

## **Appeal Summaries for Cases Determined 01/01/2013 to 31/03/2013**

**Application No:** 11/02190/FUL  
**Appeal by:** Mr C Forbes Adam  
**Proposal:** Demolition of existing dwelling, erection of replacement dwelling and alterations (including demolition) to domestic outbuildings to form garage, stores and ancillary domestic accommodation  
**Address:** Brick Farm Benjy Lane Wheldrake York YO19 6BH

**Decision Level:** DEL  
**Outcome:** DISMIS

The appeal application was refused under delegated powers. It related to a site located with York's Green Belt on the outskirts of Wheldrake. The site contains a former farm house, farm buildings and undeveloped land, now disused. The application proposed the replacement of the modest farmhouse with a larger dwelling house and the conversion and alteration of the adjacent former farm buildings to ancillary accommodation. The undeveloped land surrounding the farmhouse and farm buildings was proposed to be private garden. The reasons for refusal were twofold: 1. The proposal was considered to be inappropriate development as the replacement dwelling was materially larger and no very special circumstances were demonstrated to outweigh harm to the Green Belt by reason of inappropriateness and other identified harm being the scale of the property and the domestication of the semi-agricultural area; 2. Loss of bat habitat without sufficient compensation. The Inspector concurred that only the house and the small areas of land immediately associated with it (being an area to the front and a small yard to the rear) had a lawful residential use. He accepted that the site lay within York Green Belt as established by RSS. The Inspector agreed with the green belt reason for refusal, concluding that there were no very special circumstances (including building to passive house standards of energy efficiency) to outweigh the harm identified from inappropriateness and to its openness from the site's character and appearance. He did not accept the second reason for refusal, considering that the mitigation proposals were acceptable as they were recommended by an appropriately qualified specialist. The appeal was dismissed on green belt grounds.

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**Application No:** 11/03096/LBC  
**Appeal by:** Mr Paul Gould  
**Proposal:** 2no. rooflights to front  
**Address:** 22 St Pauls Square York YO24 4BD

**Decision Level:** DEL

**Outcome:** DISMIS

Mid terraced residential property part of a curved terrace of 3-storey dwellings. Existing roof currently unpunctuated, though many within the area have either one of two rooflights or dormers. Inspector agreed that the curving of the front terrace presents a strong and generally coherent vernacular period character and appearance which makes a positive contribution to the Conservation Area; and that the size and design of the two proposed rooflights would draw undue attention within the roofscape rather than being discreet. as such they would result in appreciable harm to the significance of the listed building. The harm was not outweighed by other benefits.

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**Application No:** 12/00940/OUT  
**Appeal by:** Mr Ryan Unsworth  
**Proposal:** Erection of two storey dwelling  
**Address:** Proposed Dwelling To The South Of 39 Sandringham Close Haxby York

**Decision Level:**

**Outcome:** DISMIS

Outline planning permission was sought for the erection of a 2 storey dwelling on a suburban estate. All matters were reserved except access but an illustrative site analysis plan showed a 2 storey house within the site. The application was refused because the buildings scale, proportions and location, particularly its projection behind the adjacent dwelling, would have had an unacceptable impact on the adjacent occupiers. At the appeal the councils position was that whilst layout, scale and appearance were reserved, the applicant had not demonstrated that a house of the dimensions for which consent was being sought could be built on the site without having an unacceptable impact on the adjacent occupiers. The inspector found that a 2 storey house on the site would have an overbearing effect on the adjacent occupiers. He appreciated that the siting of the building was a reserved matter, but the constraints of the site were such that there was only limited room for manoeuvre. Whilst the appellant stressed that details of the scheme would be the subject of a further submission, that did not obviate the need to establish clearly at the outline stage whether an appropriate scheme could be developed, given the constraints of the site. On the basis of the information before him the inspector was not satisfied that that could be achieved. Nor did he consider that the imposition of conditions could secure a satisfactory scheme. As usual the inspector attached little weight to the local plan, which he referred to as - that unadopted document. Kevin O'Connell 15 March 2013

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**Application No:** 12/01223/FUL  
**Appeal by:** Mrs Pavlou  
**Proposal:** Change of use of upper floors of Nos. 37 and 39 from mixed use restaurant and drinking establishment (Use classes A3/A4), to drinking establishment (Use class A4) (retrospective)  
**Address:** Vudu Lounge 39 Swinegate York YO1 8AZ

**Decision Level:** CMV  
**Outcome:** ALLOW

The appeal was against 3 conditions (numbered below as per the decision notice) imposed on the application to vary the opening hours(1)The use hereby permitted shall only be open to customers between the following hours; Sunday to Thursday, 1000 - 0100, following day, Friday to Saturday, 1000 - 0300, following day.(2) Temporary planning permission is granted until 13.9.13 for opening to customers between the following hours: Sunday to Thursday, 1000 to 0200, following day. Friday to Saturday, 1000 to 0300, following day. After 13.9.13 the opening hours shall revert to those in condition 1 of this permission unless a further planning permission has been granted.(5) Bottles and glass shall not be placed into bottle bins between the hours of 24.00 hours (midnight) and 08.00 hours on any day.The Inspector contended that with these conditions, the appeal premises will continue to have permission to open well into the night time period by 2 hours Sunday to Thursday and by 4 hours Friday and Saturday, and that this indicated some degree of satisfaction on the Council's part that the use of the premises would not unduly disturb nearby residents. He found it difficult to see what additional harm would result from longer opening hours.The inspector referred to the premises licence, in December 2010, to open until 04.30 every day. Circular 11/95 indicates in para 22 that a condition which duplicates the effect of other controls will normally be unnecessary. He considered that in this case, both the planning and licensing systems appeared to have regard to residential amenity and reliance on the licensing system would not appear to be at odds with the Council's attempt to achieve planning objectives. He therefore allowed the appeal against condition 1 and 2. He also varied the wording of condition 5 to prohibit bottles and glass shall not be placed into bottle bins sited externally of the building between 8.00 and 12.00 on any day.

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**Application No:** 12/01461/FUL  
**Appeal by:** Mr Thackray  
**Proposal:** Two storey rear extension (resubmission)  
**Address:** 72 The Old Village Huntington York YO32 9RB

**Decision Level:** CMV  
**Outcome:** ALLOW

The appeal related to the refusal of a part two-storey and part single-storey extension on the rear of a terraced property in Huntington conservation area. The Inspector did not consider that any dominance issues, overshadowing, or loss of light to number 74 would justify dismissal of the appeal. He felt that car parking arrangements were satisfactory and that the development would preserve the character of the conservation area.

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**Application No:** 12/01780/ADV  
**Appeal by:** Mr Tomas Svoboda  
**Proposal:** Display of externally illuminated fascia sign, non illuminated hanging sign and internal window sign (retrospective)  
**Address:** Ruby Slipper 92 Main Street Fulford York YO10 4PS

**Decision Level:** DEL  
**Outcome:** DISMIS

This application sought retrospective consent for the retention of existing signage, including a new fascia with illuminated trough light fitting; window display and projecting sign. The site lies within a small parade of shops of late Victorian origin, and lies within Fulford Conservation Area. The fascia sign is of a shiny modern appearance, which is neither sympathetic to the materials of the building nor the traditional materials currently in place within the immediate vicinity of the site within the Conservation Area. Returning the plastic fascia panel around the side of the projecting bay further compounds the intrusion of the strident yellow colour and shiny finish. The large light fitting adds clutter to the visual appearance of the area. improved design. The amount and scale of the window signs and vinlys are considered to harm the appearance of the shop, undermining the function of a shop window by obstructing any views through, and causing harm to the visual amenity of the Conservation Area. The projecting sign is of modern appearance, and again incorporates modern materials and appears at odds with the traditional appearance of the Conservation Area. The inspector agreed that the extent of signage was excessively strident and of modern appearance which was out of keeping with the character of the area.

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**Application No:** 12/01938/FUL  
**Appeal by:** Miss Sally Cakebread  
**Proposal:** Change of use from dwelling house (Use Class C3) to house in multiple occupation (Use Class C4)  
**Address:** 20 Hartoft Street York YO10 4BN

**Decision Level:** DEL

**Outcome:** DISMIS

The appeal related to the refusal of planning permission for a change of use from a dwelling house C3 to a house in multiple occupation HMO C4. The application site comprised of a two bed mid terrace, which proposed to alter the ground floor layout by providing one additional bedroom to the front and a shared communal living area, kitchen and bathroom facilities at the rear of the property. The application was refused because the number of existing houses in multiple occupation within 100 metres of the property already exceeded the 10 percent threshold set out in the draft SPD. The councils figures indicate that 13.1 percent of the homes within 100 metres of the property are HMOs. The Inspector acknowledged that the proposal would create just one additional occupant to the property, however dismissed the appeal on the basis of the already a high concentration of houses in multiple occupation in the locality detracted from its character and contributes to an imbalance in the make up of the local community. The Inspector also dismissed the arguments put forward by the appellant which stated that the thresholds should be set at 15 percent within a 100 metres of the property, due to the existing number of students living in this area. The inspector agreed with the council that the adopted thresholds are considered by the council to be the point at which a community can tip from balanced.

**Application No:** 12/01945/FUL  
**Appeal by:** Mr Peck  
**Proposal:** Change of use from dwelling house (Use Class C3) to house in multiple occupation (Use Class C4)  
**Address:** 11 Feversham Crescent York YO31 8HQ

**Decision Level:** DEL

**Outcome:** ALLOW

The appeal related to the refusal of planning permission for the change of use from a dwelling house to a house in multiple occupation (HMO C4). The appeal is the first to test the SPD approved in April 2012 seeking to control the concentration of houses in multiple occupation. Within 100m of the property 15 percent of homes are calculated to be HMOs. The threshold set out in the SPD is 10 percent. Policy 5.7 of the document states that changes of use from a dwelling house to a HMO will not be permitted when the numerical threshold is breached. This is because the concentration of HMOs is considered to have negative implications on, for example parking, maintenance, noise and general community cohesion. The Inspector allowed the appeal. He stated that the approach in the SPD must be applied with a degree of flexibility and pragmatism. He stated that because of its design ( a large terraced property with very small front garden) and location (close to the city centre, hospital and busy Wigginton Road) the impact of the specific proposal would not be unduly harmful. He felt that the street did not appear unkempt. He noted the objections of neighbours, however, considered that the local context was such that there was no cogent evidence that the proposal would unacceptably harm the character and appearance of the surrounding area. The Inspector included a condition requiring a management plan. The decision is significant as it seems to imply that where a change of use to a HMO would breach a threshold it would not necessarily justify refusal on cross city arguments relating to the need for balanced communities. Before refusing a proposal regard should presumably be given to whether there would be any significant identifiable harm to the particular location. Clearly this creates some uncertainty in respect to the consistent interpretation of the percentage based SPD.

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**Application No:** 12/02230/FUL  
**Appeal by:** Individual Restaurant Company  
**Proposal:** Replacement shop front  
**Address:** 18 Bridge Street York YO1 6DA

**Decision Level:** DEL

**Outcome:** DISMIS

The development proposed was for a replacement shop front with bi folding glazed door system. It involved the removal of the present curved glass fronts of Art Deco style that sit on low granite stall risers which are a particular feature of the existing frontage. It is likely that they are in part modern replacements but they are specifically referred to within the 1997 listing description and they contribute to the overall architectural interest of this heritage asset. The inspector concluded the use of folding doors would result, when open, in the creation of an expanse of void which would appear ill at ease and odd within the context of the grander statement provided by the building's frontage to Bridge Street. Any commercial benefit that this might bring was not felt to outweigh the harm to the significance of this listed building, and was therefore contrary to the NPPF. The alterations were also considered to diminish the appearance and character of the conservation area, again contrary to the NPPF and also local plan polices (although limited weight was afforded to these non statutory polices).

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**Application No:** 12/02231/LBC  
**Appeal by:** Individual Restaurant Company  
**Proposal:** Replacement shop front  
**Address:** 18 Bridge Street York YO1 6DA

**Decision Level:** DEL

**Outcome:** DISMIS

This listed building consent application accompanied the planning application for the alterations, and the inspector dealt with both appeals in the same decision letter . Therefore please see the summary for the planning application 12/02230/FUL.

**Application No:** 12/02255/FUL  
**Appeal by:** Mr Peter Dransfield  
**Proposal:** Rooflight to front and 2no. dormers to rear  
**Address:** 74 The Village Haxby York YO32 2HY

**Decision Level:** DEL

**Outcome:** DISMIS

The Planning Inspector considered that the terrace contributes very positively to the Conservation Area. This is particular the case for the street frontage. Although the Inspector acknowledged that the roof lights could be inserted under permitted development so no further reference was made to the frontage. The Inspector agreed with the Planning Authority and considered that the pair of dormers in the altered roof would look disproportionately large within the rear elevation, resulting in a cluttered, top heavy and unbalanced appearance which would be incompatible with the host building and detrimental to the Conservation area.

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**Application No:** 12/02300/FUL  
**Appeal by:** Sullivan Student Properties Ltd  
**Proposal:** Change of use from a small house in multiple occupation (Use Class C4) to a large house in multiple occupation (sui generis) with two storey side and rear and single storey rear extensions and loft conversion creating 8 bedrooms (resubmission)  
**Address:** 9 Green Dykes Lane York YO10 3HB

**Decision Level:** DEL

**Outcome:** ALLOW

Planning permission was sought for the change of use of 9 Green Dykes Lane from a small house in multiple occupation (Use Class C4) to a large house in multiple occupation with a two storey side and single storey rear extension and loft conversion creating 8 bedrooms. The site lies directly to the north of the University in an area of particular pressure in terms of houses being converted into HMOs. The property in question retained its domestic appearance with a well maintained rear garden. The proposal was to erect a substantial side and rear extension, which it was felt would substantially erode the domestic character of the site and add to the cumulative impact of the other similar conversions which have taken place in the surrounding area thereby altering its character. At the same time concern was felt that the effect of the proposed extension would be to reduce the level of on-site amenity space below an acceptable level. The application was refused accordingly and the applicant appealed.

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**Application No:** 12/02640/FUL  
**Appeal by:** Ruth And Nelson McConnell  
**Proposal:** Single storey extensions to rear  
**Address:** 15 Norfolk Street York YO23 1JY

**Decision Level:** DEL

**Outcome:** DISMIS

Permission was sought for a 4.8m long single storey infill extension to the rear of this mid-terrace dwelling along the common boundary with 17 Norfolk Street. Due to the street's incline the host dwelling is situated approx. 1.2m above No. 17. It was considered that the proposed extension, by virtue of its length, relative height and proximity to the boundary would appear as an unduly dominant and overbearing feature to the detriment of the amenity and outlook of neighbouring residents. The inspector stated that the impact on the living conditions of those using the kitchen at No. 17 would be significant as there would be a perception of being hemmed in, with the raised building height along the boundary leading to an oppressive and overbearing atmosphere. He concluded that this impact would be unacceptably harmful and un-neighbourly.

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**Application No:** 12/02664/FUL  
**Appeal by:** Mr & Mrs Simpson  
**Proposal:** Use of former MOD land for the siting of 6 Yurts (Mongolian style canvas buildings with decking) for use as holiday accommodation and erection of timber reception building incorporating site office and showers together with associated access from Wheldrake Lane  
**Address:** Moor Closes Elvington Park Elvington York

**Decision Level:** DEL

**Outcome:** DISMIS

The Inspector agreed that the proposed yurts, accommodation building and associated access road were inappropriate development in the Green Belt. The Inspector stated that the reception block would not significantly harm the openness of the Green Belt because it was replacing a building of similar size, however the 6 yurts and the timber decking around would reduce openness. It was also considered that the introduction of an access road across green fields would harm openness. The access road was considered to be more visually intrusive than the proposed yurts due to the existing landscaping around the proposed yurt site. There were no very special circumstances which overcame the presumption against inappropriate development in the Green Belt. The Inspector likened the proposed yurts to static caravans due to their level of permanence. The Inspector acknowledged that such developments and uses were discouraged under Policy V5 of the Development Control Local Plan. The Inspector agreed with the Council about concerns that this development would be reliant on the private car due to the sites isolation from the settlement limit of Elvington and the long and difficult access arrangements from the site. 'The long and tortuous route to the village facilities via the proposed access would not encourage walking and the likelihood is that virtually all trips would be undertaken by car. The length of the proposed access would also conflict with criterion e) of Policy V5, which requires sites to be readily accessible by public transport.' It was stated that the nature of the access would discourage integration with the village. The appeal was dismissed.

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**Application No:** 12/03023/FUL  
**Appeal by:** Mr Bora Akgul  
**Proposal:** Variation of condition 3 of planning permission  
12/01249/FUL to extend opening hours until 02:30 every day  
**Address:** Bora Bora 5 Swinegate Court East Grape Lane York YO1  
8AJ  
**Decision Level:** COMM  
**Outcome:** ALLOW

see L Drive for Cost decisionSummaryAppeal related to the operating hours of Bora Bora, which is located in Swinegate Court East. The premises wished to operate until 03.00, rather than midnight, as imposed by the Planning Committee. The site had a premises licence which allowed them to trade until 03.00 which imposed conditions in the interests of residential amenity (such as no amplified music audible outside the site). Ten complaints had been received by Environmental Protection Unit regarding Bora Bora & Lucia's (which is next adjacent) since they began trading after midnight. However E P U advised none of the complaints were justified (i.e. E P U did not observe a statutory nuisance) and did not object to the planning application. The inspector considered that as the appeal site is in an area with a high concentration of late night drinking establishments, a number of which are unencumbered by planning conditions regulating their opening hours; they are regulated solely by the licensing regime. In such a situation, the imposition of planning conditions to control the opening hours of some, but not all, of these premises would appear to be of limited effectiveness. The inspector granted costs to the appellants. The decision confirms that decisions/use of conditions must be backed by demonstrable evidence that they are relevant and necessary. In this case there is already late night activity due to existing bars. It is not adequate to apply the logic that more bars = more disturbance - this must be backed by clear evidence!

**Application No:** 12/03138/FUL  
**Appeal by:** Mr P Brown  
**Proposal:** Single storey rear extension with replacement attached garage to side (resubmission)  
**Address:** 29 Sandringham Close Haxby York YO32 3GL

**Decision Level:** CMV  
**Outcome:** ALLOW

The previous application was refused at committee, against officer recommendation, and the subsequent appeal dismissed. The Inspector considered the side extension would over-dominate the neighbouring property and result in loss of light. This revised application sought to address the reasons for refusal, by introducing a hip roof design instead of a gable, reducing the eaves height, and setting the extension away from the shared boundary by 500mm. The revised application was also refused at committee, against officer recommendation, on the grounds of loss of light and over-domination. At appeal the Inspector cited the three salient revisions set out above, and considered they were sufficient to allow the appeal.

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