

Appeal Summaries for Cases Determined 01/04/2012 to 30/06/2012

Application No: 11/00497/FUL
Appeal by: Mr Robert Winston
Proposal: Conversion of stable to 2 bed holiday let (resubmission)
Address: Holly Tree Farm Murton Way York YO19 5UN

Decision Level: DEL

Outcome: ALLOW

The application was refused because the site was in the functional flood plain (zone 3b). As part of the appeal the applicant commissioned a Flood Zone Investigation which re-categorised the land within Zone 3a. This was accepted by the Environment Agency and the City Council and as such the appeal was contested only in respect of an inadequate flood risk assessment and the raising of ground levels around the site. The Inspector concluded that the conversion of the building could proceed without an unacceptable increase in flood risk in the area, and as such would not conflict with the NPPF, its associated Technical Guidance of the Council's Strategic Flood Risk Assessment. In imposing conditions he considered it necessary and reasonable to restrict the use of the building to holiday accommodation and that a further flood risk assessment was necessary to safeguard future users of the accommodation. He also required that the existing ground levels be retained to prevent the displacement of water in the event of flooding. An application for the Council to pay the appellant's costs was refused.

Application No: 11/00869/FUL
Appeal by: Miss J Graves
Proposal: Erection of 2no. pig rearing units to rear (retrospective)
Address: The Market Garden Eastfield Lane Dunnington York YO19 5ND
Decision Level: DEL
Outcome: DISMIS

The application sought retrospective planning permission for the erection of two pig rearing units at the Market Garden in Dunnington. The application was refused on the grounds that the development is harmful to neighbouring amenity through odour generated within the pig rearing units and the associated storage of waste. The pig rearing units are in close proximity to a large number of residential dwellings and evidence provided by local residents clearly identified that the units have a significantly harmful impact on the living conditions of local residents and their ability to enjoy their homes and gardens. The Inspector concluded that the proposed pig activities at the site represented a substantial business venture which is in close proximity to a large number of residences. Despite weather conditions on the day of the site visit resulting in relatively low odour levels, the Inspector concluded that the proposal could cause significant odours which would harm the amenity of local residents. The Inspector stated that the number of objections received highlighted the odour problems which the pig enterprise creates. The appeal was dismissed.

Application No: 11/01015/FUL
Appeal by: St Peters School
Proposal: Erection of two storey dwelling to the rear
Address: St Catherines House 11 Clifton York YO30 6AA

Decision Level: DEL

Outcome: DISMIS

The application sought planning permission for the erection of a two storey dwelling to the rear of 11 Clifton. The application site would be occupied in connection with St Peter's School and the proposed house would be accessed via the school grounds. The application was refused on two grounds. The first was the visual impact on the character and appearance of Clifton Conservation Area. The second was that the proposed building could result in the loss of two trees within the curtilage which were considered to positively contribute to the character and appearance of the area. The appeal was dismissed on the grounds of the Council's reasons for refusal. The Inspector concluded that the application site is an important open space and provides a suitable interface between the older residential developments along Clifton and the later higher density developments to the south west. Views of the site from North Parade were considered to be particularly important as the application site provides a green open outlook from what is an enclosed victorian street. The proposed development would erode this. The Inspector agreed with the Council that the Sycamore and Copper Beach trees on the site are of importance and contribute to the character and appearance of the area. Whilst the applicants specialist stated that the development could be created without harming these trees, the Inspector felt that the plans had no margin for error and the trees could be damaged despite tree protection measures. It was also felt that the size of the trees and their closeness to the proposed house would result in pressure for them to be felled in the future. For the reasons above the Inspector did not feel that the application represented sustainable development and the appeal was dismissed.

Application No: 11/01468/OUTM
Appeal by: Smith And Ball LLP
Proposal: Outline application for erection of a retail warehouse following demolition of existing office building (resubmission)
Address: Arabesque House Monks Cross Drive Huntington York

Decision Level: COMPV

Outcome: ALLOW

The was an appeal against the refusal of planning permission for the demolition of an office building and erection of retail warehouse development at Monks Cross. The reason for refusal related to the need to maintain a menu of office properties around different sites in the city, of varying sizes and quality providing for the immediate and longer term employment requirements of York. The Inspector allowed the appeal considering :-In spatial terms that the site is as much a part of the retail area as the partially developed office area Weight attached to RSS diminished by forthcoming likely abolition but in any event its relevance, other than in the broadest sense is minimal. Inspector says relying on the core strategy policies at the stage when it has not been independently examined and tested against the evidence base is counter to the intention of national policy that decision taking should be genuinely plan-led. The draft local plan does not accord with Paragraph 215 of the NPPF and so little weight can be afforded to it, but the employment aims of E3b are similar to the framework requirements. The Inspectors view was that the choice and churn required by the core strategy policies have not been sufficiently tested through the independent assessment process and little weight could therefore be attached to having an excess of supply to provide choice in the office market. The Inspector attached weight to the fact that the building could be demolished even without any new scheme being brought forward and to the fact that employment would come from the retail use of the site despite the proposal being speculative and such employment not be certain. Despite objections from third parties the Inspector saw no reason why a bulky good retail could not be acceptable on the site. The view was that when the core strategy got closer to adoption policies within it may preclude further such developments

Application No: 11/02318/FULM
Appeal by: Miss Tracey Kay
Proposal: Erection of 3 storey 64 bed care home for older people
Address: Plot 6 Great North Way Nether Poppleton York

Decision Level: CMV

Outcome: ALLOW

The decision was recommended for refusal following a strong objection from City Development and their concerns that the loss of the site would cause the loss of usable employment land that was immediately available for development (CD argued that the usable employment land figure availability was less than the figure for employment land availability) and that the use was not considered an employment use as set out in PPS4. Committee refused the application on the same grounds. Between the decision and the appeal the NPPF was issued which stated that policies should avoid the long term protection of employment use sites. The definition of employment that was in PPS4 was not carried over into the NPPF. The Inspector considered that as a garden centre has been allowed on the neighbouring site and that the Monks Cross Stadium site was being considered that the loss of this site was not considered to be significant. The Inspector concluded that the benefits of the provision of employment opportunities through the provision of a care home, together with the community benefits associated with that provision, outweighs any disbenefit from the loss of a relatively small area of B1, B2 or B8 employment use land.

Application No: 11/02371/FUL
Appeal by: Mr And Mrs Luke-Wakes
Proposal: First floor side extension
Address: 1 Meam Close Osbaldwick York YO10 3JH

Decision Level: CMV

Outcome: DISMIS

The East Area Planning sub-Committee refused the application because of the oppressive and overbearing impact on the adjacent neighbours and impact on the street scene. On the basis that the proposal would create an incongruous feature by occupying part of the gap above the adjoining garages. The inspector dismissed the application because of the extension would articulate the overall facade of the building creating a poorly proportioned gap that would be incongruous in the street scene. However, the inspector ruled out the neighbour amenity issues.

Application No: 11/02711/FUL
Appeal by: Mr And Mrs Pierson
Proposal: Removal of condition 7 (open space) for approved outline application 10/02271/OUT for erection of detached bungalow
Address: Yew Tree House Vicarage Lane Naburn York YO19 4RS

Decision Level: DEL

Outcome: ALLOW

Outline planning permission was granted for a bungalow (10/02271/OUT). The permission included the council's standard open space condition requiring a financial contribution of #1172. A s.73 application later sought to remove the condition on the ground that there was sufficient open space in the area. The council acknowledged that, in the interim, a children's play area had been provided in the village. Nevertheless there remained a shortfall in the other categories of open space. The council therefore did not remove the condition but reduced to #680 the amount quoted in the informative. The applicant appealed. The inspector quoted paragraph 83 of Circular 11/95 which states that, when granting planning permission, a local planning authority cannot require, by means of a planning condition, a financial contribution from the developer. As such, condition 7 was clearly contrary to the advice. He said that if a contribution were justified the council should have negotiated it by means of a s.106 obligation. Notwithstanding this, and even if it were reasonable to seek a contribution by means of a planning condition, there was no certainty or specificity as to the sorts of open space to which the money would have contributed. The council indicated only that any money would probably be spent on improving sports pitches in Fulford without any details of what this might entail or the necessity for it. Condition 7 was neither necessary nor reasonable, contrary to the tests in Circular 11/95. Accordingly, the appeal was allowed and condition 7 was removed.

Application No: 11/02774/FUL
Appeal by: Mr And Mrs Rodwell
Proposal: Single storey side and rear extension with rooms in roof (amended scheme)
Address: 42 Dikelands Lane Upper Poppleton York YO26 6JF

Decision Level: DEL

Outcome: DISMIS

Two main issues regarding the effects of the proposed extension. The effect upon the appearance and character of the host bungalow and the surrounding area. Second, the effect upon the living conditions of the neighbouring residents at No 2 Montague Walk with particular regard to levels of sunlight and visual impact. The proposed rearward extension would be intrusive in views from Dikelands Lane. It would not appear subservient to the modest bungalow but instead disproportionate and unduly dominating the host building in views from Dikelands Lane. The Inspector concluded that the rear extension would harm the appearance and character of the host bungalow and the surrounding area. The works to the front garage elevation would add interest and be more in keeping but does not outweigh the detrimental impact of the rear section. The Inspector also concluded that there would be an increased overshadowing effect upon the secondary kitchen/breakfasting window and a reduction in afternoon/evening sun to the adjoining section of rear garden of the neighbouring property. The enlarged structure would in addition have an intrusive and overbearing effect upon the neighbours rear rooms and garden. He concluded there would be unacceptable harm to the living conditions that the neighbours at No 2 could reasonably expect to enjoy.

Application No: 11/02949/FUL
Appeal by: Mr Richard Pearce
Proposal: Garage to side after demolition of existing sheds (resubmission)
Address: Glencoe Main Street Elvington York YO41 4AG

Decision Level: DEL

Outcome: DISMIS

Planning permission was refused on the basis that the garage because of its size and scale would have a negative visual impact on the character and appearance of the conservation area by virtue of its mass, design and inappropriate detailing. The inspector considered that Glencoe is an important component within this part of the Conservation Area, where built development is characterised by cottages in the local vernacular and larger period properties surrounding the open expanse of The Green. The inspector dismissed the appeal on this basis the i the scale and proportions of the building and the inappropriateness of the garage door would be evident, resulting in a disruptive feature in the Conservation Area.

Application No: 11/03052/FUL
Appeal by: Mr And Mrs Poole
Proposal: Single storey rear extension
Address: 40 Fordlands Road York YO19 4QG

Decision Level: DEL

Outcome: ALLOW

permission was refused for the following reason. 'The proposed rear extension would project approximately 5 metres from the rear elevation of the application property, in close proximity to the boundary with the adjoined semi-detached property at no. 42 Fordlands Road. It is considered that the size and scale of the extension is such that the development would unduly dominate the side boundary and would cause significant harm to light levels and outlook. As such the proposal conflicts with policy GP1 (criterion i) and H7 (criterion d) of the City of York Draft Local Plan (fourth set of changes) approved April 2005.' The inspector stated that the existing high hedge between the properties, although a less permanent, solid feature than the extension proposed, should be taken into account when assessing the impact. He asserted that an extension projecting 3 metres could be erected under permitted development, which together with a 2 m high fence beyond, would not be significantly different to the proposed extension. He considered that the necessary removal of the hedge to make way for the extension would be an improvement to the outlook from the adjoining property.

Application No: 11/03187/FUL
Appeal by: Mr And Mrs Prescott
Proposal: Extension to garage and erection of boundary wall
(retrospective / resubmission)
Address: 4 Springbank Avenue Dunnington York YO19 5PZ

Decision Level: DEL

Outcome: PAD

The appeal related to alterations to a previously approved garage and retention of a front boundary wall. The Council was not opposed to the alterations to the approved garage. However, planning permission was refused for the retention of the boundary wall as it was considered that the higher section of the wall and timber infill panels would, as a result of its design and scale, appear as an unduly imposing and incongruous feature, which would be out of character with other front garden boundaries within Springbank Avenue. The Inspector concurred, asserting that along Springbank Avenue front boundary walls are generally very low, which gives the street an open and uncluttered character, with views over front gardens. He concluded that amidst such surroundings the front boundary wall at 4 Springbank Avenue looks incongruous and unduly imposing. It makes this part of the road appear far more built up and obscures views of front gardens. As a result it detracts from the streetscene. The appeal was allowed insofar as it related to the alterations to the approved garage, but was dismissed in respect of the retention of the wall. It is understood that the wall has subsequently been reduced in height and now falls within permitted development tolerances.

Application No: 11/03191/FUL
Appeal by: Mr Steve Oates
Proposal: First floor side extension
Address: Kilburn View Murton Way York YO19 5UW

Decision Level: DEL

Outcome: ALLOW

The application was for a first floor rear extension with balcony. The application property is a recent back land development in the conservation area. The area still has in parts the visual character of an agricultural settlement. It was felt that the development would further encroach on open land and that the balcony would appear unduly ornate in its context. The Inspector allowed the appeal. He considered that there was a wide variety of building styles in the conservation area and that the first floor rear extension would have minimal impact on the open character.

Application No: 12/00091/FUL
Appeal by: Mr D Rose
Proposal: First floor side and rear extension.
Address: 93 Newland Park Drive York YO10 3HR

Decision Level: CMV
Outcome: ALLOW

This application was to erect a first floor side extension and single storey rear extension which was recommended for approval. The East Area Planning sub-Committee refused the application because of the visual appearance within the street scene. The inspector allowed the appeal on the basis that it was felt the extension would be in accordance with the councils SPD, thus it would harmonise with the visual appearance of the surrounding area. Furthermore there would be no impact on residential amenity. The inspector confirmed that the proposal was for a residential extension and the local objections relating to student occupation could not be considered as part of the application.

Decision Level:	Outcome:
DEL = Delegated Decision	ALLOW = Appeal Allowed
COMM = Sub-Committee Decision	DISMIS = Appeal Dismissed
COMP = Main Committee Decision	PAD = Appeal part dismissed/part allowed