

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

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 closet point. Assessed using Natural England's Risk Impact Zones, the development is unlikely to have any significant impact on Fulford Ings SSSI. There are no comparable habitats within the development site, the loss

of which could have an indirect impact on the SSSI. However best working practices for construction should be followed e.g. waste water, dust control etc.

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

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

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

ARCHAEOLOGY

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

AFFORDABLE HOUSING

4.59 The National Planning Policy Framework states that local planning authorities should set policies for meeting identified need for affordable housing on site. To that end the council seeks to ensure that new housing development of 15 dwellings or

more in the urban area will include affordable housing. The current application is for 14 dwellings, thereby not triggering the need for affordable housing.

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

ENVIRONMENTAL IMPACT ASSESSMENT

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

COMMUNITY INVOLVEMENT

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

5.0 CONCLUSION

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

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and

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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.

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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