

# COMMITTEE REPORT

**Date:** 12 December 2023      **Ward:** Guildhall  
**Team:** East Area      **Parish:** Guildhall Planning Panel

**Reference:** 23/00123/FUL  
**Application at:** Castle Howard Ox Townend Street York YO31 7QA  
**For:** Conversion of existing building to 16no. student studio apartments with two storey extension to the side/east elevation, first and second storey extension to the rear/north elevation, and single storey rear/north extension following the demolition of the single storey projections

**By:** Alastair Cliffe  
**Application Type:** Full Application  
**Target Date:** 22 November 2023  
**Recommendation:** Refuse

## 1.0 PROPOSAL

1.1 Planning permission is sought for the conversion of the public house to 16 no. studio apartments for student accommodation. In addition there would be a two storey extension to the side/east elevation and rear/north elevation and a single storey extension to the north following. A communal room is proposed on the ground floor, there would be external cycle and bin store and outside communal space.

1.2 The site is within the Area of Archaeological Importance. The site is within Flood Zone 1. To the north, east and south of the site is residential development. To the west is former petrol station/garage used as a tool hire shop.

1.3 Officers understand that the public house has been closed since 2017.

### Relevant Planning History

1.4 21/00537/FULM - Conversion of public house to 16no. student studio apartments with two storey extension to the side/east elevation, first and second storey extension to the rear/north elevation, and single storey rear/north extension following the demolition of the single storey projections – Refused at the Area Planning Sub-Committee (11 November 2021) on the basis that the site had not been adequately marketed. The site was loss of a community facility. The replacement of a public house with student accommodation would not make a positive contribution to a sustainable community.

1.5 The application is reported to Committee under 5.1 (g) of Art 13 of the Constitution because the previous application was refused by Committee.

## **2.0 POLICY CONTEXT**

2.1 The Publication Draft York Local Plan (2018)

EC2 Loss of Employment Land

H7 Student Housing

H10 Affordable Housing

HW1 Protecting Existing Facilities

D1 Placemaking

D2 Landscape and Setting

D4 Conservation Areas

D6 Archaeology

D7 The Significance of Non-Designated Heritage Assets

D11 Extensions and Alterations to Existing Buildings

GI2 Biodiversity and Access to Nature

GI6 New Open Space Provision

CC2 Sustainable Design and Construction of New Development

ENV2 Managing Environmental Quality

ENV3 Land Contamination

ENV5 Sustainable Drainage

WM1 Sustainable Waste Management

T1 Sustainable Access

DM1 Infrastructure and Developer Contributions

## **3.0 CONSULTATIONS**

### **INTERNAL CONSULTATIONS**

#### Highway Network Management

3.1 No objections subject to conditions regarding redundant crossings; gates etc opening into highway, car-free development, cycle parking storage and refuse bin storage, management and occupation plan, Travel Plan, Method of Works.

Informative: No parking permits in connection with occupation of any unit within the Development.

3.2 Request following contributions via S106 agreement

- £10,000 for City of York Council Travel Plan Support for a period of five years after first occupation
- £3,000 for a Change to Permanent Traffic Regulation Order An amendment to the TRO for the exclusion of a development area from a ResPark

- £6,000 for a Change to Permanent Traffic Regulation Order to provide a disabled parking space within Residents Parking Zone R21 (if applicable, depending on whether Enhanced Access accommodation is provided)

#### Design, Conservation And Sustainable Development (Ecology Officer)

3.3 No objections, request following condition: submission of biodiversity enhancement plan/drawing. Request following informative: wildlife and lighting.

#### Design, Conservation And Sustainable Development (Archaeology)

3.4 The Castle Howard Ox lies within the Central Area of Archaeological Importance. The building dates to the mid-19<sup>th</sup> century, with later additions. It is a non-designated heritage asset. The heritage statement confirms that the main body of the building and the 1930s extensions are of some significance while the mid-late 20<sup>th</sup> century alterations are not. The statement does not describe the interior of the building. It is unknown whether the building contains any internal features worthy of recording. The proposed works includes extending the existing building. Despite the existing extensions this has the potential to reveal archaeological features and/or deposits. An archaeological watching brief should take place during groundworks to record the nature of any deposits which may survive on the site. The employed archaeologist should also include a brief photographic record of the exterior and any features of interest within the interior of the public house prior to conversion. Request following conditions: programme of post-determination archaeological mitigation.

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

3.5 The design of the scheme appears to be the same as the amended design proposed under the former application 21/00537/FULM which was the product of significant modification during the course of the application in response to conservation and design concerns. Request following conditions: details of external materials; a 1x1m brick panel to show brick, coursing, bond, mortar and pointing; scale constructional drawings for all external joinery including any alterations required to the retained historic sash window to ground floor west elevation); details of rooflights.

#### Lead Local Flood Authority

3.6 No objections, request following conditions: separate systems of drainage for foul and surface water; submission of drainage scheme; no piped discharge of surface water

#### Public Protection

3.7 No objections, request following conditions: Construction Environmental Management Plan; hours of construction; submission of site investigation and risk assessment; submission of remediation strategy and verification report; reporting of unexpected contamination; Upon completion of the development, delivery vehicles and waste removal vehicles to the development shall be confined to restricted hours; submission of detailed scheme of noise insulation measures

#### Waste Services

3.8 The site is not acceptable for CYC refuse collections as there is not a suitable point for the refuse collection vehicle to stop. The site is very close to a busy junction, next to a speed reduction road narrowing point and the street immediately next to the proposed development has double yellow road markings.

3.9 City of York Council refuse collectors do not enter private land to make collections. If the developer proposes an acceptable refuse vehicle loading point the bins would have to be presented for collection by site management where the boundary of the development meets the public highway, remaining within the boundaries of the development.

#### Carbon Reduction Team

3.10 The BREEAM pre-assessments show that the building is expected to perform as follows: BREEAM New Construction 2014 Indicative building score = 76.05% (minimum required = 70% for BREEAM Excellent) BREEAM Refurbishment and Fit Out 2014 Indicative building score = 72.93% (minimum required = 70% for BREEAM Excellent)

3.11 Submitted information demonstrates that the (new build) building emission rate (BER) reduction will be at least 32.3% better than Part L2A (2013) compliance requirements.

#### Housing Policy Team

3.12 In accordance with the proposed Local Plan Policy H7: Off Campus Purpose Built Student Housing, an affordable housing off site contribution would be required for this application 23/00123/FUL if it is permitted. Accordingly the total affordable housing contribution requirement for this scheme of 16 student studios would be £95,392.

#### Lifelong Learning And Leisure

3.13 For the 16no. one-bedroom apartments at x £213 per bedroom generates an off-site sports contribution of £3,408. I would suggest the following projects as beneficiaries of these funds to be; a Multi-Use Games Area within Guildhall Ward,  
Application Reference Number: 23/00123/FUL                      Item No: 4b

for improvement works or installation of equipment at Clarence Gardens, and / or another project within the ward or connecting wards, the need for which directly arises from the Development. Contribution towards amenity space would be £2,416.

## EXTERNAL CONSULTATIONS

### Guildhall Planning Panel

3.14 Object, little outside space provided for the number of residents. The number of rooms is an overdevelopment and will put a strain on local resources.

### Police Architectural Liaison Officer

3.15 An analysis of police recorded incidents in the area of the proposed development highlights the presence of crime and antisocial behaviour which could impact upon the security of the scheme. The most significant crime issues that could affect this development are burglary, criminal damage and cycle theft. Antisocial behaviour and violence are also problems in the area. Any new development has the potential to increase these levels if the designing out of crime is not considered and implemented. Consideration should be given to security measures at the communal entrance door, the gate to the communal garden, bike store, and external windows on the ground floor.

3.16 There is limited reference as to what crime prevention measures will be incorporated into this development. This information should be a requirement in order to assist the local authority in determining whether this development will comply with paragraphs 92 and 130 of the National Planning Policy Framework.

### North Yorkshire Fire and Rescue Service

3.17 No objections

### Yorkshire Water

3.18 No comments received

## **4.0 REPRESENTATIONS**

### York Civic Trust

4.1 Do not object to the principle of the application of conversion however, do question certain design choices.

4.2 The current application does little to reflect the heritage significance of the building as an example of a former early 19th century public house. The retention of a sign, for example, could go some way to improving this legibility of the former use. To be able to make a balance judgment, more information is required to be able to assess the impact of the proposed changes.

4.3 The massing of the proposed extension is an improvement on the previous scheme and is of a more appropriate size in relation to the existing building. The placement of windows and the double string course is however questionable, as these bear no reference to the main building, making the extension look at odds from the rest of the building. Paragraph 130 (c) of the NPPF states any new developments "are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)". The proposed design gives the appearance of an extension having been stuck on and does not reflect the character and former use of the building.

### Neighbour Notification and Publicity

#### 4.4 Five objections

- The prices the site has been marketed has risen from £250k to £400k, and to £600k in just over a year. Marking the price up, so it looks like no one will be interested in buying the property as a pub, so they have a stronger case to knock it down and build student accommodation
- Proposal will result in an increase in parking
- Following interest, the price moved from £250k to £250+vat, then to £250K +vat with an undertaking to operate as a pub (which was the intention), moving to £450k plus vat with a similar undertakings (which made it unviable).
- It seems to be a very intensive use of the space, and increases density whilst reducing amenity
- Proposed extension is visually harmful to a building with significant heritage as a legacy community asset
- Overdevelopment, cramped, and poorly laid out
- Concerned would result in problems to nearby residents
- Insufficient private amenity space
- Concerned regarding the social balance of the area, at one time provided starter housing for single people, couples & families but these are increasingly being displaced by students & short-lets
- Proposed does not provide any additional parking, result in increased parking in the area
- Request clarification as to whether the dropped pavement would be removed, its removal would impair disabled access
- The allocated space per student and 16 flats in this small space constitutes overcrowding. Insufficient space for laundry or outside space.

- Unclear whether any accessible flats have been put in place for this property. difficult for disabled students to get appropriate housing and the absence of including any accessible flats would contribute towards this problem.

#### 4.5 One representation of support

- Visually positive
- Provide needed accommodation.

## 5.0 APPRAISAL

### 5.1 NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

5.2 The planning policies of the National Planning Policy Framework as published are a material consideration in the determination of planning applications. The presumption in favour of sustainable development set out at paragraph 11 of the NPPF does not apply when the application of policies relating to irreplaceable habitats and designated heritage assets (and other non-designated heritage assets of archaeological interest referred to in footnote 68) indicate that permission should be refused.

### PUBLICATION DRAFT YORK LOCAL PLAN (2018)

5.3 The Publication Draft Local Plan 2018 was submitted for examination on 25 May 2018. It has now been subject to full examination. Modifications were consulted on in February and September 2023 following full examination. It is expected that the Plan will be adopted in early 2024.

### LOSS OF EMPLOYMENT LAND AND COMMUNITY FACILITY

5.4 Draft Policy EC2 (Loss of Employment Land) of the Draft Local Plan (2018) sets out that when considering proposals which involve the loss of land and/or buildings which are either identified, currently used or were last used for employment uses, the council will expect developers to provide a statement to the satisfaction of the Council demonstrating that: the existing land and or buildings are demonstrably not viable in terms of market attractiveness, business operations, condition and/or compatibility with adjacent uses. The supporting text for Draft Policy EC2 sets out that the Council will expect the applicant to provide evidence proportionate to the size of the site of effective marketing the site/premises for employment uses for a reasonable period of time, the Local Plan Policy Modifications details an 18 month marketing period.

5.5 Where an application is seeking to prove a site is no longer appropriate for employment use because of business operations, and/or condition, the LPA will expect an objective assessment to be submitted with the application detailing the shortcomings of the land/premises that demonstrates why it is no longer appropriate

for employment use. The proposed modifications to the Policies are now with the Planning Inspectorate following consultation earlier in the year. The wording of Draft Policy EC2 has not altered in the proposed modifications to the Planning Inspector, only the supporting text as set out above as such this policy is considered to have moderate weight.

5.6 Paragraph 93(c) of the NPPF sets out, among other things, that planning decisions should guard against the unnecessary loss of valued community facilities (including pubs), particularly where this would reduce the community's ability to meet its day to day needs. This stance is echoed by policy HW1 (Protecting Existing Facilities) of the Draft Local Plan (2018) . It states that development proposals that involve the loss of a community facility will not be supported unless: if site constraints do not allow on-site re-provision, facilities of equivalent or greater capacity and quality (as defined above) are re-provided in a location that equivalently or better serves the local community's needs, and is well served by public transport and easy to reach on foot and by bike; robust evidence is submitted to demonstrate that the facilities no longer serve a community function and demonstrably cannot be adapted to meet other community needs or are surplus to requirements; or in the case of commercial facilities, evidence is provided that demonstrates the facilities are no longer financially viable with no market interest . The policy requires Developers to consult with the local community about the value of the asset and the impact that a loss of facilities may have. The narrative to Policies HW1 and EC2 state that a loss of community facilities/employment use will only be permitted when they have been marketed for a minimum of two years/18 months respectively without success, thereby demonstrating that they are unviable. This should consist of (as a minimum) a marketing report explaining the marketing process, and its outcomes, including the terms offered, any interest received and why it was not successful. In addition, policy HW1 requires an open book based viability appraisal to be submitted to demonstrate that the facility is not viable, and could not reasonably be made viable.

5.7 The site had previously been acquired by Star Pubs & Bars in August 2017, the public house was closed on completion of the sale. The supporting information sets out that the public house was unviable and they decided to sell the site in November 2018. No financial information has been submitted about the profitability of the pub.

5.8 Members may recall that in the last application that the supporting information set out that the site was marketed online and a sale board was erected, pub companies, owner occupiers, developers and local builders were targeted. During this time the owners did not open/operate the venue. The public house was advertised for £250,000 freehold. During the marketing over 80 enquires were received. Best and final bids were invited (April 2019) and a total of 12 bids were received. Officers understand that none of these bids were to run the site as a public house or restaurant. All were received from developers or investors. The purchase



(by the applicant) was completed in May 2019. Since that time the public house has been closed. The previous marketing period lasted a total of 7 months.

5.9 Following the refusal of the previous application in November 2021 the site was marketed again. The initial marketed valuation was £250,000, the supporting information sets out that there were offers to run as a public house and as a community facility and sets out that there were offers in the region £250,000 with a number of comments advising that a further costs would be required for refurbishments, in addition the poor condition of the property was mentioned making the use as a public house unviable. As such this potentially brings into question whether the subsequent increase in price to £450,000 (in circa May 2022) and recently to £600,000 is a realistic valuation. The agent advised that the increase in the marketed price is due to a range of costs including: council tax; insurance; security measures; the cost of submitting two applications for planning permission; utility costs; marketing fees; and screens and signs. The agent advises that the overall cost of the property to the applicant including the original purchase price has risen to £500,000 and the price the applicant is willing to sell for is £600,000. From a letter (07.07.2023) written by the estate agent Flurets only unconditional offers are being considered.

5.10 The agent has submitted information setting out that 4 or 5 offers (it is not clear from the submitted information) have been received during the current marketing period to run the property as a public house. The agent advises that 2 of these offers were withdrawn. The stated reasons being the cost of refurbishment and the necessary capital expenditure. The two/three remaining pub use offers were rejected as the offers were £250,000. It is unclear at what stage these offers were made and what the pub was being marketed for at the time of the offers but the offers were made prior to the rise to £600,000.

5.11 Officers understand that two of the offers were for a community centre (the offer being £450,000), officers understand that one offer was made prior to Jan 2023 when the site was being marketed for this price, and another offer was made between February and June 2023. The information submitted by Flurets briefly sets out that the first offer did not progress as the offer was dependent on a bank loan, however proof of funding was not provided, The second offer was withdrawn following the purchase of another property.

5.12 The second round of marketing of the site started 02 March 2022 and officers understand that the marketing is still ongoing, at the time of writing (November 2023) the site had been marketed for 20 months. Officers have been previously led to understand that that the previous owners had decided to sell as the public house was considered unviable. As such whilst the £250,000 was considered a reasonable price for a public house the subsequent increase in the price does not appear to be a reasonable or justifiable price and thus the site does not appear to have been reasonably marketed.

5.13 The supporting text to the policy sets out that the loss of community facilities will be approved if it can be demonstrated that they no longer serve a community function and cannot be adapted to meet other community needs, or are surplus to requirements. Applications which involve the disposal of community assets must therefore include an assessment of the current function, accessibility, and adaptability of the facility. Any assessment which seeks to demonstrate that the facility is surplus to requirements must provide evidence of facilities in the immediate area which can appropriately cater for the loss of the relevant facility and is accessible for current users by public transport, foot and cycle. Applications must demonstrate how alternative other facilities will meet or exceed these standards of provision from the facility to be lost. As part of this process, it is expected that developers will consult with the local community to understand their needs. The approach to consultation should be agreed with the Council. Officers are not aware that any consultation has taken place with the local community.

5.14 Officers understand the public house use struggled to compete with neighbouring public houses together with high turnover of tenants. The site is tightly constrained by the adjacent properties, highway frontages. The opportunities for expansion or diversification are very limited. The Punch Bowl public house at the corner of Lowther Street and Haxby Road to the north of the site was closed at the time of the decision on the previous application but has since been re-furbished and re-opened.

5.15 Policy HW1 requires an open book based viability appraisal to be submitted to demonstrate that the facility is not viable, and could not reasonably be made viable. No open book viability appraisal has been submitted with the application as such the development does not comply with Policy HW1. As set out above officers do not consider that the site has been appropriately marketed (for an appropriate price) and as such fails to comply with Policies HW1 and EC2.

## STUDENT ACCOMMODATION

5.16 Policy H7 (Student Housing) of the Draft Local Plan (2018) sets out that proposals for new student accommodation should demonstrate that: there is a proven need for student housing; it is in an appropriate location for education institutions and accessible by sustainable transport modes; The rooms in the development are secured through a nomination agreement for occupation by students of one or more of the University of York and York St. John University; and the development would not be detrimental to the amenity of nearby residents and the design and access arrangements would have a minimal impact on the local area; and The accommodation shall be occupied only by full-time students enrolled in courses of one academic year or more and conditions or obligations shall be imposed to secure compliance with this requirement and for the proper management of the properties. Policy H7 is in general supportive of Purpose Built Student

Accommodation (PBSA) as a means of freeing up housing suitable for wider general housing needs.

5.17 The Council's Strategic Housing Market Assessment 2016 ("the SHMA") analyses the needs of specific groups within the population, such as older people and students. The student population in York is projected to continue to grow. Higher Education Student Statistics (HESA) data referenced in the SHMA shows 23,095 student in the City by 2014, with most significant growth in numbers of full-time students. The SHMA acknowledges that the student rental market remains strong and that demand for purpose built student accommodation is high, particularly from international students. Latest HESA data (2020/21) shows 30,275 students enrolled at York St John University and the University of York.

5.18 The applicants provide a summary of approved PBSA since 2015. Officers consider the record of recently approved and completed schemes is reasonably consistent with that provided by the applicant, albeit that we note the omission of St Joseph's Convent, Lawrence Street (+526 units, completed 2016/17). The Planning Statement does not provide analysis of current levels of provision/vacancy. Officers are not aware of concerns around PBSA vacancies, and would suggest that applicants operating in a competitive market are well placed to determine capacity in that market.

5.19 The supporting information does not advise whether the rooms in the development are secured through a nomination agreement for occupation by students of one or more of the University of York and York St. John University. This aspect of the modified policy has received objections in the consultation earlier this year and the LPA is waiting for the Inspector's report. As it has received objections it is not consistent with para 48 of the NPPF and as such can only be provided limited weight.

5.20 Policy H7 requires new student accommodation proposals to provide a financial contribution towards delivering affordable housing elsewhere in the City. The contribution required for the proposed development would be J95,392, this would be sought via a 106 legal agreement. The agent has been advised of the required contribution and has agreed to pay the requested contribution should planning permission be granted.

## IMPACT ON HERITAGE ASSETS

5.21 The site is within Area of Archaeological Importance, and whilst just outside of the Central Historic Conservation Area (Character area 1: Bootham Park Hospital) it is considered to fall within the setting of the Conservation Area. The site is considered to fall within the setting of Grade II listed former Groves Chapel, Union Terrace. The building is also considered to be an undesignated heritage asset.

5.22 In accordance with section 72 of the Planning (Listed Building and Conservation Area) Act 1990 (“the 1990 Act”), the Local Planning Authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area in exercising its planning duties. Section 66 of the 1990 Act requires the Local Planning Authority to have regard to preserving the setting of Listed Buildings or any features of special architectural or historic interest it possesses. Where there is found to be harm to the character or appearance of the Conservation Area, or the setting of a listed building, the statutory duty means that the avoidance of such harm should be afforded considerable importance and weight.

5.23 The legislative requirements of Sections 66 and 72 of the 1990 Act are in addition to government policy contained in Section 16 of the NPPF. The NPPF classes listed buildings, conservation areas and scheduled monuments as 'designated heritage assets'. Section 16 of the NPPF advises that planning should conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. Paragraph 197, in particular, states that local planning authorities should take account of the desirability of sustaining and enhancing an asset's significance, the positive contribution it can make to sustainable communities and the positive contribution new development can make to local character and distinctiveness.

5.24 The Draft Local Plan (2018) policies D4, D6, D7 reflect legislation and national planning guidance that development proposals should preserve or enhance the special character and appearance and contribution to the significance and setting of the heritage assets and respect important views.

5.25 The National Planning Policy Guidance sets out that non-designated heritage assets are buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets. Local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications. Policy D7 of the Draft Local Plan (2018) set out the criteria for assessing potential non-designated heritage assets.

5.26 Paragraph 203 of the NPPF states the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. Policy D7 of the Draft Local Plan (2018) sets out that Development which would remove, harm or undermine the significance of such assets, or their contribution to the character of a place, will only be permitted where the benefits of the

development outweigh the harm having regard to the scale of the harm and significance of the heritage asset.

5.27 The Castle Howard Ox is a purpose-built public house of the first half of the nineteenth century, with later alterations and additions, built abutting Bootham Stray on the corner of Townend Street and Clarence Street. There is evidence to suggest a build date in the 1830s/40s era which accords with the laying out of Penley Grove Street/Townend Street in that period. The heritage appraisal accompanying the application charts the development of buildings on the site and identifies the contribution the building makes to settings of the Central Historic Core Conservation Area and the Groves Chapel which faces the site across Clarence Street. As identified by the appraisal the earliest built form is the southern block with its gable entrance to Townend Street.

5.28 The building retains a number of attractive architectural features. The south gable is of characteristic symmetrical nineteenth century arrangement, with arched head window to the apex, and the front door is flanked by shallow arched windows with brick quoined surrounds and projecting moulded brick drip over the lintel and similar sills, elements of which are replicated in the brick door surround. The latter features suggest a remodelling of the early decades of the twentieth century which accords with photographic evidence potentially dating from 1906. Windows are mainly replaced PVC frames, but whilst poor quality they replicate the layout of the earlier sashes to the upper floors and the three-light mullion and transom windows to the ground floor. To the west elevation is a three-light timber sash window set in an impressive corbelled and dentil-corniced surround within a decorative brick projection which probably dates to the latter decades of the nineteenth century; and a bracketed and dentilled timber gutter support which may be to the original design. Substantial chimney stacks and a coped verge also contribute to a characterful historic building.

5.29 The building survives from the small-scale 2-storey terraced form of the wider area which was developed as the city expanded in the 1840s. Although much demolition in the Groves took place in the '60s/'70s for redevelopment by the Local Authority, the historic "gateways" to the area were maintained so they still preserve the small scale 19th century character of the main streets (Clarence St, Haxby Road, Monkgate, Huntington Rd). The building has always had a dual aspect as indicated on the 1852 map, facing Clarence St over former Stray land (now the former garage forecourt)

5.30 The building has previously been identified as a non-designated heritage asset as a consequence of its architectural and historic interest. As a public house it also has communal value.

5.31 The proposed development would retain the original part of the building, the design of the proposed extension is simple and is not considered to result in harm to

the designated heritage asset. The use of different materials whilst complimenting the existing building give a clear understanding that the extensions are latter additions. The proposed extension is considered to have a neutral impact on the heritage asset. The conditions requested by the Conservation Officer are considered to be reasonable and necessary to ensure a development that respects the host building and the surroundings.

### Setting of Conservation Area and Listed Building

5.32 No harm to the setting of the conservation area as a consequence of the revised proposals has been identified. The scheme respects the townscape and streetscape. The development would not materially impact the setting of any listed buildings.

### Archaeology

5.33 The site is within the City Centre Area of Archaeological Importance. NPPF paragraph 194 states that “where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation”. NPPF footnote 68 states that non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

5.34 The Castle Howard Ox lies within the Central Area of Archaeological Importance. A heritage statement confirms that the main body of the building and the 1930s extensions are of some significance while the mid-late 20th century alterations are not. The statement does not describe the interior of the building. It is unknown whether the building contains any internal features worthy of recording. The proposed works have the potential to reveal archaeological features and/or deposits. The Archaeologist has requested the following condition: an archaeological watching brief should take place during groundworks to record the nature of any deposits which may survive on the site, it should include a brief photographic record of the exterior and any features of interest within the interior of the public house prior to conversion. This condition is considered to be necessary and accords with paragraph 205 of the NPPF.

## VISUAL AMENITY AND CHARACTER

5.35 Chapter 12 of the NPPF gives advice on design, placing great importance to that design of the built environment. In particular, paragraph 130 of the NPPF states that planning decisions should ensure that development, inter alia, will add to the overall quality of the area, be visually attractive, sympathetic to local character and history and have a high standard of amenity for existing and future users. This

advice is reflected in Draft Local Plan (2018) policies D1 and D2 and, therefore, these policies can be given weight.

5.36 The proposed flat roofed two storey extension is set back from the Townend Street elevation and uses different materials (brick) to the host building (render). The proposed extension would be viewed as a later additional and appears subservient to the host building. The proposed extensions are considered to be of neutral appearance and are not considered to result in harm to the visual amenity of the host building or the character and appearance of the streetscene when travelling along Townend Street. Conditions for the materials, rooflights, and joinery are considered to be necessary.

## RESIDENTIAL AMENITY

5.37 The NPPF seeks a good standard of amenity for all existing and future occupants, and that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; are sympathetic to local character and history, including the surrounding built environment and landscape setting. Policies D1 and ENV2 of the Draft Local Plan (2018) seek to ensure that development proposals do not unduly affect the amenity of nearby residents in terms of noise disturbance, overlooking, overshadowing or from overbearing structures.

5.38 The site is considered to be within a sustainable location close to York St Johns and close to public transport for other educational establishments the site is close to local amenities. The surrounding area contains a number of residential streets with restricted parking controlled by the Respark scheme.

5.39 The proposal represents an intensification of use of the site combined with the acknowledged impacts from noise and disturbance, parking pressures, and accumulation of rubbish that can be associated with student accommodation, balanced against the impacts of the lawful Public House use of the building. Officers consider that the amenity concerns about the development can be split into two main areas; the first being the impact of the structures themselves and second being the concern about the intensity of the development, the behaviour patterns of students and the impact of this behaviour on the residential amenity of existing residents.

5.40 The proposed two storey extension would have windows in the side/east and rear/north elevation. The proposed ground floor windows would be screened by the existing boundary wall. The first floor windows in the side/east elevation would face the front garden and side elevation of No. 3 Townend Street. No 3. Townend Street has private outside amenity space to the rear of the property and a car port between the side of the property and the application boundary, there are no windows at first floor level in the side elevation. The proposed two storey extension (6.5 metres in

height) is set back from the shared boundary by 4 metres. For these reasons the proposed development is not considered to result in a loss of privacy or overlooking to the occupants of 3 Townend Street. The proposed extensions are not considered to result in a loss of light or overshadowing.

5.41 No. 1 Lowther Mews stands to the rear/north of the proposed development, it has a first floor window in the side elevation which appears to be a staircase/hallway window. The proposed rear/north elevation windows of the two storey extension would be 7.5 metres from the staircase window. As the staircase is not considered to be a primary room it is not considered that the proximity of the windows would result in a loss of privacy. Furthermore it is considered that the proposal will not result in a harmful loss of light or impact overshadowing.

5.42 The previous use would have had some impact on the local environment and residential amenity by reason of general activity during the day and evening. The agent has confirmed that the proposed development would be managed, and a condition could be imposed that requires a management plan to be submitted to and approved by the Local Planning Authority. The plan could address issues such as: refuse collection; change over days, security measures, maintenance, fire safety, student liaison and community involvement etc. The introduction of 16 student studio flats in this location is not considered to be a significant concentration that would be potentially harmful to local residential amenity.

5.43 The access gates of the proposed development have been set into the site which allows for refuse bins to be presented on the day of collection and not block the pavement. In addition if the development was considered to be acceptable it would be considered necessary to ensure that the refuse storage area within the site is retained as such and complies with Policy WM1 (Sustainable Waste Management).

5.44 If the development was considered acceptable it is considered necessary to condition the occupancy of the building to only students engaged in full-time or part-time further or higher education in the city.

## BIODIVERSITY

5.45 Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities to have regard, in the exercise of the functions, to the purpose of conserving biodiversity. Paragraph 174 of the NPPF requires planning decisions to contribute to and enhance the natural and local environment by, inter alia, minimising impacts on and providing net gains for biodiversity. Draft Local Plan (2018) policies reflect this advice in relation to trees, protected species and habitats.

5.46 The NPPF advises that if significant harm to biodiversity from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then



planning permission should be refused. A Bat, Breeding Bird and Barn Owl Survey has been submitted to support this application. The Ecology Officer is satisfied with the submitted ecology information and that there are no protected species in the building. It is considered that the recommendations of the report (e.g. bat and bird boxes) can be sought via condition.

## SUSTAINABILITY

5.47 Policy CC2 'Sustainable Design and Construction of New Development' states that developments which demonstrate high standards of sustainable design and construction will be encouraged. The policy requires that change of use to residential should achieve BREEAM domestic refurbishment 'very good' as a minimum. The submitted BREEAM report demonstrates sets out that the proposed extension and change of use of the existing building would achieve BREEAM 'Excellent' based on a BREEAM New Construction 2014 with a score 76.05% or BREEAM Refurbishment and Fit Out 2014 with a score of 72.93% (minimum score level for BREEAM 'Excellent' rating is 70%).

## HIGHWAYS

5.48 The NPPF encourages development that is sustainably located and accessible. Paragraph 110 requires that all development achieves safe and suitable access for all users. It advises at paragraph 111 that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Further, paragraph 112 requires development to give priority first to pedestrians and cycle movements and create places that are safe, secure and attractive thereby minimising the scope for conflicts between pedestrians, cyclists and vehicles. Policy T1 of the Draft Local Plan (2018) supports the approach of the NPPF in that it seeks the safe and appropriate access to the adjacent adopted highway, giving priority to pedestrians and cyclists.

5.49 The site is considered to be in a sustainable location. No vehicle parking is proposed as part of the development and the surrounding area is restricted to residential permit parking. Covered and secure cycle parking for 18 cycles is provided within a store on the site. The proposals are considered to be acceptable in terms of principle of development and their impact on the surrounding highway network. It is considered necessary to condition the submission of a travel plan. The Highway Network Management team have requested that contribution of £10,000 towards the City of York Travel Plan support, however given the scale of the development proposed this is not considered to be reasonable in terms of the statutory tests in CIL Regulation 122 that requires that obligations must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and

- fairly and reasonably related in scale and kind to the development.

5.50 The resident's parking zone R25 is considered to be over-subscribed. The potential for additional parking pressures from this development have been considered and it is recommended that the development should be removed from the zone, meaning that future residents would not be able to apply for permits. This is considered to be reasonable, necessary and directly related to the development. The costs of removing the site from the Respark Zone (£3000) would form part of the contributions being sought in a s106 agreement.

## DRAINAGE

5.51 The NPPF requires that suitable drainage strategies are developed for sites, so there is no increase in flood risk elsewhere. The Draft Local Plan (2018) Policy ENV5 (Sustainable Drainage) advise discharge from new developments should not exceed the capacity of receptors and water run-off should, in relation to existing runoff rates, be reduced. There would be no increase in impermeable areas, it is considered that the details of the means of the surface water drainage can be sought via condition.

## SAFE ENVIRONMENTS

5.52 Section 17 of the Crime and Disorder Act 1998 requires all local authorities to exercise their functions with due regard to their likely effect on crime and disorder, and do all they reasonably can to prevent crime and disorder". Paragraphs 92 and 130 of the NPPF require developments should create safe places and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. The requirements for secure cycle park, secure external doors and opening restrictors on first floor can be achieved by condition.

## OPEN SPACE CONTRIBUTION

5.53 Public Realm has confirmed that an open space contribution is required in this case. This can be secured through a s106 agreement. The amenity open space contribution of £2,416 would be used to improve the amenity open space within the ward. This obligation is considered to comply with CIL Regulation 122.

## PUBLIC SECTOR EQUALITIES DUTY

5.54 Section 149 of the Equality Act 2010 contains the Public Sector Equality Duty (PSED) which requires public authorities, when exercising their functions, to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.55 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

5.56 The PSED does not specify a particular substantive outcome, but ensures that the decision made has been taken with “due regard” to its equality implications.

5.57 Officers have given due regard to the equality implications of the proposals in making its recommendation. There is no indication or evidence (including from consultation on this application) that any equality matters are raised that would outweigh the material planning considerations.

## **6.0 CONCLUSION**

6.1 The proposed development is considered to be within a sustainable location. In assessment of Heritage Assets, the scheme would preserve the setting of the Conservation Area, and the setting of listed buildings within it, in addition the proposal would be of appropriate scale, form and materials and is not considered to result in harm or loss of an undesignated heritage asset. Impacts on archaeology are considered to be acceptable and can be mitigated by planning condition. The proposed development is not considered to result in harm to residential amenity or highway safety, nor would the proposal have an unacceptable impact on ecology on or adjacent to the site.

6.2 The presumption in favour of sustainable development, as set out in NPPF paragraph 11 therefore applies. There is evident demand for purpose built student accommodation and the NPPF requires planning decisions give “substantial weight” to the value of using suitable brownfield land within settlements for housing (which includes student accommodation).

6.3 Paragraph 93 of the NPPF sets out, among other things, that planning decisions should guard against the unnecessary loss of valued community facilities (including pubs), particularly where this would reduce the community's ability to meet its day to day needs. This stance is echoed by policy HW1 (Protecting Existing Facilities) of the Draft Local Plan (2018). The NPPF at paragraph 38 states that the LPA should work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Significant weight should be placed on the need to support economic growth and productivity, taking into account local business needs and wider opportunities for development (paragraph 81). This stance is echoed by policy EC2 (Loss of Employment Land) of the Draft Local Plan (2018). It is not considered that the site has been reasonably marketed and as such there is insufficient evidence to demonstrate that the facilities no longer serve a community function and demonstrably cannot be adapted to meet other community needs or are surplus to requirements; neither has it been sufficiently demonstrated that the facilities are no longer financially viable with no market interest.

## **7.0 RECOMMENDATION: Refuse**

1 The applicant has failed to demonstrate that the public house is unviable having failed to adequately market the property. The local planning authority are not convinced that the site has been reasonably marketed and as such there is insufficient evidence to demonstrate that the facilities no longer serve a community function and demonstrably cannot be adapted to meet other community needs or are surplus to requirements. Neither has it been sufficiently demonstrated that the facilities are no longer financially viable with no market interest. The proposed development will therefore result in the unacceptable loss of a community facility and employment land that would help to meet the day-to-day needs of the local community. The proposal fails to comply with Policies HW1 (Protecting Existing Facilities) and EC2 (Loss of Employment Land) of the Draft Local Plan (2018) and paragraphs 81 and 93 of the National Planning Policy Framework.

## **8.0 INFORMATIVES: Notes to Applicant**

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

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in an attempt to achieve a positive outcome:

- Request further information

Application Reference Number: 23/00123/FUL

Item No: 4b

Notwithstanding the above, it was not possible to achieve a positive outcome, resulting in planning permission being refused for the reasons stated.

**Contact details:**

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