

COMMITTEE REPORT

Date: 10 March 2022 **Ward:** Osbaldwick And Derwent

Team: East Area **Parish:** Osbaldwick Parish
Council

Reference: 21/00304/FUL
Application at: The Magnet 57 Osbaldwick Lane York YO10 3AY
For: Erection of 8no. dwellings with associated parking and landscaping following demolition of buildings
By: Moorside Development Ltd
Application Type: Full Application
Target Date: 17 March 2022
Recommendation: Approve

1.0 PROPOSAL

THE SITE

1.1 The application site is The Magnet public house on the north side of Osbaldwick Lane in the suburb of Osbaldwick, to the east of the city centre. Constructed in the 1930s, it is two storeys in height, plus basement. It is of brown brick with a hipped slate roof, and with distinct round-headed windows to the bars on the front elevation. It is set back from the road by a car park which extends to the rear with a beer garden to the left hand side (west) of the building. At ground floor it contains the bar, snug, lounge bar and catering kitchen. At first floor and attic, is a maisonette flat providing seven bedrooms and living space. There is a basement used for storage. Within the car park is a small garage/store.

1.2 The Magnet sits at the transition of 1920s York Corporation housing to the west and private housing dating from the 1930s onwards to the east. It shares an access with Campbell Court to the rear (north) which is a development of retirement housing and extra care for older people, run by housing association 'Housing 21'. Adjacent to the site at Nos. 59 and 61 Osbaldwick Lane is a cluster of commercial units including a joiners, a double glazing supplier and a mobility equipment supplier. Osbaldwick Primary Academy School is located opposite the site. Bus stops serving cross city routes 6 and 20 are located outside the site travelling in both directions.

1.3 The building is not listed nor in a conservation area. It has however been identified as a 'non-designated heritage asset' by the local planning authority. It is

not an 'Asset of community value' and has not been nominated as such. The site is in flood zone 1 (low risk of flooding).

PROPOSAL

1.4 The proposal is to demolish The Magnet and to erect 8no. two storey dwellings with attic accommodation, car parking and associated landscaping. The proposed site plan shows a line of five terraced properties set back behind small front gardens with hedge fronting onto Osbaldwick Lane, and a small garden at the rear, each with bin and cycle store. Each property would have a living room and kitchen/diner at ground floor and two bedrooms at first with office/store in the attic.

1.5 A row of three two-storey dwellings would be positioned perpendicular, with frontage facing east onto the access road, which is shared with Campbell Court, the retirement housing development. These dwellings would also have two rooms at ground floor as kitchen, dining and living space with two bedrooms at first floor and a third bedroom in the loft with a gabled dormer to the front elevation. 12no. car parking spaces would be provided in a gated car park at the rear of the properties.

RELEVANT PLANNING HISTORY

1.6 The following is of relevance:

- Planning application withdrawn on 26.02.2019 prior to determination for the demolition of The Magnet public house and the erection of 9no. houses (ref. 18/02670/FUL). The LPA advised that the building should be considered a non-designated heritage asset, and was opposite a site where the presence of a late-prehistoric Romano-British field system was identified. Prior to determination assessments were required on potential archaeology and on the significances of the non-designated heritage asset. The proposed erection of 9no. dwellings was considered over-development of the site.
- Planning application withdrawn on 29.07.2020 prior to determination for the demolition of The Magnet public house and the erection of 8no. dwellings (ref. 19/00895/FUL). The LPA advised that whilst the scheme was supportable in design terms, the principle of demolishing the pub and meeting the requirements of emerging policy HW1 in the 2018 Publication Draft Local Plan (2018 eLP) had not been met: insufficient marketing and lack of evidence of financial viability. The presumption is in favour of retaining the building as it is a non-designated heritage asset. Further justification and marketing evidence required.

CALL IN

1.7 The application has been called in for determination at planning sub-committee by Councillor Warters should the application be recommended for approval due to concerns over the loss of an important, non-designated heritage asset, the loss of a community facility, the considered lack of a genuine attempt to market and offer for sale the building as a public house, concerns over the submitted viability statement, and the considered deliberate and wilful neglect of the building.

2.0 POLICY CONTEXT

2.1 Policies

City of York Local Plan Publication Draft 2018

DP3 Sustainable communities

H3 Balancing the housing market

HW1 Protecting existing facilities

D1 Placemaking

D2 Landscape and setting

D6 Archaeology

D7 The significance of non-designated heritage assets

CC1 Renewable and low carbon energy and storage

CC2 Sustainable design and construction of new development

ENV2 Managing environmental quality

ENV3 Land contamination

ENV5 Sustainable drainage

T1 Sustainable access

City of York Draft Local Plan (incorporating 4th set of changes, April 2005)

GP1 Design

H4a Housing windfalls

C3 Change of use / redevelopment of community facilities

3.0 CONSULTATIONS

INTERNAL

Design, Conservation and Sustainable Development (Conservation)

3.1 The Magnet is a purpose-built public house which occupies a prominent position on Osbaldwick Lane. It stands at the transition between corporation and private housing, constructed in 1934 by John Smith's Brewery in-house architect Sir Bertram Wilson (CYC HER MYO4024), evidently to serve the contemporary suburban housing. The Magnet constitutes a suburban "improved pub" and CAMRA considers it to be the best surviving example in York of such a pub. The exterior is relatively unexceptional but it does have charm and a positive presence in the street scene and contributes significantly to the history and the character of the area. The interior is more significant in terms of its unusual state of survival of layout and quality fixtures within the Snug, Bar and Lounge. Original panelling, doors, fireplaces, staircase, cornices and arched headed windows have also been retained.

3.2 The demolition of The Magnet would lead to the loss all heritage significances, aesthetic, historical and communal. The NPPF advises that it is desirable to sustain and enhance the significance of heritage assets (including non-designated assets) and that local planning authorities should seek development which avoids or minimises conflict with the conservation of an asset. The officer recommends revising the scheme to retain the existing building, maintaining a pub use if possible, and potentially combining a sympathetic form of development within the curtilage. If this is demonstrated not to be viable then a judgment of the planning merits should consider the balance between any public benefits and the loss of the non-designated asset. The loss would be locally-significant in terms of the architectural and historical interest of the Osbaldwick Lane and Tang Hall area and significant within the City as a whole based on the assessment by CAMRA that it is the best-preserved example of an improved pub.

Design, Conservation and Sustainable Development (Archaeologist)

3.3 As stated in previous comments for similar applications, whilst City of York Council has not adopted a formal List of Locally Significant Heritage Assets (a "Local List"), this building should be considered a non-designated heritage asset of local significance. It is considered to be the best surviving example in York of an inter-war 'Improved' pub, purpose built to serve the surrounding new housing estate.

However, should planning permission be granted, a Level 2 photographic record is required prior to demolition. This can be secured by condition.

3.4 In terms of below-ground archaeology, two archaeological evaluation trenches were dug on this site in 2019 by YAT. Agricultural features were noted probably relating to the medieval or post-medieval period. No further archaeological investigation or mitigation is required.

Design, Conservation and Sustainable Development (Ecologist)

3.5 The updated Bat Survey Report by Tyler Grange dated 18.06.2021 found no evidence of roosting bats and concluded that they are likely absent from the buildings. There is little suitable foraging or commuting habitats for bats within the site. These findings are accepted by CYC's ecologist and a condition is advised to secure biodiversity enhancements comprising two bird boxes and integrated features such as roosting crevices for bats.

Design, Conservation and Sustainable Development (Landscape Architect)

3.6 As a public house, The Magnet will have been an important landmark, meeting place, and social community building in the suburban residential area extending from the designed estate of Tang Hall. The site falls within character area 56 of the 'City of York Historic Characterisation Project' 2013. Whilst the greenery in the area, grass verges and roadside trees, have gradually been eroded to the detriment of the area's character, many front gardens are still bound by hedging. The proposals could be improved by setting the buildings further back and permitting larger front gardens and hedges to be planted. Conditions are advised for a detailed landscape scheme to be approved.

Highways Network Management

3.7 No objections to the proposed development, but seek a Method of Works statement including dilapidation survey. This is to ensure that during demolition and construction works, users of the public highway remain safe, particularly considering the proximity to the bus stop and school. Conditions are advised.

Flood Risk Management

3.8 FRM advised that a percolation test was not required following the information provided on the clay sub-soil in the archaeologist's report. Following CCTV investigation, dye testing and update to the submitted drainage report, FRM agree with Yorkshire Water that foul water can discharge to public foul sewer that surface water flows will be directed to the dedicated surface water system limited to 3 litres/second. Conditions are advised.

Public Protection

3.9 Environmental Health officers report no objections to the scheme subject to conditions to secure a Construction Environmental Management Plan (CEMP), provision for the charging of electric vehicles, an investigation and risk assessment for land contamination on site prior to development commencing, and for a noise insulation scheme to be submitted and agreed.

EXTERNAL

Yorkshire Water

3.10 Yorkshire Water support the proposals for waste water discharge providing they are in accordance with the submitted drainage statement.

Foss Internal Drainage Board

3.11 The Board has assets in the wider area in the form of Osbaldwick Beck. This watercourse is known to be subject to high flows during storm events. Prior written consent is required for any direct or indirect discharge. For surface water drainage, soakaways should be considered first following a percolation test on site. Further investigations are required about the existing surface water drain and whether it is in good order and the area draining into the existing surface water drain. If so, the proposed discharge rate of 3 litres per second is acceptable. A condition is advised.

Campaign for Real Ale (CAMRA)

3.12 No comments received.

Osballdwick Parish Council

3.13 The Parish Council strongly object to the proposal to demolish a formerly important community facility and building of historic and architectural merit. There has been a prolonged period of deliberate neglect by the current owners who have not engaged with others attempting to retain the building as a public house or other community facility. A mature tree on the site has now been removed. The relatively unspoilt 1930s interior of the Magnet is a feature that CAMRA recognised in the 2000 edition of Historic Pubs in and around York when it was described as “the best survivor of its type in York”. The NPPF recognises non-designated heritage assets, including the desire to sustain and enhance them, put them to viable use, and for the positive contribution they make to sustainable communities.

3.14 Given the historic and architectural merit of the building, consideration should have been given to renovating the building even for another use, thereby retaining a landmark building rather than simply allowing it to decline and propose demolition to maximise development returns. Viability is a complex issue and further evidence should be provided of trading accounts to be assessed by an independent body. Enterprise Inns should have explored a full range of measures during the last three years of operating to increase trade and diversify use. The lack of financial investment in the last 20 years has resulted in the current poor state of exterior repair. The option of retaining a renovated pub with a small terrace of residential properties in the car park should have been explored. If not viable as a public house, then it should be renovated and restored for another use. There is no local shortage of housing.

4.0 REPRESENTATIONS

Neighbour Notification and Publicity

4.1 Four objections have been received to the proposals. The following points were raised:

- No need for additional housing in the area.
- The alternative pubs, the Derwent Arms and the Black Bull are a fair walk.
- Lack of investment by previous owners and the pub was allowed to run down. It now requires greater renovation and investment and is not attractive to prospective purchasers.

- Loss of a community asset.
- Even more than before, following the pandemic, there is a need for local community facilities in walking distance of residents. This is a highly populated area.
- The building was deliberately made to look as unattractive as possible to potential buyers.
- Vandals have accessed the unsecure site which has allowed it to deteriorate further.

4.2 Housing 21 (social housing for frail and elderly people) at the rear have commented that access must be maintained for all their residents, in terms of emergency services as well as residents by foot and in their own vehicles. Speed limits of 5mph must be adhered to and delivery vehicles should not drive into Campbell Court. The housing should not be occupied by students. New drainage will be required and any damages during construction should be made good.

Hope Centre Church

4.3 In May 2021, the Trustee on behalf of the Hope Centre Church has advised that they were looking for a property to purchase and use as a church and community facility. Whilst they have the funds available, they were not initially able to secure a viewing with the selling agent, or a timescale for when it would be possible and were advised that this was for security reasons, including presence of squatters and other intruders which is why the property was boarded up. It is considered therefore not surprising that no offers have been forthcoming and it appears to be a ruse to deter potential buyers.

4.4 Subsequently, following the objection, a viewing was made but the Church decided not to continue with purchase as they had found an alternative venue.

York Civic Trust

4.5 The Civic Trust have reiterated concerns previously expressed to the former two applications. The Magnet is a non-designated heritage asset due to its importance as a historic public house with interiors that have been assessed by CAMRA as nationally important. Its heritage significance therefore is given material consideration in assessing the application. (A recent similar planning application for the proposed demolition of a historic public house and NDHA - the Carlton Tavern on Acomb Road is mentioned. Even though that application was recommended by

officers for approval, CYC's Planning Committee refused the application, including on heritage grounds, and the Government's Planning Inspector upheld this decision on appeal.)

4.6 The Trust maintains its objection to demolition of the building as a loss of a non-designated heritage asset and loss of archaeology. The submitted Historic Building Assessment confirms that although much renovation work is required, the building is structurally sound. The building should be retained as a pub or similar (restaurant/ community use) possibly with modest development in the grounds, and a more imaginative and sustainable solution which retains the historic building and its interiors.

Conservation Area Advisory Panel

4.7 Whilst the building is not listed it was nominated for the Local List by CAMRA because it is the best surviving example in York of an inter-war 'improved' pub, purpose built to serve the surrounding estate. The interior is very well preserved. Whilst the Panel had no particular comments upon the external appearance of the proposed dwellings it was felt that those within the terrace of five were extremely small, perhaps a terrace of four would be more acceptable. The Panel regretted the potential loss of this building, considered to be 'best of its kind', and as an amenity to the local area. A social use such as a Doctors' Surgery/Pharmacy, café or library would be far more appropriate.

Ward Councillor

4.8 Councillor Warters strongly objects to the proposals, as with earlier submissions by the same applicant. He believes the marketing statements continue to be misleading and the sale process has been less than satisfactory. The site has been deliberately run down and made as unattractive as possible to further the development aims of the current owners. Without a satisfactory sale process the viability cannot be adequately assessed and permission cannot be granted for the loss of a community asset.

4.9 There has been previous interest in the site. The selling agent ignored or deflected Mr X requests for an internal inspection prior to the lockdowns associated with the pandemic in March 2020. Mr X was proposing retention of the public house and to build small starter homes to the rear. There have been other parties interested, not all have been listed in the selling agent's statement, and Councillor

Warters has been involved in some of these discussions including with York Theatre Royal and Housing 21. Whilst the viability of public houses is under further pressure resulting from the pandemic, it is not correct that there has been no interest in the building as a pub nor to retain the building whilst building small housing units to fund renovation of the main building.

4.10 The pub interior, prior to its considered deliberate neglect by the current owners merited mention on the York Local List after being well highlighted by CAMRA some years ago. The car park was used by the local school as a 'Park and Stride' facility but the owners have fenced it off. The development should be car free as there is a bus stop outside, and the landscaping increased rather than having a car park.

4.11 In further correspondence, Councillor Warters advised that the previous tenant landlord had to surrender his lease due to ill health. He believes that the letting of rooms upstairs enabled the pub to be profitable and that there was no efforts by Enterprise Inns to secure a subsequent manager, but that it went quickly up for sale in accordance with their announced disposal programme. Councillor Warters considers the recent planning permission granted at Appeal by the Planning Inspectorate for The Jubilee Public House, Balfour Street (20/01498/FUL), provides a template for the retention of The Magnet as a viable building of local interest and public house through retaining the pub on the ground floor with holiday lets above and new housing developed in the car park.

5.0 APPRAISAL

KEY ISSUES

5.1 The key issues are:

- Loss of community facility
- Non-designated heritage asset
- Marketing and viability
- Design and sustainability
- Ecology
- Drainage

APPRAISAL

National Planning Policy Framework (2021)

5.2 The National Planning Policy Framework (revised July 2021) (“the NPPF”) 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 Section 5 sets out the Government’s objective to significantly boost the supply of homes. Paragraph 69(c) supports windfall housing sites, giving great weight to the benefits of using suitable sites within existing settlements for homes. Paragraph 64 states that affordable housing should only be sought for major residential development. Section 8 promotes mixed-use developments to encourage social interaction, and strong neighbourhood centres to support healthy lifestyles and well-being. Planning decisions should support the provision and use of community facilities, including meeting places, cultural buildings and public houses to enhance the sustainability of communities and guard against the unnecessary loss of valued facilities and services (paragraph 93). Section 9 promotes sustainable transport choices.

5.5 Section 11 advises that substantial weight should be given to the value of using suitable brownfield land within settlements for homes and other needs and to

support the development of under-utilised land and buildings, especially if this would help meet housing needs where land supply is constrained. Planning decisions need to reflect changes in the demand for land, taking a positive approach to applications for alternative uses of land which is currently developed, but not allocated (paras 122, 123). Development should make efficient use of land whilst maintaining an areas prevailing character and setting, and securing well-designed, attractive and healthy places. Section 12 on good design advises that developments should function well and add to the overall quality of the area, be visually attractive, sympathetic to local character and maintain a strong sense of place using appropriate materials.

5.6 Section 16 confirms that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life for existing and future generations. Where there is deliberate neglect of a heritage asset, its deteriorated state should not be taken into account in any decision (para 196). Paragraph 203 advises that the effect on the significance of a proposal on a non-designated heritage asset should be taken into account in determining the application. Regard should be had to the scale of any harm or loss and significance. Where loss is permitted, all reasonable steps to ensure the development will proceed should be secured. The ability to record evidence should not be a factor in deciding whether such loss should be permitted (para 205).

National Planning Practice Guidance – Historic Environment (updated 2019)

5.7 This NPPG provides further guidance on non-designated heritage assets (NDHA). It confirms that NDHA are buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets. In some cases, local planning authorities may also identify NDHAs as part of the decision-making process on planning applications (paras 39, 40).

York Local Plan Publication Draft (February 2018)

5.8 The 2018 eLP was submitted for examination on 25 May 2018. Phase 1 of the hearings into the examination of the Local Plan took place in December 2019. In accordance with paragraph 48 of the NPPF the Draft Plan policies can be afforded weight according to:

- The stage of preparation of the emerging plan (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 emerging plan to the policies in the previous NPPF published in March 2012. (NB: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

5.9 Policy DP3 ‘Sustainable communities’ sets development principles including respecting and enhancing the historic character and landscape of York and delivering high quality design, appropriate density, layout and scale in new development. Development should contribute to a sustainable, balanced community through the provision of an appropriate range of housing. A modal shift from the car to more sustainable and healthier forms of travel is encouraged.

5.10 Policy H3 supports a mix of housing types, including smaller houses for those accessing the housing market for the first time and family housing of 2 to 3 beds.

5.11 Policy HW1 protects existing community facilities. Development proposals which involve the loss of existing community facilities, or last used for community purposes, will not be supported unless;

- i. Replacement facilities are provided elsewhere on the site; or
- ii. Facilities of equivalent or greater capacity or quality are provided off-site in a location that equivalently or better serves the local community needs; or
- iii. The facilities no longer serve a community function and demonstrably cannot be adapted to meet other community needs; or
- iv. In the case of commercial facilities, evidence is provided that demonstrates the facilities are no longer financially viable.

5.12 Supporting text confirms that community facilities include public houses. Although a loss of facilities would affect all residents, particularly effected groups may be the elderly, those with reduced mobility and those on low income. Chronic loneliness is a key concern. However changes in the economic climate may mean that some facilities are no longer financially viable and only in circumstances where no alternative community use is possible, will a loss of facilities be permitted.

Evidence that the facilities have been marketed for a minimum of one year without success will be required to demonstrate they are unviable.

5.13 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.

5.14 Policy D7 seeks to sustain and enhance the significance of York's historic environment including non-designated heritage assets. It states that development which would remove, harm, or undermine the significance of such assets, or their contribution to the character of a place, will only be permitted where the benefits of the development outweigh the harm having regard to the scale of harm and significance of the heritage asset. Policy D6 protects archaeological features and deposits and where harm is unavoidable, mitigation measures may be appropriate.

5.15 Policy CC1 requires new buildings to achieve a reasonable reduction in carbon emissions of at least 28% through renewable and low carbon technologies or through energy efficiency measures. Policy CC2 requires all new residential buildings to achieve a 19% reduction in dwelling emission rate compared to the target emission rate and a water consumption rate of 110 litres per person per day.

5.16 Policy ENV2 protects environmental quality, including adverse impacts on existing and future residents from noise, vibration, odour and dust, including during construction and operational phases of the development. ENV3 relates to potential land contamination. ENV5 sets requirements for appropriate surface water drainage proposals including restriction of surface water flow to 70% of the existing runoff rate, attenuation and storage as required. Policy T1 promotes sustainable travel and ensuring development is safe with appropriate access to the adopted highway.

City of York Draft Local Plan (incorporating 4th set of changes, April 2005)

5.17 The City of York Draft Local Plan Incorporating the Fourth Set of Changes was approved for development control purposes in April 2005 (DCLP). 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, although the weight that can be afforded to them is very limited.

5.18 The following policies are of some relevance:

- GP1 Design – requires development proposals to be of a density, layout, scale, mass and design that is compatible with neighbouring buildings, spaces, and the character of the area. Residents should not be unduly affected by overlooking, overshadowing or dominated by overbearing structures.
- H4a Housing windfalls supports residential development where the site is within the urban area and vacant, derelict or underused, has good accessibility and is of an appropriate scale and density.
- C3 states that planning permission for the change of use or redevelopment of community facilities be granted where it is of appropriate design, it can be demonstrated that the buildings are surplus to and no longer capable of meeting existing or future needs of the local community and that alternative acceptable sites for the existing use can be provided.

APPRAISAL

Principle of development

5.19 The site is a developed site within the urban area. It was last in use as a public house with letting rooms above, with former beer garden to the west, and car park to the front and rear. There is sheltered accommodation for elderly and frail residents to the north in Campbell Court which shares the same access from Osbaldwick lane. Although there is a mix of commercial units to the east, and a primary school opposite, the area is predominantly a suburban residential area. In principle, residential development would be compatible with surrounding uses. However, as the building was last in use as a pub and is a non-designated heritage asset (NDHA), in accordance with the NPPF the presumption is that the building should be retained as a pub over redevelopment of the site for housing (NPPF paragraphs 93, 197, 203, 204, 2018 eLP policies D7 and HW1).

Loss of community facility

5.20 Sustainable development is development, which amongst other factors, provides good quality homes, places to work, meet and socialise through a range of

community facilities. Paragraph 93(c) of the NPPF states that to provide the social, recreational and cultural facilities and services the community needs, planning decisions should guard against the *unnecessary* loss of valued facilities and services.

5.21 Policy HW1 of the 2018 eLP protects existing community facilities.

Development proposals which involve the loss of existing community facilities, or last used for community purposes, will not be supported unless;

- i. Replacement facilities are provided elsewhere on the site; or
- ii. Facilities of equivalent or greater capacity or quality are provided off-site in a location that equivalently or better serves the local community needs; or
- iii. The facilities no longer serve a community function and demonstrably cannot be adapted to meet other community needs; or
- iv. In the case of commercial facilities, evidence is provided that demonstrates the facilities are no longer financially viable.

5.22 The applicant has sought to address each of the above requirements. The site is just 0.17ha in size and thus cannot accommodate replacement facilities elsewhere on site, nor would it be desirable and thus part i is met.

Viability and marketing

5.23 The building is a vacant building, last used as a pub with letting rooms above, which closed in September 2018. It is therefore not an existing facility which would close as a result of any planning permission; it has not operated as a pub for over three years.

5.24 A viability assessment or trading accounts from when it was last open and operating, have not been provided. The site was previously owned by Enterprise Inns, a national operator of some 5,000 public houses, who are not the applicant. However, the agent advises that “In the period September 2012 to 2017, the total trade figures for The Magnet, in barrel equivalents, fell by 23.5%. As disclosed orally to the Applicant (*Moorside Developments*), the final decision made by Enterprise Inns to sell the property arose from the inability to find a manager in the light of the poor trading figures. Prior to the onset of the lockdown consequent upon the Covid 19 pandemic, the Times reported that 40 pubs were closing every month. As at 09.12.20, it was estimated that 2,500 pubs were “lost” in 2020”. The LPA are advised that there are no documentary records available from the last trading period

before the premises closed and was put up for sale and thus the above is presented as evidence of a lack of viability.

5.25 The applicant also states that there has been a lack of interest from a commercial operator of the pub or community enterprise as demonstrated by the marketing undertaken. The Magnet was purchased by Moorside Developments on 4 September 2018. On 5 December 2019, Barry Crux Estate Agents ('Barry Crux') were instructed by Moorside Developments to place The Magnet back on the market. Moorside, having bought the property with the intention of demolition and redevelopment for housing, found that planning permission was required for the demolition and that policy HW1 of the 2018 eLP required marketing evidence that the pub could not be retained in its current use, or for an alternative community use. Barry Crux therefore included the following, under sub-heading 'Tenure' within the marketing brochure: *"The property is for sale freehold but purchaser will be expected to agree that, for a minimum period of ten years, the property shall be used only as a public house, hotel or for community purposes and that funding is readily available for the maintenance of such use over the same period."* It is understood that were this agreement not satisfied, the applicant would be unwilling to sell the property.

5.26 Details of interested parties since 5 December 2019 have been provided by the applicant, which appears to correspond with that of known parties to Councillor Warters. As there have been some concerns about whether the marketing process itself had been adequately undertaken the LPA commissioned their own independent review of the marketing process by Stapleton Waterhouse Chartered Surveyors, who reported in January 2022.

5.27 The marketing of the property from 5 December 2019 to the date of this report amounts to 26 months (to February 2022); more than double the 12 months required by policy HW1. During this time, a 'For sale' board has been fixed to the front elevation of the property. It has been advertised on Barry Crux's website and as of 16 November 2020 it had 1,296 views and 61 downloads. It was also advertised on 'Businesses for Sale' website where it had 1,477 views and 11 downloads, and in 'Daltons weekly' it had 90 views, again by November 2020. The Magnet was advertised without sale price and this has been queried by the LPA with the agent. In response, Barry Crux states in "my professional opinion ... that, because of the necessary constraints on future use, a fixed sale price would not be a feasible introduction in the opening stages of any discussions with a possibly interested

purchaser... it has not made any difference, in what, in any event, has been, and remains, a very difficult market.”

5.28 The LPA understand that, whilst the price is not advertised, the vendor is seeking over £500,000 (advised by an objector) being a significant increase on the purchase price from 2018, understood to be £365,000 plus VAT. The independent assessment provided by Stapleton Waterhouse considers the £365,000 purchase price to be fair value for the subject property in early 2022 given it is vacant and non-trading; there is no change in either the property market or the subject property between 2020/21 to justify a higher price than the figure of £365,000. However they also state that vendors can quote what they see fit. Stapleton Waterhouse report that they consider £500,000 an ‘inflated and optimistic figure which was unlikely to gain traction in the market place from owner occupiers.’ However marketing a property without a quoting price is not uncommon, and many agents prefer to do so, to encourage interested parties to call to enquire and thus, providing an opportunity to engage with them.

5.29 Officers had some concerns that the £500,000 figure may have discouraged interest. The property has also not been presented in its best light through reference to the submitted photographs in the report by YAT ‘Historic Building Assessment’ (2019) and that better images could have been used for the marketing brochure. However Stapleton Waterhouse consider that the marketing brochure is adequate and appropriate and would have drawn interest. They continue stating that whilst the boarding up of The Magnet was not ideal, it would not have deterred interested parties. Whilst noting the restrictive covenant was unusual, as it is intended to narrow interest to those parties intending to use the property as a pub or community use, as this was the requirement to meet local planning policy, there is no issue with the inclusion of the restrictive covenant. They note that the period of marketing was affected by COVID 19 and the various lock downs and restrictions. The property market did continue to function during this time and there was experienced a relatively strong bounce in September 2020 when restrictions were fully lifted and the government injected financial stimulus into the leisure sector. They conclude: *“my understanding that the purpose of the marketing was to prove the absence of a credible user of the premises as a public house of a community use. Based on the information to hand I am of the view that this was undertaken in an adequate manner.”* With this being the independent view of Chartered Surveyors, it is concluded that should an interested party wished seriously to purchase The Magnet, they would have come to light and a sale progressed.

5.30 Since marketing commenced, the LPA are aware of the following interested parties:

- i. A local developer expressed interest, but Barry Crux reports he was not able or willing to supply the information on his intended use nor if he was to retain the pub/hotel, nor any evidence of funding. His interest ceased by August 2020. Councillor Warters reports that this developer was unable to view the property despite repeated requests.
- ii. York Theatre Royal expressed an interest to use the building for both 'commercial and community uses'. No information on funding was made available to Barry Crux. Their interest also ceased by August 2020.
- iii. Almscliffe Properties expressed interest but could not accept the restriction on uses.
- iv. On 18 May 2021, the Hope Centre Church advised the LPA they could not view the property and was told it was for security reasons and that there was no date or estimate when it might be possible to view it. They advised the LPA they had funds available. Following the objection, the Church did view the property but did not continue with a purchase advising the LPA they had found alternative premises.
- v. Mr A viewed the property in November 2021. It did not progress to an offer and his interest has ceased.
- vi. Mr B, a medical practitioner, also viewed the property in November 2021. No indication of the purpose of his interest was provided to Barry Crux and he did not comment on the covenants listed in the sales particulars. Following the site visit, no offer has been made and interest has ceased.
- vii. Ms C viewed the property in November 2021. She is a dentist and wished to use the property as a dental facility. An offer was made to purchase the property for £550,000. No reference was made to the restrictive covenant but the agent highlights that a dentist falls within class E(e) and is not therefore a community use (class F). Therefore the provisions of policy HW1 would still apply, and planning permission for the change of use required as medical facilities are excluded from the definition of community assets. The LPA understand the purchase has not progressed.

5.31 Barry Crux concludes that "no potential interested party has been either able or willing to consider purchase on the terms upon which it has been offered for sale."

5.32 Despite reluctance to allow for viewings reported by some parties, these were subsequently permitted but after the viewing, the sale did not progress. The

independent advice from Stapleton Waterhouse chartered surveyors, found the marketing to be adequate and that therefore any potential buyer would have come forward. Over the 26 months of marketing, there have only been seven viewings (according to the information supplied). There has been no comment on the current planning application from CAMRA (previous objections are noted). There has been no interest from any pub operator, multiple or independent or community pub. There has only been two potential alternative community uses; the Theatre and the Church but these have not progressed to an offer. Whilst the dentist practice did make an offer, it would not retain it in community use as a medical facility. No application has been made for the pub to become an Asset of Community Value. There has been 4 objections received to the current application from neighbours. The period of marketing, being over 26 months, is significantly more than the 12 months required by policy HW1. Therefore the marketing has been suitable, taking into account the independent review, and thus parts iii and iv of HW1 are satisfied.

5.33 As noted by objectors, the building has deteriorated since planning officers first considered the proposals in 2018. Windows have been broken, holes have appeared in the roof and squatters have entered the property at times. The applicant has sought to make the site more secure through boarding windows and enclosing it with security fencing. In coming to a recommendation, the deteriorated condition of the building, in line with paragraph 196 of the NPPF has not been given any weight in the planning balance.

Equivalent facilities off-site

5.34 The applicant is not required to fulfil all parts of the policy, nevertheless, they have also sought to address part (ii) which states that facilities of equivalent or greater capacity or quality are provided off-site in a location that equivalently or better serves the local community needs may provide justification for the loss. The applicant has presented the Derwent Arms, The Black Bull, Beeswing Ale House, and the site's accessibility to the city centre as alternatives to The Magnet and therefore this also merits consideration.

5.35 The Derwent Arms is a 'village pub' serving food and benefitting from a large garden to the rear and showing football matches on a big screen. The field is used as recreation space for a range of community and sporting events. It is 550m (7 minute walk) from the site. The Black Bull is less of a 'local' pub and is situated close to the junction of Tang Hall Lane with Hull Road, 450m (6 minute walk) from the site. It is a family pub with food, beer garden, pool table and darts and a large

screen for Sports. Beeswing Ale House is on Hull Road at the junction with Millfield Lane, 870m (11 minute walk) from the site. It is agreed that these three pubs, all currently open and offering a 'pub' facility, including entertainment and outside space, are within a short walk from the Magnet and thus between them physically cater for the same catchment. However it is also accepted that the appeal of The Magnet must also lie in the original character of the 'Improved' pub with its distinctive architecture and it's well preserved original layout and fixtures which provide character and atmosphere, which are valued by its customers and heritage bodies, which these alternatives venues do not possess. Nevertheless, as there are these three alternatives, officers consider that part ii of draft policy HW1 is satisfied in terms of assessing the proposal.

Other Considerations

5.36 Reference has been made to other planning applications for the loss of public houses by objectors. In contrast to the Jubilee Pub on Balfour Street (20/01498/FUL, planning permission refused) which had significant local opposition to the proposals and which also benefitted from being a non-designated heritage asset and listed as an Asset of Community Value, the scheme included retention of a smaller pub element and conversion rather than demolition, CAMRA were involved and the community are seeking to purchase The Jubilee and to retain the pub use. There is not this level of support from the local community of The Magnet. "The Jubilee is of exceptionally high architectural quality" by Walter Brierley, an architect of highest renown in the city. The Magnet is not of this *exceptional* quality, either in its interior or exterior."

5.37 Reference has also been made to Carlton Tavern (17/00476/FULM, planning permission refused, Appeal dismissed). This involved demolition of a non-designated heritage asset and construction of a care home. The Magnet again is not considered to have the *exceptional* architectural value as this building, and there is not the local level of strong opposition to the proposals for The Magnet. This lack of objection from the local community is given weight in the decision. Carlton Tavern was still trading, The Magnet has been closed for three years.

Non-designated heritage asset

5.38 The Magnet is not listed as a building of special architectural or historic interest, nor is it within a conservation area. As such it does not benefit from the protection it would otherwise be afforded by legislation. However it has been identified as a 'non-designated heritage asset'. This means it carries a degree of

architectural and or historic interest but not sufficient to meet the criteria of listing but, which should be ‘taken into account’ in planning decisions (NPPF, para. 203). It does not require *great* weight to be attached to any harm and does not require the exercise of identifying *public* benefits to clearly outweigh such harms, as a designated heritage asset would. A ‘balanced judgement’ is required.

5.39 The Magnet is a purpose-built public house which occupies a prominent position on Osbaldwick Lane. It stands at the transition between corporation and private housing, constructed in 1934 by John Smith’s Brewery in-house architect Sir Bertram Wilson (CYC HER MYO4024) to serve the contemporary suburban housing. The Magnet constitutes a suburban “improved pub” designed to attract and serve the new and perhaps more bourgeois residents of the modern suburbs who expected greater levels of comfort than provided in more historic public houses, and a greater range of facilities. Following advice from the LPA on the 2018 application, the applicant has commissioned and submitted two reports: A desk-based Assessment Report and a Historic Building Assessment report on the special interest of the historic building (York Archaeological Trust reports 2019).

5.40 The conservation officer advised that he considers the exterior to be relatively unexceptional but that it does have charm and a positive presence in the street scene and contributes significantly to the history and the character of the area. The interior is more significant in terms of its unusual state of survival of layout and quality fixtures including in the Snug, Bar and Lounge, but also including panelling, doors, original fireplaces, staircase, cornices and arched headed windows. This is in accordance with CAMRA and reason for its NDHA listing.

5.41 The building therefore possesses locally-significant aesthetic design value in relation to its exterior and interior, historical value in terms of its contribution to the legibility and inter-war history of the area, and communal significance as a local landmark and, when open, pub facility. As the proposal is for demolition, this results in the loss of all heritage significances; aesthetic, historical and communal. The harm by demolition is thus harm at the highest level through destruction. However the level of protection is not the same as a listed building or building in a conservation area, which would be ‘designated’ heritage assets. The loss would be locally-significant in terms of the architectural and historical interest of the Osbaldwick Lane and Tang Hall area and significant within the City as a whole based on the assessment by CAMRA that it is the best-preserved example of an improved pub.

5.42 As with the loss of the community use, retention of the building as a NDHA relies on a new occupier or appropriate new use being secured and thus the marketing of the property is a key consideration in terms of meeting the need to sustain and enhance the significance of this heritage asset by keeping it in a viable use consistent with its conservation. The retention of the pub (possibly with sympathetic development within the curtilage) would most likely secure the internal fittings, fixtures and layout associated with its original use, which is of value as well as its communal and historical value as an example of an Improved pub to serve the neighbouring residential area. However, the marketing has demonstrated over the last 26 months, that there has been no interest by a national or local landlord / brewery to continue with operating the building as a pub. Whilst an alternative use has not been secured either, it is likely that conversion to residential, performance and rehearsal space for the theatre, or even as a dental practice, would result in significant internal alterations, removal of historic features and fittings and alterations to the internal layout, that the LPA would have no control over. It is not considered reasonable to continue to require marketing of the property as the minimum 12 months has passed. Therefore, with no occupier secured that could retain the building in its current or alternative use through conversion, the proposed demolition requires a judgement of the planning benefits and the loss of the non-designated asset.

5.43 The benefits of the proposal include providing eight two or three bedroom family houses contributing to the housing supply on a brownfield site. The location is considered a sustainable location being within an existing established residential neighbourhood, with the local primary school opposite, secondary school in walking distance, local shops on Tang Hall Lane, again a short walk, and cross-city bus services stopping outside the site. It is therefore considered a suitable site for housing and these benefits are considered on balance to outweigh the loss by demolition of the NDHA giving weight to the extended period of marketing which has failed to find an alternative occupier that would reuse the building and preserve its significance.

5.44 A condition is recommended for building recording prior to demolition. In accordance with paragraph 204 of the NPPF, a condition is also proposed which requires evidence that funds are available and contracts secured for the erection of the houses so as to ensure that all reasonable steps to ensure the development will proceed are secured.

Archaeology

5.45 The archaeology reports, by York Archaeological Trust, were prepared in 2019. The initial desk-based assessment found that the site offered the potential to yield evidence of Roman features and possibly for medieval/post-medieval ridge and furrow, though any remains may have been damaged during the construction of The Magnet public House in the 1930s.

5.46 The desk-based report was followed by an Archaeological Evaluation in March 2019, involving the excavation and recording of two trenches. During the course of the evaluation two furrows and a ditch were uncovered. These most likely relate to agricultural activity in the medieval or post medieval period. In terms of below ground archaeology, this loss is accepted and no further recording is required.

Proposed development and design

5.47 The site is a brownfield site within the suburban inter and post war suburban development of Tang Hall. Housing in the area is typically two stories in height, brick built, some rendered, with clay/cement tile roofs. Housing is generally semi-detached or comprises short terraces, set behind small soft landscaped front gardens although some have been hard landscaped to provide off-street parking. Residential estate development from the 1930s predominates to the west in 'Tang Hall' with later 1950s residential development extending to the east and south. There is also more modern infill residential development along Osbaldwick Lane and the proposed development of 8no. terraced dwellings follows this style.

5.48 The proposed development would comprise two short terraces, built of brick with tile or slate roofs. The details of materials can be secured by condition and chosen to respond to the existing residential neighbourhood. To the front, the elevation is articulated with bay windows, canopies over the front doors and a gable projection. The houses would be set behind a small, hedged front garden and have a small garden to the rear. Noting the landscape architect's comments, officers consider that there is not space, nor is it necessary to set the terrace further back from the street as the plans do show soft landscaping to the front and hedge boundary; this can be conditioned. Setting the terrace further back would result in the loss of rear garden with subsequent impact on useful amenity space of the more valued rear garden. The proposed layout is thus acceptable.

5.49 The three units set perpendicular with frontage to Campbell Court access are larger three bedroom units. Again they are of a similar design with bay windows, front dormers and arched headers over windows to add interest. They would be set behind small front gardens, bound by hedges, with larger rear gardens. In the enclosed and gated car park at the rear, one space per dwelling is shown plus one visitor space. Cycle stores are shown in the rear gardens and bin stores to the access road.

5.50 Whilst the separation distances are tight between House 8 and the rear garden of No.1 Campbell Court, drawings show the side windows as obscure glazed. There is therefore little potential for overlooking and loss of privacy. Two storeys in height, it presents the gable end to the dwelling. Rear to side elevation measures 13.5m. This is considered acceptable and would not be over-bearing for existing occupiers. Overall the proposed design, layout and density is acceptable for its context.

5.51 The commercial units immediately adjacent to the site at Nos. 59-61 Osbaldwick Lane were consulted on the proposals by neighbour letter. No comments have been received from the occupiers. The businesses are located within an established residential area and include a small bespoke joiners, a mobility equipment supplier and a double glazing supplier. A planning condition is advised to ensure a noise assessment is undertaken with noise mitigation measures proposed as required to meet accepted standards. It is considered unlikely that there would be significant noise from these commercial units, but that if necessary, protective design measures can be put in place to protect the amenity of future occupiers of the proposed housing development.

Sustainable construction and electric vehicles

5.52 In line with policies CC1 and CC2, the applicant has been advised of the standard conditions to be attached to any planning permission which require a 19% reduction in the dwelling emission rate, a water consumption rate of 110 litres per person per day and a reduction of carbon emissions of at least 28% compared to target rates. These conditions have been accepted by the applicant.

5.53 In accordance with paragraph 112(e) of the NPPF, developments should be designed to incorporate facilities for charging plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. Given that the proposal includes secure allocated parking for each dwelling and in view of the NPPF and the

Council's adopted Low Emission Strategy which aims to facilitate the uptake of low emission vehicles in York, the provision of EV charging facilities within the car park is to be encouraged and this can be secured by condition.

Environmental considerations

5.54 Due to the previous uses of the site and the proposed use as residential a Phase 1 contaminated land assessment is required and the findings will indicate whether further investigation and/or remedial work is needed to make the site safe and suitable for its proposed use. It would be acceptable for the Phase 1 contaminated land assessment to be carried out post any planning permission being granted. Conditions are therefore advised.

5.55 As the proposed dwellings front Osbaldwick Lane are close to commercial uses then noise mitigation measures should be incorporated into the construction of the dwellings. A condition is advised to secure appropriate noise insulation.

Ecology

5.56 The submitted Bat Report and survey data initially submitted was out-of-date and as the building had fallen into further disrepair, and therefore presented a greater number of suitable roosting features. These included voids under lifted flashing, access into the internal space within the roof as a result of broken windows and roof slates, and voids behind boarded windows. An updated Bat Report and survey, including preliminary bat roost assessment of all three buildings on the site was requested, and undertaken by the applicant.

5.57 Following a preliminary roost assessment in undertaken in April 2021 which identified moderate bat roost potential for the main building, two further nocturnal surveys and one dust survey were conducted on site. However no evidence was found of any bats during any of the surveys, resulting in the conclusion that roosting bats are likely absent from the buildings. Therefore the development proposals will not have any impact on roosting bats. The site also does not possess much suitable foraging or commuting habitat for bats. The LPA's ecologist accepts these findings. In accordance with the need to improve biodiversity in and around developments, a condition is advised to secure the provision of two integrated features to provide roosting crevices for bats and two nesting boxes for birds.

6.0 CONCLUSION

6.1 Whilst some concerns have been expressed about the loss of the building as a NDHA and for its community use as a pub, and whether the marketing has been undertaken with the genuine intention of securing a new occupier to continue the use of the building as a pub, or alternative community use, with or without new build on the site, the extended period of marketing of the building has not resulted in a sale and crucially there has been no interest from a local or national operator to continue the pub use. The independent review of the marketing commissioned by the LPA and undertaken by Stapleton Waterhouse found the marketing to be sound. Without the continued use of the building as a pub, the retention of the architectural, historical and cultural significance of the NDHA would be under threat, even should an alternative use be found. The building is not listed and its interior is not protected. Therefore having regard to the heritage significance of the building and taking a balanced judgement that the site is a brownfield site in a sustainable location, providing eight new family size dwellings, the proposals are found to be in accordance with NPPF principles particularly in Section 16 on conserving the historic environment, section 5 on housing and paragraph 93(c), and emerging local plan policies in the 2018 eLP being DP3 sustainable communities, HW1 protecting existing facilities, D1 placemaking and D7 non-designated heritage assets. It is recommended that planning permission should be granted for the development proposed subject to the following conditions.

7.0 RECOMMENDATION: Approve

Conditions

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out in accordance with the following plans and other submitted details:-

Location Plan, received 08.02.2021

Proposed site plan, drawing no. 04 revision E, dated August 2018

Proposed plots 1-5, floor plans and elevations, drawing no. 02 revision C, dated August 2018

Proposed plots 6-8, floor plans and elevations, drawing no. 03, revision B, dated September 2018

Design and access statement, April 2019

Robert Dyas' Trimetals Bicycle Store or equivalent

Application Reference Number: 21/00304/FUL

Item No: 4b

Summer Garden Buildings Wheelie Bin Store 151 wooden slatted or similar
Tyler Grange's Bat survey report, 18th June 2021
Stevenson Associates' Drainage Statement revised 09.09.2021, received
11.10.2021
Insitu CCTV drainage survey report and recommendation, 29.09.2021

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

3 Demolition works shall not be commenced before a legally binding contract with contractors and or sub-contractors for the carrying out of the works of redevelopment of the site is made, with a start date identified. A copy of the contract(s) shall be provided to the Council before demolition works commence. A copy of the evidence of funds available to complete the development shall also be provided to the local planning authority. Therein, the local planning authority will review such documents, confirm that they have witnessed such evidence and if satisfactory will approve the details to enable demolition to commence.

Reason: To ensure that the premature demolition of the buildings does not take place to the detriment of the loss of the non-designated heritage asset in accordance with paragraph 204 of the NPPF.

4 A programme of archaeological building recording, specifically a written description and photographic recording of the standing building to Historic England Level of Recording 2 is required for this application. The archaeological scheme comprises 3 stages of work. Each stage shall be completed and approved in writing by the Local Planning Authority prior to the next stage commencing.

A) No demolition shall take place until a written scheme of investigation (WSI) has been submitted to and approved by the local planning authority in writing. The WSI should conform to standards set by CYC and the Chartered Institute for Archaeologists.

B) The programme of recording and post investigation assessment shall be completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and digital archive deposition with ADS will be secured. This part of the condition shall not be approved until these elements have been fulfilled in accordance with the programme set out in the WSI. The submitted Historic Building Assessment (YAT 2019) should be updated and resubmitted to meet this requirement.

C) A copy of a report shall be deposited with City of York Historic Environment Record and digital archive images with ADS to allow public dissemination of results within 3 months of completion or such other period as may be agreed in writing with

the Local Planning Authority.

Reason: The buildings on this site are of special archaeological and historic interest and must be recorded prior to demolition.

5 All demolition and construction works and ancillary operations, including deliveries to and dispatch 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.

Reason: To protect the amenity of local residents

6 The dwellings hereby approved shall achieve the following measures:

- At least a 19% reduction in Dwelling Emission Rate compared to the target fabric energy efficiency rates as required under Part L1A of the Building Regulations 2013.
- A water consumption rate of 110 litres per person per day (calculated as per Part G of the Building Regulations).
- A reduction in carbon emissions of at least 28% compared to the target emission rate as required under Part L of the Building Regulations.

Prior to first occupation of the dwellings details of the measures undertaken to secure compliance with this condition shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of sustainable design and in accordance with policies CC1 and CC2 of the Publication Draft Local Plan 2018.

7 Notwithstanding any proposed materials specified on the approved drawings or in the application form submitted with the application, samples of the external materials to be used shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing above ground level. The development shall be carried out using the approved materials.

Note: Because of limited storage space at our offices it would be appreciated if sample materials could be made available for inspection at the site. Please make it clear in your approval of details application when the materials will be available for inspection and where they are located.

Reason: So as to achieve a visually cohesive appearance.

8 Details of all means of enclosure to the site boundaries shall be submitted to and approved in writing by the Local Planning Authority before the commencement of above ground works and shall be provided in accordance with the approved details before the development is occupied.

As shown on the approved Proposed Site Plan, 04 rev E, Aug 2018, the boundaries to the front of the properties shall be hedgerow, with soft landscaped garden and pathways to the front and rear. These hedgerows, or replacement of with similar hedgerows, shall be retained as such for the lifetime of the development.

Reason: In the interests of the character and visual amenities of the area and the amenities of neighbouring properties.

9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order), unless otherwise approved in writing by the Local Planning Authority the windows identified on 'Proposed plots 6-8, floor plans and elevations', drawing no. 03, revision B, dated September 2018 shall at all times be obscure glazed to a standard equivalent to Pilkington Glass level 3 or above.

Reason: In the interests of the amenities of occupants of adjacent residential properties.

10 Prior to first occupation of the development, the applicant shall submit a strategy, to be approved by the local planning authority, for the provision of electric vehicle (EV) charging facilities on the site. The strategy should outline proposals for active and/or passive EV charging provision in line with the minimum requirements of City of York Council's Low Emission Planning Guidance. Thereafter it shall be implemented in accordance with these approved details prior to first occupation.

Reason: To ensure electric vehicle charge points are either provided from the outset, or can be easily added to development in the future if required by residents, in line with the NPPF and CYC's Low Emission Strategy.

11 The site shall be developed with separate systems of drainage for foul and surface water on and off site.

Reason: In the interest of satisfactory and sustainable drainage.

12 Prior to the commencement of development, details of the proposed means of foul and surface water drainage, including details of any balancing works and off site works, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the drainage scheme shall be implemented in accordance with these approved details.

The applicant should provide a topographical survey showing the existing and proposed ground and finished floor levels to ordnance datum for the site and adjacent properties. The development should not be raised above the level of the adjacent land, to prevent runoff from the site affecting nearby properties.

Details of the future management and maintenance of the proposed drainage scheme shall be provided for approval in writing by the local planning authority and adhered to for the lifetime of the development.

Reason: So that the Local Planning Authority may be satisfied with these details for the proper and sustainable drainage of the site. It is necessary to require this information prior to commencement of ground works on site as the provision of drainage is fundamental to the delivery of the scheme.

13 Unless otherwise approved in writing by the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.

Reason: So that the Local Planning Authority may be satisfied that no foul and surface water discharges take place until proper provision has been made for their disposal.

14 Prior to the commencement of development, an investigation and risk assessment (in addition to any assessment provided with the planning application) must be undertaken to assess the nature and extent of any land contamination. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- i. a survey of the extent, scale and nature of contamination (including ground gases where appropriate);
- ii. an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
- iii. an appraisal of remedial options, and proposal of the preferred option(s).

The assessment must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

15 Prior to the commencement of development, should contaminated land be identified, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) must be prepared and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

16 Prior to first occupation or use, the approved remediation scheme (if contaminated land is found) must be carried out in accordance with its terms and a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems.

17 In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation 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.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

18 No work above ground level shall take place until a detailed scheme of noise insulation measures for protecting the approved residential from externally generated noise has been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with these approved details. Upon completion of the insulation scheme works, no part of the development shall be occupied until a noise report demonstrating compliance with the approved noise insulation scheme has been submitted to and approved in writing by the Local Planning Authority.

The building envelope of all residential accommodation shall be constructed so as to achieve internal noise levels in habitable rooms of no greater than 35 dB LAeq (16 hour) during the day (07:00-23:00 hrs) and 30 dB LAeq (8 hour) and LAFMax level during the night (23:00-07:00 hours) should not exceed 45dB(A) on more than 10 occasions in any night time period in bedrooms and should not regularly exceed 55dB(A). These noise levels shall be observed with all windows open in the habitable rooms or if necessary windows closed and other means of ventilation provided.

Reason: To protect the amenity of people living in the new properties from externally generated noise and in accordance with the National Planning Policy Framework.

19 Prior to first occupation of the development hereby approved, two integrated features providing a roosting crevice for bats must be constructed within the fabric of the new buildings, and two boxes provided for nesting birds. These features must be provided on a plan or drawing showing the location of the boxes and their specifications. Thereafter they shall be incorporated into the construction of the development.

Reason: To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 180 d) of the NPPF to encourage the incorporation of biodiversity improvements in and around developments, especially where this can secure measurable net gains for biodiversity.

20 The development hereby permitted shall not come into use until the following highway works (which definition shall include works associated with any Traffic Regulation Order which are required as a result of the development, signing, lighting, drainage and other related works) have been carried out in accordance with the approved plans, or arrangements entered into which ensure the same. These

works shall be funded by the applicant, including funding of the TRO.

- No parking on street in front of the development on Osbaldwick Lane
- Clearly identify the existing bus stop / layby (bus box)
- Reinstatement of the dropped kerb to full height kerb

Reason: In the interests of the safe and free passage of highway users.

21 Prior to the first occupation details of the cycle parking areas, including means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority. The buildings shall not be occupied 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.

To note: The cycle parking shown on the drawings is not of sufficient size and should be reviewed to be in accordance with CYC Cycle Parking Guidance v3 (2017).

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

22 The buildings shall not be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles and cycles have been constructed and laid out in accordance with the approved plans, and the gate to the car park installed. Thereafter such areas shall be retained solely for such purposes.

Reason: In the interests of highway safety.

23 Within three months of commencement of development a detailed landscape scheme shall be submitted to and approved in writing by the Local Planning Authority. This shall include the species, stock size, density (spacing), and position of trees, shrubs and other plants. This scheme shall be implemented within a period of six months of the practical completion of the development. Any trees or plants 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 the Local Planning Authority approves alternatives in writing.

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

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) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

- Requested and chased for a marketing update since 16 November 2020 being the date of Barry Crux's original statement
- Requested and chased for information on whether an alternative tenant was sought for the continued running of the pub before closure
- Requested accounts information for the last three years of trading which could be independently verified
- Asked whether the applicant had considered residential conversion and new build rather than demolition
- Sought an update to the bat report
- Arranged for a percolation test to be witnessed by the drainage engineer and proof of existing connections, resulting in revised drainage scheme
- Commissioned a third party independent review of the marketing and valuation
- Agreed pre-commencement of development conditions

2. DEVELOPMENT INFORMATIVE:

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. INFORMATIVE: ELECTRIC VEHICLE RECHARGING POINTS

City of York Council's Low Emission Planning Guidance is available online at:
<https://www.york.gov.uk/downloads/file/2749/aq-plan-guidance-pdf>

As a minimum, parking bays should be provided with the necessary ducting, cabling and groundwork to facilitate the addition of Electric Vehicle Charge Points in the future, if required by residents (passive provision). Consideration should be given to the power requirements for such charge points and how this can be metered and recharged to residents.

Any active Electric Vehicle Charging Points need to be professionally installed. The installation process routinely involves wall mounting a charge point on an exterior wall and connecting it safely to the mains electricity supply. All electrical circuits/installations shall comply with the electrical requirements in force at the time of installation.

In the UK, there is a government-grant scheme available to help reduce the cost of installing a home EV charge point for residents. For more information on the scheme see the OLEV website

<https://www.gov.uk/government/collections/government-grants-for-low-emissionvehicles>

4. INFORMATIVE: TRAFFIC REGULATION ORDER (TRO)

Please apply to highway.regulations@york.gov.uk to implement the TRO to put in place the limit on on-street parking in front of the development on Osbaldwick Lane and to clearly identify the existing bus box.

Please apply to streetworks@york.gov.uk to reinstate the dropped kerb.

5. INFORMATIVE: DRAINAGE

Design considerations.

The developer's attention is drawn to Requirement H3 of the Building Regulations 2000 with regards to hierarchy for surface water dispersal and the use of Sustainable Drainage Systems (SuDS). Consideration should be given to discharge to soakaway, infiltration system and watercourse in that priority order. Surface water discharge to the existing public sewer network must only be as a last resort therefore sufficient evidence should be provided i.e. witnessed by CYC infiltration tests to BRE Digest 365 to discount the use of SuDS. Please note, the testing must be site specific and BGS data will not be accepted.

If the proposed method of surface water disposal is via soakaways, these should be shown to work through an appropriate assessment carried out under BRE Digest 365, (preferably carried out in winter), to prove that the ground has sufficient capacity to accept surface water discharge, and to prevent flooding of the surrounding land and the site itself.

City of York Council's Flood Risk Management Team should witness the BRE Digest 365 test.

If SuDS methods can be proven to be unsuitable then in accordance with City of York Council's City of York Council's Sustainable Drainage Systems Guidance for Developers (August 2018) and in agreement with the Environment Agency and the York Consortium of Internal Drainage Boards, peak run-off from Brownfield developments must be attenuated to 70% of the existing rate (based on 140 l/s/ha if proven by way of CCTV drainage survey connected impermeable areas during the 1 in 1 year event). Storage volume calculations, using computer modelling, must accommodate a 1:30 year storm with no surface flooding, along with no internal flooding of buildings or surface run-off from the site in a 1:100 year storm. Proposed areas within the model must also include an additional 30% allowance for climate change. The modelling must use a range of storm durations, with both summer and winter profiles, to find the worst-case volume required. Please note, the CCTV drainage survey must be carried out prior to determination of the application.

If existing connected impermeable areas not proven then Greenfield sites are to limit the discharge rate to the pre developed run off rate. The pre development run off rate should be calculated using either IOH 124 or FEH methods (depending on catchment size) during a 1 in 1 year event.

Where calculated runoff rates are not available the widely used 1.4l/s/ha rate can be used as a proxy, however, if the developer can demonstrate that the existing site discharges more than 1.4l/s/ha a higher existing runoff rate may be agreed and used as the discharge limit for the proposed development. If discharge to public

sewer is required, and all alternatives have been discounted, the receiving public sewer may not have adequate capacity and it is recommend discussing discharge rate with Yorkshire Water Services Ltd at an early stage.

In some instances design flows from minor developments may be so small that the restriction of flows may be difficult to achieve. However, through careful selection of source control or SuDS techniques it should be possible to manage or restrict flows from the site to a minimum 0.5 l/sec for individual residential properties, please discuss any design issues with the City of York Council Flood Risk Management Team.

Surface water shall not be connected to any foul / combined sewer, if a suitable surface water sewer is available. Suitability of the surface water sewer must be proven.

The applicant should provide a topographical survey showing the existing and proposed ground and finished floor levels to ordnance datum for the site and adjacent properties. The development should not be raised above the level of the adjacent land, to prevent runoff from the site affecting nearby properties.

Details of the future management and maintenance of the proposed drainage scheme shall be provided.

6. INFORMATIVE: FOSS INTERNAL DRAINAGE BOARD CONSENT

The IDB has assets in the wider area in the form of Osbaldwick Beck. This watercourse is known to be subject to high flows during storm events. Under the Land Drainage Act 1991 and the Boards' byelaws, the Board's prior written consent (outside of the planning process) is needed for

- a. any connection into a Board maintained watercourse, or any ordinary watercourse in the Board's district.
- b. any discharge, or change in the rate of discharge, into a Board maintained watercourse, or any ordinary watercourse in the Board's district. This applies whether the discharge enters the watercourse either directly or indirectly (i.e. via a third party asset such as a mains sewer).
- c. works within or over a Board maintained watercourse, or any ordinary watercourse in the Board's district - for example, land drainage, an outfall structure, bridges, culverting etc.

Please note that the Board does not, generally, own any watercourses and the requirement for you to obtain the Board's consent is in addition to you obtaining consent from any land owner or other authority to carry out the relevant works.

Full details of the Consent process can be found on our website:-
<http://www.yorkconsort.gov.uk>

Contact details:

Case Officer: Sophie Prendergast

Tel No: 01904 555138