

## COMMITTEE REPORT

**Date:** 16 February 2022      **Ward:** Fulford And Heslington  
**Team:** East Area                      **Parish:** Fulford Parish Council

**Reference:** 20/01471/FULM  
**Application at:** Royal Masonic Benevolent Institute Connaught Court St Oswalds Road York YO10 4QA  
**For:** Change of use of existing bungalows (Use Class C2) to residential accommodation where care is provided (Use Class C3(b)) with construction of associated parking court and access driveway from Fulford Park (resubmission)  
**By:** RMBI Care Company  
**Application Type:** Major Full Application  
**Target Date:** 30 November 2021  
**Recommendation:** Approve subject to Section 106 Agreement

### 1.0 PROPOSAL

1.1 Connaught Court is a care home in a parkland setting. The site lies between Main Street, St. Oswalds Road, Atcherley Close, Fulford Park and Fulford Ings. The care home site is dominated by a large 2 and 3-storey building, with associated smaller buildings and dwellings grouped around it. Most of the remainder of the site is private open parkland. The main vehicular access is from St. Oswalds Road. The whole of the site is in Fulford Conservation Area and in flood zone 1.

1.2 The proposal comprises:

- (i) Change of use of 10 existing bungalows from C2, residential institutions to C3(b), dwellinghouses for people living as a single household and receiving care;
- (ii) Construction of a car park for five cars to serve the bungalows;
- (iii) Construction of a 3m-wide, 85m-long internal access road to the bungalows from the public highway at Fulford Park. It would comprise a cellular confinement system with gravel surfacing above a geotextile membrane, laid over the existing grass;
- (iv) Minor alterations to the access from Fulford Park.

1.3 The application does not include alterations to the bungalows, which would be made available at affordable rents to persons aged 55 and over and in need of care.

## PLANNING HISTORY

1.4 The application is made on behalf of the Royal Masonic Benevolent Institution (RMBI). It is a resubmission of 18/02169/FULM, which the area sub-committee resolved to refuse the application at the meeting of 3 October 2019. The reason for refusal was stated as 'the public benefits of bringing forward the housing proposed do not outweigh the identified harm to the conservation area, parkland and trees'. The applicant withdrew the application before the decision notice was issued.

1.5 The main changes from the previous scheme are: a reduction in the size of the parking court/turning area to halve the number of spaces from 10 to 5; construction of all parking bays to accessible standards; identification of facilities for electric vehicle charging and cycle storage; and submission of updated details of the construction of the access driveway.

1.6 16/01577/FUL - Refurbishment of the bungalows 1,2,3,4,5,6,9 and10. Approved and implemented

1.7 16/01585FUL - Single storey extensions and external alterations to bungalows 7 and 8. Approved and implemented.

1.8 05/00022/OUTM - Outline application for erection of extra care sheltered accommodation, extension to elderly mentally frail unit, residential development, relocation of existing bowling green and provision of new access road and car parking. Refused and dismissed at appeal.

## 2.0 POLICY CONTEXT

### Draft Development Control Local Plan 2005

2.1 Relevant policies are:

GP1	Design
GP4a	Sustainability
HE2	Development in Historic Locations
HE3	Conservation Areas
GP15A	Development and Flood Risk
H4A	Housing Windfalls

### Publication Draft Local Plan 2018

Application Reference Number: 20/01471/FULM

Item No: 4c

## 2.2 Relevant policies are:

D1	Placemaking
D2	Landscape and setting
D4	Conservation areas
D5	Listed Buildings
H3	Balancing the Housing Market
H9	Older Persons Specialist Housing
G13	Green Infrastructure Network
G14	Trees and Hedgerows
ENV5	Sustainable Drainage
T1	Sustainable Access

## 3.0 CONSULTATIONS

### INTERNAL

#### Highway Network Management

3.1 No objection in principle. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the cumulative impacts on the road network would be severe. We have rejected the residual cumulative impact ground as this is a small development and uses an access previously used for car parking. We do not consider that the proposed development has an unacceptable impact on highway safety.

3.2 All the bungalows are proposed to be rented as non-car units without allocated parking. The level of parking on site would be much reduced. This should mean that the parking provision on site should be sufficient to accommodate visitors and carers without vehicles having to park on the access drive or other unsuitable areas.

3.3 Some small changes would be required to the junction with Fulford Park to ensure that adequate visibility is available for users of the proposed development and users of Fulford Park, including cyclists and taking account of current parking on Fulford Park. This can be secured by a planning condition requiring details to be submitted for approval and implemented through section 278 (it might also include TRO changes if double yellow lines or similar are required). It would include agreement on how the proposed driveway would tie in with the adopted highway. We would need a 6m buffer between any gates and the public highway at Fulford Park. Add standard conditions requiring vehicle areas to be surfaced, turning area to be provided and details of cycle parking to be agreed.

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

3.4 I do not consider that the heritage significance of any listed buildings or built non-designated heritage assets or their settings would be affected by the proposals.

They have the potential to affect the character or appearance of the Fulford Village conservation area because they involve the construction of a new car park and access road within an area of heritage and landscape significance.

3.5 The access road would have a low level effect on the communal significances of the site and would not affect its other heritage significances. The effects would amount to 'less than substantial' harm to the character and appearance of the conservation area.

3.6 The car park would be detrimental to the aesthetic and communal heritage significances of the site. However, the reduction in the number of parking spaces from 10 as previously proposed to five, has a number of benefits which reduce the detrimental effects of the proposal. They include

- The reduction in the extent of the parking area reduces its prominence in views into the central court of the bungalows;
- The parking court can be more effectively concealed by planting of hedges or shrubbery;
- The reduced parking provision would be likely to result in lower numbers of vehicle movements across the park via the new drive, which would reduce the effect on its tranquil character.

3.7 However, the presence of a parking court within the park would still be essentially incongruous in the landscape and the development would therefore continue to represent 'less than substantial' harm to the heritage values of this part of the conservation area.

3.8 I am also concerned by the potential for further incremental development in the park as a result of the proposed scheme. It is important that if this application were approved suitable planning restrictions would be applied and if necessary legal undertakings sought to mitigate the risks to the site of harmful incremental changes or subdivision of ownerships.

#### Design, Conservation and Sustainable Development (Landscape)

3.9 The parkland between the existing access from Fulford Park and the bungalows contains a number of mature trees protected by a tree preservation order. The route of the new road would wend its way between these trees to minimise the risk of harm to their root systems. Even with the proposed no-dig construction there is a residual risk of harm, so any such development within the root protection area (RPA) of a tree that is subject to a TPO and worthy of retention should be avoided if at all possible. Therefore, in weighing up the planning balance, consideration needs to be given to whether the overall value of the development is worth the residual risk of harm to the trees, also bearing in mind the age, species, and rarity of individual trees, and their value to the public amenity and conservation area; coupled with the degree of harm to the landscape within the conservation

area; and the loss of the replacement Beech within the courtyard, which would otherwise have the capacity to attain the stature of its predecessor, unlike the proposed smaller species.

### Design, Conservation and Sustainable Development (Ecology)

3.10 There are no statutory or non-statutory designated sites that will be negatively impacted by the development proposals.

3.11 The trees have been fully inspected (updated Habitat Survey Report from Wold Ecology) for their potential to support roosting bats. No evidence of bats was found and the trees are generally unsuitable to support roosts. Based on these findings no further surveys are recommended. The wider site is recognised to have potential to support foraging and commuting bats. A planning condition is recommended to ensure that the access road is not lit. This is to ensure disturbance to the surrounding parkland is not negatively impacted by lighting.

3.12 Add a condition regarding submission of a Biodiversity Enhancement and Management Plan (BEMP). Invasive non-native species notifiable under schedule 9 of the Wildlife and Countryside Act 1981 have been identified on site. The applicant with need to detail how they intend to deal with these species to ensure compliance with the Act. I support the recommendation for removal of these species.

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

3.13 The application site lies within the former grounds of Fulford Park. It is about 150m to the north-west of the medieval village of Fulford and 350m to the south-east of St. Oswald's Church (11th century). The creation of the road and car park could reveal or disturb archaeological features particularly relating to the medieval or Roman periods. It will be necessary to record any revealed features and deposits through an archaeological watching brief.

### Flood Risk Management

3.14 No objections to the development in principle. If planning permission is to be granted a condition should be attached requiring the submission of drainage details (including infiltration testing) in order to protect the local aquatic environment and public sewer network.

### Public Protection

3.15 No objections. Add a condition requiring provision of recharging facilities for two recharging points for electric vehicles and for hours of construction to be restricted to normal working hours.

## Housing Development

3.16 This proposal is welcomed in respect of meeting wider housing needs identified within the City of York.

### EXTERNAL

#### Fulford Parish Council

3.17 Objection on the following grounds:

- Harm to the Fulford Village Conservation area and historic parkland character
- Harm to a designated green wildlife corridor
- Risk to protected trees including veteran trees.
- Loss of security for the residents of Connaught Court
- Highway safety risk due to unsatisfactory access with Fulford Park
- No evidence to justify change of use from category C2 to C3(b)
- the very minor public benefits of the proposal are sufficient to outweigh the identified heritage and environmental harm
- There is no information on how the entrance gate will be operated in practice, whether by automatic opening or by other means.

#### North Yorkshire Fire & Rescue Service

3.18 No objection/observation to the development at this stage in the planning approval process. We will make further comment regarding the proposed fire safety measures when the building control body submit a statutory Building Regulations consultation to the Fire Authority.

## **4.0 REPRESENTATIONS**

#### Woodland Trust

4.1 Has concerns regarding potential detrimental impact on two trees recorded on the Ancient Tree Inventory (ATI). T100 is a veteran hawthorn tree and T1 is a notable sweet chestnut that are to be subject to root encroachment in order to facilitate the proposed access road.

4.2 While notable trees are not afforded the same level of protection through national planning policy as ancient and veteran trees, they should still be identified, retained and afforded suitable buffer zones/root protection areas (RPA). Notable trees are those that do not hold the same level of protection and value as ancient/veteran trees but have significant value to local persons and are likely to become veteran specimens if afforded appropriate space to grow and develop.

4.3 Tree T100 is categorised as a veteran tree on the ATI, though we recognise that it is on the boundary of the notable and veteran categories. Nevertheless, we consider that it is most appropriate to employ a precautionary approach and ensure that the tree is protected in line with Natural England's standing advice on veteran trees. As this tree continues in its lifecycle it must be afforded the appropriate space and environment to prevent any adverse impacts.

4.4 Whilst we note that the road will be constructed using no-dig methods, both trees should be afforded an un-encroached buffer zone amounting to 15 times the stem diameter, as recommended in Natural England and Forestry Commission's standing advice. The typical 12 times stem diameter as suggested in BS5837 guidelines should ensure that such trees have the minimum space required to maintain vitality but does not necessarily account for the rooting space needed in the future growth of larger mature trees.

#### Neighbour Notification and Publicity

4.5 21 objections have been received raising the following planning issues:

##### *Heritage Assets*

- The proposal would cause significant harm to the conservation area.
- Fences between plots would be detrimental to the conservation area.
- The road would be visible from many viewpoints inside and outside the parkland

##### *Landscape*

- Needless removal of established trees
- Risk of harm to other protected trees
- Harm to the historic open parkland, green corridor and village setting.
- A degree of cutting into the existing ground will be unavoidable.
- Improvements/widening of the access road will be found to be necessary over time
- More parking will be found to be necessary over time
- Fails Natural England and Forestry Commission guidance on tree protection, including veteran trees
- The tree survey is out of date.
- An alternative route through Connaught Court should be considered

##### *Ecology*

- The loss of parkland, introduction of lighting and vehicular movements through the parkland corridor will cause harm to bats, a protected species, and will result in loss of habitat for other wildlife.

### *Traffic and Highway Safety*

- Increase in traffic and congestion.
- The access road design is unsuitable and unsafe for pedestrians, cycles, emergency vehicles and other large vehicles.
- The junction onto Fulford Park raises concerns about highway safety due to its location on a bend and where parking pressure is very high due to the nearby doctors surgery.
- The development will cause more traffic at the junction with Fulford Road, which is very busy. The exit onto Fulford Road is repeatedly blocked by cars
- Increased risk of road accidents
- Vehicles should enter the site from St Oswalds Road
- The location of the access gate will impede traffic movements in Fulford Park

### *Parking*

- Residential care customers are unlikely to need car parking
- Misuse of the limited parking spaces could not be controlled
- Other car parking is available on site and nearby

### *Amenity and Security*

- Opening up an access route into the previously secure grounds of the care home will expose the vulnerable residents of Connaught Court to crime and/or anti-social behaviour.
- Noise and fuel pollution
- The proposed car park would spoil the potential occupants' enjoyment of the garden courtyard

### *Other Matters*

- A viability assessment should be provided with evidence to demonstrate that no other possible use for the bungalows can be found
- The change of use opens the way for open market sale
- If the planning application goes ahead it would encourage further harmful housing development in the future.

4.6 Two letters of support have been received from local residents stating that:

- Reusing the existing buildings is good
- If the access road and associated car parking enable the bungalows to be brought back into active use then this is a positive outcome for Fulford.



## 5.0 APPRAISAL

### 5.1 KEY ISSUES

- Principle of the proposed development
- Traffic and access
- Car parking and cycle storage
- Impact on heritage assets
- Landscape
- Ecology
- Amenity
- Community safety
- Archaeology
- Flood risk and drainage
- Affordable housing
- Future development

### PUBLICATION DRAFT YORK LOCAL PLAN (2018)

5.2 The Publication Draft Local Plan 2018 (the '2018 eLP2018 eLP') was submitted for examination on 25 May 2018. Phase 1 of the hearings into the examination of the 2018 eLP took place in December 2019. In accordance with paragraph 48 of the National Planning Policy Framework (the "NPPF") the emerging policies can be afforded weight according to:

- The stage of preparation of the 2018 eLP (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the 2018 eLP to the policies in the previous NPPF published in March 2012.

### DEVELOPMENT CONTROL LOCAL PLAN (2005)

5.3 The Development Control Local Plan Incorporating the Fourth Set of Changes (DCLP) was approved for development management purposes in April 2005. Whilst the DCLP does not form part of the statutory development plan its policies are considered to be capable of being material considerations in the determination of planning applications. Where policies relevant to the application are consistent with those in the NPPF (as revised in February 2019), the weight that can be afforded to them is very limited.

## NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

5.4 The revised National Planning Policy Framework was published July 2021 and its planning policies 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 where the application of policies relating to impacts on heritage assets indicates that permission should be refused.

## THE APPLICATION SITE

5.5 The application site mainly comprises five pairs of 1 and 2-bed bungalows in need of modernisation, most of which partially enclose a shared, central amenity space. The bungalows are close to the main care home building but project into the care home's parkland setting. The site also includes a gated vehicular access from the public highway at Fulford Park. The access appears to have been mainly used for maintenance but in recent years has also been used for access to a temporary car park within the parkland. The car park has been used for displaced staff parking during the erection of 14 houses within the grounds of the care home and/or by construction workers. The applicant has stated that the temporary car park is no longer in use, and would be removed if the application were to be approved.

5.6 A statement submitted by the applicant states that of the 10 bungalows, 8 have been vacant since 2006 and require substantial work to bring up to standard. Two bungalows have been occupied by the remaining sheltered residents until recently when a staff member took the place of one of the sheltered residents. The remaining sheltered resident is still in occupation.

## PRINCIPLE OF THE PROPOSED DEVELOPMENT

5.7 Paragraph 60 of the NPPF states that to support the Government's objective of significantly boosting the supply of homes it is important that the needs of groups with specific housing requirements are addressed without unnecessary delay. Paragraph 120(d) states that planning decisions should promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively. As part of this approach, decisions should support efforts to bring back into residential use empty homes and other buildings. Paragraph 112(b) states that applications for development should address the needs of people with disabilities and reduced mobility in relation to all modes of transport and allow for access by service and emergency vehicles.

5.8 Policy H9 of the 2018 eLP2018 eLP relates to older persons specialist housing and states that the council and its partners will work together to enable the delivery of specialist (supported) housing for vulnerable people including for the ageing population. It notes that the city's population aged over 65 is predicted to continue to grow. It adds that ensuring appropriate accommodation in suitable locations is

available to meet everyone's needs, including older people to remain in their homes longer, is a key issue to be addressed. Policy H3 states that proposals will be supported that are suitable for the intended occupiers in relation to the quality and type of facilities, and the provision of support and/or care.

5.9 The bungalows would operate as self-contained houses for older people with low-level care needs to maintain their independence with 24-hour on-call assistance and support. The applicant states that the bungalows would be let by the RMBI on assured shorthold tenancies, which would be subject to criteria restricting occupancy to people over 55 years of age, with residents responsible for arranging their own care package.

5.10 The RMBI's supporting statement submitted with the planning application says, at page 2:

'Due to the Care Quality Commission's (CQC) regulations, care provided for the bungalows cannot be managed through Connaught Court care home. Previously the bungalows would have been linked to the Home with care provided in an emergency if the pull cord was pulled. However, changes in regulations do not allow care staff to be 'pulled out' of the Home to attend to residents in the bungalows as this would result in insufficient carers in the care home. There are not enough bungalows to warrant in-house care provided by the RMBI. As such, there is no other option than to seek care by a third party provider. The call point for the two bungalows is now linked to third parties and not direct to the care home, although this is far from satisfactory as the bungalows suffer from a lack of access with no car parking provision.

Given that any care for future occupants will be managed by a third party, and not the Home, an essential functional need has been identified for the bungalows to have their own access and parking.'

5.11 The applicant states that without this separate access the bungalows would not be able to be let, which would result in them remaining vacant. The proposal would therefore achieve the substantial public benefits of bringing back into use 10 much-needed homes for older people in need of care.

## TRAFFIC AND ACCESS

5.12 Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the cumulative impacts on the road network would be severe. The residual cumulative impact of the proposal would be minor as this is a small development and uses an access that in recent years has been used for car parking (whilst some of it has been unauthorised and the subject of enforcement action much of it was in connection with the lawful use of the site as a care home). The

Council considers that the proposed development would not have an unacceptable impact on highway safety.

5.13 Fulford Park is a quiet, lightly-trafficked cul-de-sac with a 20mph speed limit. The road provides access to up to 30 private dwellings and a doctors' surgery. The level of traffic that would be generated by the application is extremely low. It could easily be accommodated on Fulford Park and the nearby junction with the A19. The doctors' surgery on Fulford Park can, at times, cause peaks in parking demand and careless/inconsiderate parking by patients/visitors. This is not unusual in urban areas. Some small changes would be required to the junction with Fulford Park to ensure that there would be adequate visibility at for all road users and pedestrians.

5.14 The visibility splays are in line with Manual for Streets requirements for quieter streets with low vehicle speeds. The splays could be further improved moving a short section of the fence line back into the site to improve visibility to the right for vehicles exiting the site. The submitted plans are being revised to show these changes. Members will be updated at the meeting. The revisions should be secured by a planning condition requiring details to be submitted for approval and implemented through section 278 of the Highways Act. Measures might also include provision of double yellow lines or similar, if required. A 6m buffer would be needed between any gates and the public highway at Fulford Park to prevent incoming vehicles obstructing traffic. A condition should be attached requiring vehicle areas to be surfaced.

5.15 The proposed road would be the sole vehicular access to the bungalows. It would be 3m wide with slight widening at the radii. The road width and geometry would be suitable for cars and light vans including ambulances. A passing place would be provided part way along the road and turning/manoeuvring space provided in the car park, thereby enabling vehicles to leave the site in forward gear.

5.16 The road would be wide enough for use by fire tenders, which would be there in emergency only and almost certainly rarely. There would be nothing to prevent fire tenders easily reaching the bungalows if the need were to arise. The new road would be an improvement over the present situation as emergency vehicles needing to reach the bungalows currently have no alternative but to drive across the parkland grass. The emergency services were consulted on the application and have not objected. On-street parking on Fulford Park is unlikely to significantly restrict normal or emergency access onto the site. Refuse vehicles would not need to use the access. Refuse would be collected from each bungalow by the operator of the care home and taken to a central point for despatch via St Oswalds Road. A planning obligation should be agreed to prohibit use by large vehicles except in emergency. The principle of such an obligation has been agreed by the applicant.

5.17 The access road is not proposed to be adopted so the council would not require it to be built to adoptable standards. It would not have a dedicated footpath but there is already a suitable access for pedestrians and mobility scooters from

Main Street. Cyclists would be able to share the new road with cars as they are usually no more than 1.8m wide, leaving 1.2m for approaching cyclists. This is considered acceptable as the road would serve only 10 dwellings (all for people in need of care) and five parking spaces. Bearing in mind the very low number of traffic movements and the very low traffic speed this arrangement would be acceptable and is commonplace elsewhere. Snow conditions, as raised by objectors, would be for the site manager to address, either by restricting access if the road is unsafe, advising people to use the on-street parking available on Main Street, or clearing the snow from the roadway.

## CAR PARKING AND CYCLE STORAGE

5.18 The scheme has been amended from the previous application to reduce the size of the car park, with the footprint shortened at its southern boundary and the number of spaces halved from 10 to five. The proposed parking/turning court would be of permeable block paving with a kerbed perimeter. Each bay would be designed to accessible standards. The layout includes electric charging points and secure cycle parking, which would probably be for visitors and carers. Details should be made a condition of approval.

5.19 The site is in a very sustainable location, within York urban area and close to shops, local services and public transport. Residents of the bungalows would not be allocated parking spaces, they would have non-car tenancies. The small parking/turning area would provide a short-stay setting down point for residents' carers, relatives, doctors and visitors, and would provide essential direct access by ambulances. The proposed level of parking is in accordance with national planning policy which seeks to ensure that appropriate opportunities to promote sustainable transport modes can be taken up while achieving a safe and suitable access to the site for all users (NPPF paragraph 110). It is also consistent with policy T1 of the 2018 eLP which supports development that provides safe, suitable and attractive access for all users, including those with impaired mobility, and allows the use of more sustainable modes of transport. Given the nature of the use and the sustainable location of the site this level of provision should be sufficient without the need to park on adjacent streets.

## IMPACT ON HERITAGE ASSETS

5.20 There are no listed buildings in the vicinity of the application site but the whole of Connaught Court, including the application site, lies within Fulford Village Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on local planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. A conservation area appraisal for Fulford Village Conservation Area was approved by the council in 2008.

5.21 In the NPPF conservation areas are classed as 'designated heritage assets'. Paragraph 197 advises that in determining applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (paragraph 199). Any harm or loss should require clear and convincing justification (paragraph 200). Paragraph 202 advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

5.22 Paragraph 203 advises that 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. Non-designated heritage assets include buildings identified in the conservation area appraisal as being of positive value to the conservation area. They are the St John J Hunt Memorial Cottage Homes (the almshouses) to the north of the site and The Coach House (the former coach house to Fulford Park House) to the south.

5.23 Policy D4 (Conservation Areas) of the 2018 eLP states that development proposals within or affecting the setting of a conservation area will be supported where they would preserve or enhance the conservation area. Policy D1 (Placemaking) states that development proposals that fail to make a positive design contribution to the city or cause damage to the character and quality of an area will be refused.

5.24 The conservation area appraisal states, at paragraph 8.11, that the parkland setting of Fulford House (which includes Connaught Court care home and the application site) is a landscaped and planted area in existence before 1851 and probably of late C18 or early C19 origin, and is a private oasis of peace and tranquillity. It adds, at paragraph 8.12, that 20th century development within the park has still left significant large areas of open space, including some fine mature trees, and a margin of parkland between the Main Street and the Fulford Ings, which helps to preserve the distinction between Fulford Village and the city suburbs.

5.25 The Connaught Court part of the park site (including the bungalows) has a distinctive landscape character. Its significance is not limited to the undeveloped green wedge of 19th century parkland but encompasses its later 20th century adaptation. The arrangement of low-rise buildings within the parkland landscape is a relatively sensitive development within the historic parkland. The application proposals have the potential to affect the character or appearance of this historic setting because they involve the construction of a new car park and access road

within an area of heritage and landscape significance. However, due to the historic pattern of development of the parkland landscape, the site is not so sensitive to change that any alteration would be harmful. The proposed access road would be single width, informal in layout and material and designed to have a seamless connection with the grassed parkland. Its vehicular use would be intermittent and of low intensity. Consequently it is not considered that the access road would appear incongruous or diminish the historic or aesthetic significance of the site. However, the proposed car park would occupy the landscaped garden around which the bungalows are constructed and which melds into the adjacent landscape. The car park would appear as a discordant use due to the extent of hard surfacing and presence of up to five parked cars. It would detract from the existing character of the Connaught Court development within the parkland setting. That said, the car park would be seen only from certain viewpoints - glimpsed between the pairs of bungalows and through the surrounding parkland.

5.26 The harm to the conservation area would be less than substantial, requiring the harm to be weighed against the public benefits of the proposal including securing its optimal viable use. The proposals would have no impact on the heritage significance of any listed buildings or non-designated heritage assets or their settings.

5.27 There is a risk that approval of the scheme could result in further incremental development in the park. It would facilitate the future separation or sale of the site which, uncontrolled, would be likely to lead to substantial harm to its landscape qualities for example through lack of holistic control of the bungalows, more intensive redevelopment and consequential requirements for additional parking, greater privacy, lighting, separate curtilages and the 'improvement' of the access. Such incremental changes could become difficult to resist in the context of sustaining the viability of a continuing use. If planning permission is granted planning conditions should be attached and/or legal obligations agreed, to mitigate the risks to the site of harmful incremental changes or subdivision of ownerships in the future.

## LANDSCAPE

5.28 Paragraph 180 of the NPPF states that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. Policy D2 of the 2018 eLP states that development proposals will be supported where they recognise the significance of landscape features, including mature trees. Policy G14 states that development will be supported where it retains trees and hedgerows that make a positive contribution to the character or setting of a conservation area.

5.29 The area of parkland between the existing access from Fulford Park and the bungalows contains a number of mature trees protected by a tree preservation

order. The route of the new road would wend its way between these trees to minimise the risk of harm to their root systems.

5.30 The road would pass between tree T1, an over-mature sweet chestnut and T2, a mature horse chestnut. The council's Landscape Architect agrees with the applicant's assessment that these two trees are of moderate quality (category A1, bordering B1) with a retention life span of over 40 years. Both trees are substantial and contribute to the character of the conservation area and the amenity of the area generally. The sweet chestnut is the most valuable of the affected trees due to its size and species, which is a rarity in York.

5.31 The space between the trees is not sufficiently wide to avoid the road encroaching into part of the root protection area (RPA) of these trees. BS 5837 'Trees in relation to design demolition & construction' specifies that new permanent hard surfacing should not exceed 20% of any existing unsurfaced ground within the RPA. BS 5837 also states that this principle should not be applied to veteran trees, i.e. there should be no hard surfacing within any portion of the RPA of veteran trees. Given that the Sweet chestnut is a very mature tree – verging on being a veteran tree - the 20% guide should be applied with great caution. Trees in advanced stages of maturity are likely to be less resilient to changes occurring within their rooting zone, which could therefore impact on the vitality, and hence longevity of the tree. The hard surfacing of the new road would cover 17% of the RPA of T1 and 12% of the RPA of T2.

5.32 To minimise the impact of the road on these trees a refined 'no-dig' construction method would be used with stone-filled Geoweb on top of a membrane on the existing grass surface. It would be finished with a porous gravel wearing course, contained by timber edging and graded soil shoulders. If the driveway were constructed in strict adherence to the proposed arboricultural method statement (AMS), the risk of harm to the trees would be reduced to a minimum. The proposed construction would probably improve the ground conditions across part of this area, i.e. where there is ongoing compaction and deterioration of ground conditions due to use as a temporary car park. Nonetheless there is still an element of risk of harm to these trees by way of the road not being constructed in strict accordance with the AMS.

5.33 The Sweet chestnut (T1) and the Hawthorn (T100) are now included on the Woodland Trust's tree inventory. The Sweet Chestnut is listed as a 'notable' tree, and the Hawthorn as a 'veteran' tree (with a note in the record to explain that the classification has been taken as a precautionary approach due to it being a borderline case/veteran in-the-making). BS 5837 recommends that no construction, including the installation of new hard surfacing, occurs within the RPA of veteran trees. It is considered that the Hawthorn is not an exceptional specimen for this common species and is in decline. The amenity value of the Hawthorn is not so high as to warrant the same level of concern as the other larger, mature trees. The



Sweet Chestnut, in contrast, is a notable tree and should be afforded suitable protection. It is not however considered to be a veteran tree at present, though it has the potential to become such a tree.

5.34 Construction of the parking/turning area will require the removal of two copper beech trees (T104 and T105) and one Hazel tree (T106). The copper beeches are assessed in the submitted Arboricultural Report and Method Statement as being Category B in good condition and of moderate quality and value, although T105 is noted as being located too close to the bungalows to allow it to mature without problems. The Hazel tree is assessed as being a Category C tree of low quality and value and is also identified as being unsuited to its confined location.

5.35 Construction of the car park would also require the loss of part of the central amenity space for the bungalows. Although the courtyard is not visible from the public domain its current design and central tree are an integral part of the grounds and landscape. The amenity space provides an attractive outlook for the occupiers. The loss of this outlook would be partially mitigated by the proximity of the retained parkland around the bungalows.

5.36 The route of the drive as it enters the courtyard has been slightly amended from previous proposals to allow for greater separation to the nearest bungalow (Plot 5) and allowing for gradual grading down to the external path level around the bungalow and eliminating the need for any retaining features.

5.37 The parking court would incorporate new landscaping around its perimeter. The proposals also include planting of large-species trees within the wider grounds, Detailed proposals for tree planting and landscaping should be secured by planning condition.

## ECOLOGY

5.38 Paragraph 174 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Fulford Ings Site of Special Scientific Interest (SSSI) is approximately 200m from the application site at its closet point. The proposal is unlikely to have any material impact on the SSSI and the development does not require Natural England to be consulted. There are no comparable habitats within the development site, the loss of which could have an indirect impact on the SSSI.

5.39 Policy G13 of the 2018 eLP states that development should ensure the protection of York's local district and regional green corridors. The site is located within 'Local Green Corridor (26) Fulford Park' as set out in the City of York Local Biodiversity Action Plan (LBAP, 2017). These have been identified across York with the aim of linking together habitat to create an overall structural network for wildlife. Green corridors are not fixed boundaries but are a consensus of where multifunctional green infrastructure assets occur. Although the construction of a

new access road would result in the direct loss of amenity grassland it is not considered to significantly impact on the functioning of the green corridor, particularly as no new, additional, artificial lighting is proposed.

5.40 The submitted Habitat Survey Report from Wold Ecology has recently been updated as requested by the council's ecology officer with further assessment of any potential impact on bats, including aerial inspections of trees adjacent to the proposed drive. No evidence of bats was found and the trees are generally unsuitable for supporting roosts. The lost trees should be replaced as a condition of planning permission. Habitat connectivity to Fulford Ings SSSI, through its key elements of open space and mature tree cover, would be maintained.

5.41 A planning condition should be attached to ensure that the new access road is not lit in order to avoid disturbance to species (such as bats) that are sensitive to artificial light pollution.

## AMENITY

5.42 The presence of cars where there is currently a landscaped courtyard would have some impact on the outlook for residents but it would be compensated for by the improved access and mitigated by the very close proximity of the adjacent parkland, which would continue to be available for their use. The very low number of vehicles passing along the new road would have negligible impact on residents of the bungalows or those of neighbouring houses, whether from car headlights, noise or general disturbance. Cars parked in the car park would be almost entirely screened from view from the A19 and largely screened from Fulford Park.

## COMMUNITY SAFETY

5.43 Some objectors are concerned that miscreants would be able to enter the site freely and have access right up to the bungalow windows. The proposals would not make the site any less secure than under the current arrangements, which allow free access through the gate at Fulford Park and by push button at the pedestrian electronic gate to Main Street. The staff at Connaught Court have confirmed that these arrangements have not given rise to any previous issues with security or anti-social behaviour, and site security would benefit from the round the clock presence of staff close by at the care home. The access drive would be unlit to minimise visual impact, but existing lamp posts within the courtyard would be retained for lighting of the parking area. Any parked cars would be overlooked by residents of the bungalows.

## ARCHAEOLOGY

5.44 The application site is about 150m to the north-west of the medieval village of Fulford and 350m to the south-east of St. Oswald's Church (11th century). It

appears that the land has never been built upon and was used for agricultural purposes during the medieval and post-medieval periods.

5.45 Fulford Road, nearby may have Roman origins so Roman archaeological deposits may exist on the site. An evaluation at Connaught Court in 2004 revealed very significant Roman features to the north of the site on the south side of St Oswald's Road. Trenches to the west of the proposed car park revealed only medieval ploughsoils and furrows but did contain some Roman pottery.

5.46 It is possible that any groundworks associated with the creation of the road and car park could reveal or disturb archaeological features particularly relating to the medieval or Roman periods. It will be necessary to record any revealed features and deposits through an archaeological watching brief during the stripping of the site in preparation for the creation of the road and car park. This should be made a condition of planning permission.

## FLOOD RISK AND DRAINAGE

5.47 The site is in low-risk flood zone 1 and should not suffer from river flooding. The proposed angular gravel with timber edging on top of a no-dig road construction would provide like-for-like permeable surfacing, which would mimic the existing permeable grass surfacing. It would therefore permit air and water to go into and through the track construction to the tree roots beneath, to maintain the status quo and maintain the health of the adjacent trees. If planning permission is granted drainage details should be made a condition of approval, including infiltration testing witnessed by the council's flood risk officers.

## FUTURE DEVELOPMENT

5.48 Following the submitted design changes and clarification about construction methods, any residual harm to heritage assets would be outweighed by the benefits of bringing the 10 bungalows back into long-term use. Nevertheless, without adequate safeguards relating to the manner in which the dwellings would be occupied (i.e. residential dwellings as opposed to care home bungalows), parking facilities and the management of the adjacent parkland, the proposed use could, over time, have a gradual but significant detrimental impact on the conservation area and other heritage assets. The risk of harm could be reduced to an acceptable level by the provision of an effective management plan, secured by a section 106 agreement, for the lifetime of the development. It is unlikely that the management plan and its effective implementation for the lifetime of the development could be dealt with through planning conditions as it would require the agreement and cooperation of those with an interest in the application site and the surrounding parkland. The bungalows and surrounding parkland are in the ownership of the applicant which, officers are advised, would retain ownership. The applicant has agreed to the principle of the agreement and its heads of terms, which would include:

- Regular inspection and maintenance of trees;
- Regular inspection and maintenance of access road;
- No parking of vehicles other than in the designated parking area shown on the approved plans;
- Weight/size limitation on the access road except for emergency vehicles.

5.49 Other causes of possible conflict in the future could be prevented by planning conditions. These should include:

- Removal of permitted development rights for extensions to buildings, erection of fences, construction of hardstandings, etc;
- Retention of the access road in the form shown on the submitted plans;
- No external lighting outside the courtyard area.

## **6.0 CONCLUSION**

6.1 Special attention has been paid to the desirability of preserving or enhancing the character and appearance of the conservation area and great weight given to the conservation of all relevant heritage assets. While harm is assessed as being less than substantial, the harm to the conservation area is nevertheless a matter of considerable importance. This harm has been weighed against the substantial public benefits of bringing back into use 10 homes for older people in need of care. It is concluded that, subject to safeguards provided by planning conditions and a s.106 planning obligation, the substantial public benefits of bringing forward the 10 dwellings outweigh the identified harm to the conservation area and provide clear and convincing justification for approving the application. It complies with the requirements of s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 5 (Delivering a sufficient supply of homes) and 16 (Conserving and enhancing the natural environment) of the NPPF and policies H3 (Balancing the Housing Market), H9 (Older Persons Specialist Housing) and D4 (Conservation Areas) of the 2018 eLP.

## **7.0 RECOMMENDATION:**

i That delegated authority be given to the Head of Planning and Development Services to APPROVE the application subject to:

a. The completion of a Section 106 Agreement to secure the following planning obligations:

- Regular inspection and maintenance of trees;
- Regular inspection and maintenance of access road;
- No parking of vehicles other than in the designated parking area shown on the approved plans;
- Weight/size limitation on the access road except for emergency vehicles.

b. The conditions set out below

ii The Head of Planning and Development Services be given delegated authority to finalise the terms and details of the Section 106 Agreement.

iii The Head of Planning and Development Services be given delegated authority to determine the final detail of the planning conditions

### Planning Conditions

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out only in accordance with drawings numbered:

20640-1503 Rev X - COURTYARD PLAN

20640-1505 Rev G - PROPOSED SITE PLAN

16781-Y-DR-101 Rev.P6 - ACCESS DRIVE & PARKING COURT LAYOUT

16781-Y-DR-103 Rev.P2 - SECTION THROUGH ACCESS DRIVE AND PLOT 5

16781-Y-DR-102 Rev.P10 - ACCESS DRIVE & PARKING COURT LEVELS\*

[\*Undergoing revision. Members will be updated at the meeting]

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

3 The development shall not be occupied until there has been submitted and approved in writing by the Local Planning Authority a detailed landscaping scheme (including replacement trees and visual screening of the car park) which shall illustrate the number, species, height and position of trees and shrubs. This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which 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 in the interests of the character and appearance of Fulford Village Conservation Area.

4 The development shall be carried out in accordance with the submitted Arboricultural Method Statement dated March 2021 by Enviroscope Planning.

Reason: To protect trees that make a significant contribution to the character and appearance of Fulford Village Conservation Area.

5 Within one month of commencement of development a Biodiversity Enhancement and Management Plan (BEMP) shall be submitted to the local planning authority for approval in writing. The development shall be carried out in accordance with the plan.

Reason:

6 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no external lighting shall be erected or installed except within the courtyard bounded by the dwellings at plots 3 to 10 on submitted drawing 20640-1503 Rev X : Courtyard Plan.

Reason: To maintain the character and appearance of Fulford Village Conservation Area and to avoid disturbance to bats and other species sensitive to artificial light pollution.

7 Within one month of commencement of development details of the vehicular access at the junction with the public highway at Fulford Park, including visibility splays, surfacing and boundary treatment shall be submitted to the local planning authority for approval in writing. The development shall be carried out in accordance with the approved details and retained in perpetuity.

Reason: To ensure that the development is carried out in a manner that will not be detrimental to protected trees, the character and appearance of the conservation area and highway safety.

8 Prior to the first occupation of the development details of the cycle parking areas, including means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority. The development shall not come into use until the cycle parking areas and means of enclosure have been provided within the site in accordance with such approved details, and these areas shall not be used for any purpose other than the parking of cycles.

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

9 Prior to first occupation of the development, 2 electric vehicle recharging points as shown on the approved courtyard plan numbered 20640 1503 Revision X, shall be installed.

Reason: To promote and facilitate the uptake of electric vehicles on the site in line with the Council's Low Emission Strategy and the National Planning Policy Framework.

10 No part of the site shall come into use until the turning areas have been provided in accordance with the approved plans. Thereafter the turning areas shall be retained free of all obstructions and used solely for the intended purpose.

Reason: To enable vehicles to enter and leave the site in a forward gear thereby ensuring the safe and free passage of traffic on the public highway.

11 The access road shall be constructed in accordance with the approved plan 16781-Y-DR-102 Rev.P10\* and 16781-Y-DR-101 Rev.P6 and retained in that form for the life time of the development unless otherwise approved in writing by the local planning authority.

Reason: To protect trees that make a significant contribution to the character and appearance of Fulford Village Conservation Area.

[\* Undergoing revision. Members will be updated at the meeting]

12 The dwellings shall provide independent living accommodation for people aged 55+ years old in need of care and for no other purpose including any other purpose in Class C3 in the Schedule to the Town and Country Planning (Use Classes Order) 1987, or in any provision equivalent to that class in any statutory instrument invoking or re-enacting that Order.

Reason: To ensure that the application provides the substantial public benefits to outweigh the less than substantial harm to Fulford Village Conservation Area.

13 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) development of the type described in Classes A, B, C, D, E or F of Schedule 2 Part 1 or Classes A or B of Schedule 2 Part 2 of that Order shall not be erected or constructed unless permission has first been granted by the Local Planning Authority.

Reason: In the interests of protecting the historic character and appearance of Fulford Village Conservation Area.

14 No development shall take place until details of the proposed means of surface water drainage, including details of any balancing works and off site works, have been submitted to and approved by the Local Planning Authority.

Reason: In the interest of satisfactory and sustainable drainage.

15 The development shall be carried out in accordance with the following programme of archaeological mitigation. All three stages shall be completed and approved by the local planning authority.

A) No development shall commence until a written scheme of investigation (WSI) has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no demolition/development shall take place other than in accordance with the agreed WSI. The WSI shall conform to standards set by the Chartered Institute for Archaeologists.

B) The watching brief and any necessary post-investigation assessment shall be completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part (A) above and the resources shall be made available for analysis, publication and dissemination of results and archive deposition. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

C) A copy of a report (or publication if required) shall be deposited with City of York Historic Environment Record to allow public dissemination of results within six months of completion or such other period as may be agreed in writing with the Local Planning Authority.

Reason: The site is of archaeological interest. Therefore, the development may affect important archaeological deposits which must be recorded prior to destruction.

16 No demolition and construction works or ancillary operations, including deliveries to and dispatch from the site which are audible beyond the boundary of the site shall take place on site other than between the hours of 08:00-18:00 Monday to Friday and between 09:00-13:00 on Saturdays.

Reason. To protect the amenity of local residents.

## **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) and, in seeking solutions to problems identified during the processing of the application took the following steps in order to achieve a positive outcome:

- sought changes to the access;
- sought further information about impact on protected trees and protected species;



- attached appropriate conditions to the planning permission
- considered the requirement for a planning obligation

## 2. CONTROL OF POLLUTION

The developer's attention is drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be adhered to, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(a) All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday 08.00 to 18.00

Saturday 09.00 to 13.00

Not at all on Sundays and Bank Holidays.

(b) The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

(c) All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturers instructions.

(d) The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

(e) All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

(f) There shall be no bonfires on the site

## 3 UNEXPECTED CONTAMINATION

In the event that contamination is found at any time when carrying out the approved development, the findings must be reported in writing immediately to the Local Planning Authority. In such cases, an investigation and risk assessment must be undertaken and where remediation (clean-up) is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning

Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority. Should City of York Council become aware at a later date of suspect contaminated materials which have not been reported as described above, the council may consider taking action under Part 2A of the Environmental Protection Act 1990.

**Contact details:**

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