



## Notice of a public meeting of

### Planning Committee

- To:** Councillors Reid (Chair), Derbyshire (Vice-Chair), Galvin, Ayre, Boyce, Cullwick, Cuthbertson, D'Agorne, Dew, Doughty, Looker, Funnell, Richardson, Shepherd and Warters
- Date:** Wednesday, 8 June 2016
- Time:** 4.30 pm
- Venue:** The George Hudson Board Room - 1st Floor West Offices (F045)

Would Members please note that the mini-bus for the site visits for this meeting will depart from Memorial Gardens at 10:00am on Tuesday 7 June 2016

### AGENDA

#### 1. **Declarations of Interest**

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

#### 2. **Public Participation**

It is at this point in the meeting that members of the public who have registered their wish to speak can do so. The deadline for registering is by **5pm on Tuesday 7 June 2016**. Members of the public can speak on specific planning applications or on other agenda items or matters within the remit of the committee.

To register please contact the Democracy Officer for the meeting, on the details at the foot of this agenda.

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### **3. Plans List**

This item invites Members to determine the following planning applications:

**a) Huntington Stadium, Jockey Lane, Huntington, York YO32 9JS (16/00484/FULM) (Pages 3 - 40)**

Variation of condition 2 of application 14/02933/FULM to allow minor material amendments to the approved drawings including an increase in the height and length of the commercial development building with alterations to internal layout and an increase in cinema and restaurant floorspace; alterations to the internal layout of the East Stand and variations of permitted uses; alterations to the internal layout and permitted uses within the Leisure Centre [Huntington/New Earswick] *[Site Visit]*

**b) Land Lying To The West Of Metcalfe Lane, Osbaldwick, York (16/00342/FULM) (Pages 41 - 76)**

Erection of 36 dwellings with associated roads and public open space - revised layout of part of phase 4 of the Derwenthorpe development (resubmission) [Osbaldwick and Derwent Ward] *[Site Visit]*

c) **York Designer Outlet, St Nicholas Avenue, York, YO19 4TA  
(16/00215/FUL) (Pages 77 - 94)**

Temporary use of car park for siting of ice rink and funfair [Fulford and Heslington Ward] *[Site Visit]*

4. **Any other business which the Chair considers urgent under the Local Government Act 1972.**

Democracy Officer:

Name: Judith Betts

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For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
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- For receiving reports in other formats

Contact details are set out above.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

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**PLANNING COMMITTEE****SITE VISITS****TUESDAY 7 JUNE 2016**

<b>Time</b>	<b>Site</b>	<b>Item</b>
10.00	Coach leaves Memorial Gardens	
10:15	Community Stadium Site, Huntington	3a
10:50	Land West of Metcalfe Lane (Derwenthorpe)	3b
11.40	York Designer Outlet, Naburn	3c

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**COMMITTEE REPORT**

**Date:** 8 June 2016                      **Ward:** Huntington/New Earswick  
**Team:** Major and Commercial Team                      **Parish:** Huntington Parish Council

**Reference:** 16/00484/FULM  
**Application at:** Huntington Stadium Jockey Lane Huntington York YO32 9JS  
**For:** Variation of condition 2 of application 14/02933/FULM to allow minor material amendments to the approved drawings including an increase the height and length of the commercial development building with alterations to internal layout and an increase in cinema and restaurant floorspace; alterations to the internal layout of the East Stand and variations of permitted uses; alterations to the internal layout and permitted uses within the Leisure Centre  
**By:** Wrenbridge Sport York Limited And GLL  
**Application Type:** Major Full Application (13 weeks)  
**Target Date:** 17 June 2016  
**Recommendation:** Approve after referral to Sec. of State

**RECOMMENDATION**

That delegated authority be given to the Assistant Director of Development Services Planning and Regeneration to

- (i) refer the application to the Secretary of State for Communities and Local Government under the requirements of Article 5(1) of The Town and Country Planning (Consultation) (England) Direction 2009, and should the application not be called in by the Secretary of State, then:-
- (ii) APPROVE the application subject to the following conditions set out later in this report.

**APPLICATION SITE**

1.1 The site (10.3ha.) lies approximately 3km north east of York city centre and is bounded by commercial properties in Jockey Lane to the north, Vangarde Shopping Park to the east and open land to the south and west. Main access points are via Kathryn Avenue in the north and Martello Way in the south. The site includes the site of Huntington Stadium, Waterworld Leisure Centre and Monks Cross Park & Ride. Since planning permission for the stadium was granted in 2015 the stadium and Waterworld have been demolished. The area is predominantly

retail/commercial to the north and east and open/agricultural to the south and west, apart from a small residential area (Forge Close) abutting the north-west corner of the site.

1.2 There are no conservation areas or listed buildings in close proximity to the application site. The site does not contain any trees which are subject to tree preservation orders.

## PROPOSAL

1.3 The application is to vary condition 2 of planning permission 14/02933/FULM for the erection of a mixed-use development comprising (as approved): Erection of 8,000 seat Community Stadium, leisure centre, multi-screen cinema, retail units, outdoor football pitches, community facilities and other ancillary uses, together with associated vehicular access, car parking, public realm, and hard and soft landscaping following demolition of existing structures.

1.4 Condition 2 requires the development to be carried out in accordance with approved plans, which are specified. The applicant is now seeking approval for some of the approved works to be altered. The proposed changes mainly relate to the cinema, which would sit above retail shops on the ground floor of the Commercial Development building to the rear of the Stadium's South Stand.

1.5 As now proposed the cinema would be enlarged to provide a 13th screen, 400 additional seats, improved circulation space and better facilities for disabled users. The enlargement would provide an extra 2880sqm of floorspace, which would be achieved by (a) increasing the height of the main part of the building by 2.5m (b) increasing the height of the projecting lightbox by 3.9m, and (c) extending the building to the south by 6m. The extension to the south would project from first-floor level and cantilever over the ground floor (which would retain its approved dimensions), creating a colonnade to the principal retail façade. The dimensions of the Stadium and Leisure Centre buildings would remain as approved.

1.6 Other changes include:

- Some of the retail floorspace on the ground floor of the Commercial Development building would be replaced with a small amount of additional restaurant space.
- The proposed retail mezzanine would be enlarged.
- 643sqm of cinema floorspace on the first floor of the Commercial Development building would be replaced by a leisure use, accessed from the ground floor.



- Within the Community Hub the proportions of the approved floorspace devoted to each use would change. In particular Be Independent and York St John University would no longer occupy space and therefore a greater amount of floorspace would be occupied by York NHS Trust, which would move from level 2 of the Leisure Centre building.
- The restaurant space in the Stadium's East Stand would be rearranged with all space now provided only on the ground floor of the Stadium's East Stand.
- 692sqm of Community Hub NHS facilities on level 2 of the Leisure Centre building would be replaced by class B1, D1, D2 community facilities.

1.7 In terms of floorspace, the changes to the different uses outlined above would be as follows:

Retail units:	No change
Leisure, health, fitness:	31sqm reduction
Cinema:	2,880sqm increase
Restaurant:	585sqm increase
Community:	733sqm increase

1.8 Access, car parking and landscaping would remain as approved.

## BACKGROUND AND RELEVANT PLANNING HISTORY

1.9 The delivery of a Community stadium has been a council priority since 2003. In July 2012 outline planning permission was granted for a mixed-use development mainly comprising demolition of the existing stadium and erection of a 6000-seat community stadium, retail uses, food and drink uses, car parking, and landscaping (11/02581/OUTM). A subsequent reserved matters application was approved in September 2012 for the retail and restaurant part of the outline application site (12/02545/REMM). These elements of the development were implemented and now operate as the Vangarde Shopping Park.

1.10 In 2012 the council reviewed its aspirations for the stadium and considered a range of development options. This review resulted in planning application 14/02933/FULM. In March 2015 the Planning Committee resolved to grant planning permission subject to the application not being called in by the Secretary of State (it was not). Formal planning permission was granted by the council in May 2015. In October 2015 various details pursuant to the planning permission were approved.

## LEGISLATIVE CONTEXT

1.11 The planning permission granted in 2015 (14/02933/FULM) included a condition (no.2) listing the plans identifying the works as approved. The current application seeks to replace some of the approved plans with others, showing the works now proposed. This requires condition 2 to be varied to replace the superseded plans with new ones. Permission to vary a planning condition of a previous consent can be made under s.73 of the Town and Country Planning Act. This route is appropriate where the changes are material but do not amount to a fundamental alteration of the proposal put forward in the original application. There is no statutory definition of a 'minor material amendment' but National Planning Guidance states that it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one that has been approved. Officers consider that the changes being sought can be properly and robustly assessed under Section 73. The main changes to the application, in particular the changes to the size, appearance and capacity of the cinema building, are material but would not result in a development that, as changed, would (as a whole) be substantially or fundamentally different from the one that was approved in 2015.

1.12 The planning authority should only consider issues raised by the conditions to be changed; in the current case the alterations to the proposals and the impacts of the development as changed. In making its decision the planning authority should focus on national and development plan policies and other material considerations. Where an application under s.73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which would remain in force and unamended. The new permission must describe the whole development and list all conditions, not just the one for which an amendment is being sought.

1.13 For the purposes of the Environmental Impact Assessment Regulations 2011, a s.73 application is a new application for planning permission. Where an environmental impact assessment was carried out on the original application (as in this case) an environmental statement (ES) must be submitted with the s.73 application. The current application is accompanied by the original ES together with an ES addendum comprising the proposed changes and the environmental impacts of the development as changed. After submission the applicant was asked to provide additional information (under regulation 22 of the EIA Regulations) in order for the local planning authority to properly consider the likely environmental effects of the proposed development as changed and any appropriate mitigation. The local planning authority has taken into account the environmental impacts of the development in its consideration of the application.

## 2.0 POLICY CONTEXT

### 2.1 Development Plan Allocation:

City Boundary York City Boundary 0001  
DC Area Teams East Area (2) 0005

### 2.2 Policies:

Draft York Local Plan (2005) - relevant policies include:

CYGP1 - Design  
CYGP4A - Sustainability  
CGP15A - Development and Flood Risk  
CYNE6 - Species protected by law  
CYNE1 - Trees, woodlands, hedgerows  
CYHE9 - Scheduled Ancient Monuments  
CYT4 - Cycle parking standards  
CYSP7A - The sequential approach to development  
CYSP7B - York City Centre and Central Shopping Area  
CYSP9 - Action Areas  
CYSP9 - Action Areas  
CYSP10 - Strategic Windfalls  
CYS1 - Land allocated for shopping sites  
CYS2 - Out of centre retail warehouse criteria

Draft York Local Plan (2014) Publication Draft - relevant policies include:

DP2 - Sustainable Development  
DP4 - Approach to Development Management  
SS1 - Delivering Sustainable Growth for York  
R1 - Retail Hierarchy and Sequential Approach  
R4 - Out of Centre Retailing  
D1 - Landscape and Setting  
CF1 - Community Facilities  
CF2 - Built Sports Facilities  
CC2 - Sustainable Design and Construction  
ENV2 - Managing Environmental Quality  
ENV4 - Flood Risk  
ENV5 - Sustainable Drainage  
T1 - Sustainable Access

## 3.0 CONSULTATIONS

### INTERNAL

#### Planning and Environmental Management (Policy)

3.1 No objection. The sequential assessment undertaken in support of the proposal has demonstrated that there are no sequentially preferable development sites within or on the edge of York City Centre which are both suitable and available at the present time.

3.2 The retail impact assessment (RIA) undertaken in support of the A1 retail floorspace proposed has demonstrated that that the proposal would divert modest levels of comparison goods expenditure from the defined centres and that there would not be a significantly adverse impact upon the vitality and viability of trade or turnover of centres within the City of York or the wider study area. It is also not considered that the effects of the proposed development would have a significantly adverse impact on committed or planned investment.

3.3 The assessments undertaken in respect of the cinema and A3 floorspace, alongside the additional clarification provided by the applicant has demonstrated that the proposals would be unlikely to have a significant adverse impact upon in-centre facilities within York City Centre.

#### Planning and Environmental Management (Urban Design)

3.4 The two key views are from the south (Malton Road) and west (New Lane). In both views the proposed development would appear significant and large. The changes are not a significant departure from the agreed scheme but it is hard to interpret the appearance of the cinema as a positive characteristic in the landscape. The increased massing would be a small-to-medium negative change on distant views compared to the agreed scheme. I would recommend a strengthening of the landscape strategy to mitigate the appearance in the long term with enhanced tree and hedge planting. A condition should be attached to prevent over-dominance of retail signage on the long southern retail elevation.

#### Planning and Environmental Management (Landscape)

3.5 The proposed increase in height and volume of the retail/cinema building as approved would exacerbate the building's visual impact, particularly as the tree planting will not be fully mature for a few decades and the full screening qualities of the trees are only effective for six months of the year. The already approved landscape treatment to the south and west of the retail/cinema does not sufficiently balance the scale of the development, nor will it provide sufficient visual mitigation from New Lane, Huntington. However, there appears to be no scope to increase the

width of planting around the perimeter of the site, due to restricted land ownership. It may be that the benefits of the scheme outweigh the harm to the views and landscape context and quality of the environment of Monks Cross.

#### Highway Network Management

3.6 The application is not considered to have a material impact on the highway network and changes to travel by sustainable modes would be marginal. Parking management arrangements should be made a condition of approval.

#### Environmental Protection

3.7 No objections. Comments made by Environmental Protection on the previous application still apply. Conditions of the previous planning permission should be attached to any new approval granted

#### Flood Risk Management

3.8 No objections. The proposed changes would have no material effect on the drainage scheme approved under the previous permission.

#### EXTERNAL

#### Huntington Parish Council

3.9 No objections.

#### Sport England

3.10 No objections.

#### Highways England

3.11 No objections.

#### Historic England

3.12 The application can be determined.

#### Yorkshire Water

3.13 No comments are required.

Environment Agency

3.14 No objections.

Police Designing Out Crime

3.15 No comments to make.

**PUBLIC CONSULTATION**

3.16 One objection has been received from VUE Entertainment Limited, which operates a cinema at Clifton Moor: The proposed changes are too significant to be considered under Section 73 of the 1990 Act; a full sequential test should be carried out; the full impact of the proposals on the city centre has not been fully assessed; the impact on the local highway network has not been fully assessed.

3.17 An objection has also been received from Reel Cinemas Limited, which operates the Odeon cinema in Blossom Street: The proposed change is too significant to be considered under Section 73 of the 1990 Act; a proper sequential test assessing the impact on existing centres has not been carried out; the proposals should be rejected due to conflict with policy and the threat to vitality and viability of in-centre operations such as Reel's cinema.

**4.0 APPRAISAL**

**PLANNING POLICY CONTEXT**

4.1 Legislation requires local planning authorities to determine planning applications in accordance with the development plan unless material considerations indicate otherwise. The City of York Local Plan was approved for development control purposes in April 2005 but was never formally adopted by the council. Its policies are capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF. For the purposes of this application the most relevant local plan (2005) policies are GP1 design and SP7A, SP7B and S2 relating to protection of existing centres.

4.2 The emerging local plan remains at publication draft stage with consultation on hold pending further work. The plan can only be afforded weight in accordance with paragraph 216 of the NPPF and at the present stage in the statutory process such weight is limited. However, the evidence base that underpins the proposed emerging policies is a material consideration. The evidence base for the emerging local plan includes the City of York Council Retail Study Update, September 2014, by White Young Green.

4.3 The main planning policy context for determining the application is national policy set out in the National Planning Policy Framework (NPPF). The heart of the NPPF is a presumption in favour of sustainable development (Paragraph 14). Where a development plan is not up to date local planning authorities should grant permission unless any adverse impacts of doing so would significantly outweigh the benefits or specific policies in the Framework indicate that development should be restricted. There are three dimensions to sustainable development - economic, social and environmental. To achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system (paragraphs 7 and 8). Decision-takers at every level should seek to approve applications for sustainable development where possible. Local Planning Authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

## MAIN ISSUES

4.4 The key planning issues relevant to the application are:

- Design and Visual Impact;
- Landscape;
- Highways and Traffic;
- Impact on Existing Centres.

## DESIGN AND VISUAL IMPACT

4.5 The NPPF states that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people. Planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

4.6 The revised scheme represents an increase in height and volume and hence visual mass of the approved retail/cinema building. The main roof would be raised by 2.5m to 23.5m (an increase of approximately 12%) and the lightbox would be raised by 4m to 29m (an increase of approximately 16%). As a guide to the scale of the building the three stores comprising the adjacent Vangarde development are 11.5m high. The increase in height and width would increase the building's visual impact, particularly from the south (the P&R and Malton Road) and from New Lane looking east. From both viewpoints the proposed development would appear significant and large across the open flat landscape. At this distance the stadium would appear easily contained within the landscape but the cinema would appear prominent and rectilinear. A large object in the landscape is quite appropriate for celebrating the significance of a community stadium, but the dominant form

(rectilinear cinema box) does not reinforce sporting or stadium image-association. The proposed enlargement of the cinema as approved is unlikely to be seen as a positive change to the landscape. However, although the increased massing would be a small-to-medium negative change to distant views the development would not be seen as a significant departure from the approved scheme.

4.7 The council's architect has raised concerns about changes to the approved fenestration, including the extent and distribution of signage/advertising on the main retail elevation. Condition 16 of the previous approval requires certain details to be submitted for approval. These include external openings, materials and fenestration. Discussions between the council and the applicant over these matters are progressing. Signage and advertising are covered by the Advertisement Regulations.

## LANDSCAPE

4.8 The already approved landscape treatment to the south and west of the retail/cinema does not sufficiently balance the scale of the development, nor will it provide sufficient visual mitigation from New Lane, Huntington. However, there appears to be no scope to increase the width of planting around the perimeter of the site due to restricted land ownership. In particular the lit-up cinema box would, during dark opening hours, be easily visible from Malton Road, New Lane, and Martello Way. The quality of the landscape on the south side of the building is below that provided on the Vangarde development, due to spatial constraints. The increase in width of the cinema over the retail units to create a colonnade over the pavement further reduces the quality and flexibility of the external environment.

4.9 The impact could in the long term be mitigated to some extent by increased tree and hedge planting but the considerable height of the cinema would rise above the tree planting for many years. Furthermore the full screening qualities of the trees would only be effective for six months of the year. It is considered that the benefits of the scheme to the community and the economic need for the additional retail space outweigh this harm to the views, landscape context and quality of local environment.

## HIGHWAY AND TRAFFIC CONSIDERATIONS AND ISSUES

4.10 The transport and highway implications of a new stadium on the site have previously been considered by the council through its consideration and approval of the outline planning application. Therefore the issues of how people would travel to the development, the impacts likely to arise and the mitigations required have substantially been established. The environmental statement addendum includes an update of the proposed changes compared with the planning permission granted May 2015. The note sets out the predicted trips (journeys) for the development as now proposed. The assessment includes different modes of travel but focuses on



car trips. The approach and methodology used are consistent with the previous transport assessment.

4.11 The amendments to the retail, leisure, community uses and offices are all shown to be negligible in terms of trip generation. The increased restaurant offer and cinema will give rise to a slightly more noticeable uplift in predicted trips, however even during the peak highway network weekday and weekend hours, the difference (from approved) is well under 100 vehicle trips.

4.12 The predicted increase in traffic due to the 400 extra cinema seats has been calculated pro-rata using the previously-approved trip generation for the same use. During the week the largest increase in trips (by all modes of travel) is in the evening, after the peak hours experienced on the road network, with 1900-2100 typically seeing circa +100 trips over the approved scheme; and on a Saturday this would be in the region of +200 by all modes but predominantly by car.

4.13 Again, as per the approved development, it is predicted that 85% of people will travel by car (driver and passengers) to the cinema; slightly higher still for the restaurants. There would be some linked trips, with people visiting more than one part of the development, although this generates only a single trip to/from the site. The impacts on the local highway network of the car trips generated by the development as changed have been assessed. During all highway network periods the additional vehicular traffic would be under 100 trips which, when distributed on the local network, would not have a material impact over and above that previously considered and approved.

4.14 However the predicted total car traffic generated by the amended scheme has highlighted an issue on the development site itself, in relation to increased demand for car parking. Under the approved scheme the proposal on match days was for the northern and eastern car parks (173 spaces) to be assigned solely to the stadium/club use, leaving the 268 southern car park for all visitors to the retail, cinema, leisure and community facilities.

4.15 On non-match days the maximum parking accumulation (321-352) would still be able to be accommodated within the total car park stock, as all three car parks would be available. The concern raised by officers in pre-application discussions about the variation to development was that of the uplift in parking demand on match days under which only the southern car park would have been available to visitors to the retail, cinema, leisure uses etc.

4.16 The total peak demand of 352 (1500-1600 Saturday) being substantially greater than the 268 space southern car park. Because of this the applicant has agreed to change the parking arrangements at match times such that the bulk of spaces in the northern car park will also be available to the public, with spaces for

358 cars overall; the eastern car park would remain exclusively for stadium use at match times.

4.17 The disabled spectator bays and spaces for emergency services will be retained in the north car park and only on a rare occasion (local derby match with high away attendance or a televised cup game) will it necessary to allocate more spaces in the northern car park for stadium use. Such occasional events will be communicated well in advance and the public made aware of the parking management in place. Use of the car parks will be monitored, managed and reported on, through the Travel Planning commitments already in place.

4.18 There are no immediate impacts on the park and ride (P&R) site as part of this amended scheme, with the alterations to the P&R car park already approved and delivery underway. Servicing (deliveries) and arrangements for coaches would be accommodated within the previously-approved layout, including the realigned Kathryn Avenue.

4.19 In summary the development now proposed would not have a material impact on the highway network. Changes to travel by sustainable modes would be marginal.

## IMPACT ON EXISTING CENTRES

4.20 Paragraph 23 of the NPPF says that planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. Local planning authorities at paragraph 24 are directed to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. Paragraph 26 states that when assessing applications for retail development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m).

4.21 In terms of retail the NPPG sets out that the sequential test should be considered first as this may identify that there are preferable sites in town centres for accommodating main town centre uses (and therefore avoid the need to undertake the impact test). The sequential test will identify development that cannot be located in town centres, and which would then be subject to the impact test. The impact test determines whether there would be likely significant adverse impacts of locating main town centre development outside of existing town centres (and therefore whether the proposal should be refused in line with policy).

## Evidence Base

4.22 The most relevant evidence base is the Retail Study Update (2014). It considers that the hierarchy in the emerging plan represents sound tiers in the hierarchy for planning for future community needs and in the absence of new guidance still represents previous best practice. It is not considered that a blanket threshold is suitable for all types of centres across the city. Instead it is considered more appropriate to have a range of thresholds, a tiered approach whereby the threshold applied at edge of centre and out of centre locations varies in relation to the role and function of the particular centre.

## Sequential Test

4.23 The application site is in excess of 300m from any surrounding defined centre as defined on the emerging Local Plan proposals map and it represents an out of centre retail development in retail policy terms. It is therefore necessary to assess other 'in' or 'edge of centre' alternatives. In accordance with national and local guidance a sequential test is required. This assessment should demonstrate that there are no other viable alternative sites for the proposals within the centres identified in the retail hierarchy; set out in Policy R1. A thorough assessment of the suitability, viability and availability of locations for main town centre uses is required, with a clearly explained reasoning if more central opportunities to locate main town centre uses are rejected. It is for the applicant to demonstrate compliance with the sequential test.

4.24 The retail assessment submitted to support the application includes a sequential test assessment based on the consideration of sites of 2.25 to 2.75ha to accommodate the 13,500sqm commercial floorspace within a catchment area of zones 1-3 of the York Retail Study catchment area which cover the City of York Council boundary. A site is considered sequentially preferable where it is 'suitable' and 'available'.

4.25 The applicant has assessed the following sites in terms of their suitability and availability:

- Hungate (Allocation MU1 in emerging Local Plan);
- Castle Piccadilly (Site ST20 in emerging Local Plan; and
- York Central (Site ST5 in emerging Local Plan)

4.26 NPPF (para 24) requires both applicants and local planning authorities to demonstrate 'flexibility' on issues such as format and scale when considering sites in, or on the edge, of existing centres as part of applying the sequential test but does not provide specific guidance as to what degree of flexibility is required. Recent case law from Tesco v Dundee City Council (2012 UKSC13) clarifies the position. It

highlights that the Supreme Court has told us in the Dundee case what 'suitable' means in relation to the sequential test. In summary the Dundee case establishes firstly that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach and secondly in terms of the size of the sequentially preferable site, provided that flexibility has been demonstrated the question is " whether the alternative site is suitable for the proposed development NOT whether the proposed development can be altered or reduced so it can be made to fit.

4.27 In summary, whilst it is necessary for applicants to demonstrate 'flexibility' on issues such as format and scale when applying the sequential test, there is no requirement to consider 'disaggregation' nor to consider changes that would materially alter the proposal such that it no longer meets commercial requirements.

4.28 Officers considered that the applicants have demonstrated flexibility on matters of format and scale because they have assessed the floorspace of the retail, restaurant and leisure floorspace in isolation from the Community Stadium scheme itself which reduces the minimum site size to approx 2.5ha. The sequential test has considered sites from 2.25ha to 2.75ha an allowance of 10% from the required size. Below is a summary of the assessed sites and the officers' review of the conclusions made:

#### Hungate

4.29 The total site area is approximately 4ha. The original development brief for the site sought to bring forward a mix of uses including residential, commercial and ancillary retail. A planning approval for the Hungate site in 2006 included 6,392 sqm of Classes A1, A3, A4 and A5 uses.

4.30 Phase 1 of the site is now largely completed and consists of residential apartments. Phase 2 is also a residential-led scheme with a small quantum of commercial floorspace at ground level. This scheme was granted planning permission in February 2014 (13/03015/FULM).

4.31 Members have resolved to approve the hybrid application for phases 3 & 4 (ref 15/01709/OUTM) subject to completion of legal restrictions on 10th December 2015 for the erection of two buildings (Block G and Block H) to comprise either residential units (use class C3), residential institution/elderly accommodation (use class C2), or a mixture of the two and flexible commercial uses (within use classes A1, A2, A3, A4, A5, B1 or D2) and associated infrastructure works. The area for commercial uses would be between 1,265sqm and 1,660sqm.

4.32 Although the site is suitable in principle for some retail development it is not considered suitable for large scale retail development such as that proposed in this scheme. In addition the site is not considered to be available for the use proposed

given the developers intention to bring the site forward for a residential-led scheme as demonstrated by the committed and proposed later phases of the masterplan.

4.33 In light of the existing built and committed schemes at the Hungate site it is not suitable by virtue of the quantum of remaining land available for the proposed scheme. Even if the residual part of the Hungate site is considered alongside the adjacent telephone Exchange and Stonebow House sites it would still not be large enough for the proposal in terms of the totality of the floorspace required (13,500 sq.m).

#### York Central

4.34 This site is included as an 'Area of Opportunity' in the emerging Local Plan under policy SS9. The policy states that a range of uses would be appropriate in this location including office, residential, tourism uses, open space and rail related uses along with ancillary uses subject to relevant impact tests.

4.35 The Council seeks to bring forward the site in a comprehensive manner and it is identified as a medium to long term opportunity for development given the number of ownerships and the scale of development envisaged. The site maybe suitable for some retail and leisure use, subject to the necessary impact tests, but this is envisaged to be ancillary to the main uses including office and residential.

4.36 The site is not considered to be available at present and is unlikely to be available in the short to medium term. The site is not considered to represent a sequentially preferable site at this current time.

#### Castle Piccadilly

4.37 Policy SS10 of the emerging Local Plan includes the Castle Piccadilly site as an 'Area of Opportunity' for sustainable mixed use regeneration. A mix of retail, leisure, civic open space, residential and employment uses are identified as being acceptable in this location.

4.38 This approach is underpinned by the York Retail Study which states at paragraph 9.20 that:

"In centre investment is likely to have been lost in the short to long term, especially in light of the limited capacity that this Retail Study Update has found to 2023. Whilst the whole site may be considered the sequentially preferable site for future retail needs for the city, it is now unlikely that this will come forward in the form of retail development that was previously considered by the Council and LaSalle UK Ventures"

4.39 Whilst it may be a suitable site for the proposed scheme it is not considered that the site can be considered realistically available for retail development within a reasonable period of time. The policy test is whether a site is 'available' now and not over a number of years. Given that Castle Piccadilly isn't available at present and is unlikely to be available in the short to medium term it is not considered to represent a sequentially preferable site at this current time.

4.40 In conclusion officers consider that the sequential assessment has demonstrated that there are no sequentially preferable development sites within or on the edge of York City Centre which are both suitable and available at the present time.

### Impact Test

4.41 The broad approach to assessing impact is set out at paragraph 018 of NPPG. It sets out a staged approach which requires the consideration of the likely turnover and 'trade draw' associated with a proposal, the locations where impacts will arise and the consequences of identified impacts.

4.42 The methodology employed by HOW Planning on behalf of the applicant is consistent with the approach advocated by the NPPG. In order to quantify trade diversion impacts HOW, undertook a new NEMS household survey in November 2014 as part of the original application (14/02933/FULM). This updated the survey undertaken to inform the York Retail Study in November 2013.

4.43 The study area for the proposed retail development is based on the York Retail Study Update so that direct comparisons may be made in terms of trading patterns and market shares. The period over which population and expenditure has been forecast is between 2015 and 2020 and between 2015 and 2025. This is in line with the timescales for the assessment of impacts as set out under paragraph 26 of NPPF.

4.44 The quantum of retail floorspace remains at 5,324sqm gross internal area (4,259sqm net) as approved under the previous application. A revised RIA has been undertaken to support this new application which updates the following:

- Revised list of retail commitments
- New population/expenditure base data
- New population/expenditure growth forecasts
- Revised allowance for Special Forms of Trading
- Revised allowance for changes in sales densities

## Impact of New Proposals

4.45 The updated RIA demonstrates that the implications of the changes in population and expenditure across the catchment area are minimal when compared to the previous RIA of 2014. The population in the test year of 2020 is broadly comparable at 1% lower than previously forecast and the total amount of comparison goods expenditure generated within the catchment area is £2.57bn - 2.7% lower than previously forecast. There is very little difference in the calculated turnovers of centres within the study area.

4.46 HOW Planning in their assessment to accompany the latest proposals estimate that the six A1 retail units (4,259 sq.m net) will have a combined turnover of about £26.4m in the test year of 2020. This is estimated to have a solus impact on York City Centre of 1.5% (1.4% in previous assessment) and a cumulative impact (when taking account of other retail commitments) of 2.9%.

4.47 York city centre's comparison goods turnover (2015) from the study area is estimated at £424.29m (18.9%). It is predicted that the proposal would divert, cumulatively with the other existing retail commitments, about £15.5m of comparison goods expenditure (2.9%). It is considered that the relatively modest level of trade loss predicted from the City's comparison goods retailers would not lead to a 'significantly adverse impact' upon the vitality and viability of York City Centre.

4.48 In terms of the other district centres of Acomb and Haxby the updated RIA forecasts solus impacts of 1.6% on Acomb district centre and 3.1% on Haxby. The cumulative impact is 3.8% and 5.1% respectively. It is considered that these smaller centres predominantly serve the day to day shopping needs of their catchment areas with a relatively low level of comparison goods floorspace. Their focus is convenience goods provision and in that respect the potential for direct competition from the Stadium proposal is limited.

4.49 In summary officers consider that the proposal would divert modest levels of comparison goods expenditure from the defined centres and there would not be a significantly adverse impact upon the vitality and viability of trade or turnover of centres within the City of York or the wider study area.

## Impact on Investment

4.50 NPPG states that when assessing impact upon investment the key considerations are: the policy status of the investment (i.e. whether it is identified in the Development Plan); the progress made towards securing the investment (i.e. if contracts are established); and the extent to which an application is likely to undermine the planned development (i.e. its effect on operator demand and investor confidence).

4.51 The emerging Local Plan identifies three sites within York City Centre (Policy SS5) for retail and mixed use development including Hungate (Site E1), Castle Piccadilly (Site ST20) and elements of York Central (Site ST5). With regards progress made to securing investment both Castle Piccadilly and York Central are identified in the emerging Local Plan as 'Areas of Opportunity' under policies SS5, SS9 and SS10. York Central and Castle Piccadilly are more medium to long term development opportunities and are not available in the short term for investment given existing operational uses. Given this, investment on the sites is 'planned' but is at an early stage in the development process. At the Hungate site planning consent has already been granted for various phases of primarily residential development and the scheme is under construction. This therefore represents committed and existing investment.

4.52 With regards to the extent that the proposed scheme is likely to undermine planned development in terms of operator demand and investor confidence given the early stage of both the York Central and Castle Piccadilly site with no firm concept of a detailed scheme it cannot be evidenced that the planned development at York Community Stadium would undermine the investment.

4.53 With regards the Hungate scheme the second phase, which is residential led, is currently under construction so this investment has already taken place. The third and fourth phase of the scheme does include ancillary commercial floorspace including some retail floorspace but the purpose of this space is to serve the residents of the scheme and may include small scale convenience and comparison floorspace. It is very unlikely therefore that the retail development proposed as part of the Community Stadium scheme will impact on investment at the Hungate site.

4.54 In summary officers consider that the proposed development at the Community Stadium would not have a 'significantly adverse' impact on committed or planned investment.

### Cinema Proposal

4.55 The cinema proposal includes an extra screen and 400 extra seats. The NPPF includes cinemas in its definition of main town centre uses. This means that proposals for new cinemas in locations outside of town centres are subject to the sequential approach and the impact test. There is no set methodology within planning practice guidance (NPPG) for the assessment of impact of cinema/leisure proposals. However, in line with the NPPF (paragraph 24 and 26) it is necessary to consider the trading impacts of the proposed cinema upon existing facilities within existing centres. Within the York area there are three cinema facilities:

4.56 City Screen, York City Centre - 3 screen facility with associated bar/cafe, gallery and small multi-event venue;

Reel Cinema, Blossom Street - 5 screen facility with limited car parking; and



Vue Cinema, Clifton Moor Retail Park - 12 screen out of centre cinema with associated car parking.

4.57 The applicant's original assessment concluded that the proposed facility at Monks Cross would compete directly with, and therefore have most impact upon, the Vue cinema at Clifton Moor. This is based on the theory of 'like affecting like' given that this is also an out of centre multi-screen cinema offering free car parking and therefore is directly comparable to the proposed cinema at Monks Cross. Given this is an out of centre facility and therefore offered no 'policy protection' the applicants conclude that this demonstrates that there would be no significant adverse impact on existing facilities within defined centres.

4.58 The 2013 household survey undertaken as part of the York Retail Study included a question on cinema usage. The results showed that across the whole study area Vue had the largest market share, 33.9%, followed by Harrogate Odeon with 13.8%, Cineworld at Xscape, Castleford at 11.9%, York City Screen at 11.3% and the Reel cinema, York at 1.5%. For just the York zones (Zones 1, 2 and 3 of the study area) Vue cinema has 55% of the market share, followed by City Screen 34% and Reel 2.3%.

4.59 This analysis of patterns of usage both within York and the wider study area show that the Vue cinema at Clifton Moor has the most dominance with 33.9% and 55% of the market share respectively. It would seem likely then that, given the directly comparable format of the new proposal at Monks Cross, the greatest impact is likely to be felt at Vue which would be competing with the same market share as the proposal. The Vue cinema has no policy protection either nationally or locally given its out of centre location.

4.60 It is evident, particularly given their market shares for the York zones, that York City screen and Reel may feel some impact through the opening of a new cinema at Monks Cross. Whilst it is accepted that it is logical to conclude that the proposal would have most impact on Vue, given its dominant market share and its similar format and scale, further clarification was sought from the applicants that the proposal will not have a significantly adverse impact on the in-centre facilities at York City Screen and Reel.

4.61 It was recognised that further clarification would need to focus on qualitative information given there is no set quantitative methodology for this use advised in NPPG - unlike for A1 retail proposals. Also there is a lack of conventional retail impact data available for this use including benchmark sales densities (£ per square metre), cinema spend per capita (at postcode level) or local level trip data.

4.62 As detailed above both York City Screen and Reel have lower market shares both in the wider catchment zone and York zones than the existing out of centre facility at Clifton Moor (Vue). In terms of patterns of trade that are likely to be

diverted from these existing facilities from the proposal it is logical to assume that the greatest competition would be to the Vue facility, given its market share dominance, and the trade diversion felt by York City Screen and Reel would be more limited

4.63 Both York City Screen and Reel offer a different qualitative product to that at the out of town multiplex cinema at Vue, Clifton Moor and to the new IMAX proposal at the stadium. York City Screen has a City Centre location and has a combined offer as both a specialised cinema destination along with a small live events venue and bar/cafe. It is evident from its current market share both in the wider study area (11.9%) and within the City of York zones (34%) that people are making a distinct choice to visit the facility rather than the out of centre multiplex format offered at Clifton Moor. It is considered unlikely therefore that the new proposal would have a significant adverse impact on York City Screen.

4.64 The Reel cinema on Blossom Street offers a small 5 screen facility in a more intimate setting than that offered at out of centre multiplex facilities. The facility is based on a different business model to out of centre facilities offering a 'value' experience with ticket prices cheaper than the large out of centre facilities. The cinema is also in a central location offering good access both for pedestrians and cyclists and by public transport. The central location also offers the opportunity for linked trips with other restaurant and leisure facilities in York city centre for both residents and visitors to the city.

4.65 It is likely that the new proposal, given its out of centre location, could split the market share currently held by the Vue at Clifton Moor and divert some of this to the new facility along with much smaller trade diversions from the Harrogate Odeon and Cineworld at Xscape (which also have market share in the study area, 13.8% and 11.9% respectively) along with the in-centre facilities at York City Screen and Reel. In summary, officers consider that there is no evidence to suggest that there would be a material diversion of trade from either of the in-centre facilities at City Screen and Reel. Nor would the proposal have a significant adverse impact on these facilities.

### Restaurant (A3) Uses

4.66 The approved scheme included two large restaurant uses totalling 1,042 sq m. The revised scheme proposes five smaller units totalling 1,627 sq m. Given that this is above the impact assessment threshold for out of centre destinations of 1500 sqm a RIA is required to demonstrate that the proposal would not have a significant adverse impact on in-centre facilities including York City Centre.

4.67 In the same way as for the cinema use considered above there is no standard quantitative 'retail' impact methodology for assessing the impact of A3 (restaurant uses) given in NPPG. The principles of 'like affecting like', analysis of existing

trading patterns and popularity are all relevant factors in the context of an impact assessment which focuses on qualitative assessment rather than quantitative.

4.68 The applicants have assessed current patterns of market share using the 2014 household survey which included a question asking which location in the study area they most often chose when visiting a restaurant. This analysis shows that York City Centre is the most dominant centre in the whole study area (zones 1 to 20) with a market share of 32% of all available expenditure. Other centres with a strong market share in the study area include Harrogate at 14% and Leeds City Centre at 5%. This shows that York is retaining significant amounts of the available spend across the whole catchment area and is the most dominant centre for this use.

4.69 In terms of the City of York area (covered by Zones 1 to 3 of the study area) York City Centre retains 80% of the total available spend showing that it is very dominant in terms of market share. York City Centre has around 30,000 sq.m of A3 floorspace with the proposal at 1,627 sq.m representing around 5% of this amount. It is considered unlikely that the trade diversion to the new units proposed would give rise to a significant adverse impact on trade and turnover of the City Centre or affect its vitality and viability.

4.70 The five units proposed would be modern out of centre format restaurants which are more likely to compete with the existing out of centre format offer rather than on in-centre provision. Given the limited amount of floorspace it is unlikely that the units would be a destination on their own but rather are an ancillary and complementary offer to the wider stadium and leisure uses. Officers consider it unlikely that the A3 floorspace proposed would have a significant adverse effect on existing centres including York City Centre.

## SUBMISSION OF DETAILS

4.71 The previous stadium application, to which the current application is a variation, was approved subject to various conditions requiring submission of details. Most of those details were subsequently submitted to the local planning authority as AOD applications and approved. The applications were 'subsequent applications' in relation to EIA development where environmental information had previously been provided to the local planning authority. As required by Regulation 8(2) of the Environmental Impact Assessment Regulations 2011 the local planning authority considered whether the environmental information already before the local planning authority was adequate to assess the environmental effects of the development and was satisfied that it was.

4.72 The current application (to vary condition 2) is not substantially different from the application that was approved. The local planning authority has therefore considered whether the details approved pursuant to conditions of the previous application are acceptable as details of the current proposal. In its consideration

the local planning authority has considered whether the environmental information already before the local planning authority (the original ES and its 2016 addendum) is adequate to assess the environmental effects of the current proposal. The local planning authority has concluded that it is. Furthermore, the planning authority is satisfied that the previously approved details are acceptable as details of the current proposal. Therefore, where conditions of the previous application required details to be submitted, and those details were subsequently approved, they do not need to be submitted again. Instead, if the current application is approved, conditions should be attached requiring the development to be carried out in accordance with those approved details.

## **5.0 CONCLUSION**

5.1 The proposed development represents a material change to planning permission 14/02933/FULM for the erection of a community stadium and related mixed use development, but in officers' view do not amount to a fundamental change that would warrant a new application being made. Your Officers are satisfied that the application can be robustly assessed through the Section 73 process. The changes mainly relate to the commercial building on the southern side of the stadium. Of these, the main change is the enlargement of the proposed cinema to provide a 13th screen, 400 additional seats, improved circulation space and better facilities for disabled users. The development as changed would have some impact on the highway network, parking, the city centre and the character and appearance of the development, all of which are capable of being examined through the Section 73 process. None of the proposed changes would result in a development that would be fundamentally substantially different from the approved description of the development.

## **COMMITTEE TO VISIT**

**6.0 RECOMMENDATION:** Defer pending the following:-

- (i) Refer the application to the Secretary of State for Communities and Local Government under the requirements of Article 5(1) of The Town and Country Planning (Consultation) (England) Direction 2009, and should the application not be called in by the Secretary of State, then:-
- (ii) APPROVE the application subject to the following conditions set out later in this report.

1 The development shall be begun not later than the expiration of three years from 21 May 2015.

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

2 The development shall not be carried out otherwise than in complete accordance with the following plans:

AL(0)002 Rev L Masterplan 1:1250  
AL(0)006 Rev G Site Plan 1:500  
AL(0)010 Rev S GA Plan, Level 00 1:500  
AL(0)011 Rev S GA Plan, Level 01 1:500  
AL(0)012 Rev S GA Plan, Level 02 1:500  
AL(0)013 Rev B GA Plan, Cinema Projector Level 1:500  
AL(0)014 Rev N GA Plan, Roof Level 1:500  
AL(0)020 Rev K Elevations - North, South, East & West 1:500  
AL(0)024 C Detail Elevations 1:100  
3041-EH-AL(0)121 Rev E - East Stand Section 1:100  
3041-EH-AL(0)122 Rev E - East Stand/Hub Section 1:100  
3041-AL(0)038 Rev D - North and West Sections 1:100  
3041-AL(0)039 Rev D - South Stand and Retail Section 1:100  
3041-SD-AL(0)125 Rev D - Sections - East/West & North/South 1:400  
3041-LB-AL(0)121 Rev B - Leisure GA Sections EW1 - 1:100  
3041-LB-AL(0)122 Rev B - Leisure GA Sections EW2 - 1:100  
General Arrangement - 3955\_LP 01 Rev.B  
YCS(52)SP001 Rev P02 Proposed Surface Water Drainage Network Key Plan  
YCS(90)SP002 Rev P02 External Works Proposed Finished Level Contours  
YCS(52)SP011 Rev P01 Proposed Surface Water Drainage Network Exceedence Plan - 1 in 100 years + 20% Climate Change Allowance.  
YCS(90)CH0002 Rev P02 dated 06/03/15  
H-DR-0100 Issue 03  
H-DR-0104 Issue 04  
H-DR-0106 Issue 04  
H-DR-0108 Issue 04  
H-DR-0110 Issue 04  
H-DR-109 Issue 03

REASON: For the avoidance of doubt and to achieve an acceptable form of development.

3 Within three months of commencement of development a detailed landscaping plan shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall illustrate the number, species, height and position of trees and shrubs. This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which within a period of five years from the completion of the 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 alternatives are 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.

4 The development shall be carried out in accordance with the tree protection measures approved by the Local Planning Authority on 30 October 2015 under application reference AOD/15/00352.

REASON: To protect existing trees which are considered to make a significant contribution to the amenity of this area and/or development.

5 Prior to the use of the stadium hereby approved commencing, full details relating to the Public Address System (specification and type) and its positioning shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall include measures for mitigating noise emissions to neighbouring properties and shall be implemented in accordance with that approval, unless otherwise agreed in writing by the Local Planning Authority. The Public Address System (the details of which are to be agreed) shall only be used during events that take place on the external area within the stadium and during the period two hours prior to the event commencing (apart from for testing purposes) and within 30 minutes of the completion of the event, unless otherwise agreed in writing by the Local Planning Authority.

REASON: To protect the amenities of adjacent residents.

6 Details of all machinery, plant and equipment to be installed in or located on the development hereby permitted, which is audible at the boundaries of the nearest residential properties when in use, shall be submitted to the local planning authority for approval. These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. All such machinery, plant and equipment shall not be used on the site except in accordance with the prior written approval of the local planning authority. Any approved noise mitigation measures shall be fully implemented and operational before the machinery, plant and equipment to which they relate is first installed or brought use. All plant and any noise mitigation measures shall be appropriately maintained thereafter..

REASON: To protect the amenities of adjacent residents

NOTE: The combined rating level of building service noise associated with plant or equipment at the site should not exceed the background noise level at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics.

7 No open-air concerts shall be held at the stadium hereby approved without the prior written consent of the Local Planning Authority.

REASON: To protect the amenities of adjacent residents.

8 The development shall be carried out in accordance with the construction environmental management plan (CEMP) approved by the Local Planning Authority on 30 October 2015 under application reference AOD/15/00341. The CEMP shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

REASON. To protect the amenity of local residents and businesses and protected species.

9 Except in case of emergency, no site preparation, demolition, ground works or construction shall take place on site other than between the hours of 08:00-18:00 Monday to Friday and between 09:00-13:00 on Saturdays. There shall be no working on Sundays or Public Holidays except with the prior written consent of the local planning authority. At times when operations are not permitted work shall be limited to maintenance and servicing of plant or other work of an essential or emergency nature. The Local Planning Authority shall be notified at the earliest opportunity of the occurrence of any such emergency and a schedule of essential work shall be provided.

REASON. To protect the amenity of local residents and businesses

10 During the site preparation, demolition, ground works or construction period heavy goods vehicles shall only enter or leave the site between the hours of 08:00-18:00 on weekdays and 09:00-13:00 Saturdays and no such movements shall take place on or off the site on Sundays or Public Holidays (this excludes the movement of private vehicles for personal transport).

REASON. To protect the amenity of local residents and businesses

11 Within three months of commencement of development a full Lighting Impact Assessment undertaken by an independent assessor shall be submitted to and approved in writing by the Local Planning Authority. The report shall detail predicted light levels at neighbouring residential properties containing the following as a minimum:

- o Description of the proposed lighting: number of lighting columns and their height, and proposed lighting units.

- o Plan showing vertical illuminance levels (Ev), showing all buildings within 100

metres of the edge of the site boundary

o Artificial lighting to the development must conform to requirements to meet the Obtrusive Light Limitations for Exterior Lighting Installations for Environmental Zone - E3 contained within Table 1 of the Institute of Light Professionals Guidance Notes for the Reduction of Obtrusive Lighting

Any floodlights to be used at the site shall not be used before 08:00 or after 23:00 on any day of the week unless previously agreed in writing by the Local Planning Authority.

No other external lighting shall be installed without the prior consent in writing of the Local Planning Authority.

REASON: To protect the amenities of adjacent residents.

12 There shall be adequate facilities for the treatment and extraction of cooking odours. Details of the extraction plant or machinery and any filtration system required shall be submitted to the local planning authority for written approval. Once approved it shall be installed and fully operational before the proposed use first opens and shall be appropriately maintained thereafter.

REASON: To protect the amenity of future residents and local businesses.

NOTE: It is recommended that the applicant refers to the Defra Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (January 2005) for further advice on how to comply with this condition and that information submitted in compliance with this condition shows compliance with the Defra guidance.

13 In the event that contamination is found at any time when carrying out the approved development, the findings must be reported in writing immediately to the Local Planning Authority. In such cases, an investigation and risk assessment must be undertaken, and where remediation (clean-up) 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. 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 2A of the Environmental Protection Act 1990.

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.

14 The development shall be carried out in accordance with the archaeological details approved by the Local Planning Authority on 15 September 2015 under application reference AOD/15/00198.

REASON: The site lies in an area where important archaeological deposits have been identified. The development will affect these important archaeological deposits and they must be recorded during the construction programme.

15 No longer applicable.

16 Within one month of the start of construction of the development details and, where appropriate, samples of the following matters shall be submitted to the local planning authority and approved in writing. The development shall be carried out in accordance with the approved details.

- o External materials
- o Cinema lightbox including lighting and hours of operation
- o Street furniture
- o External openings
- o Fenestration.

REASON: In the interests of the character and appearance of the area.

NOTES: Samples of external materials should cover aspects such as finish, colour, jointing method & flashings.

Fenestration details should include those of: (1) stadium bay western elevation (2) stadium entrance western elevation (3) cinema/retail typical bay southern elevation (4) cinema/retail lightbox bay southern elevation (5) hub entrance bay eastern elevation (6) retail/restaurant bay eastern elevation (7) Stadium entrance canopy/gap eastern elevation (6) leisure bay northern elevation.

In order to ensure the design intent is carried through to detail resolution, the fenestration production drawings are to be produced at part 1:20 scale, covering detailed points of change, so run from the ground to the top of the building over the width of a typical bay. The scope is to be agreed, but includes examples such as window reveals and curtain walling on the vertical and horizontal plane and articulation of solid panels to achieve changes in depth of plane (typified by the

example of the cinema box serrated edge). Solid panel sizes, retail advert/signage panels and jointing methods to also be included.

The design intent of the cinema auditorium with external lightbox appears to be for a glowing lightbox effect. The provision of drawing details will not enable the effect of this lighting to be judged, and so details of additional illustrative material (e.g. samples, computer or artist generated images) for an accurate judgement to be made as to the overall effect shall be agreed and thereafter submitted to the Planning Authority.

17 Prior to first occupation of the development eight (8) electric recharge bays shall be provided within the site boundary at a location to be agreed with the Local Planning Authority. Bays shall be clearly marked for 'electric vehicle charging only'. The bays shall include free-standing, weatherproof, outdoor electric vehicle recharging units (either 4 x dual headed outlets or 8 x single outlets) and provide 32A type 2 sockets and use a back office system which provides public access by swipe card or mobile application.

REASON: In the interests of sustainable transport

18 The development shall be carried out in accordance with the drainage details approved by the Local Planning Authority on 30 October 2015 under application reference AOD/15/00346.

REASON: So that the Local Planning Authority may be satisfied with these details for the proper drainage of the site.

19 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 water 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.

20 No part of the development hereby approved shall be occupied until the means of vehicular/pedestrian access from the public highway has been constructed and surfaced to at least a base course level, in accordance with the details shown on submitted drawing(s) ref;

- o H-DR-0100 Issue 3
- o H-DR-0104 Issue 4
- o H-DR-0106 Issue 4

- o H-DR-0108 Issue 4
- o H-DR-0110 Issue 4
- o LDA Design General Arrangement 3395\_LP 01 Rev B

or such plans as are subsequently submitted to and approved in writing by the Local Planning Authority.

REASON: To confine access to the permitted points in the interests of good management of the highway and to minimise the number of vehicle accesses onto the highway in the interests of free flow of traffic and safety of highway users, including the Park & Ride bus services.

21 No part of the development hereby approved shall be occupied until facilities clear of the public highway have been provided for the manoeuvring of vehicles in accordance with the approved drawing H-DR-109 Issue 3 or such drawings as are subsequently submitted to and approved in writing by the Local Planning Authority. Such drawings shall show means of access, dimensions, surface treatment and drainage. The areas so provided shall at no time be used for any other purpose than the manoeuvring of vehicles and shall be retained thereafter for such purposes.

REASON; In order to ensure that vehicles may leave the site in a forward gear and do not prejudice the free flow of traffic, highway safety or the amenities of the area.

22 The development shall be carried out in accordance with the vehicle parking details including provision for motorcycles approved by the Local Planning Authority on 30 October 2015 under application reference AOD/15/00346.

REASON; To ensure that adequate provision for parking of vehicles, in accordance with the council's maximum parking standards is provided within the site curtilage to avoid the displacement of uncontrolled parking on the adjacent public highway, to the detriment of free flow of traffic, safety of highway users and amenity of local residents

23 Within 6 months of the commencement of development details of the cycle parking facilities as indicatively shown on drawing LDA Design General Arrangement 3395\_LP 01 Rev B shall be submitted to the local planning authority for approval in writing. Such details to show the position, design, materials and finishes thereof. The approved facilities shall be installed prior to any part of the site being brought into use and shall thereafter be retained for the lifetime of the development for the sole purpose of the parking of cycles.

REASON: To ensure that adequate provision for the parking of cycles, in accordance with the councils minimum cycle parking standards.

24 The development hereby approved shall not be brought into use until the

forward sightlines as shown on drawing H-DR-109 Issue 3 have been provided. Such sightlines shall be retained thereafter for the lifetime of the development, free of all obstructions over 600mm in height above the level of the adjacent highway.

REASON: To ensure an adequate level of visibility is provided in accordance with the relevant criteria so that the use of said highway/junction does not prejudice the free flow of traffic or safety of highway users.

25 Within 6 months of the commencement of development drawings detailing the design of a pedestrian/cycle crossing point to be used in the locations indicatively shown on drawings:

- o H-DR-0100 Issue 3
- o H-DR-0104 Issue 4
- o H-DR-0106 Issue 4
- o H-DR-0108 Issue 4
- o H-DR-0110 Issue 4

shall be submitted to the local planning authority for approval in writing. Such details to show the carriageway width, kerb detail, design, surface materials, street furniture and/or planting/street trees thereof. The development shall be carried out in accordance with the approved details.

REASON; To ensure that the pedestrian and cycle crossing facilities are of a high quality to encourage sustainable travel whilst ensuring through design measures that vehicles are aware of the presence of the crossing and as such positively influences driver behaviour.

26 Within 6 months of the commencement of development detailed drawings and an access strategy shall be submitted to the local planning authority for approval in writing by the Local Planning Authority of measures to restrict and regulate traffic using the new access road around the stadium boundary. Such details shall show the physical design features such as carriageway narrowing, signage, surface treatments and/or technology based solutions such as ANPR enforcement, gates, intelligent bollards or CCTV. The development shall be carried out in accordance with the approved details.

REASON: To ensure that the new internal access route is not used inappropriately to the detriment of highway safety of vulnerable highway users or hinder the service reliability of public transport including Park & Ride services.

27 The development shall not come into use until the following off-site highway works have been implemented in accordance with the submitted drawing(s), or such plans as are subsequently submitted to and approved in writing by the Local Planning Authority:

Application Reference Number: 16/00484/FULM

Item No: 3a

- a) Upgrading of signal loops and software to UTC and/or MOVA at the existing signalised junction of Kathryn Avenue/Jockey Lane
- b) Provision of a CCTV camera at a location to be agreed in the vicinity of the junction of Kathryn Avenue/Jockey Lane
- c) Improvements to facilities for pedestrians and cyclists including widening and resurfacing of the footways from the site boundary along Kathryn Avenue to the junction with Jockey Lane as shown indicatively on drawing ref; YCS(90)CH0002 Rev P002 dated 06/03/15

REASON: In the interests of providing a safe means of access to the site by all modes of transport and to minimise disruption to the free flow of traffic.

28 A full 4 stage road safety audit in accordance with guidance set out in DMRB HD19/03 and guidance issued by the council shall be carried out for the internal highway layout and all off-site works requiring alteration as specified in submitted drawing(s):

- o H-DR-0100 Issue 3
- o H-DR-0104 Issue 4
- o H-DR-0106 Issue 4
- o H-DR-0108 Issue 4
- o H-DR-0110 Issue 4
- o LDA Design General Arrangement 3395\_LP 01 Rev B

or such plans as are subsequently submitted to and approved in writing by the Local Planning Authority.

NOTE: Stage 1 of the audit was approved by the Local Planning Authority on 30 October 2015 under application reference AOD/15/00364.

REASON: To minimise the road safety risks associated with the changes imposed by the development.

29 The development shall be carried out in accordance with the detailed method of works statement approved by the Local Planning Authority on 30 October 2015 under application reference AOD/15/00341.

REASON: To ensure that the development can be carried out in a manner that will not be detrimental to the amenity of local residents, free flow of traffic or safety of highway users.

30 No part of the development hereby approved shall be occupied until a car

Application Reference Number: 16/00484/FULM

Item No: 3a

parking management plan has been submitted to the local planning authority for approval in writing. The site shall thereafter be occupied in accordance with the approved car parking management plan unless agreed otherwise in writing by the local planning authority. Such a management plan shall include at least the following details:

- a) a maximum duration of stay;
- b) details of how the use of 400 spaces within the Monks Cross Park & Ride by stadium spectators during stadium events will be managed;
- c) details of how the implemented plan is to be enforced and managed on a day to day basis;
- d) a signage strategy which makes visitors clear as to the restrictions and enforcement;
- e) details of how and on which match days the northern car park will be available to the public

REASON: To ensure that car park is not used by employees at adjacent employment sites, undermining sustainable travel policies and to ensure that the provision of free car parking at out of town retail units does not encourage car borne travel to these destinations.

31 Within 6 months of the commencement of development a strategy for the placing of directional signage on the highway network shall be submitted the local planning authority for approval and agreed in writing. Such agreed scheme shall be implemented prior to any part of the development hereby approved being brought into use.

REASON: In order to manage traffic flows to minimise the likelihood of development traffic using inappropriate routes to the detriment of highway safety, residential amenity or air quality

32 The site shall hereafter be occupied in accordance with the aims, measures and outcomes of the submitted Travel Plan dated 11 December 2014, or such Travel Plan as is subsequently submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that the development complies with local and national planning and transportation guidance, and to ensure adequate provision is made for the movement of vehicles, pedestrians, cycles and other modes of transport to and from the site, together with provision of parking on site for these users.

33 Within 6 months of the commencement of development a strategy for the use of shuttle buses serving the stadium shall have been submitted to the local planning authority for approval in writing. The agreed strategy shall include at least the following details and shall be implemented prior to the first event taking place at the stadium;

- a) The frequency of the shuttle service operation
- b) The time period before, during and after stadium events that the service will operate
- c) Charges if applicable that will be levied on users of the shuttle service
- d) The routing of the shuttle service including the locations of pick up, drop off and stabling points
- e) Ongoing mechanisms to evaluate the usage of the service, review/adaptation of any aspect of provision to accord with spectator numbers and origins.
- f) Mitigation proposals should the shuttle services fail to achieve the modal split by bus envisaged in the Transport Assessment/Travel Plan.

The agreed stadium shuttle service strategy shall thereafter be operated during stadium events unless agreed otherwise in writing by the Local Planning Authority.

REASON: In order to manage traffic flows to the stadium by promoting sustainable travel and reducing dependence on the private car with the associated detrimental impact that will arise on the operation of the highway network and to local residents.

34 Prior to commencement of the construction works an emission mitigation package for the development shall be submitted in writing to the local planning authority for approval. This shall include a revised emissions damage costs calculation undertaken in line with the DEFRA emissions factor toolkit and Interdepartmental Group on Costs and Benefits (IGCB) and shall adequately demonstrate that the emissions mitigation measures are proportionate to the damage costs. Once approved by the local planning authority

The development shall be carried out in accordance with the emission mitigation package approved by the Local Planning Authority on 30 October 2015 under application reference AOD/15/00346. The emission mitigation package shall be implemented prior to first occupation of the development.

REASON: to mitigate and/or offset emissions associated with the operation of the site in accordance with National Planning Policy Framework paragraphs 109, 124 and 152, City of York Council's adopted Low Emission Strategy, City of York

Council's draft Air Quality Action Plan (AQAP3), and City of York Council's draft local plan air quality policy.

35 The total Class A1 retail floorspace (including mezzanines) of the development hereby permitted shall not exceed 5,324 square metres gross internal area.

REASON: The local planning authority would wish to assess the retail and highway impacts of further retail development.

36 No mechanical, electrical, telecommunications or other plant, equipment or apparatus shall be installed on the roof of the buildings hereby approved without the prior written consent of the local planning authority.

REASON: In the interests of the design and external appearance of the building.

#### RECOMMENDATION

That delegated authority be given to the Assistant Director of Development Services Planning and Regeneration to

- (i) refer the application to the Secretary of State for Communities and Local Government under the requirements of Article 5(1) of The Town and Country Planning (Consultation) (England) Direction 2009, and should the application not be called in by the Secretary of State, then
- (ii) APPROVE the application subject to the following conditions set out later in this report.

#### 7.0 INFORMATIVES:

##### Contact details:

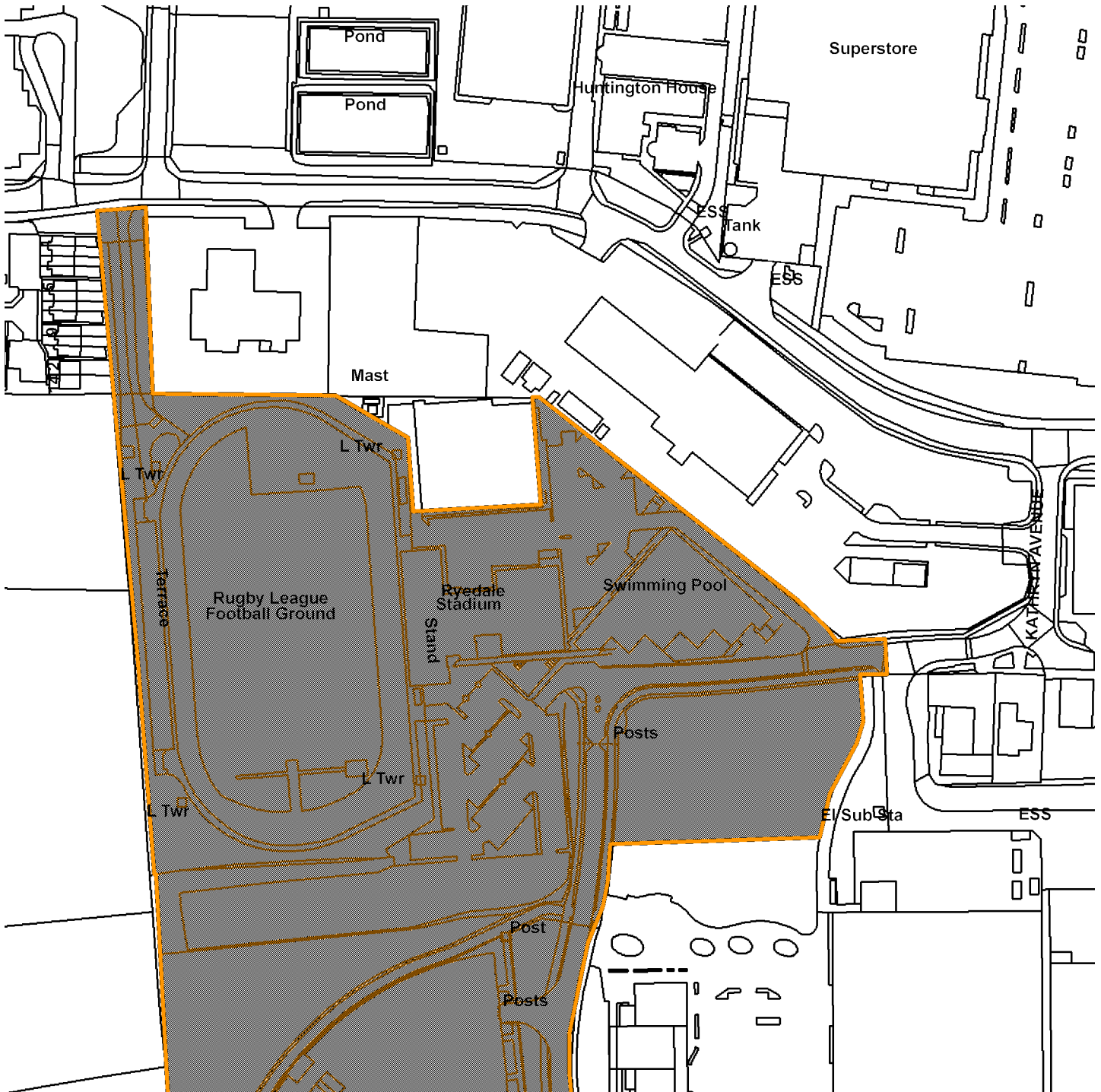
**Author:** Kevin O'Connell Development Management Officer

**Tel No:** 01904 552830



# Huntington Stadium, Jockey Lane

16/00484/FULM



Scale : 1:2266

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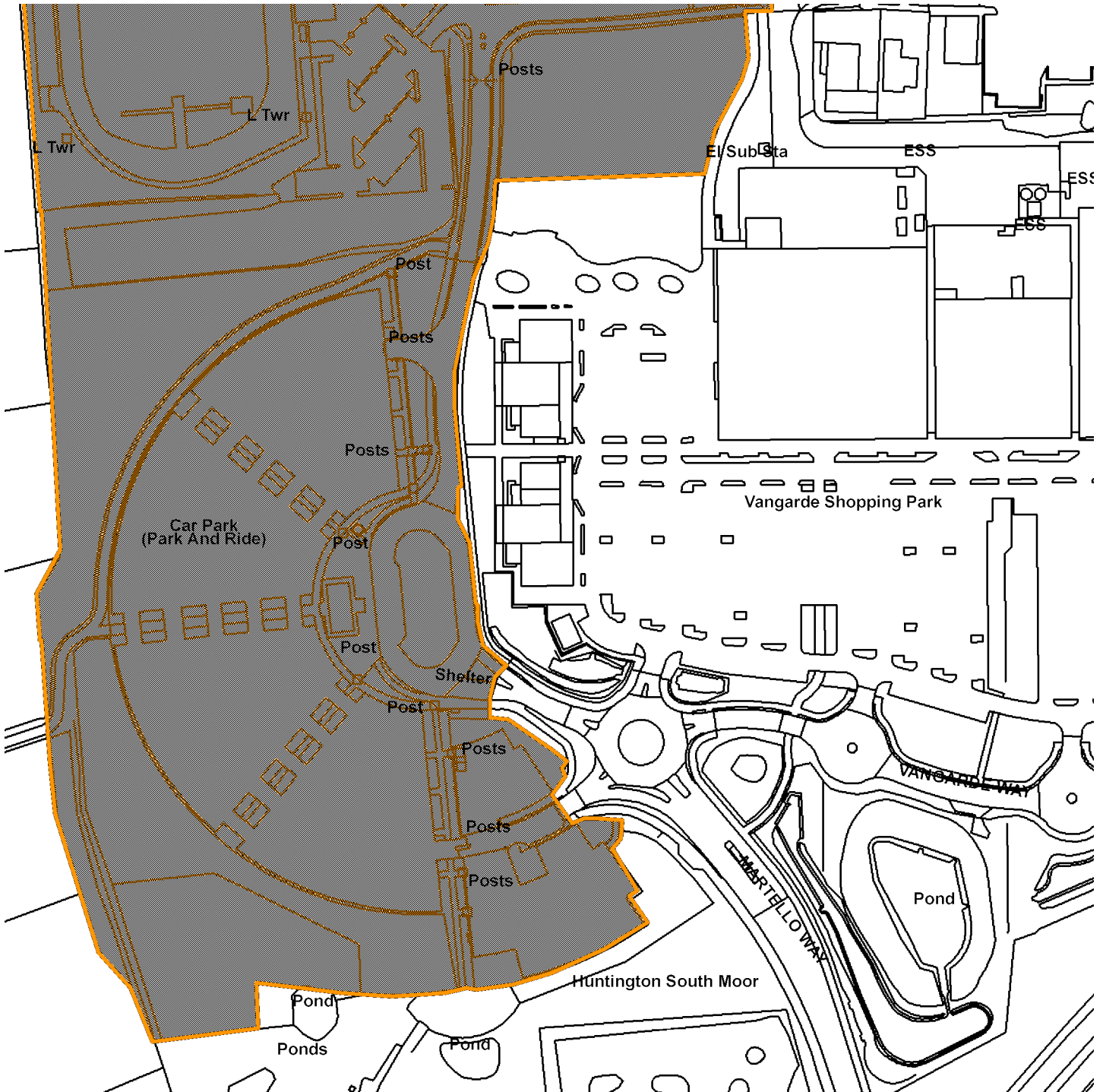
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<b>Organisation</b>	City of York Council
<b>Department</b>	CES
<b>Comments</b>	Site Plan 1
<b>Date</b>	31 May 2016
<b>SLA Number</b>	Not Set

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# Huntington Stadium, Jockey Lane

16/00484/FULM



Scale : 1:2266

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<b>Organisation</b>	City of York Council
<b>Department</b>	CES
<b>Comments</b>	Site Plan 2
<b>Date</b>	31 May 2016
<b>SLA Number</b>	Not Set

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**COMMITTEE REPORT**

**Date:** 8 June 2016                      **Ward:** Osbaldwick and Derwent  
**Team:** Major and                      **Parish:** Osbaldwick Parish  
Commercial Team                      Council

**Reference:** 16/00342/FULM  
**Application at:** Land Lying To The West Of Metcalfe Lane Osbaldwick York  
**For:** Erection of 36 dwellings with associated roads and public  
open space - revised layout of part of phase 4 of the  
Derwenthorpe development (resubmission)  
**By:** Joseph Rowntree Housing Trust  
**Application Type:** Major Full Application (13 weeks)  
**Target Date:** 9 June 2016  
**Recommendation:** Delegate to Approve subject to Section 106 Agreement

**1.0 PROPOSAL**

1.1 The application concerns an area of land to the west of Metcalfe Lane, which is part of a larger residential development scheme approved at outline stage by the Secretary of State in 2007. Reserved matters approval for the four quadrants of the development has subsequently been granted. This proposal relates to an area of land within Phase 4 (the north-eastern quadrant accessed from Meadlands) and to a field, Field 9, immediately to the south of it. Permission was granted for 74 number of homes accessed from Meadlands. Field 9 was shown as an area of open space of ecological interest.

1.2 The current proposal seeks full planning approval to redesign part of Phase 4 by repositioning houses and re-siting 6 no. dwellings onto Field 9, to accommodate the retention of overhead electricity power lines that cross the site. The application does not cover all of the land within Phase 4. The power lines were intended to be laid underground, but the application submission explains that National Grid are unable to provide this undertaking and a stand off zone distance set by the grid operator, Northern PowerGrid needs to be adhered to if the power lines have to remain overhead. The retention of the cables effectively neutralises the land beneath them and within a safety clearance distance of 11m either side of the power lines. This affects 17 no. of the dwellings approved under reserved matters application 12/01878/REMM, within Phase 4, which cannot be constructed because the overhead lines and the associated safety clearance corridor cross over the dwellings themselves or the private gardens.

1.3 Access to Phase 4 would remain unchanged. The number of dwellings would reduce from 74 in total accessed from Meadlands to 66 and within the application site itself from 44 to 36. The mix of house types is as follows: 6 no. two bedroom houses, 28 no. three bedroom houses and 2 no. four bedroom houses. The open

space would be reconfigured with a large section of Field 9 retained and extended north along the eastern site boundary with Metcalfe Lane, under the line of the power cables.

1.4 This application is a re-submission of the same scheme that was submitted in 2015 (ref.15/00754/FULM), but was withdrawn prior to Committee by the applicant, as they wished to revisit the proposed Section 106 obligations.

## ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS

1.5 The site area does not exceed 5 hectares and the number of units is less than 150 dwellings and therefore the application falls below the threshold stated in the Town and Country Planning (Environmental Impact Assessment)(Amendment) Regulations 2015. The application, whilst related to an existing approved application that was accompanied by an EIA does not constitute a subsequent application as defined in the EIA regulations.

## 2.0 POLICY CONTEXT

2.1 2015 Draft Development Plan Allocation:

Conservation Area GMS Constraints: Osbaldwick CONF

Schools GMS Constraints: St. Aelred's RC Primary 0223

2.2 Policies:

1. Yorkshire and Humber Regional Spatial Strategy - Green Belt policies YH9(C) and Y1 (C1 and C2))

2. National Planning Policy Framework (March 2012)

3. 2005 Draft York Local Plan (4<sup>th</sup> set of changes). Relevant policies include:

- CYGP1 – Design
- CYGP3 – Planning against crime
- CYGP4A – Sustainability
- CYGP4B – Air Quality
- CYGP6 – Contaminated Land
- CYGP9 – Landscaping
- CGP15A – Development and Flood Risk
- CYNE1 – Trees, woodland, hedgerows
- CYNE6 – Species protection
- CYNE7 – Habitat protection

- CYGB1 – Development in the Green Belt
- CYT4 – Cycle parking standards
- CYH1 – Housing Allocation
- CYH2A – Affordable Housing
- CYH3B – Managed Release
- CYH3C – Mix of Dwellings
- CYH5A – Residential Density
- CYED4 – Developer Contributions towards Education
- CYL1C – Provision of New Open Space in Development

4. Draft York Local Plan (2014) Publication Draft – relevant policies include:

- DP2 – Sustainable Development
- DP3 – Sustainable Communities
- SS1 – Delivering Sustainable Growth for York
- SS2 – The Role of York's Green Belt
- D1 – Landscape and Setting
- D2 – Placemaking
- G14 – Trees and Hedges
- GB1 – Development in the Green Belt
- CC2 – Sustainable Design and Construction
- ENV4 – Flood Risk
- T1 – Sustainable Access

### **3.0 CONSULTATIONS**

3.1 The application was publicised by means of a press notice, posting of site notices and consultation with statutory consultees and adjacent residents. Further re-consultation was undertaken following the submission of the revised plans. The consultation period expired on 29 April 2016.

INTERNAL

#### **PLANNING AND ENVIRONMENTAL MANAGEMENT (ECOLOGY AND COUNTRYSIDE)**

3.2 This application is a resubmission of 15/00754/FULM. There are no significant changes to the application with regards to impacts on ecology and therefore the previous comments of 4th August 2015 and recommendations for conditions remain valid.

3.3 States the original scheme retained Field 9 as a nature reserve to maintain habitat for great crested newts and also the nature conservation value of the wet

grassland habitat found here. The area was to be enhanced with the creation of new ponds and additional hedgerow planting. Stock proof fencing was to be installed to allow grazing as a management option.

3.4 The officer visited on 22nd May 2015 and found the pond to be dry. Therefore, although the great crested newt survey is two years old, the conclusion that great crested newts are no longer breeding on site is supported. A pond drying by late Spring can indicate annual drying.

3.5 The area to the west and immediately south of the pond has a lush grass sward with frequent common and meadow buttercup and occasional tufts of hard rush. The ridge and furrow is less pronounced here although there was evidence of recent areas of standing water. The ridge and furrow is much more pronounced in the area east of the pond with evidence of having held water until recently. The area is dominated by strands of hard rush where lady's smock is frequent and interspersed and boarded with areas of grass containing glaucous sedge, meadow and creeping buttercup, common vetch, common sorrel and occasional dock. Towards the centre is a small patch dominated by thistles.

3.6 This second design of the revised scheme introduces one row of housing and access road at the western side of Field 9, with a connecting shared user path along the south. It also introduces a new area of open space to the north of Field 9, along the boundary with Metcalfe Lane. An Ecological Conservation and Management Plan has been submitted which sets out the creation and treatment of the areas.

3.7 This latest revision, removing houses on the eastern side of Field 9, is an improved design as the more interesting area of wet grassland is retained with better connectivity to the wider landscape. The eastern hedgerow along Metcalfe Lane is now at less risk of inappropriate management and disturbance. The restriction of housing to one side of the field gives it less of a 'village green' feel which could help to minimise 'people pressure' on it, although there is still some risk from this. It still feels that the area of wildflower grassland proposed behind housing on the western side is unlikely to be sustainable in the long term, being at risk of damage from garden waste or unofficial extensions of back gardens.

3.8 The ecology report still refers to land re-modelling to avoid seasonal water logging in the south of the area. It is not clear what exactly this would involve and a construction environmental management plan for biodiversity, such as detailed in British Standard BS 42020:2013, will be required to ensure that there are no adverse impacts from construction.

3.9 The improvements to the existing pond are welcomed, as are the new hedgerows which should limit the amount of blackthorn in their composition to avoid encroachment into the field. The Ecological Conservation and Management Plan details the creation of a new pond to the south of the shared user path which would



enhance the area. The management for this area is now proposed as annual hay cut which will help to maintain the botanical interest.

3.10 The lighting scheme shows low level bollards on the shared user path which is appropriate for this location but 'all round' street lights on the roads. Use of this type of lighting would cause unnecessary light spillage onto the areas retained for nature conservation (including the existing pond) and an appropriate condition should be used to secure a better design.

3.11 If this application was approved the protection and enhancements of existing features, creation and future management of the areas of open space would need to be secured through a planning condition.

#### PLANNING AND ENVIRONMENTAL MANAGEMENT (LANDSCAPE)

3.12 As there are no significant changes to the previous submission, no further comment to make, requests referral to previous detailed comments made 20th May 2015 ref: 15/00754/FULM (see below). In summary, in terms of open space provision, the proposal works well. Compared with the approved scheme (12/01878/REMM), a higher number of properties overlook open space; and the amenity is increased along Metcalfe Lane due to the increased openness along the eastern edge of the site.

3.13 Raises concern on basis of capacity to accommodate the ecological requirements within the new layout and the visual impact of the housing arrangement. The impact on open space in the revised scheme is more openness to Metcalfe Lane and the quality of amenity space is not harmed. However it is not as satisfactory for the housing arrangement. The single rows of houses now appear somewhat isolated and vulnerable. Nonetheless there remains a reasonably close association between the single rows of houses and adjacent blocks. Along the front elevations they read with units 469-475 as part of an incomplete quadrangle around the revised open space, with appropriate pedestrian and cycle circulation.

3.14 The character of this space was to essentially reflect its purpose as a 'nature reserve'. The reduction in size of this particular space and its enclosure with housing will place greater population pressure upon it, but sees no reason why it cannot be maintained as best as possible with nature in mind, including suitable wet areas, and to discourage too much wear and tear through general recreation, given that there is the provision of other formal facilities within Derwenthorpe. This arrangement, as for others, results in good overlooking of open spaces.

3.15 The planting and hard materials proposed in the Landscape Layout are in keeping with the standards presented throughout the rest of the Derwenthorpe development. However any shrub planting within the two open spaces should be predominantly native. The same style of LAP is provided in a different but equally

suitable location. A minor detail but the visitor parking spaces to the east of the link with Meadlands could possibly be given a bit more attention e.g. by way of tree planting.

3.16 A street lighting scheme is included in the submission. In order to be assured that the electricity supply and other utility runs will not hinder the proposed street tree planting, which is so critical to the home zone principles and street amenity. This information should be provided before a recommendation can be made. It is assumed such information can be provided at this stage, given the advanced development of earlier phases. Would also expect a tree pit/trench planting detail for the street trees.

3.17 Requests conditions be attached as for the previously approved reserved matters phase 4 scheme in respect of provision of an approved landscape scheme through LAND 1 which would include details for the open spaces and secure all of the planting for a five year period; and a condition for protection of existing hedgerows, scrub and trees within the application site and alongside Metcalfe Lane.

3.18 Further to previous email, this scheme is improved with the removal of the houses on the eastern side of the open space, resulting in a better relationship with Metcalfe Lane and a more fluid connection between the two eastern areas of open space. It is a pleasant outlook/setting for units 476 - 481, though it does still leave them looking a bit vulnerable. Given the information we have to date, requests conditions be attached to any approval to cover landscaping, a plan showing utility runs and tree/hedge protection.

#### PLANNING AND ENVIRONMENTAL MANAGEMENT (ARCHAEOLOGY)

3.19 A desk top study of this area in 1999 suggested that the site may be the location of prehistoric settlement alongside a routeway following the glacial moraine now Hull Road. This routeway later became a Roman road. Roman settlement is known in the vicinity of Osbaldwick.

3.20 Geophysical survey and subsequent archaeological evaluation of this area in 2002 revealed possible Roman linear gullies and postholes and a possible 10th or 11th century toft enclosure. The remnants of medieval ridge and furrow were evident in all trenches.

3.21 Despite the limited findings the site is still within an area of archaeological interest and, given the scale of this proposal, it is possible that excavations for foundations and service connections may reveal or disturb archaeological features. It will be necessary to record any revealed features and deposits through an archaeological watching brief on all groundworks.

3.22 Requests condition ARCH2 on any consent that is granted for this application.

## PUBLIC PROTECTION

3.23 This application is for a revised layout of Phase 4 of the Derwenthorpe development, as a result of which the principal of development has already been established.

3.24 Noise - Concern raised regarding noise associated with the construction of the housing, given the proximity of existing housings in Phases 1, 2 and 3 of the development and properties located on Metcalfe Lane itself. Requests a condition requiring the previously approved Construction Environmental Management Plan to be used and followed for the new scheme to ensure that residential amenity during the construction phases is not adversely affected.

3.25 Contaminated Land - The revised Phase 4 layout no longer includes electricity substation land, so land contamination is less likely to be present at the development site. However, it is recommended that conditions be attached to any planning approval in case unexpected contamination is detected during the development works.

3.26 Requirement for Electric Vehicle Recharging infrastructure on the site - In line with City of York Council's adopted Low Emission Strategy and the NPPF, developments should be located and designed where practical to incorporate facilities for charging plug-in and other ultra low emission vehicles (NPPF para 35). All residential properties that include off street parking (private driveways or garage space) should make provision for this. Suggested condition for the provision of Electric Vehicle recharging infrastructure.

## FLOOD RISK MANAGEMENT TEAM

3.27 This is a revision to the already approved layout under the outline application and all drainage has been approved and constructed in accordance with the submitted drainage details and have been in operation for some time. These works to include construction of the headwall connection to Osbaldwick Beck and discharge rate was by way of consent by the Foss (2008) Internal Drainage Board (FIDB). After assessing the submitted Note to file N010-2 dated 26<sup>th</sup> April 2016 by JBA Consulting, the team confirm this is a full account of the history and approval of the drainage on this development and therefore this 2016 application will not increase flood risk on site or elsewhere. It is clear by the FIDB's response that their planning officer is not in possession of the full history and approval of the strategic drainage on this development and should therefore remove their objection. Requests conditions requiring separate systems of drainage for foul and surface water and no piped discharge of surface water prior to completion of the approved surface water drainage works.

## HIGHWAY NETWORK MANAGEMENT

3.28 No objections to the proposed application. The detail submitted accords with the principles set out in the outline application for the site. As the application has been submitted as a full application, relevant conditions will need to be applied. The Section 106 agreement would need to be varied to ensure that this application is bound by the relevant contributions and highway works linked to the outline consent.

3.29 The number of residential units served from Meadlands is in accordance with the relevant planning consents. All issues relating to traffic generation and off site highway works were secured and addressed at the outline application stage. Although the application being considered is stand alone the level of traffic that would be anticipated to be generated by the phase is less than that previously considered and as such no further assessment work is required nor justified.

3.30 A break point is provided within the phase which will permit pedestrians and cyclists to pass between the Fifth Avenue element of the scheme and the Meadlands side. Vehicular access between these access points will be prevented with the exception of emergency vehicles or refuse vehicles as may be necessary.

3.31 Much of the highway layout is based around home zone principles where the road space is shared amongst users and as such does not have a formal kerbed carriageway/footway construction. The highway has been designed to restrain vehicle speeds through a variety of recognised measures including the use of planting in the highway, varying the width of the highway and restricting forward visibility. Traffic calming design features together with managed on-street parking areas have been provided throughout the phase which have been designed to keep vehicle speeds to 20mph.

3.32 Car parking is in accordance with CYC Annex E maximum standards with the layout being carefully designed to create areas of managed on-street parking whilst avoiding the potential for indiscriminate parking to occur. The proportion of car parking numbers including visitor spaces and car club bays is to the same ratio as has been provided and agreed on Phases 1,2 and 3 of the development.

3.33 Refuse collection will be a mixture of kerbside collection and pick up from dedicated bin drop off points. Vehicle swept paths have demonstrated that refuse vehicles can successfully traverse the site.

3.34 There is an existing cycle route which runs along the Eastern boundary of the site between the Sustrans route and Meadlands. This route is being accommodated within the site layout.

## HOUSING STRATEGY AND DEVELOPMENT TEAM

3.35 Housing Services support this revised application from JRHT. Lengthy delays in beginning on site necessitated council officers and JRHT working closely with the Homes and Communities Agency (HCA) to ensure that the grant funding for the affordable housing has continued to be secured despite significant changes and delays to the original programme for building out the development.

3.36 The HCA grant funding conditions require that a certain number of affordable homes are to be completed each quarter and for all 198 affordable homes to be completed by March 2018. To achieve this it has been necessary to agree a higher proportion of affordable housing on Phase Three of the development and a lower proportion on Phase 4. This has been a pragmatic approach to securing the grant funding for the homes scheduled for delivery in phases 3 and 4 and thereby also ensuring that the overall development will deliver 40% affordable housing.

3.37 For this full planning application which forms part of Phase Four of the development one shared ownership home will be included. Across the whole of Phase Four there will be eight affordable homes which is fewer than would ordinarily be required under the council's affordable housing planning policy and this will need to be reflected in the S106 Agreement. However, because of the unique circumstances of this development and in particular the need to meet external deadlines for the delivery of affordable housing, this is considered acceptable so long as the total number of affordable homes remains at 198 out of 491 homes. Information has been provided of the tenure split in each phase of the development, which confirms that the total affordable homes in the development as a whole will still meet the original agreement of 40%.

## EDUCATION

3.38 Requests financial contributions towards education provision, including £60,736 towards the cost of additional dining facilities at Archbishop Holgate's School, and £24,444 towards the cost of additional pre-school provision within 1.5km of the site.

## LEISURE

3.39 Based on the housing mix, the off site sports contribution required for phase 4 would be £20,448. This would be spent in accordance with the city's playing pitch strategy. This 2014 strategy demonstrates that the city is short of sports pitches in general, with specific pitch and facility issues highlighted in the area. The pitches at Burnholme are specifically mentioned in Heworth Ward, which has a deficit of 15.22 Ha of grass pitches. Combining the level of provision in Heworth, Heworth Without and the former Osbaldwick ward, there is a combined deficiency of 7.33 Ha. The priority projects for the area are still pitches, outdoor sport and ancillary facilities at

Burnholme community health hub and pitch drainage and improvements at Osbaldwick sports club to improve its carrying capacity.

EXTERNAL

NATURAL ENGLAND

3.40 Has no comments to make regarding this application.

ENVIRONMENT AGENCY

3.41 No objections.

YORKSHIRE WATER

3.42 Requests conditions be attached in the event permission is granted in order to protect the local aquatic environment and Yorkshire Water infrastructure.

SPORT ENGLAND

3.43 No Comment.

NORTH YORKSHIRE POLICE

3.44 No concerns or issues to raise.

FOSS INTERNAL DRAINAGE BOARD

3.45 Object on the basis that the proposed drainage system is considered to be unviable and unachievable without the installation of a headwall to Osbaldwick Beck, which would not be agreed by the Board unless the intended discharge rate was above 1.4l/s/ha.

OSBALDWICK PARISH COUNCIL

3.46 Objects to the planning application on the following grounds:

- The plans contradict the 2007 outline permission granted by the Secretary of State that field 9 should not be built on and should be kept as amenity/wildlife open space provision;
- Issues and concerns previously raised relating to flooding and ground water retention have not been addressed;
- Drainage is a major issue due to the land being built up;
- Residents of Meadlands seek confirmation that Meadlands would not be used for construction traffic/workers, that boundary hedges would be retained, that

- bungalows would be built adjacent to Meadlands with a minimum distance of 20 metres adhered to and working hours defined, adhered to and monitored;
- Request a meeting with CYC, JHRT and local representatives;
  - Point out that item 13a) on the application form relating to protected species is incorrectly answered as it does not acknowledge that Great Crested Newts have been found in Field 9 pond in the past and the neglected state of newt fencing since the development commenced;
  - Development will compromise the protected species on the area;
  - Development on Field 9 further undermines the schemes so called environmentally friendly credentials even further;
  - Should approval be granted for the revised layout what undertaking will be given that the replacement open space under the power lines will not similarly be built on in the future should the power lines come down to facilitate development to the East of Metcalfe Lane.
  - Objection is raised to the use of outdated flood risk assessment documents to support this revised layout as Meadlands has suffered greater water-logging problems since development of other phases commenced and concerns are heightened with development on the marshy Field 9 which has always acted as a sump for water;
  - Request that dwellings on Plot No's 444 & 445 should be omitted or re-located as their positioning compromises the hedgerow forming the boundary with the PROW and concern is raised as to highway safety with the vehicles associated with these two dwellings manoeuvring onto the public highway so close to the one entrance into and out of this phase;
  - Phase 4 has the same under-provision of car parking as is already causing problems on other phases and therefore, concern is expressed as to displaced parking on Meadlands upon occupation and whatever the configuration of public open space is approved the Parish Council request that post and rail fencing is used to protect the open space from damaging parking which is evident on earlier phases;
  - Request clear undertakings from the local authority that, given earlier problems on phase 1, 2 & 3 construction, that planning conditions imposed regarding working hours are strictly enforced and that breaches are promptly investigated and sanctions applied;
  - Request clear undertakings from the local authority that the Eastern boundary hedge is protected throughout construction and is maintained at its current height with access along the prow maintained at all times.

## MEADLANDS AREA RESIDENTS ASSOCIATION

3.47 The Association makes the following points and areas of concern:

- Considers that objections submitted by Parish Council to 2015 application are still valid;

- Request formal written assurance that Meadlands will not be used for HGN construction vehicles, delivery and workers vehicles or by workers using the area as a canteen/tea break amenity;
- Consider that views of older people in community should be listened to;
- The Trust is reliant on an outdated Flood Risk Assessment for the site;
- As more of the site is development it has been noticed that standing water is now prevalent in Field 9, on the adjacent cycle track and the nearby Public Right of Way to the extent that these routes have been effectively impassable;
- Concern about water displacement from Phase 4 on the properties on Meadlands due to the effects of standing water, present high water table and raised ground levels;
- Consider that the historical ditch along Meadlands perimeter and new Phase 4 boundary should be reinstated to provide drainage so as to protect Meadlands properties and gardens from further water logging;
- Concerns were expressed by residents about close boarded fencing set against the existing boundary hedge to the rear of Meadlands properties and damage to hedge [Officer note: the boundary referred to falls outside of the redline of this application];
- Request continued access for pedestrians and cyclists between Meadlands and Osbaldwick is maintained at all times during the construction of Phase 4.

#### DERWENTHORPE RESIDENTS ASSOCIATION

3.48 The association represents residents of over 250 properties within the Derwenthorpe development, with some having lived here for almost four years:

- Concerned about impact of construction traffic generated by Phase 4 and failure of the City Council/JRHT/David Wilson Homes to control day to day traffic which passes within feet of many occupied homes contrary to requirements of Section 106 Agreement;
- Access to phases 2 and 3 was required to be via Fifth Avenue as that road has grass verges and pavements and the houses are set back behind comparatively large front gardens and residents have coped valiantly with traffic for 3 years having seen road repeatedly damaged;
- Increase in children within phase 3 living on the route to a massive construction site and design of phase 3 makes it particularly inappropriate for construction traffic with road narrowing, traffic calming measures and shared spaces and houses having very small or no front gardens;
- The safer and shorter alternative for construction traffic would be through Meadlands, which is immediately adjacent to phase 4 and access by this route would be by far the shortest route - Meadlands has two lanes throughout, all houses have substantial drives and all bar one house has a garage - there are very few parked cars parked on the road during day time and there a very few resident children;



- If construction traffic is not routed via Meadlands, massive changes must be made to the way traffic is controlled and the times that heavy vehicles can travel along Fifth Avenue and Derwent Way.

## LOCAL RESIDENTS

3.49 One letter of support received from resident of Farndale Avenue.

3.50 One letter of support of support from resident of Lotherington Avenue, who considers that construction traffic should be via Meadlands as it appears wider and access is easier. There is no school and it would reduce the disruption to residents of Fifth Avenue who have already put up with construction traffic for rest of development.

3.51 Letter of objection from resident of Phase 3 of development (Seebolm Mews) objecting on safety grounds to the access for the construction traffic for Phase 4 of the Derwenthorpe development being down Derwent Way. Reference is made to this road which is considered to have already proved totally unsuitable for construction traffic and HGV, being single lane in places and home to high numbers of children, and to the design of the estate in that there is no distinction between the pavements and roads, reducing their appreciation of the risks and dangers. It is suggested that construction traffic be routed down Meadlands, which is a quieter, wider (2-lane) road with less on-street parking and far fewer children, and will be the access road for the Phase 4 development when complete.

3.52 One letter of concern from resident of Meadlands on grounds of surface water drainage, especially near site access which already becomes badly flooded, and due to noise, air pollution and traffic both during and after building works.

3.53 Letter from local resident who objects to any suggestion that the new application can alter the route of construction traffic to go through Meadlands. She refers to Inspector's comments on the matter, the compensation given to Fifth Avenue residents and the informed decision and choice of people moving into a building site.

## 4.0 APPRAISAL

4.1 The key issues to be considered as part of this application are:

- Principle of development;
- Green Belt policy and inappropriate development;
- Openness and purposes of the Green Belt;
- Access and highway issues;
- Design and visual amenity;
- Residential amenity;

- Ecology;
- Archaeology;
- Flood risk;
- Affordable housing;
- Impact on local facilities;
- Other considerations.

## POLICY CONTEXT

4.2 Section 38(6) of the Planning and Compensation Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. There is no development plan for York other than the retained policies in the Yorkshire and Humber Regional Spatial Strategy ("RSS") saved under the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013. These policies, YH9(C) and Y1(C1 and C2), relate to York's Green Belt and the key diagram, Figure 6.2, insofar as it illustrates the general extent of the Green Belt. The policies state that the detailed inner and the rest of the outer boundaries of the Green Belt around York should be defined to protect and enhance the nationally significant historical and environmental character of York, including its historic setting, views of the Minster and important open areas.

4.3 Central Government guidance is contained in the National Planning Policy Framework (NPPF, March 2012). Paragraph 7 of the National Planning Policy Framework says planning should contribute to the achievement of sustainable development by balancing its economic, social and environmental roles. Footnote 9 of paragraph 14 contains restrictions where this presumption in favour of sustainable development does not apply, including land designated as Green Belt and locations at risk of flooding. Paragraph 17 lists twelve core planning principles that the Government consider should underpin plan-making and decision-taking, such as seeking high quality design and protecting Green Belt.

4.4 Section 6 of the NPPF 'Delivering a wide choice of high quality homes' seeks to boost the supply of housing. Paragraph 49 states that housing applications should be considered in the context of presumption in favour of sustainable development.

4.5 Section 7 of the NPPF requires good design. At paragraph 56, it says that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people.

4.6 Section 9 'Protecting Green Belts' says that the essential characteristics of Green Belts are their permanence and openness (paragraph 79). Paragraph 80 sets out the purposes of Green Belt. These are to check unrestricted sprawl of large built up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and, to assist in urban regeneration. Paragraph

88 states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. With regard to new buildings, paragraph 89 states that the construction of new buildings is inappropriate in Green Belt unless it falls within one of the listed exceptions.

4.7 Section 10 'Meeting the challenge of climate change, flooding and coastal change offers advice on locating new development to avoid increased flood risk.

4.8 Section 11 'Conserving and enhancing the natural environment' says that the planning system should contribute to and enhance the natural environment by, amongst other things, minimising impacts on biodiversity and providing net gains in biodiversity where possible as well as preventing adverse affects on pollution and land instability.

4.9 Section 12 'Conserving and enhancing the historic environment' gives advice on handling applications with heritage implications, including heritage assets with archaeological interest.

4.10 Although there is no formally adopted local plan, the City of York Draft Local Plan (DLP) was approved for development control purposes in April 2005. Whilst it does not form part of the statutory development plan for the purposes of S38, its policies are considered to be capable of being material considerations in the determination of planning applications, where policies relevant to the application are in accordance with the NPPF. The relevant policies are summarised in section 2.2 above.

4.11 At this stage, policies in the 2014 Publication Draft Local Plan are considered to carry very little weight in the decision making process (in accordance with paragraph 216 of the NPPF), although the evidence base underpinning the work to the emerging plan is capable of being a material planning consideration.

## SITE AND HISTORY

4.12 The application site comprises an open area of grazing land approximately 2.13 hectares in size that is located to the west of Metcalfe Lane between the residential development of Meadlands to the north and National Grid land to the south. Metcalfe Lane runs along the eastern site boundary and provides vehicle access to Langton House, situated to the east of Metcalfe Lane, and pedestrian access through to the Meadlands. The application site lies within flood zone 1.

4.13 Outline planning permission (ref. 03/02709/OUTM) was granted by the Secretary of State in May 2007 for a residential scheme of approximately 540

dwelling on land to the west of Metcalfe Lane, Osbaldwick. Means of access and the general landscaping structure were approved as part of the outline consent. The scheme involved a sustainable urban extension to the east of the City with high a high proportion of affordable homes that would be retained and managed by JRHT. The general layout of the development, its division into four neighbourhoods each with its own individual vehicular access point, the size and shape of these neighbourhoods and the approximate number of dwellings within each one, along with the general location of public open space, were established through an illustrative masterplan and design documents submitted in support of the outline planning application. Reserved matters consent for siting, design, external appearance and detailed landscaping were subsequently approved. Reserved matters for the phase the subject of this application were approved in 2013 (12/01878/REMM).

4.14 Phase 1 of the development (Neighbourhood D accessed from Osbaldwick Village) has been built and is now occupied. Phases 2 (Neighbourhood C accessed from Temple Avenue) and 3 (Neighbourhood A accessed from Fifth Avenue) are under construction with some homes completed and occupied.

#### PRINCIPLE OF DEVELOPMENT

4.15 Whilst the RSS has otherwise been revoked, its York Green Belt policies have been saved together with the key diagram which illustrates the general extent of the Green Belt around York. These policies comprise the S38 Development Plan for York. The policies in the RSS state that the detailed inner boundaries of the Green Belt around York need to be defined to protect and enhance the nationally significant historical and environmental character of York. The 2005 Draft Local Plan proposals map identifies the site for housing development, but the Secretary of State in considering the outline application proposal concluded that the land was part of the Green Belt. The Secretary of State considered that the site fell outside the categories of development that are considered in policy to be appropriate in the Green Belt and attributed substantial weight to the definitional harm.

4.16 It is considered that the site falls within the general extent of the Green Belt. In accordance with footnote 9 of paragraph 14 of the NPPF, the usual presumption in favour of sustainable development established by the NPPF does not apply in Green Belt locations. Instead, the more restrictive policies in section 9 of the NPPF apply.

#### GREEN BELT POLICY

4.17 Paragraph 79 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence. Paragraph 80 sets out the five purposes of the Green Belt:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.18 Paragraph 89 states that a local planning authority should regard the construction of new buildings as inappropriate development in Green Belt. Paragraph 87 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 says when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.

4.19 The proposal constitutes inappropriate development for the purposes of the Green Belt policy tests. For inappropriate development to be acceptable, very special circumstances must exist. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

#### IMPACT ON OPENNESS AND GREEN BELT PURPOSE

4.20 The outline consent has been implemented and is part constructed. The current application seeks full planning approval to reposition the properties within part of Phase 4 of the approved outline scheme to take account of the retention of overhead electricity cables that cut across the site, which were previously intended to be underground by National Grid. The retention of the cables effectively neutralises the land beneath them and within a safety clearance distance of 11m either side of the power lines. This affects seventeen of the dwellings approved under reserved matters application 12/01878/REMM, which cannot be constructed because the overhead lines and the associated safety clearance corridor cross over the dwellings themselves or their private gardens.

4.21 The Secretary of State, in granting outline consent, identified that the residential development of the land resulted in limited harm and concluded that the site did not fulfil any purpose of Green Belt set out in paragraph 80 of the NPPF, in particular the preservation of York's historic setting and special character. In light of the previous outline consent for residential development of the land and the fact that this full application seeks to re-site houses within the extent of the previous development site, the proposal would not cause further harm to openness and purposes of the Green Belt. Indeed, the proposal increases openness at the site's

eastern boundary with the Green Belt beyond through the omission of houses adjacent to Metcalfe Lane. However, although the harm to openness is considered to be limited, it still needs to be given substantial weight by the decision maker.

## TRANSPORT AND HIGHWAY ISSUES

4.22 The NPPF encourages sustainable travel and the location of development in sustainable and accessible locations. The proposal relates to an approved sustainably located and accessible residential development that forms an extension to the main urban area of the City. The dwellings would be accessed via Meadlands as previously approved through the outline planning application.

### (i) Construction traffic

4.23 Concern has been expressed by residents of the Derwenthorpe development about the continued use of Fifth Avenue and Derwent Way (the main spine road from Fifth Avenue to the community hub building) as the access for construction vehicles to Phase 4. The residents cite the inappropriate road layout for construction vehicles, lack of compliance with the legal agreement requiring a construction traffic management plan, increased numbers of children living in the scheme and the potential for highway safety problems. There has also been representation from residents of Meadlands requiring confirmation of the agreement not to bring construction vehicles through this group of houses where there is a large proportion of elderly residents.

4.24 The agreed intention at the time of approval of the original outline application was that the site access would be via Fifth Avenue due to its proximity to the strategic road network and layout of the road. This application relates to part of Phase 4, with the outer housing adjacent to Meadlands properties and to the west of the phase being built as part of the original outline and reserved matters consents. This equates to 30 dwellings of the 66 now proposed in the revised phase 4 layout. Therefore, only 36 of the houses in Phase 4 would be built from Meadlands if the decision was made to alter the construction traffic arrangements as requested by the residents of Derwenthorpe. It would be very difficult to determine which construction vehicles ought to be accessing this full planning permission element or the remainder of the land within the phase 4 reserved matters approval. Therefore, enforcement of any alternative construction traffic management arrangements would not be practicable, and thus such a condition, would not meet the tests set out in the NPPF (paragraph 206).

4.25 In the event, the Council's Local Highway Authority considers it appropriate for the current access arrangements for construction traffic to be continued and points out that the internal highway from Fifth Avenue has been designed to naturally constrain vehicle speeds (to 20 mph or below) through the use of localised pinch points, managed on-street parking and building alignment. The road has been

designed to accommodate public transport and is therefore considered suitable as a route for construction traffic.

(ii) Post construction traffic

4.26 The main changes that impact on highway considerations relate to the internal road layout and parking provision. The hierarchy of roads within the quadrant remains the same with a circular outer road ("green lane") and internal home zones. The new section of road serving the 6 no. dwellings on Field 9 is accessed by the green lane and has adequate space to turn. Parking provision is provided on a 1:1 basis, as intended for the development site as a whole with visitor spaces and city car club spaces being distributed across the phase. The revised scheme allows the retention, for the most part, of the existing public right of way cycle/footpath that runs along the eastern boundary from Meadlands to Metcalfe lane and beyond it to the Sustrans cycle route and Osbaldwick. Only the top section would need to be diverted to avoid the semi-detached pair of houses approved under reserved matters and the visitor parking bays now proposed.

4.27 No objections have been raised in principle by the Local Highway Authority, subject to conditions relating to highway and parking related matters and Section 106 contributions relating to sustainable travel initiatives, though some minor tweaks were suggested around the Local Area of Play in the centre of the phase to create more landscaped green space and assist with car parking ownership and management. The application has been revised as suggested.

(iii) Sustainable transport

4.28 One of the key principles of the Derwenthorpe housing scheme is its sustainable and accessible location and encouragement of sustainable transport. The development is an urban extension site with four accesses allowing connections to the surrounding built up areas and facilities. Parking is restricted within the scheme to 1:1, with the exception of some larger properties. A package of sustainable transport measures is required through the original legal agreement including financial contributions to pump-prime a bus service through the site and towards the establishment of a site-specific car-club and the provision of a contribution towards a cycle or bus pass for the first occupier. The car club is already operating on site, but the requirement for a cycle/bus pass should be required through obligation for this revised Phase 4 application and are considered to be:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and,
- (c) fairly and reasonably related in scale and kind to the development,

and therefore comply to Regulation 122 of the 2010 CIL Regulations. These contributions would also comply with Regulation 123 as there have not been 5 or more separate obligations which provide funding or provision of that project or type of infrastructure since 2010.

4.29 Overall, it is considered that the access and parking arrangements proposed are acceptable and would not have a detrimental impact on highway safety, subject to conditions and planning obligations. There is no further harm caused to the Green Belt as a result.

## DESIGN AND VISUAL AMENITY

4.30 Chapter 7 of the NPPF gives advice on design, placing great importance to the design of the built environment. At paragraph 58 it states that planning decisions should aim to ensure that, amongst other things, developments will function well and add to the overall quality of an area, establish a strong sense of place, incorporate green and other public space as part of them, respond to local character whilst not stifling innovation, create safe and accessible environments and include appropriate landscaping. It goes on to say that great weight should be given to outstanding or innovative designs which help raise the standard of design in the area (para.63). At paragraph 64, it advises against poor quality design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

4.31 Field 9 was proposed within the strategic landscape plan for the larger scheme as open space and a nature reserve between areas of housing. The proposal would alter the structural layout of the larger residential development and reconfigure the open space within this part of the larger scheme by introducing 6 no. dwellings within the western part of the field and omitting approved housing from the eastern part of Phase 4, adjacent to Metcalfe Lane. The open space would be elongated in shape and would be less contained and defined as an area. However, the reduction in the number of houses adjacent to Metcalfe Lane would benefit the rural character and openness along the lane and have a better connection to the open land to the east without adversely affecting the overall quantity and quality of the available amenity space. The omission of the houses to the east of the site would allow the retention of the majority of the cycle and pedestrian track that connects Meadlands with the Sustrans route and Osbaldwick.

4.32 The new houses within Field 9 would face towards the retained open space and would back onto what remains as National Grid land. If developed in accordance with the approved outline scheme, the houses would join two areas of housing to the north and south and fully enclose an area of open land that is already shown as being built up to on the three remaining sides. However, overall, the existing structural open space layout would be retained. The proposal would not adversely affect the existing structural planting with the exception of an opening



created to allow for the new vehicle access that would serve the six houses in Field 9. The proposal includes new hedgerow to mitigate for any loss.

4.33 The revised scheme would follow the overall approach and design of the larger residential development, with the emphasis on the creation of a sustainable, accessible and cohesive community and utilising existing house types with the same palette of materials and fenestration details. The Design and Access Statement submitted with the application states that the homes are proposed to be environmentally friendly and economical to run and are to be built to Joseph Rowntree Foundation 'Lifetime Homes' standard. There would be a mix of house types ranging from 2 to 4 bedroom properties arranged in terraces, semi-detached and detached forms, with the majority of houses being three bedroom. Whilst the houses differ from the existing housing stock to the north on Meadlands, there would be a cohesive character and appearance to the approved housing within the Derwenthorpe development. The Police Architectural Liaison Officer raises no concerns or issues with the revised layout with regards to opportunities for crime. A condition covering detailed landscaping for the development is required if the application is approved.

4.34 As such, the proposal would result in limited harm to the character and appearance of the area and that of the Green Belt.

## RESIDENTIAL AMENITY

4.35 One of the core principles of planning outlined in the NPPF is to seek a good standard of amenity for all existing and future occupants. Paragraph 120 of the NPPF also states that new development should be appropriate for its location to prevent unacceptable risks from pollution and land instability, with the responsibility for securing a safe development resting with the developer. Paragraph 123 in particular advises that planning decisions should avoid and mitigate any impacts from noise and light pollution.

4.36 There are existing properties on Meadlands to the north and single properties on the east side of Metcalfe Lane (Langton House) and within the National Grid site to the south (Grid Cottage). The houses on Meadlands would be separated from the proposal by the houses previously approved as part of the outline consent and Phase 4 reserved matters approval (12/01878/REMM), which are excluded from the site boundary of this application. There would be no impact on the properties on Meadlands as no additional dwellings are proposed and no change to the dwellings already approved under reserved matters. Langton House itself is separated from the site by Metcalfe Lane and a range of associated outbuildings. The proposal does not now involve the erection of dwellings adjacent to the eastern boundary. Grid Cottage to the south is separated from the site by the existing National Grid land.

4.37 The proposal would have a higher density than the adjacent Meadlands estate, though would reflect the housing in other phases of the larger development and would be similar to the previous built form approved under reserved matters. The proposed houses would have similar separation distances within the phase to the previously approved scheme and each have an adequate private amenity space to serve them. A Local Area of Play is retained within the phase.

4.38 The Council's Environmental Protection Officer (EPO) has raised concern about the potential adverse impact of noise associated with the construction of the housing on existing housing in the vicinity including within the larger development site itself. The applicant has submitted a revised version of the Construction Environmental Management Plan (CEMP) that has been agreed for the earlier phases of the Derwenthorpe development. The EPO is satisfied with the document and requests a condition to require the development to be constructed in accordance with it. Further conditions to cover unexpected land contamination and vehicle charge points to address air quality emissions are requested.

4.39 Therefore, in light of the above, there would be no adverse impact on residential amenity as a result of the revised layout and no further harm would be caused to Green Belt.

## ECOLOGY

4.40 Paragraph 118 of the NPPF aims to conserve and enhance biodiversity, including the refusal of planning applications where significant harm cannot be avoided or adequately mitigated and where development would adversely affect Sites of Special Scientific Interest, ancient woodland and European protected sites.

4.41 Field 9 was originally retained in its entirety due to the presence of great crested newt in the pond within it and the wet grassland habitat it provided. The application is supported by an ecology report, which confirms that a population of great crested newts is no longer present. The application proposes the retention of the majority of Field 9 with the inclusion of 6 no. houses and access to them to its western end. The loss of the houses backing onto Metcalfe Lane and the reconfiguration of the open space puts the hedgerow on the western side of Metcalfe Lane at less risk of inappropriate management and disturbance. The introduction of the housing into Field 9 and the re-modelling of land within the remainder of the Field would potentially cause harm to the nature area. However, this could be mitigated by the proposed management of the land, and the proposed bunding between it and the adjacent road.

4.42 A condition is requested by the Council's Ecologist to require a construction environmental management plan for biodiversity in line with British Standard BS 42020:2013 to ensure that there are no adverse impacts from construction. The improvements to the existing pond and creation of a new pond along with new

hedgerow planting would enhance the area. A condition is also requested to require the siting and design of the proposed lighting adjacent to the open space to be submitted for approval. Therefore, the proposal is considered to be acceptable in terms of ecology and biodiversity, subject to conditions and no further harm would be caused to the Green Belt.

## ARCHAEOLOGY

4.43 Paragraph 135 of the NPPF requires the effect of an application on the significance of a non-designed heritage asset to be taken into account in determining an application. Draft Local Plan Policy HE10 reflects national planning guidance.

4.44 Previous studies and surveys indicated that the site may be the location of a prehistoric settlement and a Roman settlement is known in the vicinity of Osbaldwick. There is also evidence of medieval ridge and furrow. Given the potential for archaeological features and deposits, a condition requiring an archaeological watching brief should be attached to any approval granted. Therefore, subject to condition, the proposal would result in limited harm to non-designated heritage assets.

## FLOOD RISK

4.45 Paragraph 103 of the NPPF states that development should be directed to the areas of low flood risk and that development should not result in an increase of flood risk within the site or elsewhere.

4.46 The site lies within low risk flood zone 1 and should not suffer from river flooding. Foul sewage is proposed to be discharged to the existing mains drainage sewer via the approved drainage network provided within the Derwenthorpe scheme. Surface water is proposed to be disposed of via the sustainable drainage system that was approved in principle at outline stage. The Environment Agency raises no objection to the revised layout. Yorkshire Water requests conditions be attached to any approval requiring separate systems of drainage for foul and surface water and no pipe discharge of surface water until a satisfactory outfall is provided. The Council's Flood Risk Management Team raises no objections as it considered that the proposed scheme would not increase flood risk on site or elsewhere, subject to the imposition of conditions relating to foul and surface water drainage.

4.47 The Internal Drainage Board has registered a formal objection to the scheme as it considers the proposed drainage system to be unviable and unachievable without the installation of a headwall to Osbaldwick Beck, which would not be agreed by the Board unless the intended discharge rate was above 1.4l/s/ha. The applicant's drainage consultant, JBA Consulting, has responded to the Board's objection, but no further response has been received further to its initial objection.

The response describes the surface water drainage strategy already agreed for the scheme through compliance with conditions of approval attached by the Secretary of State in granting outline planning permission. The response explains the involvement of the Board in the site's drainage scheme, including granted consents for the temporary and permanent works involved with the outfall pipe from the on-site surface water attenuation ponds to the beck. The response confirms that the surface water attenuation ponds have been constructed and are in operation. The Council's Flood Risk Management Team has confirmed that the response from JBA is a full account of the history and approval of the drainage on this development.

4.48 As a result, the development is considered to be acceptable in planning terms, subject to conditions to cover the detail of the drainage proposals. There is no further harm identified to Green Belt.

## IMPACT ON LOCAL FACILITIES

4.49 Paragraph 203 of the NPPF advises that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations and that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 ('2010 CIL Regulations') sets out the statutory tests that any planning obligation must satisfy. These tests are: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and, (c) fairly and reasonably related in scale and kind to the development. These tests are reiterated in paragraph 204 of the NPPF. Provision 123 of the 2010 CIL Regulations places further limitations on the use of planning obligations including that where more than five separate planning obligations have been entered into since April 2010 that provide for the funding or provision of that project or type of infrastructure, it would be unlawful to take into account in the granting to planning permission any further planning obligation relating to that project or type of infrastructure.

4.50 The application seeks full planning permission and therefore is considered as a stand alone application, with any contributions required being directly related to the development.

### (i) Education

4.51 The development would generate the need for four additional places at Archbishop Holgate's Secondary Academy (which is at capacity), one additional place at Osbaldwick Primary School (which has capacity) and 4 additional places at pre-school education facilities within 1.5km of the site (which are at capacity). Financial contributions totalling £85,180 would therefore be required under Policy ED4 of the 2005 Draft Local Plan.

(ii) Public Open Space

4.52 The development would generate the need for off site sports provision in lieu of provision on site. The site lies within an area where there is a combined deficit in the surrounding wards of Heworth, Heworth Without and former Osbaldwick. The contribution would be spent in accordance with the City's playing pitch strategy on the provision of pitches, outdoor sport and ancillary facilities at Burnholme community health hub and pitch drainage and improvements at Osbaldwick Sports Club. A financial contribution of £20,448 would therefore be required under Policy L1c of the 2005 Draft Local Plan.

4.53 These contributions are considered to be:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and,
- (c) fairly and reasonably related in scale and kind to the development,

and therefore comply with Regulation 122 of the 2010 CIL Regulations. These contributions would also comply with Regulation 123 as there have not been 5 or more separate obligations which provide funding or provision of that project or type of infrastructure since 2010.

## AFFORDABLE HOUSING

4.54 The NPPF states that local planning authorities should set policies for meeting identified need for affordable housing on site. To that end the Council seeks to ensure that new housing development of 15 dwellings or more in the urban area will include affordable housing. The site lies within the general extent of York's Green Belt, but as the 2005 Local Plan and emerging Local Plan exclude the site from Green Belt and include it as a housing site within the urban area, it is considered appropriate to treat it as an urban site for the purposes of the affordable housing provision. The original outline planning approval was subject to a Section 106 Legal Agreement that required the provision of 40% affordable housing across the entire site in accordance with an affordable housing plan to be agreed. The pepper-potting of housing has been revised to provide more affordable housing within Phase 3, thus it is reasonable to accept 1 affordable home as part of this full application for part of Phase 4. The Council's Housing Services Team has been consulted and confirmed its agreement to the proposed number of affordable units within Phase 4.

## OTHER CONSIDERATIONS

4.55 Paragraphs 87-88 of the NPPF advise that permission should be refused for inappropriate development unless other considerations exist that clearly outweigh identified harm to the Green Belt, which would amount to very special circumstances.

4.56 Whilst the Secretary of State considered that the land falls within the Green Belt, she concluded that the site did not fulfil any of the Green Belt purposes and that harm to openness was limited. The following very special circumstances were identified by the Secretary of State as clearly outweighing the harm to the Green Belt from inappropriate development: the nature of the development as a highly sustainable and accessible housing scheme; the intended long term management role of JRHT; the need for an improved mix and for affordable housing in York; and, the absence of harm to any purposes of Green Belt. The outline consent has been implemented and the development is part constructed. This application seeks approval to amend the layout of houses that fall within the extent of the previous development site and consequently the number of houses has reduced.

4.57 It is officers' opinion that the previous considerations identified by the Secretary of State in granting outline consent are still relevant and the fact that the land could be developed in part by virtue of this outline consent is material. Taken together, these are considered to be compelling reasons to justify development in the Green Belt and, therefore, very special circumstances exist to clearly outweigh the identified harm to the Green Belt.

## **5.0 CONCLUSION**

5.1 The application site is within the general extent of the York Green Belt. The proposal constitutes inappropriate development for the purposes of paragraph 88 of the NPPF and by definition causes harm to the Green Belt. This harm, and other limited harm to openness and purposes of the Green Belt, must be afforded significant weight and very special circumstances will not exist to justify the development unless the potential harm to the green belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

5.2 It is considered that the other considerations set out in paragraphs 4.51 above together with mitigation of other harm through planning conditions, clearly outweigh the potential harm to the Green Belt, even when affording this harm considerable weight. This therefore amounts to the very special circumstances necessary to justify the development.

5.3 Any approval is subject to the signing of a Section 106 Agreement to cover the following matters, to include any necessary consequential variations being made to the original Section 106 obligation.

- (i) Affordable housing provision – Provision of 1 no. shared ownership homes;
- (ii) Education:

- £60,736 towards the cost of additional dining facilities at Archbishop Holgate's School;
- £24,444 towards the cost of additional pre-school provision within 1.5 km of the site.

(iii) Off-site sports provision - Financial contribution of £20,448 towards outdoor sport and ancillary facilities at Burnholme Community Health Hub and pitch drainage and improvements at Osbaldwick Sports Club;

(iv) Sustainable Travel:

- Payment to the occupier upon first occupation of each residential unit either: £150 per dwelling towards the provision of a travel pass to permit one adult to travel free of charge on buses operated within the Council's area, or a non-transferable voucher to the value of £150 to be used to purchase a bicycle;

5.4 In light of the above, the proposal, subject to conditions and planning obligations, is considered to be acceptable in planning terms and complies with national and local planning policy. The application is, therefore, recommended for approval subject to the completion of a section 106 agreement and the following conditions.

## **6.0 RECOMMENDATION:** Approve subject to Section 106 Agreement

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:-

- Site Plan drawing no. 2303\_PL\_005 D dated 21.4.2016;
- Landscaping Layout drawing no. 2303\_PL\_006D dated 28.4.2016;
- Building Materials Layout drawing no. 2303\_PL\_007C dated 11.2 2016;
- Roof and Chimney Locations drawing no. 2303\_PL\_008C dated 11.2.2016;
  
- House Type B1A plans drawing no. 2303\_PL\_112A dated 10.2.2016;
- House Type B3 plans drawing no. 2303\_PL\_113A dated 10.2.2016;
- House Type B4 plans drawing no. 2303\_PL\_114A dated 10.2.2016;
- House Type B5 plans drawing no. 2303\_PL\_115A dated 10.2.2016;
- House Type C4 plans drawing no. 2303\_PL\_124A dated 10.2.2016;
- House Type E2 plans drawing no. 2303\_PL\_142A dated 10.2.2016;
- House Type G2 plans drawing no. 2303\_PL\_162A dated 10.2.2016;
- House Type G3 plans drawing no. 2303\_PL\_163A dated 10.2.2016;
- House Type G4A plans drawing no. 2303\_PL\_165A dated 10.2.2016;
- House Type J3 plans drawing no. 2303\_PL\_183A dated 10.2.2016;

- House Type B1A elevations drawing no. 2303\_PL\_412A dated 10.2.2016;
  - House Type B3 elevations drawing no. 2303\_PL\_413A dated 10.2.2016;
  - House Type B4 elevations drawing no. 2303\_PL\_414A dated 10.2.2016;
  - House Type B5 elevations drawing no. 2303\_PL\_415A dated 10.2.2016;
  - House Type C4 elevations drawing no. 2303\_PL\_424A dated 10.2.2016;
  - House Type E2 elevations drawing no. 2303\_PL\_442A dated 10.2.2016;
  - House Type G2 elevations drawing no. 2303\_PL\_462A dated 10.2.2016;
  - House Type G3 elevations drawing no. 2303\_PL\_463A dated 10.2.2016;
  - House Type G4A elevations drawing no. 2303\_PL\_465A dated 10.2.2016;
  - House Type J3 elevations drawing no. 2303\_PL\_485A dated 10.2.2016;
  - House Type J3 elevations drawing no. 2303\_PL\_486A dated 10.2.2016
- 
- Garden Storage Enclosure drawing no. 2303\_PL\_625A dated 10.2.2016;
- 
- External Materials 2303\_EM\_SI 001 A dated February 2016;
  - Phase 4 Drainage Strategy drawing no. 25365/401/A dated 22.5.2015;

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

3 No work shall commence on site until the applicant has secured the implementation of a programme of archaeological work (a watching brief on all ground works by an approved archaeological unit) in accordance with a specification supplied by the Local Planning Authority. This programme and the archaeological unit shall be approved in writing by the Local Planning Authority before development commences.

Reason: The site lies within an Area of Archaeological Importance and the development will affect important archaeological deposits which must be recorded during the construction programme.

4 Fully detailed drawings illustrating the design and materials of roads, footpaths and other adoptable open spaces shall be submitted to and approved in writing by the Local Planning Authority prior to the start of construction on site.

Reason: In the interests of highway safety.

5 No dwelling to which this planning permission relates shall be occupied unless or until the carriageway basecourse and kerb foundation to the new estate road and footpath to which it fronts, is adjacent to or gains access from, has been constructed. Road and footway wearing courses and street lighting shall be provided within three months of the date of commencement on the construction of the penultimate dwelling of the development.

Reason: To ensure appropriate access and egress to the properties, in the interests



of highway safety and the convenience of prospective residents.

6 Prior to the first occupation of each dwelling, the areas shown on the approved plans for parking and manoeuvring of vehicles shall be 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.

7 Prior to the first occupation of each dwelling, the cycle parking facilities relating to it as shown on the approved plans shall be provided and be available for use, and thereafter such facilities shall not be used for any purpose other than the parking of cycles.

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

8 Prior to the commencement of any works on site, a detailed method of works statement identifying the programming and management of site clearance/preparatory and construction works shall be submitted to and approved in writing by the Local Planning Authority. Such a statement shall include at least the following information:

- (a) The routing that will be promoted by the contractors to use main arterial routes and avoid the peak network hours;
- (b) Where contractors will park;
- (c) Where materials will be stored within the site;
- (d) Measures employed to ensure no mud/detritus is dragged out over the adjacent highway.

Reason: To ensure that the development can be carried out in a manner that will not be to the detriment of amenity of local residents, free flow of traffic or safety of highway users.

9 Before any landscape works proceed on site, a detailed planting plan shall be submitted and approved in writing by the Local Planning Authority. The plan shall be in accordance with Landscaping Layout drawing 2303\_PL\_006D dated 28.4.2016. The landscaping scheme shown on the Landscaping Layout and detailed in the planting plan shall be implemented within a period of six months of the completion of the development. Any trees or plants which within a period of five years from the completion of the 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 alternatives are 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.

10 No construction work shall take place until there has been submitted to and approved in writing by the Local Planning Authority details and ground preparation for tree pits and a plan showing locations of utility runs in relation to proposed street tree planting.

Reason: So that the Local Planning Authority may be satisfied that appropriate details will be implemented to support the proposed tree planting, since the tree planting is integral to the amenity of the development.

11 Prior to the commencement of development, including site clearance, importing of materials and any excavations, a method statement regarding protection measures for the existing trees within and immediately adjacent to the site, shall be submitted to and approved in writing by the Local Planning Authority. This statement shall include details and locations of protective fencing to be shown on a plan in accordance with BS 5837; phasing of works within the zones of influence; type of construction to be used; locations for storage of materials. The method statement shall also include details of existing and proposed ground levels such that there are no changes within the potential rooting zones of the trees. The protective fence line shall be adhered to at all times during development operations to create exclusion zones. None of the following activities shall take place within the exclusion zones: excavation, raising of levels, storage of any materials or top soil, lighting of fires, mechanical cultivation, parking or manoeuvring of vehicles. Within the exclusion zone there shall be no site huts, no mixing of cement, no disposing of washings, no stored fuel, no new trenches, pipe runs for services or drains. The fencing shall remain secured in position throughout the construction process including the implementation of landscape works. A notice stating 'tree protection zone - do not remove' shall be attached to each section of fencing.

Reason: To ensure protection of existing trees before, during and after development which are covered by a Tree Preservation Order and/or make a significant contribution to the amenity of the area and/or development.

12 No development shall take place (including ground works and vegetation clearance) 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 role 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 approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To secure practical measures to avoid or reduce impacts to biodiversity features during construction, as appropriate to the scale of development.

13 Notwithstanding the submitted details, a plan shall be submitted to an approved in writing prior to any construction work showing a lighting scheme for the development. The scheme shall ensure that no lighting is dispersed on to the nature area within the retained Field 9. The development shall be carried out in accordance with the approved scheme.

Reason: In the interests of visual amenity, to achieve a safe environment and to protect biodiversity.

14 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.

15 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.

#### INFORMATIVE:

- (i) Foul water will discharge to public foul water sewer.
- (ii) Sub-soil conditions do not support the use of soakaways.

16 Prior to occupation, a three pin 13 amp electrical socket shall be provided at each property in accordance with the following:

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Item No: 3b

For all garage spaces - provision in a suitable location to enable the charging of an electric vehicle using a 3m length cable. Any socket provided must comply with BS1363 or an equivalent standard, Building Regulations and be suitable for charging electric vehicles;

For all driveways – Provision of an electrical socket which is suitable for outdoor use, located in a suitable position to enable the charging of an electric vehicle on the driveway using a 3m length cable. Any socket provided must comply with BS1363, or an equivalent standard, Building Regulations and be suitable for charging electric vehicles. It should also have a weatherproof cover and an internal switch should be also provided in the property to enable the socket to be turned off.

Reason: To promote sustainable transport through the provision of recharging facilities for electric vehicles.

17 All development works on site including ground works shall be undertaken in accordance with the approved Environmental Management Scheme, reference 2303\_PL\_EM001 dated May 2016, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenity of local residents.

18 All construction and demolition 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.

19 In the event that 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 submitted to and approved 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.

## **7.0 INFORMATIVES:**

### **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 a positive outcome:

- Submission of revised drawings to improve scheme layout;
- Imposition of conditions to mitigate any impacts;
- Requirement for planning obligations.

#### **Contact details:**

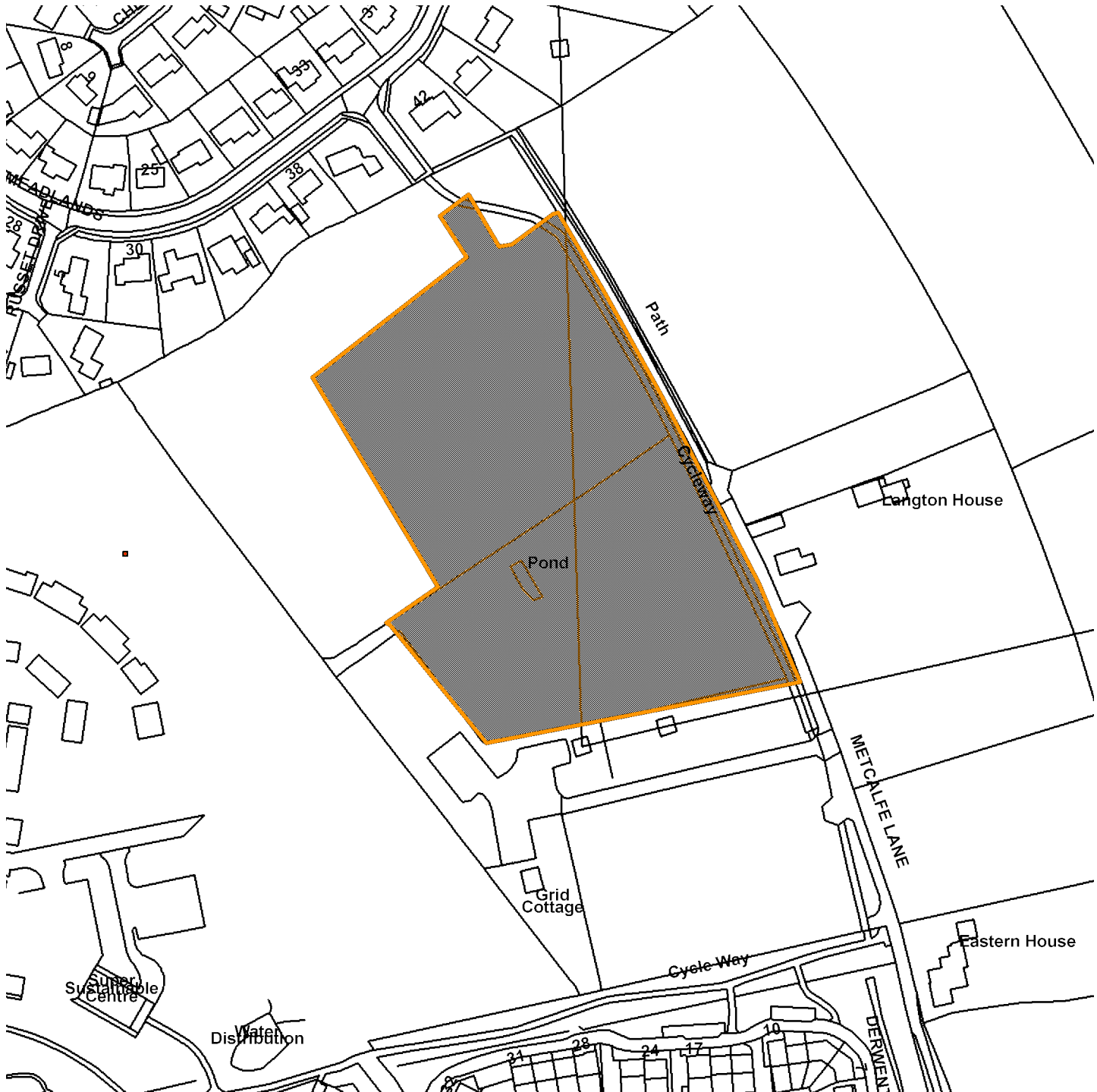
**Author:** Hannah Blackburn Development Management Officer

**Tel No:** 01904 551325

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# Land Lying To The West Of Metcalfe Lane

16/00342/FULM



Scale : 1:2119

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<b>Organisation</b>	Not Set
<b>Department</b>	Not Set
<b>Comments</b>	Site Plan
<b>Date</b>	27 May 2016
<b>SLA Number</b>	Not Set

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**COMMITTEE REPORT**

**Date:** 8 June 2016                      **Ward:** Fulford And Heslington  
**Team:** Major and                      **Parish:** Fulford Parish Council  
Commercial Team

**Reference:** 16/00215/FUL  
**Application at:** York Designer Outlet St Nicholas Avenue York YO19 4TA  
**For:** Temporary use of car park for siting of ice rink and funfair  
**By:** Ms Maria Farrugia  
**Application Type:** Full Application  
**Target Date:** 13 June 2016  
**Recommendation:** Approve

**1.0 PROPOSAL**

1.1 This application relates to land at the Designer Outlet in Fulford, specifically the coach park adjacent to the south entrance walkway and car parking area located between the coach park and the boulevard leading to the southern entrance to the Outlet. The proposal is for the use of the land for the operation of an outdoor recreational ice rink and funfair in November, December, and January. The ice rink would operate between the hours of 09:15 to 21.15 during this period and the funfair would operate between 11:00 and 20:30. Both would operate Monday to Sunday.

1.2 The rink itself would measure 30 by 27 metres; with a canvas skate hire building to the west and a café, office and first aid facility opposite to the east of the ice rink. A ticket office would be located to the south of the rink.

1.3 The proposed funfair layout shows 6 rides and a toy/games stand, food stall, a marquee, a payment kiosk, six small log cabins and two electric generators. However the application seeks permission that is flexible enough to allow the rides to vary from year to year. The site area measures approximately 56m by 47m. The highest ride is shown as 6 metres high.

1.4 Information supporting the application includes a lighting assessment and acoustic report. The ice rink event has been running from the site for the last 6 years and is known as Yorkshire's Winter Wonderland.

**PLANNING HISTORY**

1.5 There have been a considerable number of applications granted at the Designer Outlet. The history below relates to permissions that have been submitted within the car parking area:-

- Permission was granted for the park and ride facility in the car park to the north of the building in February 2006 (05/02593/GRG3).
- A storage building, landscaping and alterations to the car park on the west side of the building were granted in May 2006 (06/00564/FULM).
- Single storey building to provide P\_R office was approved in June 2008 (08/00842/FUL)
- Temporary permission for the siting of public ice rink (Nov - Jan) on coach park was granted in August 2010 (10/01868/FUL)
- Temporary permission was granted for 5 years for the siting of public ice rink on the coach park in April 2011 (11/00868/FUL)
- Permission was refused for a temporary wooden sales stand outside the south entrance in November 2011 on the basis that the development was inappropriate development in the Green Belt and no very special circumstances had been shown. (11/02033/FUL)
- Siting of a holiday lodge in the car park area was refused in December 2011 (11/02625/FUL) because of the location of the site in the Green Belt and proximity to protected trees.
- Permission was granted for the erection of a miniature railway and associated storage shed within the Designer Outlet car park (12/01456/FUL) in June 2012.
- Planning permission was refused for the placing of a car wash facility in the car park in December 2012 (12/03184/FUL) because of the location of the site in the Green Belt.
- Permission was granted for the siting of the funfair and marquee between November and January for a temporary period (to coincide with the expiry of the Skate rink temporary permission) (13/00245/FUL)

## **2.0 POLICY CONTEXT**

2.1 Please refer to section 4 paragraphs 4.2 to 4.12 of this report.

## **3.0 CONSULTATIONS**

### **INTERNAL**

3.1 HIGHWAY NETWORK MANGEMENT – No objections in principle subject to conditions.

3.2 PUBLIC PROTECTION - public protection does not wish to object to this application. However, there is the potential for an impact on residents of Naburn Lane, if conditions restricting the operation are not placed on the permission. Similar previous activities have been permitted within two separate temporary permissions, one for the ice rink (10/01868/FUL) and one for the funfair (13/00245/FUL) these contained conditions which restricted the activity to a level which is not detrimental to the amenity of local residents. If permission is granted for this application, it is requested that the same level of control is placed on the permission.

## EXTERNAL

3.3 HIGHWAYS ENGLAND - No Objections.

3.4 DESIGNING OUT CRIME OFFICER - No concerns.

3.5 FULFORD PARISH COUNCIL - Fulford Parish Council objects to this application.

- i) Inappropriate Development in the Green Belt. - The site lies within the green belt and the proposals have been seen to have a serious impact on the openness and visual amenity of the area when viewed from within and from outside the site. No very special circumstances have been put forward by the applicant that would justify granting a further permission and there appear to be few public benefits.
- ii) Impact on City Centre - We are concerned that the out-of-town location of the ice-rink and funfair draws visitors away from the city centre. We ask that this matter be investigated and that a sequential test be carried out.
- iii) Temporary Permissions. - This is the third application on this site for a temporary permission, yet the NPPG advises against more than one such permission being granted" NPPG: "Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. It will rarely be justifiable to grant a second temporary permission - further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning of planning permission should be granted permanently".
- iv) Parking and highways - The Christmas/New Year period is the busiest time of year for the Outlet with December and January being the months of greatest demand for parking spaces. In past years, we have provided photos of vehicles parked all along the perimeter route and on grass verges where there are no pathways or safe routes for pedestrians. This causes safety issues for drivers and pedestrians. In addition, the A19 is operating beyond capacity and the attraction

inevitably draws visitors from outlying areas who arrive by road. No assessment of the increase in vehicle movements has been provided and no recent survey has been undertaken to assess the usage by cyclist and pedestrians.

v) Loss of amenity for nearby residents - Over the years, residents along Naburn Lane have made complaints about noise disturbance and light pollution. This is a further reason why it is not appropriate to grant a further permission.

3.6 One letter of objection has been received covering the following points:-

- Over the course of the existing temporary permission has been in place there have been numerous occasions where the Ice Factor has caused noise levels by playing audio music which has caused nuisance to the objector and family
- There is significant light pollution from this event in both the lighting been used for the event plus the security lighting used at night. Trees on the perimeter have recently been thinned.
- The light pollution is also an issue with Bird life and bats; a bat survey has never been carried out.
- With Public Protection's inability to enforce plus the proven failure of Lunchbox Theatre Production to manage the noise then no audio music should be permitted at the event.

## 4.0 APPRAISAL

4.1 Key issues:

- Planning policy
- Green Belt
- Sequential Test
- Highways and parking
- Residential amenity
- Temporary permission

### PLANNING POLICY

#### Development Plan

4.2 Section 38(6) of the Planning and Compensation Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for York comprises the retained policies of the Yorkshire and Humber Regional Spatial Strategy (RSS). These are policies YH9(C) and Y1 (C1 and C2) which relate to York's Green Belt and the key diagram insofar as it illustrates general extent of the Green Belt. The policies require the inner and the rest of the outer boundaries are defined to protect and enhance the nationally significant historical and environmental character of

York, including its historic setting, views of the Minster and important open areas. The key diagram to the RSS includes the Designer Outlet site in the general extent of the Green Belt.

#### National Planning Policy Framework (NPPF)

4.3 Paragraph 14 of the NPPF says that there is a presumption in favour of sustainable development unless specific policies in the NPPF indicate development should be restricted. Restrictions are referred to in a footnote to paragraph 14.

4.4 The core planning principles at Paragraph 17 include the expectation that planning should proactively drive and support sustainable economic development, always seek to secure high quality design and a good standard of amenity for all existing and future occupiers of land and buildings, take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it; promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions.

4.5 Paragraph 19 says that the government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.

4.6 Paragraph 24 says that Local Planning Authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Main town centre uses are defined in annex 2 of the NPPF and in relation to leisure uses says that main town centre uses include leisure, entertainment facilities the more intensive sport and recreation uses ( including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres and bingo halls).

4.7 In seeking to promote sustainable transport Paragraph 34 says that Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised and at paragraph 37 says that Planning policies should aim for a balance of land uses within their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities.

4.8 Section 9 of the NPPF 'Protecting Green Belt Land' says that the essential characteristics of Green Belts are their permanence and openness (paragraph 79). Paragraph 88 says that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. With regard to new buildings paragraph 89 says that the construction of new buildings is inappropriate. Exceptions to this include provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. Paragraph 90 says that certain other forms of development are also not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and the purposes of including land in it. These are: mineral extraction, engineering operations, local transport infrastructure, the re-use of buildings and development under a community right to build order.

#### Development Control Local Plan

4.9 The policies within the City of York Council Development Control Local Plan (DCLP) have been used for assessing planning applications since 2005 although the document is not formally adopted. Policies in the DCLP are considered to be relevant to this development where they are consistent with the NPPF. In this respect the most relevant policies to the proposal are policy GB1 'Development in the Green Belt' which is similar in its effect to paragraph 89 of the NPPF and policy NE 1 which seeks to protect trees and landscaping.

4.10 The DCLP shows the site as being within the Green Belt. Within the plan Designer Outlet building is designated as a major developed site (the car park is excluded from the designation); such a designation is no longer recognised by Government policy and is no longer relevant to the consideration of applications.

#### Emerging Local Plan

4.11 The emerging publication draft local plan seeks to remove Designer Outlet and the car park area from the Green Belt. Policies in the emerging draft Local Plan are not considered to be sufficiently far advanced to be relevant at the moment.

4.12 In the absence of a formally adopted local plan the most up-to date representation of key relevant policy issues is the NPPF and the statutory development plan (the Regional Spatial Strategy which shows the site within the Green Belt). It is against this Framework and the RSS that the application proposal should principally be addressed.

## PRINCIPLE OF THE DEVELOPMENT

4.13 The Designer Outlet is operated by a single management company; the car parking and ancillary facilities such as toilets and entrance areas provide amenities for the existing shops. There is however a park and ride scheme operating in the northern car park. The proposed ice rink and funfair share the parking facilities of the Outlet and create linked trips between the two activities however the rink can be booked online and the activities can be accessed separately. Management of the funfair and ice rink is independent of the Outlet. Although one may take the view that the Outlet and the temporary facilities are one planning unit given the potential for separate and additional trips being created, Officers consider the rink and funfair, as a whole, are a separate planning unit and thus for the time when the buildings are sited and the funfair equipment and retail cabins are in place there is a change of use of land.

4.14 The site is located within the general extent of the Green Belt as described in the RSS; is shown as being within Green Belt on the proposals map in the DCLP but is proposed to be removed from the Green Belt in the emerging Local Plan (publication draft 2014). The RSS represents the statutory development plan for the area.

4.15 Although paragraph 14 of the NPPF sets out a presumption in favour of sustainable development, in accordance with the footnote referenced within paragraph 14 the presumption in favour of sustainable development does not apply in Green Belt locations.

4.16 Paragraph 89 and 90 of the NPPF set out those developments that may be considered exceptions to inappropriate development in the Green Belt. Paragraph 89 refers to exceptions to new buildings; as the proposal does not relate to new buildings this paragraph is not relevant. Paragraph 90 lists other development that may be considered as not inappropriate. This does not include the change of use of land. It is considered that the proposed development of ice rink and funfair with retail cabins placed on site for a temporary period November to January as a whole does not fall within any of the exceptions to inappropriate development in paragraphs 89 and 90. It therefore constitutes inappropriate development within Green Belt. Paragraph 87 says that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 says that substantial weight should be given to harm and that 'Very Special Circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

4.17 For members information it can be noted that previous applications for the ice rink and funfair were separate proposals. The conclusion reached in determining the separate developments was that the ice rink was appropriate development in the

Green Belt as it related to buildings and could be termed sport and recreation use and the fun fair was a use of land which as explained above would be inappropriate development. As the fun fair and ice rink are now one application as a whole it is considered that the proposal represents inappropriate development in the Green Belt. Furthermore in the case of the ice rink the siting of buildings temporarily could also be viewed as a change of use of land as opposed to the erection of buildings. In this case one could have dealt with the rink application as a change of use of land.

## Openness

4.18 Paragraph 79 establishes that openness is an essential characteristic of Green Belt. Previous applications have considered that the proposal does not impact on the openness of the green belt.

4.19 The site is located within the car and coach park areas which are hard surfaced and well lit. The area is viewed in the context of the existing Outlet buildings and is during Outlet opening hours often occupied by cars and coaches. The boundaries of the site are well planted and the immediate environment of the Outlet site is notable for the tree cover. The relatively developed nature of the site and the site context is such that its temporary use each year would have very limited impact on the openness of the Green Belt.

## Purposes of Green Belt

4.20 The Green Belt purposes are to check unrestricted sprawl of built up areas; prevent neighbouring towns merging into one another; assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns and to assist in urban regeneration ( paragraph 80 NPPF). The proposal will not undermine the purposes of Green Belt which is viewed in the context of the Outlet complex.

## Sequential test

4.21 Paragraph 24 of the NPPF requires that main town centre uses are directed to the town centre first, then to edge of centre and only if no sites are available should out of centre locations be considered. Main town centre uses are defined in Annex 2 of the NPPF as retail development ( including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres and bingo halls);offices; and arts, culture and tourism development ( including theatres, museums, galleries and concert halls, hotels and conference facilities). The definition refers to more intensive uses for sport and recreation as being main town centre uses. The ice rink would not it is felt be termed intensive sport and recreation,



and therefore no sequential test would be required. The fun fair would be considered a leisure use. The examples provided within the definition of main town centre uses relate to sites which require substantial buildings, and it is considered that a temporary leisure use which involves no permanent structures would not fall under the category of development requiring a sequential test. The rink has operated in the city centre before but, as Members may recall, on a site that was found not to be acceptable. Previous applications have not required a sequential test to be undertaken. Officers are satisfied that for an operation that is carried out for limited time each year that the development does not amount to a main town centre use as described in annex 2 of the NPPF and does not require a sequential test.

## Residential Amenity

4.22 The ice rink and funfair have been operating from the site for a number of years and therefore there has been opportunity for Public Protection to assess the impact of the development on adjacent properties. The nearest residential dwellings are on Naburn Lane, the curtilage of the nearest property being around 80m from the proposed ice rink. The carriageway of Naburn Lane, an internal circulation road within the Designer Outlet and a substantial area of landscaping are located between the proposed ice rink and the dwellings. There has been a letter of objection from a resident of Naburn Lane who is concerned that the operation of the site has caused disturbance (from noise and light) and that there is an inability for Public Protection to enforce against the use.

4.23 Public Protection is satisfied that with appropriate conditions the development can be supported. In response to the objectors concerns Public Protection comment that there have been six complaint cases at Designer Outlet since October 2011, four of which relate to business at the Designer Outlet and do not relate to operation of the Ice Factor event. The two which related to activities at the Ice Factor were in November 2012 and November 2011. The former was not substantiated despite visits to the objector's property; the latter was substantiated and found to be a problem which occurred when a CD was left in the CD player at the end of the event. It is Public Protections understanding that from that date on, CDs were removed at the end of each day and this incident has not recurred. Given this, Public Protection is satisfied that appropriate conditions will address noise issues.

4.24 The objector also raises concerns about the submitted acoustic report; Public Protection says that this report is dated November 2010 and refers to the noise climate at that time. The report identifies an 11 dB increase above background, however, since this date the recommendations made in the report were acted upon and in more recent years the site has operated on mains power. Public Protection have reviewed the predicted noise level at the objectors property based on no generator on site, an enclosure providing screening to the chiller units, and the distance between the source and receiver being the minimum between the boundary of the property and the boundary of the site. This gives an indicative level

of 30 dB where the acoustics report indicates the background when the site was not operating was 31.1dB and 29.7dB. Public Protection would previously have requested a noise level of 5dB below background, this was based on BS4142:1997, this standard was updated in 2014 and based on the current standard we now recommend noise levels the same as background. The levels calculated are equivalent to the background when the event is not operating.

4.25 Overall Public Protection is satisfied that the development can be supported subject to appropriate conditions. It is concluded that the intervening internal road, landscaping and Naburn Lane provide a significant buffer between the site and the surroundings such that there are no visual amenity concerns for adjacent residents. Conditions will seek to control noise levels, hours of operation, lighting and audio equipment. The land will be required to be reinstated to its former use by the 15th January in each year. With appropriate conditions it is considered that the development will not be detrimental to adjacent residents and accords with the core planning principle in paragraph 17 of the NPPF which seeks a good standard of amenity for all existing and future occupiers of land and buildings.

#### Highways and Parking

4.26 The proposed development would take up 100 car parking spaces and 28 coach spaces. This leaves 2700 car parking spaces and 7 coach spaces during the operation of the Yorkshire's Winter Wonderland event. The car park at the Designer Outlet is busy at Christmas time. Evidence provided by local residents and the Parish Council in respect of previous applications for the ice rink and funfair have highlighted that indiscriminate car parking has occurred within the designer Outlet site. Designer Outlet manages the car park and the concern about parking outside of parking bays is a matter for the Outlet management.

4.27 The operation of the visitor attraction coincides with the busy Christmas/January sales shopping period, although many trips will be linked, there will be an increased temptation to park on Naburn Lane due to difficulty parking at such busy times within the shopping park and the proximity of the Ice rink to this area of unrestricted parking accessible by foot. The rink and funfair activities have been in place at a similar time for the last 5 years. In operating the event, the event team have historically applied for a coning order to prevent indiscriminate parking on Naburn Lane in response to their event traffic management document (which supported the early applications). Highway Network Management seeks assurance that the event when in operation will fund cones and the required temporary coning orders to prevent indiscriminate parking on the highway, as has been successful for the last 5 years. A Traffic Management plan is proposed to be conditioned and the requirement to ensure coning along Naburn Lane will be sought through this management plan.

4.28 The event is close to the park and ride which has a regular bus service into the city. To encourage less dependence on the motor vehicle, Highway Network Management seeks measures to incentivise and provide sustainable travel to the site. Sustainable measures can be sought through the Traffic Management Plan.

#### Temporary Permission

4.29 The applicant is seeking a further 5 year temporary consent. The Parish Council have raised concerns that a further temporary permission does not comply with the National Planning Policy Guidance (NPPG). The NPPG says in relation to temporary permissions that 'It will rarely be justifiable to grant a second temporary permission - further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission should be granted permanently'. It is agreed that a further temporary consent would not comply with Government advice and on this basis it must be considered whether permission should be granted on a permanent basis i.e. to operate between November and January every year or whether there are grounds to refuse planning permission. Therefore whilst the development represents inappropriate development in the Green Belt, for the reasons set out above the application is considered acceptable. Therefore it is recommended that the application for the temporary use of the car park is granted on a permanent basis i.e. can take place each year between November and January indefinitely subject to the conditions of operation set out at the end of this report.

4.30 In summary, the proposal would be inappropriate development. According to the NPPF, paragraph 87, inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The proposal would also cause a small loss of openness. No harm is associated with the highway and residential amenity implications of the development. No sequential test is required for the development.

#### OTHE CONSIDERATIONS - Very Special Circumstances

4.31 Paragraph 81 of the NPPF says that once Green Belts have been defined, local planning authorities should plan positively to enhance its beneficial use by, among other things, looking to provide opportunities for outdoor sport and outdoor recreation. The NPPF is also supportive of development that is beneficial to the rural economy.

4.32 A previous application for the funfair set out the very special circumstances as being the lack of harm to openness and the purposes of including land within the Green Belt. These considerations remain the same and apply equally to the whole of this scheme as set out in paragraph 4.19 above.

4.33 In addition the applicant has set out a number of other considerations which in their view amount to very special circumstances:-

- The development is a significant tourist attraction for York (winning visitor attraction of the year 2015)
- The development provides employment for 50 people during its operation.
- The facilities provide opportunities for people with disabilities to enjoy a new activity.
- The facilities provide healthy family entertainment.
- The site can be accessed sustainably; is on a good bus route, next to a park and ride facility and accessible by bicycle.

4.34 The site circumstances and those considerations put forward by the applicant are (even when attaching substantial weight to the harm to the Green Belt) benefits that are considered to amount to very special circumstances in this case sufficient to clearly outweigh the potential harm to the Green Belt and any other harm.

## **5.0 CONCLUSION**

5.1 The site is located within the general extent of the Green Belt as described in the RSS; is shown as being within Green Belt on the proposals map in the DCLP but is proposed to be removed from the Green Belt in the emerging Local Plan (publication draft 2014). The RSS represents the statutory development plan for the area.

5.2 Although paragraph 14 of the NPPF sets out a presumption in favour of sustainable development, in accordance with the footnote referenced within paragraph 14 the presumption in favour of sustainable development does not apply in Green Belt locations.

5.3 The proposal would be inappropriate development. According to the NPPF, paragraph 87, inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The proposal would also cause a small loss of openness. No harm is associated with the highway and residential amenity implications of the development. No sequential test is required for the development.

5.4 For the reasons set out in paragraph 4.28 it is recommended that the application for the temporary use of the car park is granted on a permanent basis i.e. can take place each year between November and January indefinitely subject to the conditions of operation set out at the end of this report.

5.5 It is considered that the other considerations put forward by the applicant together with the mitigation of other harm through the imposition of planning conditions clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm, and thereby amount to very special

circumstances to justify the inappropriate development in the York Green Belt even when substantial weight is given to any harm to the Green Belt.

**6.0 RECOMMENDATION:** Approve

1 TIME L2 Development start within 3 yrs (LBC/CAC)

2 The development hereby permitted shall be carried out in accordance with the following plan and other documentation:-

Updated Site layout drawn by PJM dated 18/01/16

Elevations of the skate rink received 27th January 2016

Yorkshire Winter Wonderland Planning application - Additional information

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

3 The use hereby approved shall only operate during the months of November and December and shall not operate between 1st January and 31<sup>st</sup> October inclusive each year.

Reason: To safeguard the amenities of local residents, to ensure that the car park is available for the use of the retail outlet and in the interests of the visual amenity of the area.

4 All buildings and equipment used in association with development (the ice rink, cafe and funfair) shall be removed from the site and the land reinstated to its former condition as use as a coach and car park at or before 15th January of each year.

Reason: To ensure the coach and car park is re-instated in line with the requirements of the shopping centre.

5 No audio systems associated with the development shall operate outside the hours of 09:15 and 19:30 hours, unless required for emergency purposes.

Reason: To safeguard the amenities of local residents

6 The funfairs shall only be located in the area shown on Image three in the supplementary planning statement. The number of rides in this area shall be limited to 6 and no ride shall exceed 6 metres in height.

Reason: to minimise the loss of car parking and in the interests of visual and residential amenity

7 The use of generators on site shall be restricted to a single generator used to power the funfair rides. This generator shall be situated as shown on image 3 of the supporting document and shall be housed in an acoustic enclosure. The acoustic enclosure shall be at least 2m in height and imperforate in construction with no air gaps to allow the escape of noise and shall be in place for the entire operation of the use hereby approved.

Reason: to safeguard the amenities of local residents.

8 The plant and machinery associated with the operation of the ice rink shall be housed in an acoustic enclosure. The acoustic enclosure shall be at least 2.5m in height and imperforate in construction with no air gaps to allow the escape of noise and shall be in place for the entire operation of the use hereby approved..

Reason: to safeguard the amenities of local residents.

9 The funfair, marquee and associated uses shall not operate outside the hours of 11:00 to 20:15 hours Mondays to Sundays.

Reason: To safeguard the amenities of local residents

10 No lighting associated with the development, other than security lighting, shall operate outside the hours of 09:00 to 22:00 hours, unless required for emergency purposes.

Reason: To safeguard the amenities of local residents.

11 The ice rink and associated cafe shall not operate outside the hours of 09:15 to 2130 hours Mondays to Sundays.

Reason: To safeguard the amenities of local residents.

12 The ice-rink and associated plant and machinery shall be powered by mains electricity.

Reason: to safeguard the amenities of local residents

13 Prior to the development hereby approved being brought into use; a Traffic Management Plan (TMP) shall have been submitted and approved in writing by the Local Planning Authority (LPA). Said TMP shall include at least the following information:

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- Parking strategy to minimise the risk of indiscriminate parking occurring in the vicinity of the site.
- Measures to protect damage to adjacent highway verges from indiscriminate parking.
- Measures to incentivise and provide sustainable travel to the site

The development hereby approved shall thereafter be operated in accordance with the aforementioned approved TMP, or such variations that shall be have been agreed in writing by the LPA.

Reason: To protect the amenity of local residents and ensure the free flow of traffic on the highway.

## **7.0 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 (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 a positive outcome:

- Additional detail provided about the operation of the site and the very special circumstances that are considered support approval of development in the Green Belt

#### **Contact details:**

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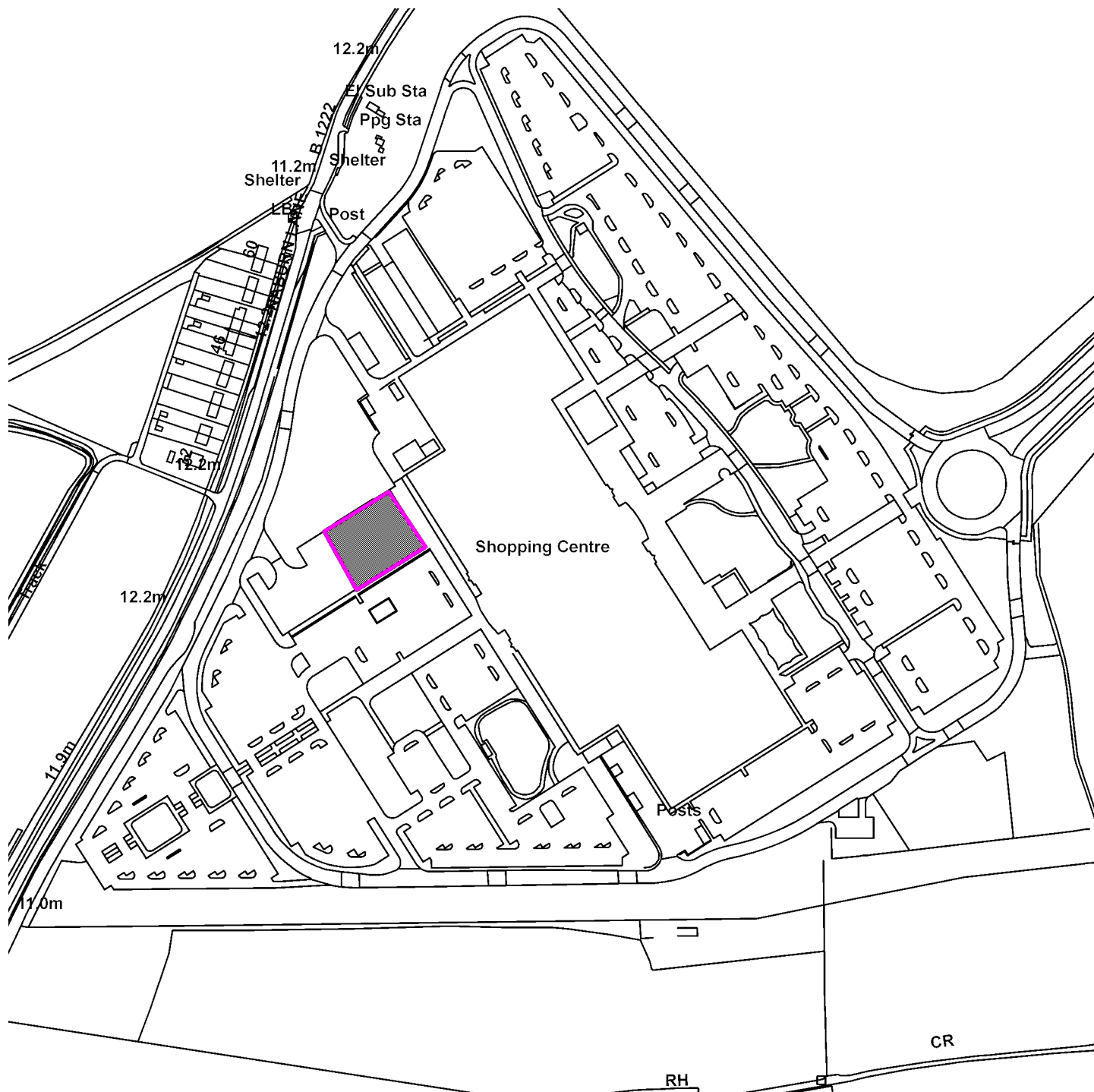
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York Designer Outlet St Nicholas Avenue



Scale : 1:3470

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<b>Organisation</b>	Not Set
<b>Department</b>	Not Set
<b>Comments</b>	Site Plan
<b>Date</b>	27 May 2016
<b>SLA Number</b>	Not Set

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