

COMMITTEE REPORT

Date: 10 October 2012 **Ward:** Fishergate
Team: Major and **Parish:** Fishergate Planning
Commercial Team Panel

Reference: 12/02737/FUL
Application at: 4 Derwent Road York YO10 4HQ
For: Removal of condition 12 (level 3 Code for Sustainable Homes) and
13 (provision of on-site renewable energy) of approved application
09/01202/FUL for the erection of a pair of semi-detached dwellings
By: Mr Warren Breeze
Application Type: Full Application
Target Date: 4 October 2012
Recommendation: Approve

1.0 PROPOSAL

SITE

1.1 The application site lies on the south side of Derwent Road, off Fulford Road. It comprises the second housing plot along the road and is currently occupied by a detached dormer bungalow with attached side garage. It lies outside the Fulford Road Conservation Area boundary. The rest of the street comprises a mix of house types and styles.

PROPOSAL

1.2 The application seeks to remove two planning conditions that were attached to a previously approved application for the redevelopment of the site. The previous application, ref. 09/01202/FUL, was granted planning permission on 15 October 2009, subject to conditions. It proposed the erection of a semi-detached pair of properties following the demolition of the existing bungalow. Two of these conditions relate to the sustainable design and construction elements of the scheme. Condition 12 referred to the Code for Sustainable Homes requirement and condition 13 referred to on-site renewable energy generation. They read as follows:

CONDITION 12 - CODE FOR SUSTAINABLE HOMES

Prior to the commencement of the development, the developer shall submit for the written approval of the Local Planning Authority an initial Code for Sustainable Homes (CSH) Design Stage assessment for the development. Unless otherwise agreed in writing with the Local Planning Authority, this shall indicate that at least the minimum code level 3 rating will be achieved. This shall be followed by the submission of a CSH Post Construction Stage assessment, and a CSH Final Certificate (issued at post construction stage).

These documents shall be submitted to the Local Planning Authority after completion and before first occupation of the building. Both documents submitted shall confirm that the code rating agreed in the initial CSH Design Stage assessment has been achieved. Reason: In the interests of sustainable development.

CONDITION 13 - ON-SITE RENEWABLES

Unless otherwise agreed in writing by the Local Planning Authority, a minimum of 5% of the expected energy demand for the development hereby approved shall be provided through on site renewable generation for heat and/or electricity. Prior to the commencement of development a statement outlining how this is achieved shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved statement unless otherwise agreed in writing by the Local Planning Authority. Reason: To ensure that the development is sustainable and accords with Policy GP4a of the Draft City of York Local Plan and the City of York Interim Planning Statement on Sustainable Design and Construction.

1.3 The application as originally submitted sought removal of condition 14 relating to foul and surface water drainage details. However, at officer's request, the applicant has removed this request from the application.

HISTORY

1.4 A previous planning application (08/01709/FUL) for the erection of a semi-detached pair of houses was withdrawn in 2008, following concerns expressed about height and depth of the houses, access and parking. A subsequent application (09/01202/FUL) was approved in 2009 for a pair of semi-detached dwellings that were single storey with accommodation in the roof space. A similar application (10/00287/FUL) was granted consent in 2010 for an extended form of development to that previously permitted in 2009 with the main difference being the inclusion of a sub ground floor level basement to serve each dwelling.

MEMBER INTEREST

1.5 The application has been called-in to Committee by the Ward Councillor, Councillor Taylor, whose comments are included in section 3.

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

Application Reference Number: 12/02737/FUL

Item No: 5d

Page 2 of 11

2.2 Policies:

CYSP6 - Location strategy

CYGP1 - Design

CYGP4A - Sustainability

CYGP10 - Subdivision of gardens and infill devt

CGP15A - Development and Flood Risk

CYH3C -Mix of Dwellings on Housing Site

CYH4A -Housing Windfalls

CYH5A -Residential Density

CYT4 -Cycle parking standards

CYL1C -Provision of New Open Space in Development

3.0 CONSULTATIONS

PUBLICITY

3.1 The application was advertised by way of letters to surrounding residents and the posting of a site notice. The Consultation period expired on 7 September 2012.

INTERNAL

3.2 Highway Network Management

No highway implications.

3.3 Environmental Protection Unit

No objections.

3.4 Flood Risk Management Team

Object to removal of condition on grounds that sufficient information was not received at the time of the original application to determine the potential impact the proposals may have had on the existing drainage systems.

EXTERNAL

3.5 Councillor Taylor

Objects on the following grounds:

- the conditions were perfectly reasonable conditions when they were imposed and remain so;
- the developer should develop the site as approved or sell to another developer;
- the property, empty and secured by a huge metal fence, is an abomination in the streetscape.

3.6 Councillor D'Agorne

Objects on the following grounds:

- the conditions are significant as they were part of the applicant's justification for demolition of the building and its replacement;
- action should be taken to bring the building back into occupation or redeveloped as the site and building have remained fenced off and unused for several years.

3.7 Fishergate Planning Panel

Notes the change in LPA Policy and strongly supports the need to build more housing the area, it objects to the removal of conditions on the grounds of precedent and the removal of conditions aimed at achieving social or environmental goals.

3.8 Local residents

Three individual letters and joint letter from six properties on Derwent Road received raising following points:

- Property has blighted the street and had effect on house prices;
- Conditions are reasonable as no reason for small developments not to make a contribution to combat global warming;
- Conditions are a core element of the approved application that justified demolition of perfectly good bungalow and protected surrounded residents and their removal makes application invalid;
- Application is an attempt to bypass another full process, denying Councillors and neighbours the opportunity to review the proposed development;
- New application should be submitted that revisits the previous objections of visual amenity and damage to drainage infrastructure;
- Council should compulsory purchase the abandoned property and make it available to others in the community in need of housing.
- Site has been an eyesore for past 3-4 years and should be remedied by CYC by council tax reduction, enforcement action to remove hoardings/container and legislation to remedy nuisance.

4.0 APPRAISAL

KEY ISSUES

- Change in policy direction since the original application was approved.

POLICY CONTEXT

4.1 The National Planning Policy Framework (NPPF) published 27 March 2012 puts emphasis on sustainable development, one of the Frameworks' core principles being to support the transition to a low carbon future and encourage the use of renewable resources. The Framework states that local policies should set the requirements.

4.2 The Regional Spatial Strategy for Yorkshire and The Humber (RSS), published in 2008, outlines the regional policy approach until 2026. Policy ENV5 sets out the aim of improving energy efficient and increasing installed renewable energy capacity across the Region. It requires at least 10% of the energy to be used in developments of 10 dwellings or more to be from renewable sources. In May 2010, the Government announced its intention to abolish the regional spatial strategies. The Government's intention to revoke the RSS is a material consideration in the determination of planning applications. However, at the time of writing the Government has not undertaken the necessary steps to revoke the strategy and the date of revocation is not certain. Whilst, the intention to revoke is acknowledged, the strategy remains part of the development plan for the City and has weight in the determination of this application.

4.3 At a local level, Policy GP4a 'Sustainability' of the City of York Council Draft Development Control Local Plan (2005) sets out what proposals should take account of and what should be included within the proposal with regards to the principles of sustainable development. The Local Plan is un-adopted. Only policies that are in line with the aims of the National Planning Policy Framework can be attached weight.

4.4 The CYC Interim Planning Statement on Sustainable Design and Construction (IPS), published in 2007, gives more specific guidance for developments, such as constructing dwellings to (the minimum) Level 3 of the Code for Sustainable Homes and provision of on-site renewable energy for all proposed dwellings. In January 2012, an addendum to the statement was published to reflect the transition towards the adoption of the then emerging Council's Local Development Framework Core Strategy. The addendum, based on Policy CS21 of the Core Strategy, removed the requirement for residential developments less than 10 units to demonstrate a Code for Sustainable Homes Level 3 rating or provide on-site renewable energy generation.

4.5 The Council's Local Development Framework Core Strategy (LDF) was an emerging policy document that was submitted to the Secretary of State on 14 February 2012 to consider the soundness of the plan. As referred to above, Policy CS21 required only developments of 10 units or more to demonstrate a Code level 3 rating or provide on-site renewable energy generation. On 12 July 2012, the Local Development Framework Core Strategy was withdrawn for reasons unrelated to sustainability requirements.

ASSESSMENT

4.6 As outlined above, the policy position at the local level has been subject of recent changes with regard to the requirement for Code for Sustainable Homes Level 3 compliance and on-site renewable energy generation.

4.7 Although the intention is to revoke the RSS and the LDF has been withdrawn, in terms of shaping the Council's future policies, they are clearly more up-to-date than the Draft Local Plan of April 2005 and the 2007 IPS. The requirements of Policy CS21 are based on a viability study into renewable energy and on the national target of achieving zero carbon rated buildings by 2016 achieved through changes to Building Regulations. As a result of this change in policy direction, the Local Planning Authority prepared the addendum to the IPS and has subsequently not imposed the two conditions to schemes under the threshold of ten dwellings and has agreed to the removal of these conditions. Committee's attention is drawn to the decision to approve the removal of these conditions at East Area Sub-Committee in April 2012 for the redevelopment of The Laurels, Brecks Lane, Strensall, for 8 dwellings (ref: 12/00148/FUL).

4.8 As the development under consideration relates to the erection of 2 dwellings it falls below the threshold set out in the RSS, Policy CS21 of the withdrawn LDF and the addendum to the IPS.

4.9 The original application was supported by a Sustainability Statement, which considered the proposal against the criteria in Local Plan Policy GP4a. It proposed that a renewable energy source in the form of a solar powered water heating system be incorporated into the scheme. The developer has submitted a revised assessment to support the current application. It confirms the intention to install solar roof panels to heat water or generate energy, the provision of secure cycle parking and recycling facilities and reiterates the economic contribution the build would make to the local economy and the excellent connectivity of the site. It explains the reason for the request to remove the conditions is due to the cost of gaining code level certification.

4.10 The comments made in the revised assessment are considered to be reasonable. The conditions do require documentation to demonstrate compliance that is prepared by a specialist to be submitted for approval by the Local Planning Authority. The intention to implement on-site renewable energy technology and other Code 3 requirements such as external drying space and recycling provision is noted. It is also noted that the original consent was granted prior to the 2010 changes to Building Regulations which introduced Part L 'Conservation of Fuel and Power' that covers elements such as insulation and energy efficiency.

4.11 Central Government advice contained within Circular 11/95 states that a condition should not be retained unless there are sound and clear cut reasons for doing so. This is reaffirmed in the NPPF where it states that conditions should only be imposed where they are necessary, relevant to planning and the development, enforceable, precise and reasonable in all other respects. By virtue of the change in the Council's policy approach and the change to Building Regulations, it is considered that the two conditions in question can no longer be deemed necessary, reasonably applied or enforced and their removal is considered acceptable.

4.12 The comments of the Ward Councillors and local residents are noted. However, it is considered that the removal of the conditions would not invalidate the application since the principle of the redevelopment of a site in a sustainable location with a development that makes more efficient use of land and is visually acceptable, accords with national planning policy. The scheme is required to comply with Part L of Building Regulations. It remains the same scheme as previously approved with the only difference being the requirement to comply with conditions 12 and 13. Whilst concerns have been raised about the state of the site since the application was granted and the reuse of the existing bungalow is sought, the applicant has stated his intention to develop the site. This intention is confirmed by the submission of separate applications to the Council, dealing with the approval of details required by other conditions imposed on the original permission. Concerns about the effect on house prices and references to council tax reductions are not material to the determination of this application.

5.0 CONCLUSION

5.1 This application seeks the removal of two conditions attached to a 2009 planning permission. Condition 12 relates to the need to comply, as a minimum, with Level 3 of Code for Sustainable Homes and condition 13 relates to the provision of 5% on-site renewable energy generation. Both conditions require the submission of documentation to demonstrate that the requirements have been met.

5.2 The request to remove the two conditions is based on the change in direction of Council policy with regards the size thresholds for compliance with Code for Sustainable Homes and the provision of on-site renewable energy sources.

The additional cost to a small scale development of seeking certification is also cited as justification for the request.

5.3 The applicant confirms his intention to provide solar panels for heat or electricity and other features required by Code for Sustainable Homes. Part L of the Building Regulations will ensure improved energy efficiency and levels of insulation for the new dwellings.

5.4 In light of the above, and taking into account advice on conditions outlined in Circular 11/95 and the National Planning Policy Framework, it is considered that the two conditions can no longer be deemed necessary, reasonably applied or enforced. As such, their removal is considered to be acceptable.

6.0 RECOMMENDATION: Approve

1 The development shall be begun not later than 15 October 2012.

Reason: To ensure compliance with Sections 91 to 93 and Section 56 of the Town and Country Planning Act 1990 as amended by section 51 of the Compulsory Purchase Act 2004.

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

Drawing nos. 09/06/102, 09/06/103, 09/06/104 and 09/06/105 dated June 09 and received on 16 June 2009;

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

3 VISQ8 Samples of exterior materials to be app -

4 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order), development of the type described in Classes A, B, D and E 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 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.

5 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 the side or front elevations or any roof slope of the dwellings hereby approved.

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

6 No development shall take place 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 and shrubs in the garden areas of the two properties hereby approved. 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 and in the interests of visual amenity of the area.

7 The hours of construction, loading or unloading on the site shall be confined to 8:00 to 18:00 Monday to Friday, 9:00 to 13:00 Saturday and no working on Sundays or public holidays.

Reason: To protect the amenities of adjacent residents.

8 HWAY9 Vehicle areas surfaced -

9 HWAY18 Cycle parking details to be agreed -

10 HWAY19 Car and cycle parking laid out -

11 No gate shall be fitted so as to open outwards over the adjacent public highway.

Reason: To prevent obstruction to other highway users.

12 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.

Reason: So that the Local Planning Authority may be satisfied with these details in the interests of the proper drainage of the site, and to comply with guidance contained within Planning Policy Statement 25 (Development and Flood Risk).

INFORMATIVE:

With respect to surface water drainage, the submitted details should incorporate the following:

Peak surface water run-off from the development shall be attenuated to 70% of the existing rate, in accordance with a scheme to reduce run off to be submitted to and agreed in writing by the Local Planning Authority (based on 140 l/s/ha of connected impermeable areas). The scheme submitted shall include storage volume calculations, using computer modelling, allowing for a 1:30 year storm with no surface flooding, along with no internal flooding of buildings or surface run-off from the site in a 1:100 year storm. Proposed areas within the model shall also include an additional 20% allowance for climate change. The modelling shall use a range of storm durations, with both summer and winter profiles, to find the worst-case volume required. Details of run off rates including calculations of both the existing and proposed rates shall also be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development.

13 No development shall commence unless and until details of provision for public open space facilities or alternative arrangements have been submitted to and approved in writing by the Local Planning Authority. The Open space shall thereafter be provided in accordance with the approved scheme or the alternatives arrangements agreed in writing by the Local Planning Authority and thereafter implemented, prior to first occupation of the development.

Reason: In order to comply with the provisions of Policy L1c of the Development Control Local Plan which requires that all new housing sites make provision for the open space needs of future occupiers.

INFORMATIVE:

The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring a financial contribution towards off site provision of open space. The obligation should provide for a financial contribution calculated at £2,124.

No development can take place on this site until the public open space has been provided or the Planning Obligation has been completed and you are reminded of the local planning authority's enforcement powers in this regard.

14 Notwithstanding the information contained on the approved plans, the height of the approved development shall not exceed 7.9 metres, as measured from existing ground level. Before any works commence on the site, a means of identifying the existing ground level on the site shall be agreed in writing, and any works required on site to mark that ground level accurately during the construction works shall be implemented prior to any disturbance of the existing ground level. Any such physical works or marker shall be retained at all times during the construction period.

Reason: to establish existing ground level and therefore to avoid confusion in measuring the height of the approved development, and to ensure that the approved development does not have an adverse impact on the character of the surrounding area.

7.0 INFORMATIVES: Notes to Applicant

1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to principle of redevelopment, design, density, sustainability, character and amenity, residential amenity, flood risk and drainage, highway safety and impact on local facilities. As such the proposal complies with national advice contained in the National Planning Policy Framework, Policy ENV1 of the Regional Spatial Strategy for Yorkshire and The Humber and Policies SP6, H4A, H5A, GP1, GP4A, GP10, L1C and T4 of the City of York Draft Development Control Local Plan (incorporating 4th set of changes, April 2005).

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