

Appeal Summaries for Cases Determined 01/07/2018 to 30/09/2018

Application No: 15/00524/OUTM
Appeal by: British Sugar
Proposal: Outline application for the development of the site comprising up to 1,100 residential units, community uses (D1/D2) and new public open space with details of access (to include new access points at Millfield Lane and Boroughbridge Road and a new link road, crossing the Former Manor School Site) and demolition of the Former Manor School buildings (duplicate application)
Site: British Sugar Corporation Ltd Plantation Drive York YO26 6XF
Decision Level: CMV
Outcome: ALLOW

At the time of making the appeal against non-determination there was disagreement about the appropriate (viable) level of affordable housing to be secured and other 106 matters were unresolved. By the time of the inquiry the only outstanding matters were viability and affordable housing. By the end of the inquiry both parties had agreed to a viability review mechanism that would deliver between 3% and 20% affordable housing overall. This was necessary to allow development/incentivise the scheme given significant remediation costs. The review mechanism would be applied at each reserved matters application. The 'surplus land value' at each phase would be required to provide affordable housing up to a cap of 35%. (in any phase) If the final phase were to provide 35% affordable housing on site and the overall amount of affordable housing was still not at 20%, a contribution towards off site affordable housing would be provided. The inspector was satisfied that all the Council's 106 requirements were acceptable, and with the viability review mechanism also. On this basis permission was granted.

Application No: 16/02285/FULM
Appeal by: Mr Robert Bennett
Proposal: Erection of a single storey car showroom and workshop with associated facilities
Site: 10 Great North Way Nether Poppleton York
Decision Level: CMV
Outcome: DISMIS

The appeal site is a vacant plot of land within a business park. The land is designated as a Site of Local Interest to Nature Conservation (SINC) and was allocated as employment land in the DCLP. The application was refused as it was contrary to policy PNP2 of the Upper and Nether Poppleton Neighbourhood Plan which forms the development plan for that area. The site is identified as green infrastructure in the NP. Policy PNP2 states that green infrastructure should be safeguarded and that development which would harm the integrity or appearance of the green infrastructure will not be supported. The appellant provided a vegetation survey to try to evidence that the site should no longer be designated as a SINC although the inspector noted that there was no indication that the site's designation as green infrastructure was dependent on it being a SINC. A scheme for mitigation measures for great crested newts and off-site mitigation for the SINC had been agreed at application stage but no legal agreement had been submitted with the appeal to secure these. The inspector noted that similar mitigation had been agreed on neighbouring sites but these had all been approved prior to the NP and did not therefore relate to sites allocated as green infrastructure. The inspector found that the proposal would harm the integrity and appearance of a site allocated as green infrastructure and for which no satisfactory mitigation was proposed. The site does not represent a suitable site for the proposed development having regard to its allocation as an area of green infrastructure in the NP.

Application No: 16/02608/OUT
Appeal by: Ms S Goodwill
Proposal: Erection of 1 no. agricultural/horticultural workers dwelling
Site: Proposed Dwelling To The South Of Mayfields Dauby Lane Kexby York
Decision Level: DEL
Outcome: DISMIS

The proposal was for the erection of a single detached dwelling for an additional worker in association with an existing nursery operation and was made in Outline with access only to be considered. The site lies in the Green Belt between Kexby and Elvington and was therefore considered to be inappropriate development. The applicant was required to demonstrate a functional need for an additional dwelling on the site which they were unable to do. It was claimed that as the nature of the business was horticultural then it benefited from the exception in terms of agricultural and forestry related development contained within the NPPF. This was disputed and it became clear that the proposal was intended to accommodate the daughter and son-in law of the nursery operator who lived a very short distance away in Elvington. Permission was refused and the case heard at a hearing. The Inspector agreed that the proposal was not agricultural development and therefore inappropriate development within the Green Belt. In terms of functional need the Inspector agreed that there was no clear business case and that the requirements of the business did not need to be undertaken by an additional person resident on site. The appeal was therefore dismissed.

Application No: 17/00476/FULM
Appeal by: Crown Care
Proposal: Erection of three-four storey 74 no. bedroom care home with associated parking, cycle racks and landscaping following demolition of existing public house
Site: The Carlton Tavern 140 Acomb Road York YO24 4HA
Decision Level: COMP
Outcome: DISMIS

It was recognised that the proposal would contribute towards meeting a recognised need for specialist elderly accommodation within the city, which would provide social benefits. There would also be economic benefits during the construction period, in terms of employment and in support of local services from staff, residents and visitors. The proposal is also in an accessible location. However, in the light of paragraph 192 of the Framework, the loss of the non-designated heritage asset is not justified. In the absence of any evidence that there are no other potential viable uses of the site that would not require the demolition of the building, and which would also share many of these benefits, the Inspector therefore considered that the benefits of the proposed development would not outweigh the loss of the non-designated heritage asset. The site contains a large number of mature trees, particularly to the front and side, many of which are covered by a Tree Protection Order. The proposal would be much closer to many of the trees than is the case at present. In order to provide the lift, excavation works would be required within the root protection area of a tree which is already compromised by the existing access road. Whilst the Inspector acknowledged the need to provide a level access to the site they were unconvinced that the construction of these features could take place without causing damage to the trees, or even their removal and given the prominent position of the trees within the street scene, this would have a detrimental impact on the character and appearance of the area. In dismissing the appeal the Inspector found that the adverse impacts would significantly and demonstrably outweigh the benefits. As such, the proposal would not comprise sustainable development for which the Framework presumes in favour.

Application No: 17/00578/FUL
Appeal by: Andrew Cobley
Proposal: Use of property as a 7 bed House in Multiple Occupation (retrospective)
Site: 9 Sails Drive York YO10 3LR
Decision Level: DEL
Outcome: ALLOW

The Council accepted that it was probable that the lawful use of the property was as an HMO for up to 6 people. The application sought to regularise a change of use from C4 HMO to Large (7 bed) HMO. Property is in an area where HMO threshold has reached 10.87% at street level and 17.53% in neighbourhood. Refused on The level of HMO activity already causing problems for residents Expansion undertaken at the expense of the loss of off street parking capacity and internal storage If applicants attempted to provide appropriate cycle and bin storage facilities on the site and expand on site car parking it would have adverse impacts on on-site external amenity space and the visual amenities of the streetscene Inspector resolved CYC has no specific internal storage standards and he considered there was sufficient space in the rooms, kitchen cupboards and attic The proposed bin store at the front was acceptable as it would be hidden by a hedge so no need to reduce rear external amenity space A 7 space bike store in the rear garden would have no greater impact on external amenity space than the existing 5 cycle racks Roads in the area capable of absorbing a degree of on-street parking without detriment to highway safety Not persuaded that the additional parking demand of one resident would harm living conditions of neighbours Proposal will not alter balance of HMOs to other properties in the area The comings and goings of 7 occupiers will not be appreciably greater than 6 CYC argument that proposal could set a precedent not accepted

Application No: 17/01812/FUL
Appeal by: Mr Wayne Dixon
Proposal: Change of use of paddock to domestic garden
(retrospective)
Site: 2 Hawthorne Mews Strensall York YO32 5RR
Decision Level: DEL
Outcome: DISMIS

The proposal was for a retrospective change of use of land to the rear of 3 dwellings to garden curtilage. The application was refused as a result of the impact on protected species and the ecology of the River Foss; and the impact on the character or appearance of the Strensall Village Conservation Area. The inspector noted that the appeal sites contribute to the environment of the river corridor and that the enclosure of these areas would have implications for local habitats. Ecology surveys for a site on the other side of the river indicated the presence of water voles and otters and it is clear that the work which has taken place on the appeal sites has affected the area accessible to wildlife. No survey information was submitted with the applications and it was therefore impossible to assess the impact of the proposals on protected species and the natural environment of the river. The proposal conflicts with DCLP policy NE6 of the DCLP and the NPPF. The sites are within the Strensall Conservation Area and close to the Grade II listed Strensall Bridge. The inspector considered that the appeal sites related to the village - the CAA appraisal refers to houses having long rear gardens and it was considered that the sites fell within this description. No harmful impact on views into or out of the village was identified and the impact on the listed bridge was considered not to harm the significance of the heritage asset. The proposals were considered to preserve the character and appearance of the CA and would not have a harmful effect on the setting of listed buildings. However the lack of survey information meant that the impact on protected species could not be demonstrated and any harm could not be mitigated. The appeals were dismissed.

Application No: 17/01836/FUL
Appeal by: Mr C Swift
Proposal: Erection of 2no. semi detached dwellings following demolition of existing bungalow (resubmission)
Site: The Bungalow 1A Wenlock Terrace York YO10 4DU
Decision Level:
Outcome: DISMIS

Planning permission was refused for the erection of 2no. three-storey semi detached dwellings following demolition of an existing vacant bungalow at No.1A Wenlock Terrace (17/01836/FUL). The reasons were that the scheme caused significant harm to the character of this part of the conservation area through inappropriate style, orientation and mass, loss of an important gap in the street scene which would also block views of the distinctive profile and architectural features of the prestigious houses on Wenlock Terrace. There was also found to be harm to neighbour amenity as a result of over-development of the site. The public benefits of two dwellings and solar panels on the roof did not outweigh this harm. The Inspector dismissed the Appeal. She agreed that the proposals would cause adverse impact on the urban grain through introducing a prominent building which did not follow the pattern of long linear plots. The scheme would cause a loss of openness, be more imposing in the street scene and be of an inappropriate scale, dwarfed by neighbours and significantly under scaled. It would be an incongruous addition in the street scene. The scheme would cause harm to the character and appearance of the conservation area. She found the harm to be less than substantial and as such considered the public benefits set by the appellant, including the removal of a vacant derelict building, screening of a neighbouring unsympathetic building and provision of two new dwellings. However whilst lending support to the scheme, she still concluded that these benefits did not outweigh the harm caused to the significant heritage assets as a result of the proposals. She also identified harm to neighbour amenity including loss of light, loss of outlook and loss of privacy for both existing and future residents. The scheme was thus not in accordance with the NPPF nor saved policies in the DCLP (2005) which were given little weight.

Application No: 17/01848/FUL
Appeal by: Mr Andrew Blackburn
Proposal: Extension of garden curtilage into field at the rear
(retrospective)
Site: 3 Hawthorne Mews Strensall York YO32 5RR
Decision Level: DEL
Outcome: DISMIS

The proposal was for a retrospective change of use of land to the rear of 3 dwellings to garden curtilage. The application was refused as a result of the impact on protected species and the ecology of the River Foss; and the impact on the character or appearance of the Strensall Village Conservation Area. The inspector noted that the appeal sites contribute to the environment of the river corridor and that the enclosure of these areas would have implications for local habitats. Ecology surveys for a site on the other side of the river indicated the presence of water voles and otters and it is clear that the work which has taken place on the appeal sites has affected the area accessible to wildlife. No survey information was submitted with the applications and it was therefore impossible to assess the impact of the proposals on protected species and the natural environment of the river. The proposal conflicts with DCLP policy NE6 of the DCLP and the NPPF. The sites are within the Strensall Conservation Area and close to the Grade II listed Strensall Bridge. The inspector considered that the appeal sites related to the village - the CAA appraisal refers to houses having long rear gardens and it was considered that the sites fell within this description. No harmful impact on views into or out of the village was identified and the impact on the listed bridge was considered not to harm the significance of the heritage asset. The proposals were considered to preserve the character and appearance of the CA and would not have a harmful effect on the setting of listed buildings. However the lack of survey information meant that the impact on protected species could not be demonstrated and any harm could not be mitigated. The appeals were dismissed.

Application No: 17/01938/FUL
Appeal by: Mr Dennis Wright
Proposal: Extension of garden curtilage into field at the rear
(retrospective)
Site: 4 Hawthorne Mews Strensall York YO32 5RR
Decision Level: DEL
Outcome: DISMIS

The proposal was for a retrospective change of use of land to the rear of 3 dwellings to garden curtilage. The application was refused as a result of the impact on protected species and the ecology of the River Foss; and the impact on the character or appearance of the Strensall Village Conservation Area. The inspector noted that the appeal sites contribute to the environment of the river corridor and that the enclosure of these areas would have implications for local habitats. Ecology surveys for a site on the other side of the river indicated the presence of water voles and otters and it is clear that the work which has taken place on the appeal sites has affected the area accessible to wildlife. No survey information was submitted with the applications and it was therefore impossible to assess the impact of the proposals on protected species and the natural environment of the river. The proposal conflicts with DCLP policy NE6 of the DCLP and the NPPF. The sites are within the Strensall Conservation Area and close to the Grade II listed Strensall Bridge. The inspector considered that the appeal sites related to the village - the CAA appraisal refers to houses having long rear gardens and it was considered that the sites fell within this description. No harmful impact on views into or out of the village was identified and the impact on the listed bridge was considered not to harm the significance of the heritage asset. The proposals were considered to preserve the character and appearance of the CA and would not have a harmful effect on the setting of listed buildings. However the lack of survey information meant that the impact on protected species could not be demonstrated and any harm could not be mitigated. The appeals were dismissed.

Application No: 17/01973/FUL
Appeal by: Mrs Jenny Kabir
Proposal: Second floor extension and alterations to roof and insertion of window in first floor north elevation (retrospective).
Site: Fresh Dental Smile Clinic Ground Floor Manor House Manor Lane York YO30 5XY
Decision Level: DEL
Outcome: DISMIS

The appeal related to a proposal to add another floor to a two-storey dentists building located on the edge of an industrial estate in Rawcliffe. It was refused because of the unacceptable harm the increase in height would have on the enjoyment of the gardens of homes that abut it. It was also refused because of the appellants unwillingness to accept a condition that restricted the use of the extended building to a dentist, rather than any use in Class D1 Non-Residential Institutions. At appeal the agent accepted the use restriction. Despite this, the Inspector dismissed the appeal considering that the existing building was very dominant and it was unacceptable in respect to neighbours living conditions to increase its height further.

Application No: 17/02134/FUL
Appeal by: Mr Mohan
Proposal: Two storey and single storey rear extension following demolition of existing rear extension
Site: 10 St Johns Crescent York YO31 7QP
Decision Level: DEL
Outcome: DISMIS

The appeal relates to the refusal of a part two storey and part single storey rear extension to replace the existing two storey and single storey rear offshoot to the host mid terraced dwelling. The two storey rear extension would be greater in length and marginally wider than the existing two storey rear offshoot and the single storey rear extension would infill the space between the side boundary wall and two storey rear extension. The application was refused consent as it was considered that the combined length and mass of the two storey and single storey rear extensions would harm the amenity of adjoining residents. The proposals would appear over-dominant and would result in a loss of outlook from the adjoining property. The combined length and mass of the rear extensions would appear overbearing and oppressive from the rear ground floor living room, side kitchen windows and adjacent rear yard area of the adjoining dwelling. Within the context of the terrace, the rear extensions would be unduly dominant and result in an oppressive relationship between the dwelling houses. The Inspector considered that the outlook from the rear of the adjoining property is already constrained. In these circumstances, even small alterations to outlook can be significant to residents. The development would increase the level of enclosure and would extend a significant depth close to the side boundary. The deeper and marginally wider two storey rear extension would be clearly evident above the single storey rear extension and would further limit the outlook from the side and rear windows of the adjoining dwelling. In combination, the rear extensions would be overly imposing and would unacceptably reduce the already limited outlook from the rear rooms of the adjoining property. The Inspector concluded that the proposals would be harmful to the living conditions of residents at no. 9 St. John's Crescent with regard to outlook. The appeal was dismissed.

Application No: 17/02541/CLU
Appeal by: Mr Greg Harrand
Proposal: Certificate of lawfulness for use of property as a House in Multiple Occupation within Use Class C4.
Site: 20 North Parade York YO30 7AB
Decision Level: DEL
Outcome: DISMIS

We refused the above CLU application on grounds that sufficiently precise and unambiguous evidence had not been submitted to demonstrate that the building had a lawful C4 HMO use. The Inspector commented that appellant stated that the HMO use commenced on 6 August 2009 but contradicted this by stating that the property has been used as a HMO since it was purchased in November 2008. Either way, it was apparent to the Inspector that the HMO use began prior to the introduction of permitted development rights for the change of use of a dwellinghouse to an HMO in 2010 and that at the time when the HMO use commenced it would have been unlawful. A further complication the Inspector noted was that it was undisputed that the property had been used for guest accommodation in connection with the appellants nearby hotel use, whether alongside or as an alternative to occupation by tenants, which may have resulted in a material change of use involving or including guest accommodation at some point. The Inspector concluded by saying that the onus is on the appellant to demonstrate that, on the balance of probability, the use has continued over a ten year period. However, the earliest date the appellant claimed that the HMO use was operational was less than ten years before the date of the application and the HMO use therefore fails to meet this test.

Application No: 17/03042/FUL
Appeal by: Mr & Mrs Davenport
Proposal: First floor side extension and porch extension to front.
Site: 96 Acorn Way York YO24 2RP
Decision Level: DEL
Outcome: DISMIS

Planning permission was refused for a first floor side extension and front porch due to its excessive size and width to the side, resulting in an incongruous, over-dominant addition in the streetscene. The addition represented a 117% increase in the two storey width of the house, the extension being over an existing single storey side projection. Permission was also refused on harm to the amenity of the nearest neighbours to the side of the first floor extension. The Inspector dismissed the appeal on both grounds, upholding the Council's reasons for refusal. They concluded that the proposal would be an excessively wide and bulky addition which would be read as a considerable unbroken continuation of the property's front elevation which would appear out of scale with it, overwhelming it. The use of contemporary materials was also cited as resulting in further harm. With regard to neighbour amenity, the Inspector concluded that the proposal reduced the spaciousness between houses, causing harm to those houses at right angles to the appeal house and their outlook from the front. Weight was given to the Council's SPD on House Extensions and Alterations and was quoted throughout the decision by the Inspector.

Application No: 18/00038/FUL
Appeal by: Mr Peter Black
Proposal: Erection of 1.8m fence to side (retrospective).
Site: 20 Copmanthorpe Lane Bishopthorpe York YO23 2QR
Decision Level: DEL
Outcome: ALLOW

The appeal property is a traditional semi-detached dwelling in a street of similar development. The application sought retrospective consent for the erection of a 1.8m high close board timber fence to the side boundary of the site adjacent to a shared access lane. Retention of the fencing was refused due to its design, height, appearance and use of materials, which officers considered to appear incongruous and unduly imposing within the streetscene resulting in a stark, solid and harsh feature in the lane which is otherwise characterised by hedging and mature vegetation. The Inspector concluded that whilst the fence had replaced a hedge that contributed to the green and leafy nature of the road, given the existence of other fencing in the vicinity and the retention of the hedge towards the front of the site, that the overall impact was not particularly incongruous and the fence was of robust design. As such the fencing was not considered to have a detrimental impact on the character and appearance of the area and the appeal was allowed.

Application No: 18/00204/FUL
Appeal by: Mr & Mrs Chris and Claire Burrows
Proposal: Single storey rear extension.
Site: 91 Bishopthorpe Road York YO23 1NX
Decision Level: DEL
Outcome: ALLOW

The appeal relates to the refusal of a single storey rear extension that would be attached to the existing two storey rear offshoot to the host mid terraced dwelling. In revised proposals, the extension would be almost the full width of the plot, approx 7.8 metres in length as attached to the two storey rear offshoot, with a total projection of approx 11.5 metres from the rear elevation of the main house. The extension was refused as it was considered of a significant and disproportionate length and mass that would be at odds with the existing character and diminishing form of the rear offshoots to the host and adjoining dwelling house. The extension would appear dominant and overbearing when viewed from the rear of the adjoining dwelling and the proposals would harm outlook. The Inspector considered that the extension would generally maintain the established hierarchy of offshoots to the adjoining dwellings. An area of garden would be maintained beyond the extension and a small open courtyard adjacent to the two storey offshoot. The extension would not be open to public view or prominent in the street scene. The extension would read as a secondary element and would not appear unduly disproportionate to the original dwelling. With regard to the impact on living conditions, the Inspector considered that the extension would have a relatively low ridge and eaves height and the pitched roof would slope away from the adjoining dwelling. The eaves of the extension would not be much greater in height than the existing high boundary wall with trellis above that is located between the adjoining properties. Therefore, the Inspector concluded that the extension would not unduly worsen the levels of outlook from the rear of the adjoining dwelling and would not be an unduly dominant or overbearing feature. The appeal was allowed.

Application No: 18/00366/FUL
Appeal by: Mr And Mrs Breene
Proposal: Erection of dormer bungalow with garage
Site: 115 Fulford Road York YO10 4ET
Decision Level: CMV
Outcome: ALLOW

The appeal site comprised of a large back garden with the proposed dwelling located to the rear of the site and accessed of a seperate drive to the side. The Inspector concluded that the site was built up on three sides and that the garden area retained would not be at odds with other properties. Garden area would be lost but it was not readily visible from the public realm. Three approvals exist and the character of the area has not materially changed since. In connection with neighbours amenity it was considered that the dwelling would not be tall nearest the dwellings along Killburn, being 2.5m at a distance of 1m away from the boundary. The dwelling would be hidden from view from the ground floor windows by the existing retained hedge. It would not appear unduly dominant or overbearing from there and would not result in an undue loss of outlook.

Application No: 18/00388/FUL
Appeal by: Mr And Mrs Lofthouse
Proposal: Two storey side extension, new vehicular access crossing to front and timber fence to side boundary.
Site: 6 Little Meadows Haxby York YO32 3YY
Decision Level: DEL
Outcome: DISMIS

Planning permission was refused for a two storey side extension to this end terraced house, together with new boundary fence and vehicular crossover. The house is on a corner plot and the extension would have occupied a narrow strip of land to the side which would project right up to the side boundary. The Council considered it would adversely impact on the character and appearance of the streetscene and would significantly compromise the original design layout of Little Meadows, which incorporated generous areas of spacing, and it would harm the relationship of the building to the footpath. This original layout has remained virtually intact and thus contributed to the general amenity and character of the locality. The Inspector dismissed the appeal, upholding the Council's decision in all areas saying that the surrounding development had a pleasant open aspect and the proposal would have the effect of reducing the sense of openness and unbalance the terrace and introduce an incongruous built line into the streetscene. They also concluded that occupying a corner plot close to a footpath where there is also tree cover to the wide green verges would create an unwelcome sense of enclosure. The Inspector based their decision almost wholly on the wording of the NPPF, stating that the 2005 draft local plan does not comprise an emerging local plan and thus has little weight and the emerging 2018 plan is at its very earliest stages of adoption and thus they couldn't be confident that any policy relied on in the decision would be adopted in its current form, therefore also gave it little weight.

Application No: 18/00502/FUL
Appeal by: Mr I Jemison
Proposal: Removal of condition 5 of permitted application
 15/02919/FUL to allow retention of external seating
Site: Home Farm Buildings 81 Main
 Street Bishopthorpe York
Decision Level: DEL
Outcome: ALLOW

The appeal property is part of a complex of former agricultural buildings which have been converted into residential and business uses. The unit in question has permission for use as a cafe. The seating area is a strip of land to the west of the building and runs along the whole of the long rear boundary of the adjacent dwelling at 5 The Courtyard. No 5 has a short back garden that is around 4 metres deep and the seating area is close to its garden, patio area and rear door. The Inspector stated that the neighbouring property was located in the built up area where there is some existing background noise. He noted that the use of the area would be wither dependant and seemed unlikely that its use would be constant and over extended periods of time. He states that the building has been in commercial use previously for a number of years and could have had the potential to generate some noise and disturbance. In concluding he noted that the outdoor seating helps to maintain the viability of the small cafe and support a local business. The enterprise is valued in the community and this is a benefit of the proposal that aligns with the government's economic growth aspirations as set out in the Framework and weighs in its favour.

Decision Level:

DEL = Delegated Decision

COMM = Sub-Committee Decision

COMP = Main Committee Decision

Outcome:

ALLOW = Appeal Allowed

DISMIS = Appeal Dismissed

PAD = Appeal part dismissed/part allowed