

COMMITTEE REPORT

Date: 14 June 2023 **Ward:** Fulford and Heslington
Team: East Area **Parish:** None

Reference: 22/01122/FUL
Application at: Land Adjacent To 141 Broadway York
For: Variation of condition 2 of permitted application 18/02129/FUL to omit footpath across the front of houses, alter position of fences between properties and erect a shed between plots 2 and 3 (retrospective).
By: Mr Gordon Harrison
Application Type: Full Application
Target Date: 15 June 2023
Recommendation: Approve

1.0 PROPOSAL

THE SITE

1.1 The application site contains four no 4 bedroom dwellings that were recently constructed close to the junction of Broadway and Heslington Lane in Fulford.

PROPOSAL

1.2 The planning permissions for the development indicate a landscaped triangle of land in front of the enclosed gardens of the 4 properties. The drawings indicated this as being within the planning application site but to remain open and undivided. The drawings also showed a footpath running from Broadway, along the front boundary of the proposed enclosed front gardens before carrying on to the boundary with Walmgate Stray.

1.3 The scheme has been completed, a gravel timber edge path was introduced along the front of the enclosed gardens but hasn't been maintained and there is no longer a clear pathway along the fronts of the gardens. The path never formed an access in to Walmgate Stray. This planning application seeks to amend the drawings to omit the footpath. It also seeks retrospective permission for a small shed that is located between units 2 and 3 and for the 1.5m timber fences located between the homes to project approximately 2.5m forward of the homes (the approved schemes indicated that they would be flush to the front building line of the homes).

RELEVANT PLANNING HISTORY

1.4 The original permission for four houses on the site reference 14/02569/FUL was approved under delegated powers in February 2015. Following this permission there have been several minor changes to the scheme including the addition of two single garages to the rear, modifications to the rear parking layout and a change in house types. These permissions all indicated that the footpath to the front would be provided.

1.5 Since the February 2015 permission there have also been two refused planning applications at the site also for 4 houses (ref:16/02069/FUL and 17/01022/FUL). Both these schemes sought to create a scheme where the gardens would appear to back on to Heslington Lane with the enclosed back gardens of the homes abutting the verge adjacent to Heslington Lane. On both occasions the applications were refused because it was considered that they would detract from the character of the area including the provision of a transition between the main built-up area of the City and the openness of Walmgate Stray.

1.6 The 2017 application was dismissed at appeal. Neither the 2017 delegated refusal or appeal decision or the 2016 delegated refusal made any reference to the absence of a footpath linking with Walmgate being a reason to refuse/dismiss the applications/appeal.

CALL IN

1.7 The application was called in for determination at planning sub-committee by Councillor Aspden should the application be recommended for approval. The reason given was visual amenity, no access to Walmgate stray as intended, potential highway safety issues, and the lack of a path leading to residents incorporating the open land into their gardens.

2.0 POLICY CONTEXT

2.1 Policies

City of York Local Plan Publication Draft 2018

D1 Placemaking

D2 Landscape and setting

T1 Sustainable access

3.0 CONSULTATIONS

3.1 None

4.0 REPRESENTATIONS

Fulford Parish Council

3.2 The Parish Council object to the removal of the footpath. It was always meant to be a publicly accessible connecting route through the site. It is absurd to have no pedestrian front access to the properties. A footpath would discourage home owners from extending their gardens across to the Heslington Lane frontage. Plot 4 has erected stone walling on the path and also extended their garden on to the open land.

Fishergate Planning Panel

3.3 The original permission (14/02569/FUL) refers to a 'publicly accessible area of open land'. The lack of provision of the path has led to occupiers taking over the land. The visual amenity of the area has declined and also concerns regarding the impact of boundaries on road safety.

Neighbour Notification and Publicity

3.4 One objection has been received. This states that the footpath to be removed is widely used by people accessing Low Moor including families with children. The footpath opposite is narrow and has poor access to the public to cross the road. If residents don't like the public passing close to their gardens why don't they put a fence up? (Case office comment – it is presumed that the objector was of the misunderstanding that the applicant intended to remove the long-standing public footpath adjacent to Broadway/Heslington Lane rather than the path indicated as running in front of the enclosed gardens)

5.0 APPRAISAL

KEY ISSUES

5.1 The key issues are:

- Changes to dividing fence and erection of shed.
- Impact of absence of footpath on public access.
- Impact of absence of footpath on visual amenity.
- Impact on amenity of residents

APPRAISAL

National Planning Policy Framework (2021)

5.2 The National Planning Policy Framework is material to the determination of planning application and sets out the Government's overarching planning policies. Paragraph 7-11 explains that the purpose of planning is to contribute to achieving sustainable development. Development proposals that accord with an up-to-date development plan should be approved without delay. Where there are no relevant development plan policies or where they are out of date, planning permission should be granted unless policies in this framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.

5.3 Section 2 confirms that there are three interdependent objectives to securing sustainable development. Economic objectives help to build a strong, responsive and competitive economy, social objectives support strong, vibrant and healthy communities by ensuring there is a sufficient range of homes supported by accessible services to support communities' health, social and cultural well-being, and environmental objectives protect and enhance the natural, built and historic environment. At the heart of the NPPF is a presumption in favour of sustainable development.

5.4 Chapter 9 relates to Promoting Sustainable Transport. In respect to considering development proposals, paragraph 112 states that development should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring area.

Emerging Local Plan

5.5 The emerging Local Plan was submitted for examination on 25 May 2018. Examination hearings took place between December 2019 and September 2022. Consultation on proposed modifications took place in early 2023. The emerging Plan policies can be afforded weight in accordance with paragraph 48 of the NPPF.

5.6 Policy D1 'Placemaking' states that development proposals will be supported where they improve existing urban environments, enhance York's special qualities and better reveal the significances of the historic environment. Density should be appropriate to its context. Parking should not dominate the street scene and be integrated into the development. Policy D2 requires development to respond to local landscape character, setting and context of the city, making a positive contribution to York's special qualities.

5.7 Policy T1 promotes sustainable travel and ensuring development is safe with appropriate access to the adopted highway. It also states that walking networks should integrate with the development, including Public Rights of Way where appropriate.

APPRAISAL

Changes to dividing fence and erection of shed.

5.8 The variation indicates that the 1.5m fences that separate the homes would be located 2.5m forward of the properties, rather than in line with the frontages. This has a slight impact on the open character of the patios/gardens, however it is considered a reasonable revision in that it creates a durable screen between the patio areas and ground floor windows of the individual homes. The erection of fences in the specific location would typically not require planning permission, however, the 2018 variation and subsequent consents at the site removed permitted development rights to erect boundaries. The shed that has been erected without consent is small in scale and set behind the front building line. It would not have a significant impact on the streetscene or neighbours living conditions. As with fences and walls, permitted development rights at the site have been removed for garden buildings.

Impact of the absence of footpath on public access.

5.9 The removal of the footpath would not have a significant impact on access to the 4 properties erected on the site. Although the homes are designed to appear as if

the elevation fronting Heslington Lane is the 'front' including the provision of a conventional 'front' door, it is the case that they are laid out internally so that the elevation that faces the private road that runs behind the buildings is functionally the 'front' with a door leading to the hallway of the property. The door in the elevation facing the private road would be used by residents and visitors, including for example for deliveries. The door facing Broadway leads directly into the living room and would be used by residents to access the patio. As the properties are detached it is also possible to access the rear garden from the front without going through the house. It is the case that the floor plan for the housing approved in 2014 did include the door facing Broadway as the main entrance, however, this was changed in the floorplans approved in the 2018 consent. The footpath remained on the scheme.

5.10 The main consideration is whether the footpath would be necessary to provide suitable access to Walmgate Stray. The proposed curved route of the footpath shown on the approved drawings does not provide the most direct access to or from Broadway. This would be via the existing footpath that runs along Broadway/Heslington Lane. It is noted that the footpath adjacent to Broadway/Heslington Lane is separated from the road by a grass verge and as such its use would not seem to raise any particular safety issues for users. The benefits of using the new path would presumably be recreational, however, it is considered that any recreational gains would be very modest given the short length of the path and the fact that the existing roadside path abuts land left open at the front of the development.

5.11 The footpath was initially proposed by the applicant and was not a route sought by or promoted by the Local Planning Authority. Of significance is the informative on the 2015 and 2018 permissions that states:

“Connection of the private footpath to the Stray and associated public right of way would require further permission from Leisure services and our public rights of way team. Should this not be granted, we would accept the path terminating at the end house.”

5.12 Based on the history of the site it is not considered that the provision of a new path to Walmgate Stray is necessary to justify the approval of the scheme or played any significant role when assessing the planning merits of the proposal. Removal of the footpath from the approved drawings would not raise concerns regarding public access to Walmgate Stray or the individual homes.

Impact of absence of footpath on visual amenity.

5.13 It is not considered that the provision of the path itself is important for visual amenity. If re-constructed it would reduce the amount of soft landscaping on the site and to be a through route would require a gap to be created/maintained in the hedge abutting Walmgate Stray.

5.14 In visual terms the main benefit of the path would be to provide a clear marker between land that forms the small, enclosed gardens and land that is outside. It is the case however that a garden boundary is shown on the approved plans and demarcates the line of the enclosed private gardens. Three properties currently have a timber and chain link fence with some planting as a boundary. One property has a low stone wall. In the description of proposed development for the 2015 planning permission the officer's delegated report refers to the land to the front of the gardens as being "a publicly accessible area of open land". The approved site layout drawing makes no indication in respect to whether the land would be publicly accessible and there is no condition, management plan or legal agreement on any of the planning permissions that would indicate or require this. The 2015 permission included a condition requiring details of landscaping (condition 6). The details submitted to discharge this condition were approved in 2015. The approved landscaping scheme which included the footpath indicated the land to be laid to grass with three trees planted at its centre. The land currently contains several small trees. Hedges have also been planted at the southern boundary of the land where it abuts the verge adjacent to Heslington Lane.

5.15 It would seem based on the 2015 permission and subsequent variations to it, that there is nothing that would indicate that the land between the site of the proposed path and verges associated with Heslington Lane is public open space. Its essential value would seem to be aesthetic. The current application indicates that the land remains within the control of the owners of the 4 homes. Permitted development rights have been removed meaning that boundary walls and fences cannot be erected on the application site without planning permission. Furthermore, permitted development rights have been removed for outbuildings to be erected on the site. Any outbuildings forward of the homes would typically require planning irrespective of permitted development rights being removed. The land currently contains no structures that impact on its open character and it provides a green and open foreground/background to Walmgate Stray and Heslington Lane.

5.16 If the footpath that is proposed to be omitted was a through route to Walmgate Stray it would arguably lesson the likelihood that occupants of the homes would see the land to the south of it as part of their own 'domain', however, the planning permissions for the site do not require a through route to Walmgate for use by the general public to be provided. It is considered that the conditions and restrictions that exist will ensure that the Local Planning Authority are able to keep the land free from any significant development that would conflict with its open and landscaped character. It should be noted that even if a path were provided and in existence there are no planning controls to force the owners to permanently retain it should they consider it superfluous.

5.17 On balance it is not considered that there are visual amenity grounds to require the path to the front to be provided.

Impact on amenity of residents

5.18 The path would provide no real benefit to the occupants of the homes as their 'front' door is at the northern side. No correspondence has been received from the owners or occupants of the 4 homes regarding the planning application.

6.0 CONCLUSION

6.1 The proposed development of four homes was set to the back of the application site to enable the frontage to be soft landscaped to retain the open character of this part of the street. Car parking, external storage facilities and the access road are to the rear and largely screened by the houses. The houses were designed to appear to front Heslington Lane, however, the main entrance is to the rear and what appears as the front gardens are the properties main garden space. Planning conditions exist for the site that allows the Local Planning Authority to control the erection of walls, fences and garden buildings.

6.2 It is not considered that the absence of a path along the front gardens detracts from any necessary planning need such as providing suitable private access to the 4 homes or public access to Walmgate Stray. Although the path is shown on the approved drawings and should be provided, no planning conditions exist that require it to be retained once provided. It is not considered that the lack of the provision/retention of the path would have a significant impact on the future use and appearance of the land within the application site that fronts Heslington Lane.

6.3 The proposals are considered to comply with the National Planning Policy Framework and the relevant policies of the emerging Local Plan.

7.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

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

Site Plan GHBB2 41 P13 received on 6 April 2022.

Pland and elevations of shed reference GHBB2 49 P00 received on 30 March 2023.

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 areas shown on the approved plans for parking and manoeuvring of vehicles and cycles shall be retained solely for such purposes.

Reason: In the interests of highway safety.

4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order), no door, window or other opening additional or different in size and design to those shown on the approved plans shall at any time be inserted in the front elevation of the properties.

Reason: In the interests of the preserving the character and appearance of the local environment.

5 Any trees or plants shown on the approved landscaping scheme which within a period of five years from the substantial completion of the planting and development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority. This also applies to any existing trees that are shown to be retained within the approved landscape scheme.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species within the entire site, since the landscape scheme is integral to the amenity of the development.

6 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development Order 2015 (or any Order revoking or re-enacting that Order), development of the type describe below shall not be erected or constructed:

- Classes A (extensions), B (roof alterations) and E (outbuildings) of Schedule 2 Part 1 of that Order; or
- Class A (gates, fences, walls, or other means of enclosure) of Schedule 2 Part 2 of that Order in respect of the front (south-east) garden boundary.

Reason: In the interests of the amenities of the adjoining residents and the visual amenities of the local environment the Local Planning Authority considers that it should exercise control over any future extensions or alterations which, without this condition, may have been carried out as "permitted development" under the above classes of the Town and Country Planning (General Permitted Development Order 2015.

7 2.0 x 2.0m sight lines, free of all obstructions which exceed the height of the adjacent footway by more than 0.6m, shall be maintained.

Reason: In the interests of pedestrian safety.

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 having taken account of all relevant national guidance and local policies, considers the proposal to be satisfactory. For this reason, no amendments were sought during the processing of the application, and it was not necessary to work with the applicant/agent in order to achieve a positive outcome.

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