

COMMITTEE REPORT

Date: 6 June 2013 **Ward:** Wheldrake
Team: Major and **Parish:** Elvington Parish Council
 Commercial Team

Reference: 13/00769/FUL
Application at: The Villa Main Street Elvington York YO41 4AG
For: Removal of conditions 7 (Code for Sustainable Homes) and 8
(renewable heat and electricity) of planning permission
10/01265/FUL for the erection of a dormer bungalow
By: Mr Paul Lofthouse
Application Type: Full Application
Target Date: 13 June 2013
Recommendation: Approve

1.0 PROPOSAL

1.1 The application site is an area of land to the rear of the Villa in Elvington. In 2010 planning permission was granted for a new dwelling on the site (10/01265). The application is being brought to Committee to ensure consistency in decision making as the previous application for a dwelling was also determined at Committee.

1.2 The application seeks to remove two planning conditions that were attached to the original consent, as follows:

CONDITION 7 - CODE FOR SUSTAINABLE HOMES

Prior to the commencement of the development, the developer shall submit for the written approval of the Local Planning Authority an initial Code for Sustainable Homes (CSH) Design Stage assessment for the development. Unless otherwise agreed in writing with the Local Planning Authority, this shall indicate that at least the minimum code level 3 star rating will be achieved. This shall be followed by the submission of a CSH Post Construction Stage assessment, and a CSH Final Certificate (issued at post construction stage). These documents shall be submitted to the Local Planning Authority after completion and before first occupation of the building. Both documents submitted shall confirm that the code rating agreed in the initial CSH Design Stage assessment has been achieved.

Reason: In the interests of sustainable development.

CONDITION 8 - ON-SITE RENEWABLES

Unless otherwise agreed in writing by the Local Planning Authority, a minimum of 5% of the expected energy demand for the development hereby approved shall be provided through on site renewable generation for heat and/or electricity.

Prior to the commencement of development a statement outlining how this is achieved shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved statement unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development is sustainable and accords with Policy GP4a of the Draft City of York Local Plan and the City of York Interim Planning Statement on Sustainable Design and Construction.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: East Area (1) 0003

2.2 Policies:

CYGP1
Design

CYGP4A
Sustainability

CYGP10
Subdivision of gardens and infill devt

CYGP15
Protection from flooding

CYH3
Sequential test for new housing

CYH4
Housing devp in existing settlements

CYH5
Residential densities over 25 per ha

CYT4
Cycle parking standards

CYL1

Open spaces in new residential devts

3.0 CONSULTATIONS

3.1 Internal

None consulted.

3.2 External

Neighbours:

3 letters of objection have been received from neighbours. The concerns raised are:

- 'Cherry Picking' of individual conditions should not be allowed.
- The proposal contravenes council policies on sustainable homes.
- Government policies on garden development have changed since the consent was granted. It is inappropriate to allow the sustainability elements to be removed from the consent, but not consider the principle of the acceptability of the scheme as a whole against more up to date policies and guidance.

Parish - Object on the following grounds:

All the original conditions should be met - or the application re-submitted and subject to current criteria.

Internal Drainage Board - No objections - the proposal has no negative implications on drainage.

4.0 APPRAISAL

KEY ISSUES

- Change in policy direction since the original application was approved.

POLICY CONTEXT

4.1 The National Planning Policy Framework (NPPF) published 27 March 2012 puts an emphasis on sustainable development. One of its core principles is to support the transition to a low carbon future and encourage the use of renewable resources. The Framework states that local policies should set the requirements.

4.2 In respect to conditions the NPPF states (paragraph 206) that planning conditions should only be imposed where they are 'enforceable, precise and reasonable in all other respects'.

4.3 Policy GP4a 'Sustainability' of the City of York Council Draft Development Control Local Plan (2005) sets out the criteria to be considered with regard to the principles of sustainable development. The Local Plan has not been adopted, so weight can only be attached to policies that are in line with the National Planning Policy Framework.

4.4 The CYC Interim Planning Statement on Sustainable Design and Construction (IPS), published in 2007, gives more specific guidance for developments, such as constructing dwellings to a minimum of Level 3 of the Code for Sustainable Homes and provision of on-site renewable energy for all proposed dwellings. In January 2012, an addendum to the statement was published to reflect the transition towards the adoption of the then emerging Local Development Framework (LDF). The addendum, based on Policy CS21 of the LDF Core Strategy, removed the requirement for residential developments of less than 10 units to achieve Code for Sustainable Homes Level 3 or provide on-site renewable energy generation.

4.5 The Council's Local Development Framework Core Strategy was an emerging policy document that was submitted to the Secretary of State on 14 February 2012 to consider the soundness of the plan. As referred to above, Policy CS21 required only developments of 10 units or more to achieve a Code level 3 rating or provide on-site renewable energy generation. On 12 July 2012, the Local Development Framework Core Strategy was withdrawn for reasons unrelated to sustainability requirements.

ASSESSMENT

4.6 As outlined above, the policy position at the local level has been subject of recent changes with regard to the requirement for Code for Sustainable Homes Level 3 compliance and on-site renewable energy generation.

4.7 Although the LDF has been withdrawn, in terms of shaping the Council's future policies, it is clearly more up-to-date than the Draft Local Plan of April 2005 and the 2007 IPS. The requirements of Policy CS21 are based on a viability study into renewable energy and on the national target of achieving zero carbon rated buildings by 2016 achieved through changes to Building Regulations. As a result of this change in policy direction, the Local Planning Authority prepared the addendum to the IPS and has subsequently not imposed the two conditions to applications under the threshold of ten dwellings and has approved the removal of these conditions on existing permissions on a number of occasions.

4.8 As the development under consideration relates to the erection of a single dwelling it clearly falls below the threshold set out in Policy CS21 of the withdrawn LDF and the addendum to the IPS.

4.9 The developer has submitted a revised sustainability assessment to support the current application. It confirms the intention to provide rain water recycling in the form of water butts and ensure that the driveway is permeable. Glazing and insulation for the roof and walls will comply with the latest requirements set out in the Building Regulations.

4.10 The comments made in the revised assessment are considered to be reasonable. The conditions would require documentation to demonstrate compliance that is prepared by a specialist to be submitted for approval by the Local Planning Authority. The intention to implement on-site renewable energy technology and other Code 3 requirements such as external drying space and recycling provision is noted. It is also noted that the original consent was granted prior to the October 2010 changes to Building Regulations which introduced Part L 'Conservation of Fuel and Power' that covers elements such as insulation and energy efficiency.

4.11 Central Government advice contained within Circular 11/95 states that a condition should not be retained unless there are sound and clear cut reasons for doing so. This is reaffirmed in the NPPF where it states that conditions should only be imposed where they are necessary, relevant to planning and the development, enforceable, precise and reasonable in all other respects. By virtue of the change in the Council's policy approach and the change to Building Regulations, it is considered that the two conditions in question can no longer be deemed necessary, reasonably applied or enforced and their removal is considered acceptable.

4.12 The comments of neighbours are noted. However, it is considered that the removal of the conditions would not invalidate the application since the principle of the redevelopment of a site in a sustainable location with a development that makes more efficient use of land and is visually acceptable, accords with national planning policy. It remains the same scheme as previously approved - the only difference would be the removal of conditions 7 and 8. It should also be noted that granting consent for the removal of the conditions does not extend the time limit for the commencement of development and as such it is not considered necessary to assess other aspects of the scheme. The application only relates to the removal of conditions.

4.13 Neighbours have stated that the application should be re-considered in its entirety. This is not considered appropriate for the reasons set out in the appraisal.

For information, however, it is the case that the consent for the dwelling which is subject to this application (10/01265/FUL) was granted on 12 August 2010 and post-dates the Governments re-definition of previously developed land to exclude private gardens (as set out in the now superseded Planning Policy Statement 3 - Housing).

4.14 Attention is drawn to the decisions to approve the removal of the same conditions by the East Area Planning sub-Committee in relation to the redevelopment of The Laurels, Brecks Lane, Strensall, for 8 dwellings (ref: 12/00148/FUL) and 4 Derwent Road (ref 12/02737) for 2 dwellings.

5.0 CONCLUSION

5.1 This application seeks the removal of two conditions attached to a 2010 planning permission. Condition 7 relates to the need to comply, as a minimum, with Level 3 of Code for Sustainable Homes and condition 8 relates to the provision of 5% on-site renewable energy generation. Both conditions require the submission of documentation to demonstrate that the requirements have been met.

5.2 The request to remove the two conditions is based on the change in direction of Council policy with regards the size thresholds for compliance with Code for Sustainable Homes and the provision of on-site renewable energy sources.

5.3 Part L of the Building Regulations will ensure improved energy efficiency and levels of insulation for the new dwellings. The applicant has also indicated his commitment to following good practice in matters such as for example the use of water butts and permeable surfacing.

5.4 In light of the above, and taking into account advice on conditions outlined in Circular 11/95 and the National Planning Policy Framework, it is considered that the two conditions can no longer be deemed necessary, reasonably applied or enforced. As such, their removal is considered to be acceptable.

6.0 RECOMMENDATION: Approve

1 The development shall be begun not later than 13 August 2013.

Reason: To ensure compliance with Sections 91 to 93 and Section 56 of the Town and Country Planning Act 1990 as amended by section 51 of the Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out only in accordance with the following plans:-

Plans and elevations LO2/809/01 and LO2/809/04 received by the Local Planning Authority on 11 June 2010.

Or any plans or details subsequently agreed in writing by the Local Planning Authority as amendment to the approved plans.

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

3 Notwithstanding the information contained on the approved plans, the height of the approved house shall not exceed 6.8 metres, as measured from existing ground level. Before any works commence on the site, a means of identifying the existing ground level on the site shall be agreed in writing, and any works required on site to mark that ground level accurately during the construction works shall be implemented prior to any disturbance of the existing ground level. Any such physical works or marker shall be retained at all times during the construction period.

Reason: to establish existing ground level and therefore to avoid confusion in measuring the height of the approved development, and to ensure that the approved development does not have an adverse impact on the character of the surrounding area.

4 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 the commencement of the development. The development shall be carried out using the approved materials.

Reason: So as to achieve a visually cohesive appearance.

5 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order), development of the type described in Classes A to E of Schedule 2 Part 1 of that Order shall not be carried out to the dwelling house and within its curtilage without the prior written consent of the Local Planning Authority.

Reason: In the interests of the amenities of the adjoining residents the Local Planning Authority considers that it should exercise control over any future extensions or alterations which, without this condition, may have been carried out as "permitted development" under the above classes of the Town and Country Planning (General Permitted Development) Order 1995.

6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order), no windows, doors or other openings shall be inserted within the external elevations, or the roof of the approved development other than those shown on the approved plans.

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

7 No development shall take place until there has been submitted and approved in writing by the Local Planning Authority a detailed landscaping scheme which shall illustrate the number, species, height and position of trees and shrubs that exist around the site (including proposals for their retention/protection) along with new vegetation that will be planted. The plan should include the location of the proposed house and all access routes and turning areas. This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species within the site.

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 development commences and shall be provided before the development is occupied.

Reason: In the interests of the visual amenities of the area.

9 No part of the site shall come into use until turning areas have been provided for both the proposed new dwelling and the existing dwelling in accordance with details which have been previously submitted to and approved in writing by the Local Planning Authority. Thereafter the turning areas shall be retained free of all obstructions and used solely for the intended purpose.

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

10 Any gates shall be erected a minimum distance of 6 metres back from the carriageway of the existing highway and shall open into the site.

Reason: To allow a vehicle entering or leaving the site to stand clear of, and thereby avoid obstructing the public highway, in the interests of road safety

11 Prior to the development coming into use, all areas used by vehicles shall be surfaced and drained, in accordance with details which have been previously submitted to and approved in writing by the Local Planning Authority.

Reason: To prevent the egress of water and loose material onto the public highway and reduce surface water run-off.

12 The driveway shall be constructed at a minimum width of 3.7m and with a minimum height clearance of 4.5m throughout its length.

Reason: To ensure that the dwelling is accessible by emergency vehicles (fire tenders).

13 The building shall not be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles (and cycles, if shown) have been constructed and laid out in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.

Reason: In the interests of highway safety.

14 The hours of construction, loading or unloading on the site shall be confined to 8:00 to 18.00 Monday to Friday, 9.00 to 13.00 Saturday and no workings on Sundays or public holidays.

Reason: To protect the amenities of adjacent residents.

15 No development shall commence unless and until details of provision for public open space facilities or alternative arrangements have been submitted to and approved in writing by the Local Planning Authority. The Open space shall thereafter be provided in accordance with the approved scheme or the alternatives arrangements agreed in writing by the Local Planning Authority and thereafter implemented, prior to first occupation of the development.

Reason: In order to comply with the provisions of Policy L1c of the Development Control Local Plan which requires that all new housing sites make provision for the open space needs of future occupiers.

INFORMATIVE:

The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring a financial contribution towards off site provision of open space. The obligation should provide for a financial contribution calculated at £3,006.

No development can take place on this site until the public open space has been provided or the Planning Obligation has been agreed and you are reminded of the local planning authority's enforcement powers in this regard. The property shall not be occupied until the sum has been paid.

7.0 INFORMATIVES: Notes to Applicant

1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to principle of redevelopment, design, density, sustainability, character and amenity, residential amenity, flood risk and drainage, highway safety and impact on local facilities. As such the proposal complies with national advice contained in the National Planning Policy Framework and Policies SP6, H4A, H5A, GP1, GP4A, GP10, L1C and T4 of the City of York Draft Development Control Local Plan (incorporating 4th set of changes, April 2005).

2. 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 (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve an acceptable outcome:

Additional information requested to clarify the measures to be included to help encourage the sustainable development and use of the site.

3. INFORMATIVE

If, as part of the proposed development, the applicant encounters any suspect contaminated materials in the ground, the Contaminated Land Officer at the council's Environmental Protection Unit should be contacted immediately. In such cases, the applicant will be required to design and implement a remediation scheme to the satisfaction of the Local Planning Authority. Should City of York Council become aware at a later date of suspect contaminated materials which have not been reported as described above, the council may consider taking action under Part IIA of the Environmental Protection Act 1990. Information in respect to contamination assessments can be found at http://www.york.gov.uk/environment/Planning/guidance/contaminated_land/

The developer's attention should also be 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 attached to any planning approval, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

- (i) 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".
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) There shall be no bonfires on the site.

Contact details:

Author: Neil Massey Development Management Officer (Mon/Wed/Fri)

Tel No: 01904 551352