housing windfalls development should be of an appropriate scale and density to the surrounding area and it is found that the proposed dwelling and its host would appear uncharacteristically cramped within the neighbourhood with small garden space.

2 The introduction of a two-storey property situated just 1.1m from the property boundary and rear garden at No.231 Beckfield Lane would appear unduly dominating, oppressive and overbearing and would create an unwelcome sense of enclosure to the garden/amenity space of the property. This would be contrary to the NPPF which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings (paragraph 17) and that development proposals should positively improve the quality of the built environment and people's quality of life (paragraph 9). The proposals are also contrary to Policy GP1 of the Draft Local Plan (2005) which explains that development proposals should ensure residents living nearby are not dominated by overbearing structures.

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 an attempt to achieve a positive outcome:

- Advised the applicant it was recommended for refusal and why and offered the applicant opportunity to withdraw the application.

However, the applicant/agent was unwilling to withdraw the application, resulting in planning permission being refused for the reasons stated.

Contact details:

Author: Sophie Prendergast Development Management Officer

Tel No: 555138

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15/01924/OUT

27 Lidgett Grove, YO26 5NE



1:1059

City of York Council

CES

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05 October 2015

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Neighbour Notification

3.2 No responses received.

4.0 APPRAISAL

4.1 Key Issues:

- Visual impact on the dwelling and surrounding area;
- Impact on neighbouring amenity

POLICY CONTEXT

4.2 The National Planning Policy Framework (March 2012) sets out 12 core planning principles that should underpin both plan-making and decision-taking. Of particular relevance here is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

4.3 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 content of the NPPF.

4.4 Policy H7 states that residential extensions will be permitted where (i) the design and materials are sympathetic to the main dwelling and the locality (ii) the design and scale are appropriate to the main building (iii) there is no adverse effect upon the amenities of neighbours.

4.5 Policy GP1 refers to design, for all types of development. Of particular relevance here are the criteria referring to good design and general neighbour amenity.

4.6 The Council has a Supplementary Planning Document (SPD) for House Extensions and Alterations. Advice in the document is consistent with local and national planning policies and is a material consideration when making planning decisions. Proposals should not unduly affect neighbouring amenity with particular regard to privacy, overshadowing/loss of light or over-dominance/loss of light. Para. 13.3 advises that for single storey extensions privacy can be protected by the use of blank side walls, obscure glazing, high level windows, or by screening along shared garden boundaries.

ASSESSMENT

4.7 Being sited to the rear, this addition will not be highly visible to public view, particularly as a high boundary/wall and gate are sited along the rear boundary with the rear access lane. A flat roof rear extension has previously been added to the dwelling, which incorporates a narrow 'dog leg' design and a further narrow rear extension is proposed to 'square off' this rear element. A rendered finish, to match the

existing render in place to the kitchen, is proposed, along with matching white upvc fenestration. Though the flat roof design is not wholly in keeping with the design of the original dwelling, the extension will still retain a linear appearance in keeping with the original design of attached outshots of these terraced dwellings. Though small, sufficient amenity space will remain within the rear yard, along with access to the rear lane. Space to both the side boundary, with No. 8 Philadelphia Terrace and the rear boundary will be retained. Taking all of the above into account, this proposal is not considered to harm the dwelling nor the character or appearance of the surrounding area.

4.8 Due to the location of this proposal, the major neighbouring impact will be upon those adjacent residents at No. 8 Philadelphia Terrace. This neighbouring dwelling is sited at a slightly lower ground level than the host, thus the addition is likely to appear slightly more prominent. The extension will however be set off this common side boundary by approx. 1.7 metres, and a low wall with fencing/trellis above, to a height of approx. 2 metres, is sited along this common side boundary. No. 8 Philadelphia Terrace also has a small single storey rear extension in place built along the common side boundary with a window facing towards the rear lane; two side-facing obscurely glazed windows are in place within the longer rear outshot, facing towards the common side boundary with the host. Taking all of the above into account, it is not considered that significant undue loss of amenity, with particular regard to outlook/loss of light/overshadowing/privacy will occur.

5.0 CONCLUSION

5.1 The proposals are considered to comply with the NPFF, CYC Development Local Plan Policies H7 and GP1 and Supplementary Planning Guidance - House Extensions and Alterations (Approved 2012). Approval is recommended.

6.0 RECOMMENDATION: Householder Approval

- 1 TIME2 Development start within three years
- 2 PLANS2 Approved plans - Proposed plans and elevations received on 20/08/2015 and email from applicant received on 30/09/2015 confirming the use of render and colour.

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.

2. THE PARTY WALL ETC ACT 1996

The proposed development may involve works that are covered by the Party Wall etc Act 1996. An explanatory booklet about the Act is available at:

<https://www.gov.uk/party-wall-etc-act-1996-guidance>

Furthermore the grant of planning permission does not override the need to comply with any other statutory provisions (for example the Building Regulations) neither does it override other private property rights (for example building on, under or over, or accessing land which is not within your ownership).

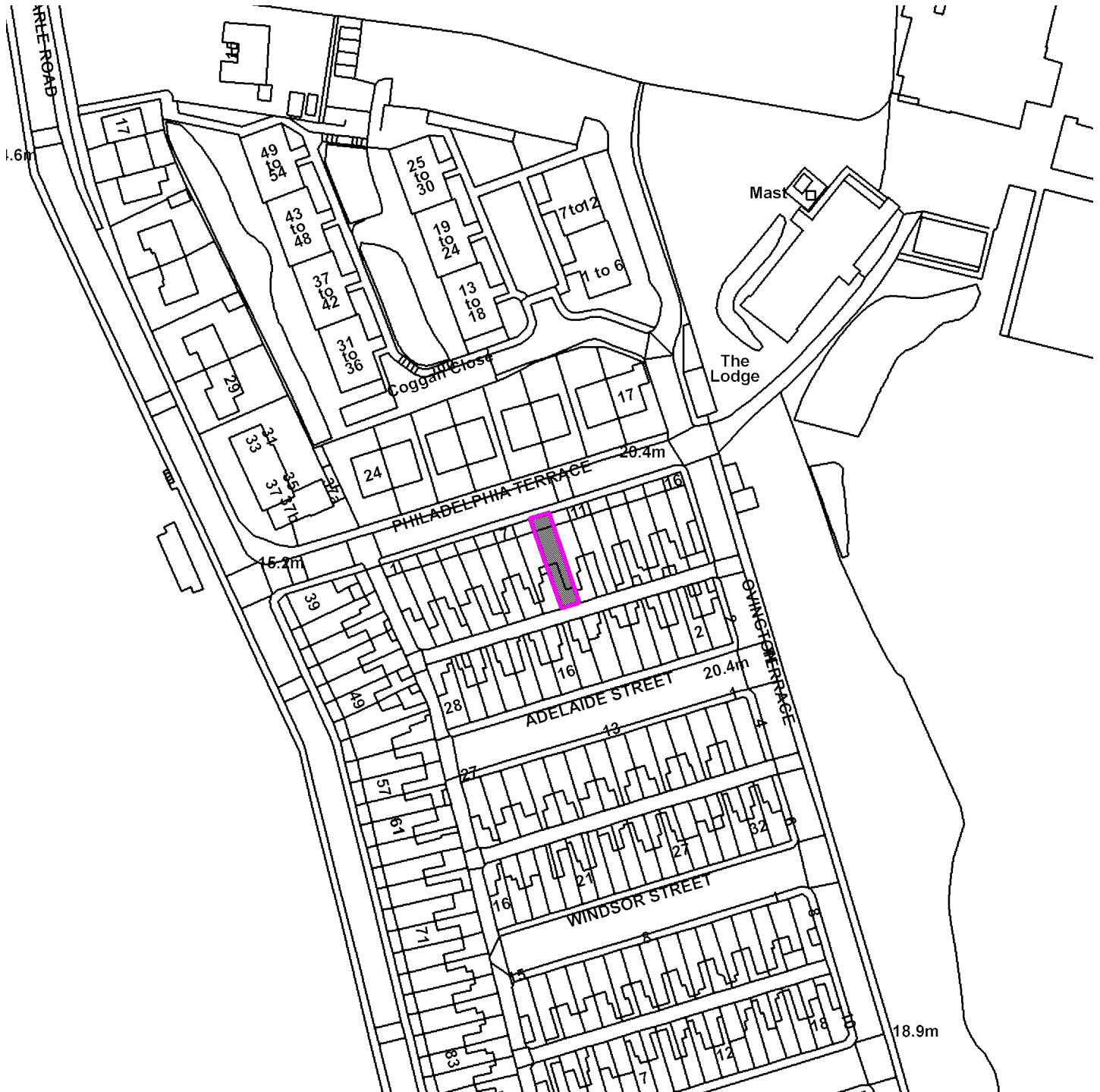
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15/01972/FUL

9 Philadelphia Terrace YO23 1DH



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Organisation	Not Set
Department	Not Set
Comments	Site Plan
Date	06 October 2015
SLA Number	Not Set

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