

Meeting	Planning Committee A
Date	5 October 2022 – Reconvened from meeting adjournment on 8 September 2022
Present	Councillors Cullwick (Chair), Ayre, D'Agorne, Doughty, Kilbane, Fisher, Melly, Waudby, Crawshaw (Substitute for Cllr Looker) and Douglas (Substitute for Cllr Pavlovic) and Fenton (Substitute for Cllr Barker)
In Attendance	Becky Eades (Head of Planning and Development Services) Ruhina Choudhury (Senior Solicitor) Alison Stockdale (Development Management Officer)
Apologies	Councillors Pavlovic, Barker and Looker

24. Northern House Rougier Street York [22/00098/FULM]

The Head of Planning and Development Services noted that written representations received following the meeting on 8 September 2022 and the full Financial Viability Assessment (FVA) had been circulated to Committee Members during the Adjournment Period. Concerning paragraph 5.14 of the Committee Report, it was clarified that the scheme would be fully electric. In response to a Member question regarding lobbying, the Head of Planning and Development Services confirmed that written representations had been accepted.

Members were given a precis of the meeting on 8 September, noting that consideration had been given to access and space requirements, density, visitor numbers, archaeology, and energy strategy (including air source heat pumps, photovoltaic and heating). Questions to the Applicant then resumed. The Agent for the Applicant and colleagues were asked and clarified that:

- There was a variety of energy saving and sustainability measures in the scheme. Due to the location of the site, it was not possible to use photovoltaic and the scheme would be using air source heat pumps and electric heating. It was noted that the air source heat pump would increase the BREAMM rating and that it would be located on a compound on the roof.

- Concerning the possibility of valuable archaeological finds, the applicants were relying on the experience of the archaeological team. It was noted that Conditions 5 and 6 covered archaeology and there was a degree of uncertainty with the archaeology with finds dealt with as they occurred.
- Regarding the FVA stating that the scheme was unviable, the different types of viability assessments was explained. It was clarified that there was £6million for the dig and that York Archaeological Trust (YAT) had taken a 10 year view of it. It was further clarified that the £2million figure for the dig was from the previous scheme.
- The overall question of viability related to the S106 obligations and the viability assessment came up with a £24-26million deficit.
- The viability assessment had been carried out using a standard viability assessment. The NPPF guidance was outlined and it was added that the developers were taking a longer term approach to make the scheme viable. If during the life of the scheme it became viable, the S106 contribution for affordable housing could be revisited as part of the overage.
- The scheme was being assessed using the standard methodology in the guidance.
- With reference to the Council for British Archaeology (CBA) methodology for the excavation for the site, it was explained that to widen the size of the excavation would have a greater impact on the site. Reference was made to previous reports on the archaeology of the site and a Member noted the questionability of the location of the Roman road and it was explained that it was highly likely that the bridge was located onwards from Tanner Row.
- The stepped entrance at one access point was because of different ground levels. The stepped access was expected to be mainly used for deliveries but could also be used by the general public.
- It was confirmed that the stairs in the middle of the building met accessibility requirements.
- The gates would be closed when the attraction was not in use and that part of Tanner Street was in the ownership of the building.
- Blue badge holders would be dropped off at the three to four parking spaces on Tanners Moat. An explanation of drop off locations was given.
- Each of the apartments will be accessible, and 20% of the rooms in the aparthotel will be accessible.
- Regarding visitor numbers, the economic impact assessment took account of visitors being from York and this was factored into that calculation.

Members then asked further clarification questions to officers to which they responded that:

- The viability at the point in time showed that affordable housing could not be provided. This may be able to be provided at a different point in time.
- The Executive Summary of the FVA remained the same as the full report.
- The location of cycle parking and storage was explained.
- The location of the parking bays was yet to be finalised.
- Condition 56 referred to the viability of the scheme.
- It would not be reasonable to include a funding agreement, and a condition could not be used to secure funding. The Senior Solicitor confirmed that conditions could not be used to regulate private contracts.
- It was clarified that the viability assessment was to look at the viability of S106 contributions.
- Paragraph 58 of the NPPF states that the weight to be given to the viability assessment is to be determined by the decision maker.
- The reason for the building material and colour was explained.
- All four clauses needed to be met to meet policy D6 of the Local Plan.
- Condition 6 covered the archaeological remains management plan. The process for the evaluation of archaeology was explained.
- Regarding the CBA reference to the lack of evaluation of the site, there was no real knowledge of what laid under the site. The difference with the site was that other public benefits aside, the benefits outweighed the substantial harm.
- It was difficult to answer whether deposits on the site would dry out as a result of environmental impacts.
- The rationale for the juxtaposition of the design of the building on the corner and its harm to listed buildings was explained.
- It was explained that the details of the overage needed to be confirmed and would be dealt with when negotiating the s106 Agreement.
- The education provision and location of play equipment were based on officer's evidence bases. In the absence of evidence to support alternative allocation, the officer's recommendation regarding the location of the play equipment would remain unchanged.
- The Senior Solicitor confirmed that, depending on the nature of amendment being sought, it was possible to amend an officer recommendation. If changes needed to be made to the S106 once completed, this would need to be agreed and formalised via a Deed of Variation. It was confirmed that details of the amount and allocation of S106 contributions could not be changed.
- The recommendation was based on officer's evidence base.

[The meeting adjourned at 18:50 and reconvened at 19:00].

The Senior Solicitor advised that in the absence of relevant assessments having been undertaken to support changes to the S106 obligations, the Committee needed to make their decision based on the recommendation and evidence used to make the recommendation. The Head of Planning and Development Services advised that the Applicant was prepared to accept a change to Condition 56 regarding providing evidence of funding for the site. The inclusion of this in the condition was considered reasonable by officers.

Members then debated the application. Following debate Cllr Fenton proposed the officer recommendation to approve the application with the additional conditions relating to the inclusion of a biodiversity enhancement plan/drawing, lighting design plan, submission of a construction environmental management plan (CEMP: Biodiversity), works to ensure the stopping up of parts of Tanner Row to facilitate the landscaping scheme and amended Conditions 2, 31, and 42 and amendment to Condition 56 regarding providing evidence of funding for the site. This was seconded by Cllr Doughty. A vote was taken with six voting in favour and five against.

It was therefore:

Resolved: That the application be approved subject to completion of a S106 agreement to include the items below and the recommended conditions:

- Control of Build to Rent tenancy length
- Viability review mechanism
- Education contributions
- Primary £56,928
- Secondary £26,126
- Early years £56,928
- Off-site sports facilities for clubs based in the city centre and Clifton £38,127
- Off-site amenity space at North Street Gardens and War Memorial Gardens £27,029
- Children's play space at Scarcroft Green play area £13,676
- Off-site highways works
- £20,000 to implement changes to loading restrictions on Wellington Row and Tanner Row, access onto Wellington Row and parking restrictions if required
- £3,000 towards signalling changes to accommodate cyclists at the junction of Tanner's Moat and Rougier Street

- £6,000 for a TRO and signage for a car club car on North Street or nearby
- Sustainable travel £400 per dwelling toward bus pass or cycle equipment
- S106 monitoring fee £1000 for travel planning, £1300 each for open space, education and highways.

Additional conditions

1. A biodiversity enhancement plan/drawing shall be submitted to, and be approved in writing by, the local planning authority prior to the commencement of above ground works. The approved plan shall be implemented prior to first occupation and retained and maintained for the lifetime 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 174 d) of the NPPF (2021) to contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

2. Prior to the installation of any new external lighting, a 'lighting design plan' shall be submitted to and approved in writing by the local planning authority. The plan shall:

- Demonstrate that required external lighting has been selected in line with current guidance – Bat Conservation Trust (2018) Bats and artificial lighting in the UK.
- Demonstrate how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications), clearly demonstrated where light spill will occur.
- The approved lighting plan shall be retained and maintained for the lifetime of the development.

Reason: To protect the habitats of European Protected Species where there might be changes on site in accordance with Section 15 of the National Planning Policy Framework.

3. No development shall take place until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include the following:

- a) Risk assessment of potentially damaging construction activities
- b) Identification of 'biodiversity protection zones'
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements)
- d) The location and timing of sensitive works to avoid harm to biodiversity features
- e) The times during construction when specialist ecologists need to be present on site to oversee works
- f) Responsible persons and lines of communication
- g) The roles and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person
- h) Use of protective fences, exclusion barriers and warning signs

The details of the approved plan shall be fully complied with in accordance with approved timescales.

Reason: To facilitate the protection of notable/sensitive habitats within the local area.

4. Prior to commencement of development, works to ensure the stopping up of parts of Tanner Row to facilitate the landscaping scheme as shown on the indicative landscape plan 0730-RFM-XX-00-DR-L-0001-S2-P03 shall be completed to the satisfaction of the Local Planning Authority.

Reason: In the interests of good design and highway safety.

Amended Conditions

Condition 2 Illustrative landscape plan 0730-RFM-XX-00-DR-L-0001-S2-P03

Condition 31 Upon completion of the development, delivery vehicles and waste removal vehicles to the development shall be confined to the following hours:

Monday to Friday 07:00 to 19:00 hours

Saturday 07:00 to 19:00 hours and not at all on Sundays and Bank

Holidays

Reason: To protect the amenity of occupants of the nearby properties from noise.

Change proposed to delivery hours to address potential conflict with pedestrianised hours.

Condition 42 Prior to the commencement of each phase of development, details of the following shall be submitted and approved in writing by the Local Planning Authority:

- Amount and type of construction traffic
- Construction access and egress
- Routes into and out of the city centre for construction vehicles including arrangements for deliveries and loading (with holding areas off site if required)
- Dilapidation survey over area to be agreed
- Locations for contractor parking
- Suitable and safe access, parking and drop-off for visitors and staff during Phase 1 (archaeological dig)
- Hoarding details - please note hoarding licences are likely to be required
- The approved details shall be implemented prior to commencement of, and fully adhered to throughout, the relevant construction period.

Reason: In the interests of highway safety.

Condition 56 – to provide evidence of funding for the site.

Reasons:

- i. The scheme involves the demolition of 3 buildings within the Central Historic Core Conservation Area. None of the buildings are of significant architectural value, and one is identified as a detractor, therefore no objection is raised to their demolition, providing a sufficiently high-quality replacement is proposed. An archaeological dig will then take place across 28% of the site followed by construction of a 12 storey (2 basement storeys plus 10 above ground) building consisting of a visitor attraction related to the archaeological dig, 2375sqm office space, aparthotel and 153 flats. The site, as well as being in the conservation area and Area of Archaeological Importance, is within Flood Zone 3 and adjacent to, or in close proximity to, a variety of listed buildings. In accordance with paragraph 11 of the NPPF, the more restrictive heritage assets and flood risk policies in the NPPF apply.

- ii. The proposal results in the loss of office space within the existing buildings. An assessment of the existing floorspace has shown that it is less attractive to the modern business as a result of its layout and low energy efficiency. Additionally, there has been a change in character along Rougier Street to a more leisure-based emphasis. There is some replacement office space in the new building, and it is acknowledged as a more energy efficient and practical floorspace than the existing. For these reasons, the proposal is considered to comply with policy EC2 of the emerging Local Plan.
- iii. The proposal has been revised significantly since the previous scheme and now represents a more sensitive response to its context. It is still however a large building within the historic city and as such will necessarily impact on its surroundings. As a result, harm has been identified to the conservation area and the setting of a number of listed buildings, most particularly 15, 16 and 17 Rougier Street. The harm to designated above ground heritage assets has been assessed at less than substantial.
- iv. The archaeological dig is an intrinsic part of the scheme. It is anticipated that the archaeological deposits found will be of national importance and they should therefore be considered subject to the policies for designated heritage assets. Local Plan policy D6 identifies that where archaeological deposits of more than 5% of the site are disturbed then this equates to substantial harm to the heritage asset.
- v. The Courts have held that when a local planning authority finds that a proposed development would harm a heritage asset the authority must give considerable importance and weight to the desirability of avoiding such harm to give effect to its statutory duties under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The harm resulting from the scheme is considered to be substantial however substantial economic, social and environmental benefits have been identified. These benefits relate to the significant economic benefits of the visitor attraction, public engagement and educational benefits of the archaeological dig, provision of housing, modern energy efficient building and public realm enhancements.
- vi. The substantial harm to the designated heritage assets has been afforded great weight in the planning balance however

there are also significant public benefits. While it is clearly a finely balanced decision, these public benefits are considered sufficient to outweigh the harm identified to those heritage assets even when such harm has been afforded considerable importance and weight in the overall planning balance.

- vii. As set out in section 5 of the committee report, other identified potential harms to flood risk, highway safety, visual and residential amenity and other environmental matters could be adequately mitigated by conditions.

Cllr Cullwick, Chair

[The meeting started at 4.30 pm and finished at 7.44 pm].