



## Notice of meeting of

### West & City Centre Area Planning Sub-Committee

- To:** Councillors B Watson (Chair), Sue Galloway (Vice-Chair), Horton, Galvin, Reid, Gillies, Gunnell, Jamieson-Ball and Sunderland
- Date:** Thursday, 15 November 2007
- Time:** 3.00 pm
- Venue:** The Guildhall, York

### AGENDA

**Site visits for this meeting will commence at 11.00 am on Wednesday 14<sup>th</sup> November 2007 at Memorial Gardens.**

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

At this point Members are asked to declare any personal or prejudicial interests they may have in the 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 the working day before the meeting. 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.

### **3. Plans List**

Members will consider a schedule of reports of the Assistant Director (Planning and Sustainable Development), relating to planning applications with an outline the proposals and relevant policy considerations and the views and advice of consultees and officers.

**a) 1 Wains Road (07/02156/FUL) (Pages 5 - 12)**

Two storey pitched roof side extension [*Dringhouses and Woodthorpe Ward*]

**b) 106 Albion Avenue (07/02291/OUT) (Pages 13 - 24)**

Outline planning application for erection of 1 dormer bungalow and garage (resubmission) [*Acomb Ward*]

**c) 11 Slingsby Grove 907/02433/FUL) (Pages 25 - 34)**

Erection of two storey 5 bed detached dwelling with accommodation in the roof space to side of 11 Slingsby Grove after demolition of existing building. [*Dringhouses and Woodthorpe Ward*]

**d) Greenthwaite (07/02196/FUL) (Pages 35 - 50)**

Erection of single storey dwelling with rooms in roof to rear with access from School Lane [*Rural West York Ward*]

**e) 58 Green Lane (07/02001/FUL) (Pages 51 - 64)**

Continued use as a hot food takeaway (Class A5), including change of opening hours (approved as 12.00 hours (noon) to 22.30 hours on any day) to 12.00 hours (noon) to 23.00 hours Mondays to Thursdays; 12.00 hours (noon) to 24.00 hours (midnight) Fridays and Saturdays; 12.00 hours (noon) to 23.30 hours Sundays (amended description to include opening hours) [*Westfield Ward*]

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

Democracy Officer

Name: Tracy Wallis

Contact Details:

- Telephone (01904) 552062
- Email – [tracy.wallis@york.gov.uk](mailto:tracy.wallis@york.gov.uk)

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

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above.

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**WEST AND CITY CENTRE AREA PLANNING SUB COMMITTEE****SITE VISITS****Wednesday 14 November 2007****The bus for members of the sub-committee will depart from  
Memorial Gardens at 11.00am**

<b>TIME</b> <b>(Approx)</b>	<b>SITE</b>	<b>ITEM</b>
<b>11.15</b>	<b>1 Wains Grove</b>	<b>3a</b>
<b>11.35</b>	<b>58 Green Lane</b>	<b>3e</b>
<b>12.00</b>	<b>Greenthwaite, Main Street, Upper Poppleton</b> (Site visit will start from the School Lane frontage of the property)	<b>3d</b>

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- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than 5.00 pm** on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

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### Further information about what's being discussed at this meeting

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

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## **Holding the Executive to Account**

The majority of councillors are not appointed to the Executive (38 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Advisory Panel (EMAP)) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

## **Scrutiny Committees**

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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- Councillors get copies of all agenda and reports for the committees to which they are appointed by the Council;
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Neighbour Notification - Expires 08/11/2007

Site Notice - N/A

Press Advert - N/A

Internal/External Consultations - Expires 15/11/2007

8 WEEK TARGET DATE 07/12/2007

### 3.2 INTERNAL CONSULTATIONS

HIGHWAYS NETWORK MANAGEMENT - None received to date

### 3.3 EXTERNAL CONSULTATIONS/REPRESENTATIONS

DRINGHOUSES AND WOODTHORPE PLANNING PANEL - None received to date

NEIGHBOURS - None received to date

## 4.0 APPRAISAL

### 4.1 RELEVANT SITE HISTORY

03/00081/FUL - Erection of metal shed to side (retrospective) - Refused

- The application is contrary to Policies GP1: Design, sections (a) and (b) and H7: Residential Extensions sections (a), (b), and (d), of the City Of York Local Plan Deposit Draft. The proposal is considered to have an unacceptable effect on the local environment, and the scale, design and materials are not appropriate to the main dwelling and the local area. The proposal is also considered to have a detrimental effect on the amenity which local residents can reasonably expect to enjoy.

### 4.2 ADDITIONAL PLANNING POLICY

CYC Supplementary Design Guidance - A guide to extensions and alterations to private dwelling houses, 2001

### 4.3 KEY ISSUES

1. Visual impact on the dwelling and the area
2. Impact on neighbouring property
3. Impact on highway safety

### 4.4 ASSESSMENT

#### PLANNING POLICY

Policy GP1 'Design' of the City of York Council Development Control Local Plan includes the expectation that development proposals will, inter alia; respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with neighbouring buildings and spaces, ensure residents living nearby

are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures, use materials appropriate to the area; avoid the loss of open spaces or other features that contribute to the landscape; incorporate appropriate landscaping and retain, enhance or create urban spaces, public views, skyline, landmarks and other features that make a significant contribution to the character of the area.

Policy H7 'Residential Extensions' of the City of York Council Development Control Local Plan sets out a list of design criteria against which proposals for house extensions are considered. The list includes the need to ensure that the design and scale are appropriate in relation to the main building; that proposals respect the character of area and spaces between dwellings; and that there should be no adverse effect on the amenity that neighbouring residents could reasonably expect to enjoy.

The City of York Council's supplementary planning guidance - Guide to extensions and alterations to private dwelling houses states that the basic shape and size of the extension should be sympathetic to the design of the original dwelling. The scale of the new extension should not dominate the original building. Where a street or a group of buildings has a well-defined building line it should be retained. It is suggested side extensions should be set back at least 0.5 metres from the front of the building. Side extensions should be sympathetically designed to appear subservient to the main dwelling. Their appearance will be improved if the extension is set back from the main building. It is particularly important that the design of the side extension takes account of the height of the new building in relation to the distance from neighbouring properties. In order to reduce the visual impact of two storey extension the ridge line should be lower than the original dwelling.

### VISUAL IMPACT ON THE DWELLING AND THE AREA

The existing property (1 Wains Road) is a semi-detached 2-storey family dwelling with a relatively large side garden. The dwelling is set on a corner plot off the junction between Wains Road and Chaloners Road.

The proposed two storey pitched roof side extension is not set back or set down in line with the CYC supplementary planning guidance. The width of the proposed extension is the same as the original dwelling; and the proposed side extension would not have a subservient appearance to the main dwelling. However it is not considered to cause undue harm to the character of the dwelling or the pair of semi-detached dwellings or the streetscene. The adjoining dwelling has had a two storey side extension which is slightly set back at first floor level and not set down in roof height, the width is significantly less than the what is being proposed in this application. The lack of set back and set down would help to retain an element of symmetry and balance when viewing the pair of semi-detached dwellings. The proposed extension does not extend further forward of the building lines on Wains Road or Chaloners Road.

The proposed extension would be easily convertible to a separate dwelling; the plans show separate accesses and separate staircase. There is an example of a side extension being converted to a separate dwelling opposite the site (59 and 59a

Chaloners Road, 01/03313/FUL and 03/02423/FUL), and a dwelling has been approved in the side garden of 78 Chaloners Road (07/01911/FUL) diagonally across the junction. Any subdivision of 1 Wains Road into additional units would require planning permission. The applicant has stated that it would be an extension only but in the future may apply for planning permission to make it a separate dwelling hence why they have shown a staircase, the staircase and wall separating the dwelling and extension would not be constructed.

The application shows a vehicular access from Chaloners Road, at the time of writing the report no comments has been received from Highways Network Management regarding the appropriateness of the new access.

#### IMPACT ON NEIGHBOURING PROPERTY

The proposed extension would bring the dwelling closer to 57 Chaloners Road. 57 Chaloners Road has two first floor windows for one bedroom in the side elevation facing the first floor windows of the proposal (bedroom and study/bedroom). The proposed side extension would be 14 - 15 metres away from the 57 Chaloners Road and this is considered to be a sufficient distance to limit any potential loss of privacy from overlooking. The proposed extension is not considered to be overbearing or over dominant to the occupants of the neighbouring dwellings by virtue of its siting and it does not come any further forward or back than the original dwelling. The proposed extension is not considered to cause a loss of light or overshadowing to the occupants of the neighbouring dwellings by virtue of the orientation of the dwelling and its relationship to the surrounding dwellings.

#### 5.0 CONCLUSION

5.1 The proposed side extension despite not being subservient to the original dwelling is not considered to cause undue harm to the visual character of the area or the pair of semi-detached dwellings. It is not considered to impact significantly on the residential amenity of the occupants of the surrounding dwellings. Approval is recommended.

#### COMMITTEE TO VISIT

**6.0 RECOMMENDATION:** Approve

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

Plans received 7 September 2007;

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

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

2 TIME2 Development start within three years

3 VISQ1 Matching materials

4 Notwithstanding the submitted plans the proposed door in the front elevation shall be removed and replaced with a glazed non-opening panel.

Reason: So the extension would have the appearance of an extension rather than separate dwelling.

**7.0 INFORMATIVES:  
Notes to Applicant**

1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference the residential amenity of the neighbours, the visual amenity of the dwelling and the locality, and highway safety. As such, the proposal complies with Policies H7 and GP1 of the City of York Development Control Local Plan (2005).

2. INFORMATIVE:

You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980 (unless alternatively specified under the legislation or Regulations listed below). For further information please contact the officer named:

Vehicle Crossing - Section 184 - Stuart Partington (01904) 551361

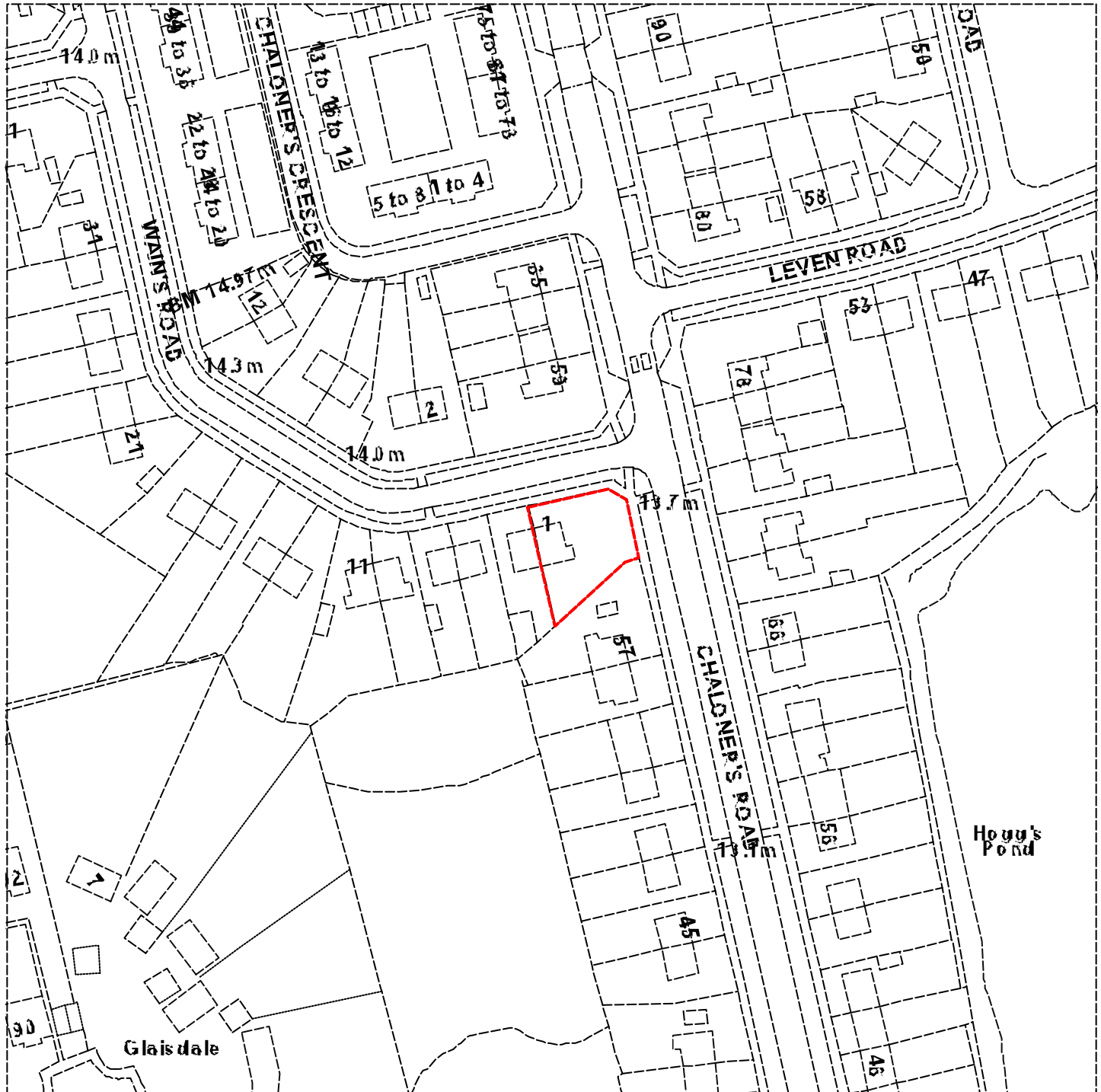
**Contact details:**

**Author:** Victoria Bell Development Control Officer  
**Tel No:** 01904 551347

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# 1 Wains Road

07/02156/FUL



Scale : 1:1250

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<b>Organisation</b>	Not Set
<b>Department</b>	Not Set
<b>Comments</b>	Application Site
<b>Date</b>	02 November 2007
<b>SLA Number</b>	Not Set

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**COMMITTEE REPORT**

**Committee:** West/Centre Area                      **Ward:** Acomb  
**Date:** 15 November 2007                      **Parish:** Acomb Planning Panel

**Reference:** 07/02291/OUT  
**Application at:** 106 Albion Avenue York YO26 5QY  
**For:** Outline planning application for erection of 1no. dormer bungalow and garage (resubmission)  
**By:** Mr K Storey And Ms J Burton  
**Application Type:** Outline Application  
**Target Date:** 21 November 2007

**1.0 PROPOSAL**

1.1.1 Outline planning permission is sought for the erection of a detached dormer bungalow to the rear (north east) of 107 Albion Avenue. As this application pertains to outline planning permission, scale, appearance and landscaping are reserved for future approval. This application however seeks approval for layout and access.

1.1.2 Access to the proposed development is shown via the existing driveway which presently serves no. 107. It is proposed to demolish the applicant's existing single detached garage and dwarf boundary wall (adjacent the footpath) to facilitate vehicular movements to the rear of the site.

1.1.3 The applicants seek approval for a detached dormer bungalow, which is approximately 10.00 m in length x 8.50 m in width x 2.70 m to eaves level and 6.50 m to ridge level. It is also proposed to form 2 no. dormer windows to the front elevation of the property and 1 to the rear. Each proposed dormer will serve a bedroom. The proposed indicative plan which supports this application states that the dwelling will consist of a living room, kitchen/family room, study and living room on the ground floor and 3 bedrooms at first floor level, including a main bathroom and 1 en-suite bathroom.

1.1.4 The proposal also includes the erection of a single attached garage, a drive and turning arrangements for the proposed dwelling. The applicants state in their design and access statement that the size, scale and height of the property is similar to that found in surrounding areas (which can be seen on the submitted location plan).

**1.2 SITE**

1.2.1 The plot area is 0.047 hectares in size. The proposed plot is irregular in shape and measures approximately 35.00 m in length x 20.00 m in width. However the proposed plot tapers in width as it extends towards Boroughbridge Road to approximately 3.00 m in width. The site is set back from Albion avenue by

approximately 33.00 m and about 25.00 m from Boroughbridge Road. The proposed site is located to the rear of 106 Albion Avenue, which is a semi-detached bungalow.

1.2.2 The design and access statement (DAS) which accompanies this proposal states that a separation distance of 21.00 m can be achieved between the proposed dwelling and the rear façade of no.106. It is further stated within the DAS that the rear garden of the proposed dwelling is 20.00 m in length. As such the agents state that the proposed new dwelling would not impinge upon the amenity of adjacent neighbours.

1.2.3 106 Albion Avenue is located at the hammerhead of Albion Avenue close. No.106 adjoins 104 Albion Avenue. Both these dwellings are built on a 45° splay so as to face the hammerhead of the close. No.106 is approximately 6.50 m in length x 8.00 m in width and is single storey in height.

### 1.3.1 HISTORY

1.3.2 A similar outline planning application was withdrawn on 19/06/2007. The application was withdrawn on the basis of concern raised by officers. The principal area of concern was the proposed access for the new dwelling being too close to the existing dwelling (No.106 Albion Avenue). This application attempts to overcome the concerns.

1.3.3 The applicants state that the existing garage (belonging to no.106) would be demolished and a new one erected further back in the site. The applicants consider that this arrangement would provide a protected area around the side entrance. Visitors, etc. would be able to gain access to the building from the front door of the property.

1.3.4 The applicants also state that the gates to the new property would be set back, than the new gates to no.106, to prevent vehicle congestion. This would, in the opinion of the applicants, provide private and secure boundaries to each dwelling and allow pedestrians and vehicles alike to move through the site without imposing on each others amenity.

### 1.4 COUNCILLOR REQUEST

1.4.1 The application is being presented to planning at the request of Councillor Simpson-Laing as there has been a lot of opposition from local residents.

## 2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Air safeguarding Air Field safeguarding 0175

City Boundary York City Boundary 0001

DC Area Teams West Area 0004

Schools Manor CE 0250

2.2 Policies:

CYGP1

Design

CYH4A

Housing Windfalls

CYH5A

Residential Density

CYGP10

Subdivision of gardens and infill devt

CYL1C

Provision of New Open Space in Development

CYGP4A

Sustainability

### **3.0 CONSULTATIONS**

#### **3.1 INTERNAL**

##### **3.1.1 Highway Network Management (HNM)**

3.1.2 The HNM officer commented that there are no highway objections to the principle of this development.

3.1.2 However the officer advised that 2 conditions should be imposed relating to the vehicular access and surfacing details to be agreed prior to development commencing. The officer also advised Informative 1 should also be attached.

##### **3.1.3 Environmental Protection Unit**

3.1.4 Environmental Protection Unit raised a number of concerns. The first concern related to noise disturbance to local residents whilst demolition, construction work and deliveries to and from the site (if a the application is approved). They recommended a condition restricting the hours of construction should be attached, should the application be approved to address this concern.

3.1.5 Although the site is unlikely to be affected by land contamination, they also recommended a condition, which places a watching brief for the discovery of any unsuspected contamination be attached should the application be approved.

3.1.6 The EPU also recommended a condition, should the application be approved, concerning hours of operation, a noise and vibration assessment, scheme of mitigation measures for adjacent neighbours, contaminated materials and the standard demolition construction informative which encompasses noise and vibration control, operation of plant and machinery, control of pollution, minimise dust emissions and no bonfires on site.

3.1.7 Life Long Learning and Culture

3.1.8 Commented that as there is no on site open space commuted sums should be paid to the Council for :-

- Amenity open space - which would be used to improve a local site such as the Northfield School site or Danebury Drive allotments;
- Play space - which would be used to improve a local site such as Viking Road;
- Sports pitches - would be used to improve a facility within the West Zone of the Sport and Active Leisure Strategy.

3.2 EXTERNAL

3.2.1 Neighbours

3.2.2 18 neighbour objection letters have been received. The objections related to:-

- The location and proximity of the proposed new dwelling would impact upon the existing privacy of adjacent neighbours;
- The proposal, if approved, would be out of character with the existing area;
- The proposal would shade adjacent neighbours private gardens and shade primary living areas;
- The proposed dormers would affect adjacent neighbours privacy;
- The proposal would create additional noise intrusion due to vehicular movements in the rear garden etc.;
- The entrance to the rear of the site is very restricted;
- The property is 'in effect' 2 stories in height and not be in keeping with the existing dwellings within the hammerhead of Albion Close;
- If the application were approved it would set a precedent for future development of this type;
- Albion Avenue cul-de-sac suffers from congestion. The proposal would create further congestion in the cul-de-sac;
- The proposal would have an adverse impact upon the safety of pedestrians using the adjacent public footpath;
- If approved it would worsen the problem for emergency vehicles gaining access to the cul-de-sac;
- Shared drives have been known to cause problems;
- Adjacent neighbours views would be affected;
- There be an impact upon the hedgerow which bounds the site;

- The proposal would detrimentally affect house values of adjacent neighbours;
- The proposal would have an adverse impact upon local wildlife;
- Are the drains adequate in the area to accommodate this extra dwelling?; and
- Create additional problems of flooding in the area by creating further hard surfaces which are impermeable and overloading the sewers.

#### **4.0 APPRAISAL**

4.1 The main considerations are:

- Principle of development;
- Impact on visual amenity of area;
- Impact on residential amenity; and
- Open space and education.

#### **4.2 POLICY**

4.2.1 PPS1: Planning for Sustainable Development aims to protect the quality of the natural and historic environment. 'The Planning System: General Principles', the companion document to PPS1, advises of the importance of amenity as an issue.

4.2.2 PPS 3 - 'Housing' sets out Government policy on housing development and encourages more sustainable patterns of development through the reuse of previously developed land, more efficient use of land, reducing dependency on the private car and provision of affordable housing. PPG3 also advises that car parking standards that require more than 1.5 spaces per dwelling are unlikely to secure sustainable development

4.2.3 Policy GP1 'Design' of the City of York Local Plan Deposit Draft includes the expectation that development proposals will, inter alia; respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with neighbouring buildings and spaces, ensure residents living nearby are not unduly affected by noise, disturbance overlooking, overshadowing or dominated by overbearing structures, use materials appropriate to the area; avoid the loss of open spaces or other features that contribute to the landscape; incorporate appropriate landscaping and retain, enhance or create urban spaces, public views, skyline, landmarks and other features that make a significant contribution to the character of the area.

4.2.4 Policy H4a - Housing Windfalls: which suggests that a proposals for residential development on land within the urban area would be acceptable, where "the site is within the urban area and is vacant, derelict or underused or it involves infilling, redevelopment or conversion of existing buildings." However, any development must be of an appropriate design and must be sustainable e.g. good links to jobs, shops and services.

4.2.5 Policy GP10 - Subdivision of Gardens and Infill Development: encourages the protection of wildlife and setting, suggesting that existing landscape features are incorporated into the scheme or compensated for elsewhere should their removal be required.

4.2.6 Policy L1c requires proposals for less than 10 dwellings to contribute towards the provision of open space (including sport, amenity and children's play provision) by way of a commuted sum.

#### 4.3 PRINCIPLE OF DEVELOPMENT

4.3.1 The site lies within the defined settlement boundary of York. There are no other relevant statutory constraints i.e. Conservation Area, etc. Central Government guidance regarding new housing is contained within Planning Policy Statement 3: Housing, policies H4a and H5a of the Draft Local Plan are also relevant. The key aim of local and national policy is to locate new housing on brownfield land in sustainable locations. PPS3 sets out a sequential test which favours the re-use of previously developed land within urban areas, then urban extensions and finally new development around nodes in good public transport corridors. Policy H4a deals with housing developments within existing settlements and says that permission will be granted within defined settlement limits for new housing developments on land not already allocated on the proposals map, where the site is vacant, derelict or underused land where it involves infilling, redevelopment or conversion of existing buildings. The scheme must be of an appropriate scale and density to surrounding development and should not have a detrimental impact on landscape features. Policy H5a says a density of 30 dwellings per hectare should be achieved on this site subject to the scale and design of the development being compatible with the character of the surrounding area and that there is no harm to local amenity.

4.3.2 Due to the location of the site and its proximity to local facilities and accessibility it is considered to be a sustainable location however whilst the principle of development is acceptable there are a number of concerns regarding this proposed development. Such concerns are the impact of the development on the visual amenity of the area and impact upon the amenity of adjacent residents. These issues are discussed below.

#### 4.4 IMPACT ON VISUAL AMENITY OF AREA

4.4.1 The existing property (106 Albion Avenue) is a semi-detached single storey family dwelling with a large rear garden. As a consequence of the dwelling being sited on 45° splay to hammerhead of Albion Close, it has a larger garden area than other dwellings in the area. The emphasis of both PPS1 and 3 and local plan policies is that development should maximise use of existing sites but that development should respect the character of the site and its surroundings.

4.4.2 One of the key principles identified in PPS1 is to ensure that development plans and decisions taken on planning applications contribute to the delivery of sustainable development is that 'planning policies should promote high quality inclusive design in the layout of new developments and individual buildings in terms of function and impact. Design which fails to take the opportunities available for improving the character and quality of an area should not be accepted'.

4.4.3 Furthermore PPS1 requires planning authorities to plan positively for the achievement of high quality and inclusive design for all development, including

individual buildings, public and private spaces and wider area development schemes. Good design should contribute positively to making places better for people. Design which is inappropriate in its context or which fails to take the opportunities available for improving the character and quality of an area and the way it functions should not be accepted.

4.4.4 Such a stance is supported by Local Plan Policies GP1, GP10, H4a and H5a which seek to ensure scale design density, layout and mass are compatible with the site surroundings.

4.4.5 The proposal would result in an additional 7.00 m high dormer bungalow being built within the rear garden of the existing property (106 Albion Avenue), between this existing property and the boundary adjacent neighbouring dwellings. There would be a distance of (approximately) 21.00 m from the rear elevation of no.106. The applicants indicate on their submitted site layout, that the following separation distances can be achieved between the proposed dwelling and adjacent neighbours:-

- 21.00 m to 1 Portal Road;
- 24.00 m to properties on Beckfield Lane;
- 27.00 m to 243 Boroughbridge Road;
- 20.00 to 104 Albion Avenue;
- 21.00 m to 106 Albion Avenue;
- 31.50 m to 5 Portal Road and
- 32.00 m to 108 Albion Avenue.

4.4.6 In addition a single storey rear extension has also been erected to the rear of no.106. This is not indicated on the submitted layout. The actual separation distance between the proposed dwelling and no.106 would be less than the stated 21.00 m. It is estimated that the separation distance would be approximately 17.00 m. However if measuring from the original dwelling the separation distance would be acceptable.

4.4.7 The site is bounded 2.00 m high fencing adjacent the public footpath (north west boundary) and the east boundary adjacent dwellings in Beckfield Lane. Hawthorn hedging also bounds parts of these boundaries and the rear northern boundary. It is considered that the majority of views, from the proposed dwelling, would be obscured by the existing boundary features. The dormer windows would afford some views into neighbouring properties/curtilage. However, in this instance such a relationship is considered acceptable due to the separation distances acknowledged above (4.4.5).

4.4.8 The relationship with other neighbouring dwellings consequently satisfies the requirements of the local plan, insomuch that the proposed extension would not have a detrimental impact upon their amenity in terms of privacy and loss of light due to shading etc.

#### 4.5 IMPACT ON RESIDENTIAL AMENITY

4.5.1 The access to the proposed dwelling would pass very close to windows in the south westerly corner of the parent property and alongside the full length of that garden. Indeed the Council's Highways department state that the access would be only 2.80 m wide at the s/e corner of the dwelling (no.106). This 'pinch point' would mean that vehicular movements would be extremely close to no.106. It would also introduce vehicular traffic into the open area immediately adjacent to the rear of the gardens of neighbouring properties, in particular 104 Albion Avenue. This would clearly create a significantly different situation from that which currently exists. As a consequence this would, in the opinion of the planning department, lead to increased noise and disturbance to those living nearby, contrary to policy GP1 of the Draft Local Plan.

#### 4.6 HIGHWAYS CONCERNS

4.6.1 Local residents have expressed concern regarding highway safety and vehicular movements within the close. However the Council Highway's department have not raised an objection to this proposal. They recommend the imposition of 2 highway conditions.

#### 4.7 OPEN SPACE

4.7.1 Under Policy L1c there is an open space provision requirement for this site. If the scheme were acceptable in all other respects the provision of open space could be dealt with by condition.

#### 4.8 OTHER ISSUES

4.8.1 Objections relating to loss of view and detrimental effect upon house valuations are not considered to be material planning considerations.

4.8.2 The safety of pedestrians using the public right of way has been raised by a number of objectors as an important issue. Whilst this situation is not ideal, no objections have been received from the Council's Highways department regarding this arrangement. Furthermore advice was also sought from the Council's Public Rights of Way (PROW) department. Informal advice received from the department confirmed that whilst such an arrangement is not encouraged there are numerous instances where this situation exists already. The PROW officer also confirmed that the footpath was not a recorded public right of way. Private vehicle access over public rights of way, whilst not encouraged cannot be prevented by the Council. The PROW officer further added that pedestrians would take precedent over vehicular traffic in such instances where a vehicle needed to either cross over or infringe a public right of way.

### 5.0 CONCLUSION

5.0.1 In the opinion of the Local Planning Authority, the access to the rear of the site is considered inadequate in width and would, in the opinion of the Council, exacerbate an already unsatisfactory arrangement and create noise intrusion and consequently loss of amenity to existing and future occupiers of 106 Albion Avenue.



5.0.2 As a consequence the proposal is considered to be unacceptable and is recommended for refusal, contrary to GP1, GP10, H4a and L1c of the City of York Development Control Draft Local Plan and National Planning Guidance PPG1 and PPG3.

**6.0 RECOMMENDATION:** Refuse

1 The access to the proposed dwelling would pass very close to windows in the south westerly corner of 106 Albion Avenue and alongside the full length of that garden. It would also introduce vehicular traffic into the open area immediately adjacent to the rear of the gardens of neighbouring properties, in particular 104 Albion Avenue. As a consequence the development would detrimentally impact upon the residential amenities of both adjacent neighbours and existing and future residents of 106 Albion Avenue by reason of noise and disturbance. The proposal therefore fails to satisfy policies GP1, GP10 and H4a of the City of York Draft Local Plan (incorporating the 4th set of changes) Development Control Local Plan approved April 2005.

**7.0 INFORMATIVES:**

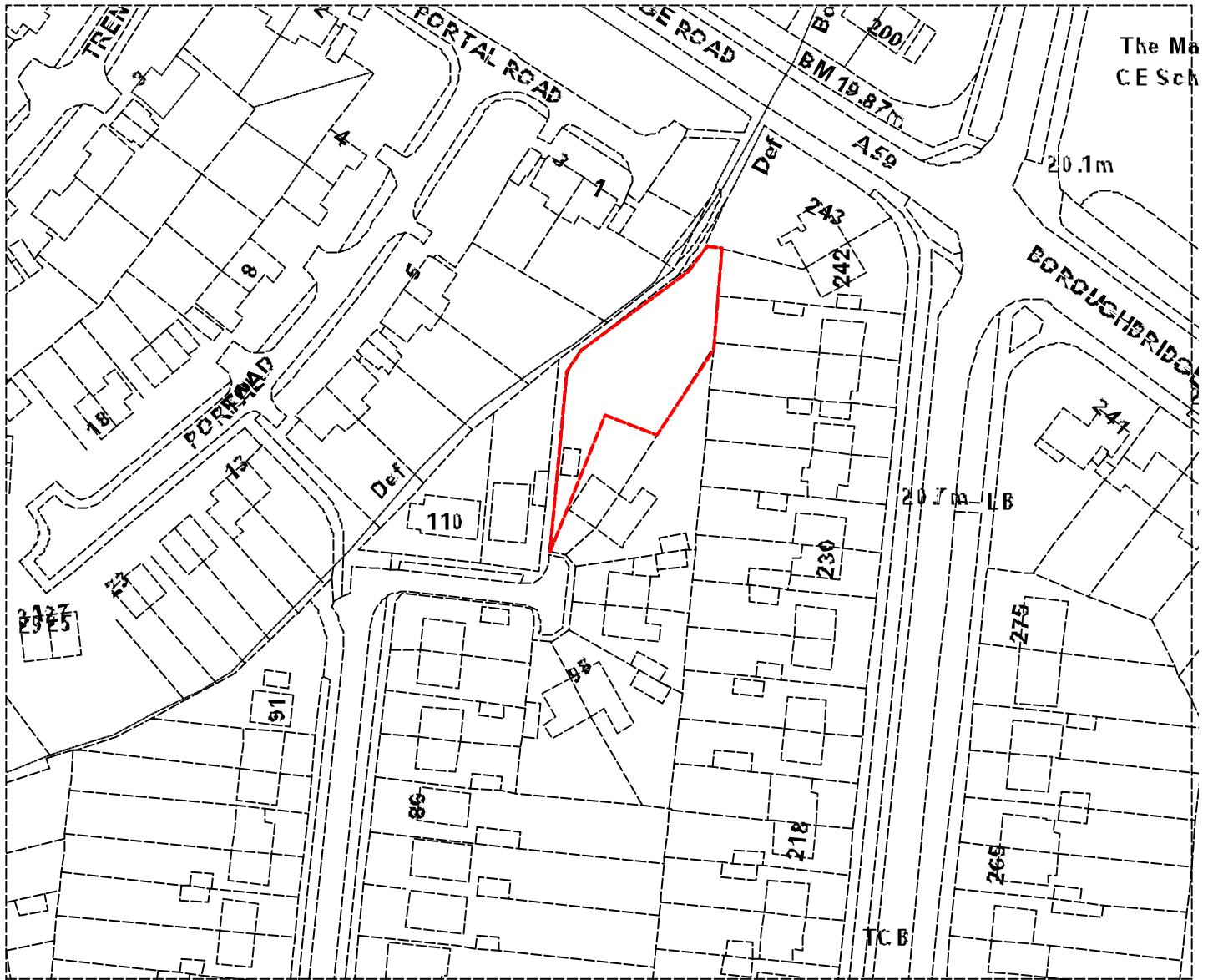
**Contact details:**

**Author:** Richard Beal Development Control Officer  
**Tel No:** 01904 551610

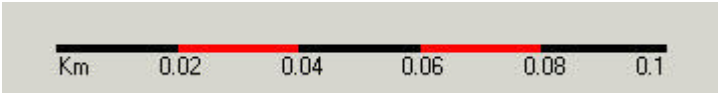
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07/02291/OUT

106 Albion Avenue



**Legend**



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<b>Organisation</b>	Not Set
<b>Department</b>	Not Set
<b>Comments</b>	
<b>Date</b>	05 November 2007
<b>SLA Number</b>	Not Set

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**COMMITTEE REPORT**

<b>Committee:</b>	West/Centre Area	<b>Ward:</b>	Dringhouses Woodthorpe	And
<b>Date:</b>	15 November 2007	<b>Parish:</b>	Dringhouses/Woodthorpe Planning Panel	

**Reference:** 07/02433/FUL  
**Application at:** 11 Slingsby Grove York YO24 1LS  
**For:** Erection of two storey 5 bed detached dwelling with accommodation in the roof space to side of 11 Slingsby Grove after demolition of existing outbuilding  
**By:** Mr Kevin Marsden  
**Application Type:** Full Application  
**Target Date:** 10 December 2007

**1.0 PROPOSAL**

1.1 The applicant seeks planning approval to erect a detached dwelling.

1.2 The application relates to the side garden of No.11, Slingsby Grove; a semi detached brick built property. The current garden contains a large flat roofed garage, which can be accessed using the existing driveway. Mature privet hedging encloses the garden to the front and side. A large brick wall approx. 2.0 metres in height forms the southern boundary and forms the shared boundary with a neighbouring bungalow No's. 94, Tadcaster Road.

1.3 This application is brought before the West and City Centre Sub Committee following a previous refusal by the aforementioned on the 26th September 2007.

**RELEVANT PLANNING HISTORY**

1.4 07/01628/FUL - Erection of two storey detached dwelling to side - Refused 26.09.2007

**Reasons for Refusal**

"The proposed two storey detached dwelling by virtue of its overall size, height, site coverage and design is considered to be out of character with surrounding properties and would therefore harm the appearance of the street scene, contrary to Policies GP1 and H4a of the City of York Development Control Draft Local Plan."

"The proposed front dormer would result in unacceptable overlooking of nearby residential properties, contrary to Policy GP1 of the City of York Development Control Draft Local Plan."

1.5 06/01687/FUL - Erection of detached dwelling (amendments to permitted scheme 06/00623/FUL to include velux roof windows) - Approved (No. 9, Slingsby Grove)

1.6 06/00623/FUL - Erection of detached dwelling - Approved 20/07/2006. (No. 9, Slingsby Grove)

1.7 No.7/13/6748/PA - Use of land for the erection of one dwelling on existing garden (submitted in accordance with Article 5 (2) of the Town and Country Planning General Development Order 1977, as an "outline application" at 11, Slingsby Grove - Refused 10th April 1989 due to overdevelopment of the site and lack of amenity space.

## **2.0 POLICY CONTEXT**

2.1 Development Plan Allocation:

City Boundary York City Boundary 0001

DC Area Teams West Area 0004

2.2 Policies:

CYGP10  
Subdivision of gardens and infill devt

CYGP1  
Design

CYH4A  
Housing Windfalls

CYL1C  
Provision of New Open Space in Development

## **3.0 CONSULTATIONS**

Internal

3.1 Environmental Protection Unit - No Objections.

3.2 Highway Network Management - No Objections.

### 3.3 Lifelong Leisure and Learning - No Objections.

As there is no on site open space, commuted sums should be paid to the Council for

a) amenity open space - which would be used to improve a local site such as the Knavesmire, Hob Moor, Mayfield or Chapmans Ponds

b) play space - which would be used to improve a local site such as Nelsons Lane or Leaside

c) sports pitches - would be used to improve a facility within the West Zone of the Sport and Active Leisure Strategy.

### 3.5 Design Conservation and Sustainable Development (Archaeologist) - No Objections - Conditions Included

External

3.4 Dringhouses/Woodthorpe Planning Panel - No Comments to date

3.5 To date no letters of objection have been received.

## 4.0 APPRAISAL

### PLANNING POLICY

4.1 Policy GP1 'Design' of the City of York Local Plan Deposit Draft includes the expectation that development proposals will, inter alia; respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with neighbouring buildings and spaces, ensure residents living nearby are not unduly affected by noise, disturbance overlooking, overshadowing or dominated by overbearing structures, use materials appropriate to the area; avoid the loss of open spaces or other features that contribute to the landscape; incorporate appropriate landscaping and retain, enhance or create urban spaces, public views, skyline, landmarks and other features that make a significant contribution to the character of the area.

4.2 H4a - Housing Windfalls: which suggests that a proposals for residential development on land within the urban area would be a acceptable, where "the site is within the urban area and is vacant, derelict or underused or it involves infilling, redevelopment or conversion of existing buildings." However, any development must be of an appropriate design and must be sustainable e.g. good links to jobs, shops and services.

4.3 GP10 -Subdivision of Gardens and Infill Development: encourages the protection of wildlife and setting, suggesting that existing landscape features are incorporated into the scheme or compensated for elsewhere should their removal be required.

4.4 L1C - Provision of New Open Spaces in Development: the council considers that all residents should have access to safe, attractive and useable public open space

and the Local Plan Strategy aims to promote accessible open space in new residential and leisure developments.

## ASSESSMENT

4.5 Following the refusal of application 07/01628/FUL at the West and City Centre Committee on the 20.09.2007, the applicant has looked to address the reasons for refusal by making a number of amendments.

4.6 In terms of design the external features of the dwelling replicates the frontages of neighbouring properties and incorporates many of the features which characterise this diverse street scene.

4.7 The proposed dwelling has a footprint of 80.36 sqm on a plot of 240 sqm, this equates to an overall reduction of 22.28 sqm, when compared with the previous application. The proposed dwelling by virtue of its location and orientation (north of the bungalow which abuts the southern boundary) will represent little threat to amenity in terms of overshadowing. Furthermore, the proposed ridgeline has been set down a further 0.5 metres (amended height 7.8 metres). Although some loss of light may occur during the late evening to the side of No.11, Slingsby Grove, the overall impact is considered negligible in this instance.

4.8 Previously concerns had been raised regarding the impact of the first floor rear windows upon neighbouring amenity; in particular the potential loss of privacy. Although the first floor windows will be located in close proximity to the rear boundary wall and the bungalow beyond, the impact in terms of amenity loss is considered to be minimal. The rear boundary wall measures approx. 2.0 metres in height with the No.94, Tadcaster Road, located approx 4.5 metres beyond; the close proximity of the bungalow to this high wall, in conjunction with existing planting and the angles of vision afforded from the proposed first floor windows (which will all be obscurely glazed) mitigates direct overlooking into the rear/side garden and the north facing windows of the aforementioned dwelling.

4.9 A pitched roofed dormer dominated the front elevation of the previous application, raising concerns from neighbours about overlooking and associated amenity impacts, these concerns were significant enough to warrant a specific "reason for refusal". The dormer has now been removed and replaced with a roof light. All roof lights within the rear and front roof elevations are to be high level further mitigating the potential for overlooking. Permitted Development Rights have been removed by condition and therefore no further rooflights can be included without the requirement for a further planning application.

4.10 The loss of existing garaging has been replaced by the inclusion of parking provision for at least two vehicles to the side of the proposed and existing properties (following amendments to the original scheme). The parking provision will enable the future occupiers of the properties to park off the main highway at all times and will not compound any perceived congestion. Cycle storage is conditioned to be provided to the rear of the existing and proposed property, potentially reducing the need for vehicle usage and promoting sustainable living.



## 5.0 CONCLUSION

The proposed detached dwelling by virtue of its overall design and locality, represents little threat to the visual and residential amenity of neighbouring property or the surrounding street scene in general, meeting policies GP1 and GP10 of the City of York Development Control Draft Local Plan.

## 6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

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

641.001- Plans and Elevations - Rev C

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

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

3 Any suspect contaminated materials detected during site works shall be reported to the local planning authority. Any remediation for this contamination shall be agreed with the local planning authority and fully implemented prior to any further development of the site.

Reason: To protect the health of the occupants.

4 All construction and demolition or refurbishment works and ancillary operations, including deliveries to the site and despatch from the site shall only be carried out between the hours of 08.00 and 18.00 Mondays to Fridays and 09.00 to 13.00 on Saturdays and not at all on Sundays and Bank Holidays.

Reason: To protect the amenity of local residents during the construction of the development.

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

Reason: So as to achieve a visually cohesive appearance.

6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order), no doors, windows or other opening additional (including dormer windows and rooflights) to those shown on the approved plans shall at any time be inserted into the external elevations of the detached dwelling hereby approved.

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

7 HWAY19 Car and cycle parking laid out

8 No gate shall be fitted so as to open outwards over the adjacent public highway.

Reason: To prevent obstruction to other highway users.

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

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

10 The boundary walls and trellis enclosing the rear (southern) boundary of the site shall not be lowered or breached without the prior written consent of the Local Planning Authority.

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

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

Reason: To comply with Policy L1C of the City of York Draft Local Plan

Informative

The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring financial contribution towards the off site provision of open space. The obligation should provide for a financial contribution calculated at £3006.

No development can take place on this site until the public open space has been provided or the Planning Obligation has been completed and you are reminded of the local planning authority's enforcement powers in this regard.

12 Prior to the commencement of any works, details shall be submitted showing the arrangements for cycle storage at 11, Slingsby Grove. All works are to be approved in writing by the Local Planning Authority and implemented prior to the dwelling hereby approved coming into use.

Reason: To promote the use of cycles

13 Notwithstanding the information contained on the approved plans, the height of the approved development shall not exceed 7.8 metres, as measured from existing ground level. Before any works commence on the site, a means of identifying the existing ground level on the site shall be agreed in writing, and any works required on site to mark that ground level accurately during the construction works shall be implemented prior to any disturbance of the existing ground level. Any such physical works or marker shall be retained at all times during the construction period.

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

14 All rear first floor windows shall be obscurely glazed and retained as such.

Reason: In the interests of residential amenity.

15 ARCH2 Watching brief required

## **7.0 INFORMATIVES:**

### **Notes to Applicant**

#### 1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to visual/residential amenity and highway safety. As such the proposal complies with Policies GP10, GP1, H4a and L1c of the City of York Development Control Draft Local Plan.

#### **Contact details:**

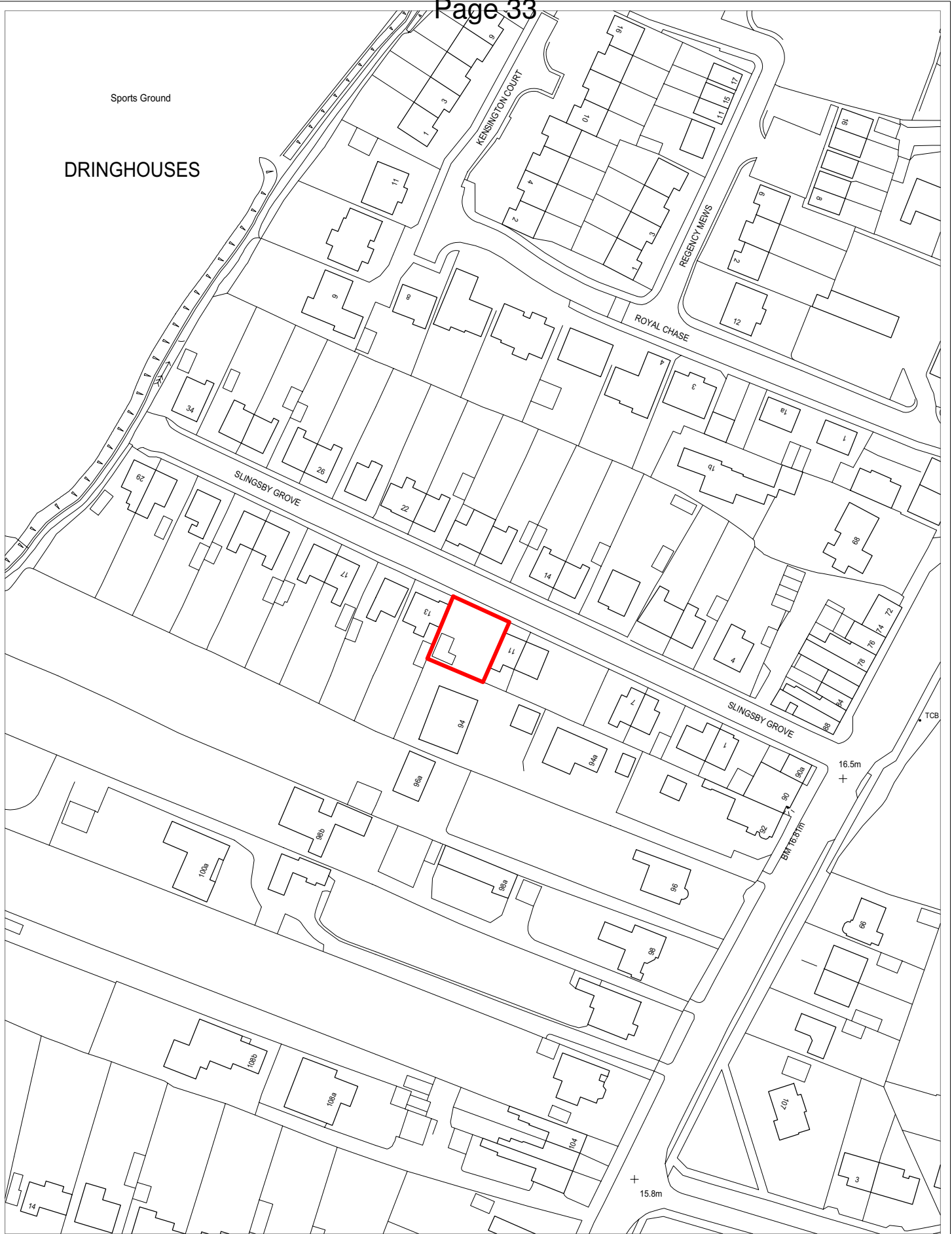
**Author:** Richard Mowat Development Control Officer

**Tel No:** 01904 551416

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Sports Ground

DRINGHOUSES



CITY OF  
**YORK**  
COUNCIL

11 SLINGSBY GROVE - 07/02433/FUL



SCALE 1:1250  
Originating Group

DRAWN BY PSL  
Project

DATE 5/11/2007  
Drawing No.

9, St. Leonards Place, York, YO1 2ET  
Telephone: 01904 551550

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City of York Council LA 1000 20818

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Conservation Area Uper Poppleton CONF

City Boundary York City Boundary 0001

DC Area Teams West Area 0004

Schools Multiple (Spatial)

## 2.2 Policies:

CYGP1  
Design

CYNE1  
Trees, woodlands, hedgerows

CYH4A  
Housing Windfalls

CYL1C  
Provision of New Open Space in Development

CYH5A  
Residential Density

CYHE2  
Development in historic locations

CYH2A  
Affordable Housing

## 3.0 CONSULTATIONS

Internal

3.1 Design, Conservation and Sustainable Development - No Objections.

3.2 Lifelong Learning and Culture - No Objections.

As there is no on-site open space commuted sums should be paid to the Council for:

a) amenity open space - which would be used to improve a local site within the Parish.

b) play space - which would be used to improve the local site within the Parish.



c) sports pitches - which would be used to improve a facility within the West Zone of the Sport and Active Leisure Strategy.

3.3 Environmental Protection Unit - No objections - Informative Included.

3.4 Highway Network Management - No Objections - Conditions Included.

3.5 Housing and Adult Social Services - Objections.

"The application can not be supported as the proposal refers to a site which has an area 3 x the threshold (which is 0.03ha) for the provision of affordable homes on 'rural' sites. Presuming all factors are equal, it would be possible to locate at least 2 or 3 homes on the site of which 1 would be affordable for rent under the council's policy for the provision of affordable housing"

3.6 City Development - Comments

This application relates to one dwelling on a site of 0.087ha, it therefore does fall above the threshold for requiring affordable housing in accordance with Policy H2a.

Policy H5a - Residential Density requires a density of 30 dph in this location dependent on individual site circumstances.

A higher density scheme should be given consideration to ensure the most efficient use of land and to try and secure affordable housing provision. Should the scheme be considered inappropriate due to other material considerations e.g character of the area, impact on the conservation area and the un-adopted road issues, the inclusion of a condition should be considered to ensure that if the site is sub divided at a later stage that the affordable housing provision for this site as a whole will need to be provided.

3.7 Marston Moor Internal Drainage Board - No Objections - Conditions Included.

3.8 Conservation Areas Advisory Panel - No Objections

"would like to see the tree protected and the new build to have PD rights removed."

External

3.9 Upper Poppleton Parish Council - No Objections - Comments

"We don't object to the planning application but wish to point out the growing number of vehicles which use School Lane. The number will increase again with the construction of yet another house in School Lane. Observations reveal that the further down School Lane vehicles have to travel the faster they are driven and the higher the risk of an accident. Special attention is drawn to the entrance to School Lane which is coterminous with the entrance to Poppleton Ousebank School."

3.10 Five letters of objection have been received from neighbouring properties regarding the applicants' proposals. The letters raise the following concerns.

- \* Safety/Highway Issues.
- \* Loss of Neighbouring Amenity.
- \* Impact upon Neighbours.
- \* Maintenance.
- \* Green Belt.
- \* Environmental/Conservation Points.
- \* The same restriction should be applied to the proposed dwelling as were applied to the Beehives.
- \* Buildings Size.
- \* Access could be provided via a different route.
- \* Impact on the Conservation Area.
- \* The property may have a business use.
- \* Impact from the Construction and Associated Traffic.

#### **4.0 APPRAISAL**

##### MAIN ISSUES

- \* Policy.
- \* Impact on the Conservation Area/Design Issues.
- \* Highway Issues.
- \* Residential Amenity.
- \* Affordable Housing.

##### POLICY

###### 3.1 Policy GP1 'Design'.

The City of York Local Plan Deposit Draft includes the expectation that development proposals will, inter alia; respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with neighbouring buildings and spaces, ensure residents living nearby are not unduly affected by noise, disturbance overlooking, overshadowing or dominated by overbearing structures, use materials appropriate to the area; avoid the loss of open spaces or other features that contribute to the landscape; incorporate appropriate landscaping and retain, enhance or create urban spaces, public views, skyline, landmarks and other features that make a significant contribution to the character of the area.

###### 3.2 Policy H5a: Residential Density

The scale and design of proposed residential developments should be compatible with the character of the surrounding area and must not harm local amenity.

Applications for all new residential developments, dependent on individual site circumstances and public transport accessibility, should aim to achieve net residential densities of greater than:

60 dwellings/hectare in the city centre <sup>1</sup>

40 dwellings/hectare in the urban areas <sup>2</sup>

30 dwellings/hectare elsewhere in the City of York

### 3.3 Policy HE2: Development in Historic Locations

Within or adjoining conservation areas, and in locations which affect the setting of listed buildings, scheduled monuments or nationally important archaeological remains (whether scheduled or not), development proposals must respect adjacent buildings, open spaces, landmarks and settings and have regard to local scale, proportion, detail and materials.

Proposals will be required to maintain or enhance existing urban spaces, views, landmarks, and other townscape elements, which contribute to the character or appearance of the area.

### 3.4 Policy NE1: Trees, Woodlands and Hedgerows

Trees, woodlands and hedgerows, which are of landscape, amenity, nature conservation or historical value, will be protected by:

- a) refusing development proposals which will result in their loss or damage; and
- b) requiring trees or hedgerows which are being retained on development sites to be adequately protected during any site works; and
- c) making tree preservation orders for individual trees and groups of trees which contribute to the landscape or local amenity; and
- d) making hedgerow retention notices where appropriate to protect important hedgerows and;
- e) ensuring the continuation of green/wildlife corridors

All proposals to remove trees or hedgerows will be required to include a site survey indicating the relative merits of individual specimens. An undertaking will also be required that appropriate replacement planting with locally indigenous species will take place to mitigate against the loss of any existing trees or hedgerows. Developments should make proper provision for the planting of new trees and other vegetation including significant highway verges as part of any landscaping scheme. In addition, other proposals to bring forward such provision will be actively encouraged.

### 3.5 Policy H4a: Housing Windfalls

Proposals for residential development on land not already allocated on the Proposals Map will be granted planning permission, in accordance to SP10, where:

- a) the site is within the urban area and is vacant, derelict or underused or it involves infilling, redevelopment or conversion of existing buildings;
- b) the site has good accessibility to jobs, shops and services by non-car modes

AND

- c) it is of an appropriate scale and density to surrounding development, and

- d) it would not have a detrimental impact on existing landscape features.

### 3.6 Policy H2a: Affordable Housing

The City of York Council will seek to ensure, through negotiation and agreement, that proposals for all new housing development 2 dwellings/0.03Ha or more in villages with less than 5,000 population, will include affordable housing in line with the Council's Second Housing Needs Survey, April 2002.

In order to achieve the maximum reasonable proportion of affordable housing, the following targets have been set on all suitable allocated and windfall sites in York: -

### 3.7 Policy GP4a: Sustainability

Proposals for all development should have regard to the principles of sustainable development as summarised in criteria a-i below.

All commercial and residential developments will be required to be accompanied by a sustainability statement. The document should describe how the proposal fits with the criteria listed below and will be judged on its suitability in these terms.

Development should:

- a) provide details setting out the accessibility of the site by means other than the car and, where the type and size of the development requires, be within 400m walk of a frequent public transport route and easily accessible for pedestrians and cyclists;
- b) contribute toward meeting the social needs of communities within City of York (including, for example, housing, community and recreational facilities, car clubs, recycling facilities and communal laundry blocks) and to safe and socially inclusive environments;
- c) maintain or increase the economic prosperity and diversity of the City of York and maximise employment opportunities (including supporting local goods and services providing training and employment for local unemployed and young people);
- d) be of a high quality design, with the aim of conserving and enhancing the local character and distinctiveness of the City;
- e) minimise the use of non-renewable resources, re-use materials already on the development site, and seek to make use of grey water systems both during construction and throughout the use of the development. Any waste generated through the development should be managed safely, recycled and/or reused. The 'whole life' costs of the materials should be considered;
- f) minimise pollution, including that relating to air, water, land, light and noise;
- g) conserve and enhance natural areas and landscape features, provide both formal and informal open space, wildlife areas and room for trees to reach full growth;

- h) maximise the use of renewable resources on development sites and seek to make use of renewable energy sources, such as heat exchangers and photovoltaic cells;
- i) make adequate provision for the storage and collection of refuse and recycling.

## IMPACT ON THE CONSERVATION AREA/DESIGN ISSUES

3.8 The proposal has been designed to provide a modern contemporary home within a traditionally proportioned external envelope using traditional building materials and methods to preserve the appearance.

3.9 The removal of the dilapidated garage will improve the appearance of the garden ground and is considered acceptable within the context of the conservation area. The development site will be divided from the garden ground associated with Greenthwaites by a boundary wall, this will be constructed in brick to match the finish of the new house.

3.10 The proposed design of the new dwelling house is well considered and takes account of the setting within the conservation area. The scale and density of the development appears to be in keeping with adjacent dwellings in School Lane and is unlikely to dominate the original dwelling house, Greenthwaites.

3.11 The design of this environmentally friendly house, not only takes account of the context of the site, but marries a traditional building envelope with modern contemporary design in a harmonious manner. The design takes account of the aspect of the site ensuring main living spaces benefit from passive solar gain.

3.12 The proposed materials are in keeping with those already existing within the designated Conservation Area. The use of natural grey slate, photovoltaic solar tiles and fair faced bricks are considered to be appropriate for the locality. Conditions will be included ensuring samples are approved in writing prior to the commencement of works.

3.13 On balance the applicants' proposals represent little harm to the character and appearance of the designated Conservation Area and are considered to be compliant with Policies HE2 and GP1 of the City of York Development Control Draft Local Plan.

## HIGHWAY ISSUES

3.14 School Lane is an un-adopted highway; surfaced to a point just before the application site. There is an existing access to the rear of Greenthwaites from School Lane.

3.15 Generally, where more than five dwellings are served from a street then that street should be capable of being constructed up to a standard suitable for adoption as a street maintainable at public expense.

3.16 School Lane currently serves nine dwellings and this additional unit would not only add to the number of residences but also increase the extent of the private street. The current layout of the street means the street is unlikely to be suitable for adoption. The current layout also does not satisfy the standard requirements of refuse vehicles and fire tenders in that formal turning facilities are not provided. In order for adoption to be considered it would need to be reconstructed to acceptable standards principally in terms of physical structure, street lighting, pedestrian facilities, drainage and road widths and layout. Should it be physically possible to achieve these requirements it would still need to have the agreement of all existing frontagers/users and would also normally be at the expense of existing frontagers/users.

3.17 Notwithstanding the above points, Highway Network Management does not consider that a recommendation of refusal solely on highway grounds could be substantiated, as it would not be possible to demonstrate that this development would have an adverse affect on the existing highway safety.

3.18 The off street provisions for vehicular parking (three parking spaces in this instance) are considered acceptable in this instance.

#### RESIDENTIAL AMENITY

3.19 The dwellings design, both externally and internally has been arranged to maximise passive solar gain and ensure privacy for adjacent neighbouring properties. The proposed site layout places the new dwellings north elevation between 3m and 6 metres from the existing northern boundary, which is dominated by a mature hedging (to be retained). Rooflights are proposed within the northern roof elevations, none of the aforementioned windows serve habitable rooms, therefore any impact upon existing amenities from overlooking is considered to be negligible.

3.20 A distance of approx. 5.5 metres has been provided between the northern elevation of the proposed dwelling and the southern elevation of the Beehive; a recently constructed bungalow. The northern elevation of the proposed dwelling contains tertiary windows only providing light to a porch and utility room. The Beehive has two bedroom windows in the southern elevation, however both are screened by the hedge forming the northern boundary, therefore the amenity impact is considered to be minimal in this instance.

3.21 The proposed dwelling is approx. 2 metres higher (overall height 7 metres) than the Beehive. The highest point of the dwelling which contains three different ridgelines is located approx. 9 metres from the northern elevation. Although some overshadowing is expected, the distance provisions in conjunction with boundary features and the location of existing properties, mitigate the overall amenity impact significantly. Assessing the perceived amenity impact is difficult at present as the Beehives' location may not be in accordance with the approved plans.

3.22 The east elevation is 9.4m from the proposed 2m high brick boundary wall and 22.4 metres from the rear elevation of Greenthwaites. The proposed high wall will prevent over looking to the existing house from the ground floor and no windows are

included in the first floor roof void gable. The west elevation has one bedroom window in the first floor roof void bedroom gable overlooks the Green Belt to the west.

## SUSTAINABILITY

3.23 The applicant proposes to use the following in order to increase energy conservation and ecological awareness. The specifics of each are set out in the Design and Assess statement, which accompanies this particular application.

- \* Super Insulated, Thermal Mass Building Fabric.
- \* Passive & Active Solar Design.
- \* Zero CO<sub>2</sub> - Ground Source Heat Pump Under Primary Floor Heating System.
- \* Zero CO<sub>2</sub>- Bio-Fuel Secondary Heating System.
- \* Zero CO<sub>2</sub> - Site Generated Renewable Energy Solar Hot Water.
- \* Zero CO<sub>2</sub> - Site Generated Renewable Energy Electrical Supply.
- \* Low Energy Appliances.
- \* Natural Passive Ventilation.
- \* Local Rain Water Supply.
- \* Water Saving Devices.
- \* Healthy-Internal Environment.

3.24 Cumulatively, the applicants' proposals are considered to be compliant with Policy GP4a "Sustainability", which aims to promote "development that meets the needs of the present without compromising the ability of future generations".

## AFFORDABLE HOUSING

3.25 The application as submitted relates to one dwelling on a site of 0.087ha and therefore falls above the threshold for requiring affordable housing in accordance with Policy H2a.

3.26 Policy H5a - Residential Density requires a density of 30 dph in this location dependent on individual site circumstances. The applicant has provided a density of 5.8 dph.

3.27 A higher density scheme with secured affordable housing has not been considered in this instance for the following reasons;-

3.28 Firstly, the proposed density would impact significantly upon the character and appearance of the designated Conservation Area, as it would result in a compacted layout in an area characterised by similar sized properties with large garden areas.

3.29 Secondly additional accommodation would only serve to compound the perceived highway problems associated with the un adopted road and highway safety in general referred to by local residents in a number of objection letters.

3.30 An informative has been included highlighting the need for affordable housing provision to be considered should the site be sub divided at a later stage.

## 5.0 CONCLUSION

5.1 The applicants' proposals are considered to be acceptable in this instance and are therefore recommended for approval.

## COMMITTEE TO VISIT

**6.0 RECOMMENDATION:** Approve

1 TIME2 Development start within three years

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

Issue E - Ground Floor Plan.  
Issue E - Roof Loft Floor Plan.  
Issue F - West Elevation.  
Issue E - East Elevation.  
Issue E - North Elevation.  
Issue e - South Elevation.

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

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

3 VISQ8 Samples of exterior materials to be app

4 HWAY10 Vehicular areas surfaced, details reqd

5 HWAY19 Car and cycle parking laid out

6 Prior to the dwelling hereby permitted being first occupied turning facilities shall be provided within the site or at the junction with School Lane capable of accommodating refuse vehicles in accordance with details which have been previously submitted to and approved in writing by the Local Planning Authority. Thereafter the turning areas shall be maintained free of all obstructions that would preclude their intended use.

Reason: In the interests of highway safety.

7 All construction and demolition or refurbishment works and ancillary operations, including deliveries to the site and despatch from the site shall only be



carried out between the hours of 08.00 and 18.00 Mondays to Fridays and 09.00 to 13.00 on Saturdays and not at all on Sundays and Bank Holidays.

Reason: To safeguard the amenities of local residents

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

Reason: To comply with the provisions of Policy L1c

Informative

The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring financial contribution towards the off site provision of open space. The obligation should provide for a financial contribution calculated at £1242.

No development can take place on this site until the public open space has been provided or the Planning Obligation has been completed and you are reminded of the local planning authority's enforcement powers in this regard.

9 Any suspect contaminated materials detected during the site works shall be reported to the Local Planning Authority. Any remediation for this contamination shall be agreed with the Local Planning Authority and fully implemented prior to any further development of the site.

Reason: To safeguard the amenities of local residents.

10 Before the commencement of and during building operations, adequate measures shall be taken to protect the existing trees, hedges and shrubs shown to be retained on approved plans This means of protection shall be agreed in writing with the Local Planning Authority and shall be implemented prior to the stacking of materials, the erection of site huts or the commencement of building works.

Reason: The existing planting is considered to make a significant contribution to the amenities of this area.

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

Reason: In the interests of the amenities of the adjoining residents the Local Planning Authority considers that it should exercise control over any future

extensions or alterations which, without this condition, may have been carried out as "permitted development" under the above classes of the Town and Country Planning (General Permitted Development) Order 1995.

## **7.0 INFORMATIVES:**

### **Notes to Applicant**

#### 1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to neighbouring amenity, designated conservation area/green belt and highway issues. As such the proposal complies with policies GP1, H5a, HE2, NE1, H4a, H2a and L1c of the City of York Local Plan Deposit Draft and policy E4 of the North Yorkshire County Structure Plan.

2. The developer's attention should also be drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be attached to any planning approval:

A. The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

B. All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturers instructions.

C. The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

D. All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

E. There shall be no bonfires on the site.

3. The planning permission hereby granted does not override private property rights nor does it confer a right of access along the un-adopted highway "School Lane". Confirmation of a "right of way" is a legal issue and you should satisfy yourself that a right of way exists prior to commencing the development.

#### 4. Affordable Housing Informative

Any future planning application to erect buildings within the red line boundary shown on the submitted site plan may be required to provide an affordable housing contribution in line with the guidance set out in Policy H2a of the City of York

Development Control Draft Local Plan.

**Contact details:**

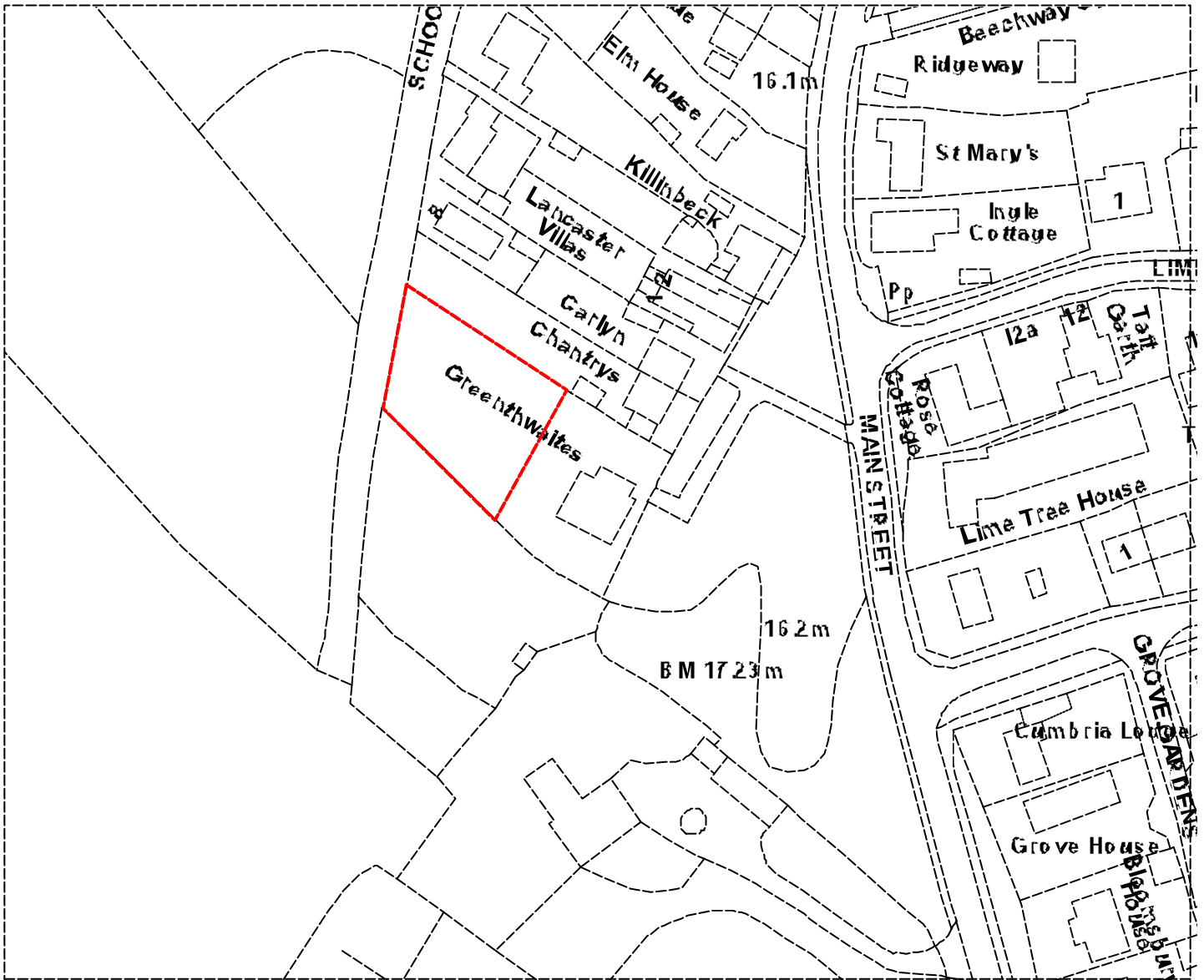
**Author:** Richard Mowat Development Control Officer

**Tel No:** 01904 551416

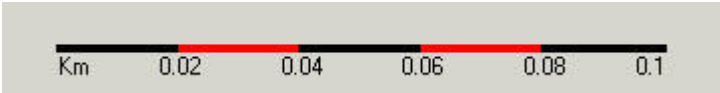
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07/02196/FUL

Greenthwaites



Legend	



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Organisation	Not Set
Department	Not Set
Comments	Main Street Upper Poppleton
Date	05 November 2007
SLA Number	Not Set

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**COMMITTEE REPORT**

**Committee:** West/Centre Area                      **Ward:** Westfield  
**Date:** 15 October 2007                              **Parish:** No Parish

**Reference:** 07/02001/FUL  
**Application at:** 58 Green Lane Acomb York YO24 4PS  
**For:** Continued use as a hot food takeaway (Class A5), including change of opening hours (approved as 12.00 hours (noon) to 22.30 hours on any day) to 12.00 hours (noon) to 23.00 hours Mondays to Thursdays; 12.00 hours (noon) to 24.00 hours (midnight) Fridays and Saturdays; 12.00 hours (noon) to 23.30 hours Sundays (amended description to include opening hours)  
**By:** Mr H Dag  
**Application Type:** Full Application  
**Target Date:** 12 October 2007

**1.0 PROPOSAL**

1.1 Following the expiration of the a temporary permission (1 year) conditioned by a Planning Inspector, following a successful appeal against the refusal of application 04/02707/FUL. The applicant has submitted an application to continue using the premises as hot food takeaway (Class A5) with amended opening hours.

1.2 The application relates to a two storey semi detached building located within a small shopping parade in a predominantly residential area. The ground floor is currently occupied by a hot food takeaway.

1.3 A committee site visit is to take place because objections have been received and the application is recommended for approval.

## Relevant History

1.4 04/02707/FUL - Conversion of retail shop (Class A1) to hot food takeaway (Class A3) - Refused 04.01.2005.

1.5 - Appeal - the Hearing held on the 25th July 2006 considered two appeals resulting from the refusal of planning application Ref.04/02707/FUL (Appeal A & B).

1.6 Appeal A: APP/C2741/C/062010833 (enforcement) and Appeal B: APP/C2741/A05/1178994 (planning) were both granted planning permission by the Planning Inspector, subject to three conditions. (appeal decision is appended to this report)

1.7 The conditions are as follows:

1)The use hereby permitted shall be discontinued and the land restored to its former condition on or before the expiry of 1 year from the date of this permission.

2) The use hereby permitted shall not be open to customers outside the times between 1200 hours (noon) and 2230 hours on any day.

3) Unless otherwise agreed in writing by the Local Planning Authority, the system for the extraction and filtering of air from around the cooking equipment as installed at the premises at the date of permission shall be retained and operated at all times when food is being prepared. It should be inspected and maintained regularly in accordance with the manufacturer's recommendations.

1.8 Condition 1 was considered appropriate as it enabled the North Yorkshire Police and Local Planning Authority to assess properly the impact of the use on anti social behaviour problems.

1.9 A condition (2) restricting the opening of the premises to customers outside specified hours was required to ensure that undue disturbance, particularly in late evening hours, does not occur. The Inspector stated that "Conclusions suggest that activity up to 2300 hours would be reasonable in its noise impact", however as the 2300 hour closing time was not being adhered to and the applicant required a modest amount of flexibility because of the practical implications of customers and employees leaving the building an evening a closing time of 2230 hours was considered more appropriate.

1.10 06/02092/FUL - Variation of condition 2 of planning permission 04/02707/FUL approved by appeal to extend opening hours from 1200-2230 Mon-Sun to 1200-2330 Sun-Thurs and 1200-0000 (midnight) Fri-Sat - Refused 04.12.2006

1.11 06/00443/ADV - Display of externally illuminated fascia sign (retrospective) - Approved 12.05.2006.

## **2.0 POLICY CONTEXT**

2.1 Development Plan Allocation:

Air safeguarding Air Field safeguarding 0175

City Boundary York City Boundary 0001

DC Area Teams West Area 0004

Schools Hob Moor Infant 0202



2.2 Policies:

CYGP1  
Design

CYS6  
Control of food and drink (A3) uses

### 3.0 CONSULTATIONS

#### INTERNAL

3.1 Highway Network Management - No Objections.

3.2 Environmental Protection Unit - No Objections.

"we have not received any complaints regarding the current use as a hot food takeaway"

3.3 Safer York Partnership - No Objections.

#### EXTERNAL

Two letters of objection have been received from one person regarding the applicants' proposals. The letters are summarised below and raise the following concerns/issues.

Please note a copy of the aforementioned letters have been forwarded to all members.

\* Two applications for "takeaways" have been refused for this particular site. (following significant community involvement). The latter of the two was refused for the following reason "In the opinion of the Local Planning Authority the proposal would generate noise and odours and attract noisy late at night to a degree that would detract from the amenity of residents and the quiet enjoyment of their homes"

\* The area is already adequately served with hot food takeaways.

\* No local residents have indicated that a hot food takeaway would provide any benefit.

\* Increase in traffic movements.

\* Vandalism and Hooliganism, exacerbated by the neighbouring McCalls.

\* Litter and discarded food is a health hazard and environmentally repulsive.

\* All incidents can be confirmed by the Police.

\* The existing CCTV camera was installed to impress the Planning Inspector.

\* Anti social behaviour is tolerated by the applicants'.

\* Approval of this application by any Committee is inconceivable as it would overturn the Inspectors "without appeal" ruling.

- \* The applicants' have ignored all statutory opening times from the 5th January 2005. In practice selecting opening and closing times based solely on their own business interests and profits.
- \* The applicants' have made no attempt to integrate with the Local Community.
- \* The applicant is still in breach of agreed opening times.
- \* The applicant has displayed two illuminating signs without consulting the Local Planning Authority or obtain planning approval.
- \* Impacts on residential amenity.
- \* Concerns that the initial neighbour consultation letter failed to include the opening times (this was addressed, with additional letters and a site notice re-sent/posted).
- \* The Planning Officer dealing with the application has allegiances to the applicant.

#### **4.0 APPRAISAL**

4.1 The Local Planning Authority and the North Yorkshire Police for the last 12 months have assessed the impact of the "Pizza King" operation and any anti social behaviour problems or within the area.

4.2 The main issue is therefore whether the hot food takeaway use is likely to add to established problems in the neighbourhood arising from anti social behaviour, and thereby increase the harm to residential amenity experienced by occupants of properties in the vicinity of the roundabout junction.

4.3 To assess the issues and in response to the requirements of the "appeal decision" the Local Planning Authority consulted North Yorkshire Police who were able to analysis 21 months of data relating to this particular site and have found there to be virtually zero reported crime. The only reported arrest was in respect to a youth breaching the terms of an Anti Social Behaviour Order.

4.4 In response to the extended opening times North Yorkshire Police could "not offer any objection", however, in order to assess the impact of extended hours another temporary permission would be beneficial, especially as the majority of the surrounding area is residential in character.

4.5 The Local Planning Authority have also surveyed the site throughout the time period of the temporary permission. Surveillance times have varied considerably and involved a number of planning and management personnel. The overriding conclusion following the aforementioned site visits was that the current operation represented little harm to the amenities of the area nor did it appear to encourage/attract anti social behaviour.

4.6 The Environmental Protection Unit (EPU) were also consulted, so any environment nuisance could be considered. EPU had no recorded complaints for the site and therefore raised no objections.

4.7 Based on the evidence and consultation advice before the Local Planning Authority, it is considered appropriate to grant planning permission for the existing use and a temporary permission for a period of 1 year for the extension in hours,

which will allow the Local Planning Authority in conjunction with North Yorkshire Police to ascertain the impact of the use on the locality beyond 2230 hours.

## 5.0 CONCLUSION

5.1 For the above reasons, the A5 use is considered appropriate for the locality. As the impact of the extended hours can not be ascertained without being put into practice a temporary consent to monitor the premises would be the most appropriate option. Consequently, if there were evidence of a detrimental impact on residential amenity, there would be a substantial material planning reason for the premises to revert to the previous hours.

## COMMITTEE TO VISIT

### 6.0 RECOMMENDATION: Approve

1 The use hereby permitted shall not be open to customers outside the following hours:

Monday to Thursday 12:00 (noon) to 23:00 hours.  
Fridays and Saturdays 12:00 (noon) to 24:00 (midnight).  
Sundays 12:00 (noon) to 23:30 hours.

The premises shall be vacated by staff by:

Monday-Thursday 23:30 hours  
Friday, Saturday 00:30 following day  
Sunday 24:00 (midnight)

The use shall adhere with these hours for a period of one year from the date of this permission after which the opening hours shall revert to 12:00 (noon) to 22:30 hours, with staff and customers vacating the premises by 23:00 hours, unless planning permission has been obtained from the Local Planning Authority for the continuation of the hours hereby permitted.

Reason: In the interests of amenity, so the Local Planning Authority may assess the impact of this use, in accordance with policy S6 of City of York Draft Local Plan.

2 Unless otherwise agreed in writing by the Local Planning Authority, the system for the extraction and filtering of air from around the cooking equipment as installed at the premises at the date of permission shall be retained and operated at all times when food is being prepared. It should be inspected and maintained regularly in accordance with the manufacturer's recommendations.

Reason: In the interests of environmental health.

**7.0 INFORMATIVES:**

**Notes to Applicant**

1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to existing amenity. As such the proposal complies with Policies GP1 and S6 of the City of York Development Control Draft Local Plan.

2. Any application to extend opening hours from 12.00 hours (noon) to 23.00 hours Mondays to Thursdays; 12.00 hours (noon) to 24.00 hours (midnight) Fridays and Saturdays; 12.00 hours (noon) to 23.30 hours Sundays, during the course of the 1 year temporary permission is likely to be resisted by the Local Planning Authority.

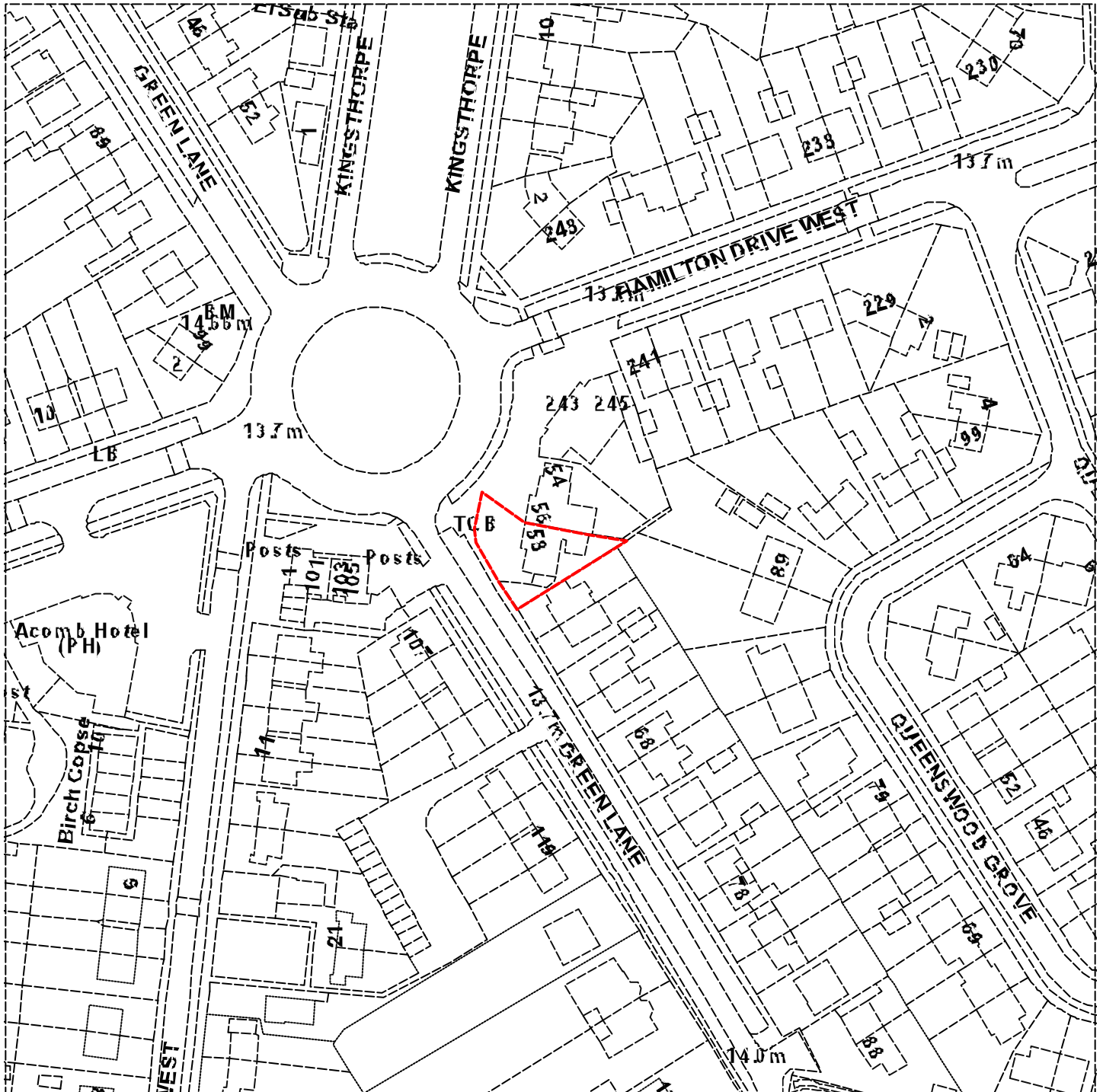
**Contact details:**

**Author:** Richard Mowat Development Control Officer

**Tel No:** 01904 551416

# 58 Green Lane

07/02001/FUL



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<b>Organisation</b>	Not Set
<b>Department</b>	Not Set
<b>Comments</b>	Application Site
<b>Date</b>	02 November 2007
<b>SLA Number</b>	Not Set

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# Appeal Decisions

Hearing held on 25 July 2006

by Alan Upward BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for  
Communities and Local Government

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
e-mail: enquiries@planning-  
inspectorate.gsi.gov.uk

Date

17 Aug 2006

## Appeal A: Ref. APP/C2741/C/062010833 58 Green Lane, Acomb, York YO24 4PS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr H Dag against an enforcement notice issued by York City Council.
- The Council's reference is 04/02707/FUL.
- The notice was issued on 15 February 2006.
- The breach of planning control as alleged in the notice is **without planning permission, the change of use of the Land to include use of the Land for the sale of hot food for consumption off the premises.**
- The requirements of the notice are to:
  - (1) **Stop using any part of the Land for the sale of hot food for consumption off the premises.**
  - (2) **Remove from the Land the ducting and extraction flue used in connection with the unauthorised use referred to in Paragraph 3 above.**
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and time limited planning permission is granted in the terms set out below in the Formal Decision.**

## Appeal B: Ref. APP/C2741/A05/1178994 58 Green Lane, Acomb, York YO24 4PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr H Dag against the decision of York City Council.
- The application Ref 04/02707/FUL, dated 17 July 2004, was refused by notice dated 4 January 2005.
- The development proposed is **conversion of retail shop (Class A1) to hot food takeaway (Class A3).**

**Summary of Decision: The appeal is allowed, and temporary planning permission granted subject to conditions set out below in the Formal Decision.**

1. The appeals relate to the same development. The reference at the time of the application to a proposed use within Class A3 should now read Class A5 following amendment of the Use Classes Order.
2. The plan attached to the enforcement notice identifies the whole of the combined residential/retail unit at number 58, being a 2 storey semi-detached building located within a local shopping group around one edge of a roundabout junction of 5 roads within a predominantly residential area to the south-west of the city centre. The appeal against refusal of planning permission relates to the established ground floor retail unit. Part of the ground floor and the upper floor were residential accommodation occupied at the date of the hearing by the Appellant. Although sharing the same curtilage, the residential and commercial uses were *individually self-contained and capable of separate occupation.*
3. The appeal against refusal of planning permission had not been accompanied by all drawings included in the application decided by the Council. Copies of all those drawings were provided to me at the hearing. These were numbered 04/13/02, 04/13/03, 04/13/04, 04/13/05, 04/13/06A and 04/13/07, and will form the basis of my decision in that case.

---

**Ground (a) appeal, the deemed application and appeal against refusal of planning permission**

4. I was told that the appeal premises had begun trading as a hot food takeaway on 17 December 2005. Although various trading hours had been quoted in the planning application and subsequent representations, the takeaway use was now open to customers between mid-day and 2300 hours on 7 days a week, and these were the hours which the Appellant wished to have the appeals judged upon.
5. Policy S6 of the unadopted Draft Local Plan allows for the development of food and drink uses within local shopping parades such as this location subject to meeting criteria which include a requirement for no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter. Other criteria specify restrictions, as appropriate to a locality, on opening hours, the provision of car and cycle parking and the ability to provide acceptable external flues.
6. These policy factors recognise the sorts of issues commonly faced when considering proposals of this kind, particularly within surroundings containing residential properties. Land along the southern sides of the roundabout junction – the meeting points of 3 of the roads – is used to provide local retailing and commercial services for an extensive suburban area of housing. These premises are set back some way from the roundabout carriageway with forecourt areas adjacent to the junction serving individual commercial uses. The suburban layout of the semi-detached and terraced housing along the roads leading away from the junction provides a measure of separation for residential occupiers from the effects of activity at these commercial sites, although it would be reasonable to characterise the overall area as primarily residential.
7. The direct impact of hot food takeaway trading at the appeal site would clearly be alleviated by the above factors of layout and density. The houses in Green Lane (South) would be the most susceptible, and particularly the nearest semi-detached house at number 60. However, this property is orientated somewhat away from the appeal premises and its forecourt. Noise associated with the arrivals and departures of customers to the premises, as well as delivery drivers employed by the Appellant, would be expected to be concentrated around the frontage forecourt area where ample vehicular and cycle parking facilities already exist. Arrivals and departures of customers on foot would be relatively widely dispersed around nearby roads, and on the evidence, a fairly small proportion of hot food trade. The Appellant indicated that between 70 – 80% of his trade involved 'home deliveries'.
8. It was apparent that the roundabout junction is a relatively busy thoroughfare through the evenings until about 2300 hours. Motor vehicle noise associated with operation of the site would be unlikely to represent a source of material disturbance to residential neighbours at these times, including those at number 60. The exception to this conclusion would be the flat above the premises, now occupied by the Appellant as proprietor of the business. Although it should not be assumed that this form of occupation would continue permanently, the living environment which occupants of such a unit could reasonably expect would be likely to be affected to some degree by 'comings and goings' through evening hours when retail premises, other than a hot food takeaway, were operating.
9. After 2300 hours the evidence suggested that the locality becomes much quieter, and trading activity would result in disturbance to residents at times when they would be likely to be seeking to sleep. This potential for harm would be reasonably capable of control by condition on opening hours.
10. Concerns about harm to amenity through cooking smells appear capable of being resolved by the employment of modern technical solutions, including flue ducting. A large metal flue was at the date of the hearing attached to the rear of the building to a height 1.2 metres above roof eaves level. The Appellant indicated that he had installed the most up to date ducting and filtering systems, and ensured that they were fully maintained and cleaned to ensure that there were no cooking smells perceived outside the premises. This equipment was said to have been installed following discussions with the Council's environmental health staff, although there was no formal approval for the system now being operated. Mr Arrowsmith, as a local resident, was unaware of any complaints relating to cooking smells over the period since the premises had opened. The



Council's representative accepted that there was currently no problem for people living in the nearest premises.

11. In the circumstances of the case the risk of harm to amenity through cooking smells should not weigh against permission for the development, including any impact upon the occupiers of the flat, so long as the standards currently being applied remained in place.
12. On the separate matter of the appearance of the external extract ducting, this had not been detailed at the time when planning permission had been refused. That now installed was a relatively large metal flue, but its impact upon the appearance of the locality, including views from neighbouring back gardens, was very limited. It could not be readily seen from adjoining streets, and its position centrally along the rear wall of the building resulted in it not being intrusive in views from neighbouring properties.
13. In relation to the above factors my conclusion would be that the immediate impact of the use upon residential and visual amenity would fall within acceptable limits, subject to conditions controlling various matters.
14. The concerns of local residents and the Council focused, however, on a broader problem associated with a history of serious anti-social behaviour in the neighbourhood related to the use of shop forecourts (and particularly the spaces in front of these premises and the attached unit and that of Martin's 'Early to Late' convenience store alongside) as congregating points for young people throughout the evenings. This was extensively documented in reports prepared by the police and accounts and lists of incidents recorded by local residents. Various initiatives had been put in place in recent times to counter the disturbance, vandalism and various criminal incidents recorded in and around the site as a consequence of this antisocial behaviour. The Appellant argued that his use of the site, allied to various specific operational measures, would serve to alleviate these conditions. The police regarded the use as creating a 'honeypot' effect likely to add to the attractiveness of the location as a congregating point, and thereby exacerbate conditions.

***The main issue is therefore***

- whether the hot food takeaway use is likely to add to established problems in the neighbourhood arising from anti-social behaviour, and thereby increase the harm to residential amenity experienced by occupants of properties in the vicinity of the roundabout junction.

***Appraisal***

15. Police data on the scale of recorded general incidents and crime in terms of assaults, burglaries, thefts and criminal damage around the site up to June 2005 were clear evidence of the existence of a significant problem affecting the quality of living environment for people in the vicinity. If operation of a takeaway business at the appeals site is likely to add materially to the scale of problems associated with antisocial behaviour around the local shopping group, that would in my view be a powerful consideration opposing the grant of planning permission.
16. The difficulties being experienced locally appear to have originated from the confluence of the 5 roads being a natural meeting point for young people living over a relatively wide area on this side of the city. This was allied to attractions for young people in the range of goods sold in the Martin's store open each day until 2300 hours, and the relatively unsupervised frontage spaces alongside the roundabout on the parking forecourts. There was general agreement among participants at the hearing that the 'Early to Late' store had been a principal cause of the area's problems over recent years, allied to the presence of the payphone box. The period of vacancy of the retail premises at the appeals site, allied to the trading times of the attached 'dry cleaning shop' seem likely to have contributed to the process. On the face of it the establishment of a takeaway food use would be bound to provide another reason why young people might choose to congregate in the area.
17. It was the Appellant's claim that his use would actually be of benefit in countering anti-social behaviour as there would be an illuminated frontage during evening hours in place of a 'dead' shop front, visual supervision of the forecourt from the shop counter's position, CCTV cameras installed to enhance this measure of control allied to recording of events, and rigorous management measures by the operator of the takeaway use.

18. I accept that it would be very much in the Appellant's commercial interest to secure better management of activity on the forecourt as well strict control over customers inside the shop premises. The forecourt control measures were now in place, including 2 CCTV cameras placed on the building, and could be expected to assist in restraining anti-social behaviour to some degree in the immediate environs of the property. It would be fair to say that any form of occupation of the property, as opposed to continued vacancy, might achieve benefits by bringing a measure of supervision over activity along the frontage. Occupation by the Appellant would not accordingly form a clear basis for permission for a hot food takeaway use if on a broader assessment the use had negative consequences flowing from the 'honeypot' effect feared by the police.
19. The Appellant's description of the various components of his trade suggested that relatively few customers visited the premises on foot separately from making use of the 'Early to Late' store. The large proportion of car borne and 'home delivery' trade would limit the scale of problems associated with customers lingering around the premises. The current trading pattern of the appeal premises would not necessarily apply to all hot food takeaway businesses capable of using the site. The Appellant would have an interest in discouraging people from lingering around the immediate illuminated frontage, whether eating takeaway food or standing and drinking alcohol bought at the 'Early to Late' store, but that would not of course prevent such people from moving a short distance away out of direct sight from the shop and the cameras.
20. In assessment of the balance of the respective arguments there was relatively limited information on changes occurring over the period since the shop began trading. More up to date statistics on incidents and crime in the area were not available at the hearing, although the police representative thought that the situation in terms of the type and volume of incidents remained broadly the same as recorded in the schedules for 2005. Mr Arrowsmith, as a longstanding local resident, had a similar impression that the type and volume of incidents in the area was the same. An application for a Dispersal Order under the 2003 Anti-Social Behaviour Act was still being considered by the police.
21. My conclusion is that the various measures taken arising from the Appellant's use of the site are likely to have helped to some extent in the management of its frontage space, but without a more comprehensive approach to the land around the junction, would not have actually deterred young people from using the wider area in the ways which have caused problems hitherto. At the same time there was little basis to conclude that, over the 8 months of operation, the use had made matters in the area worse to the detriment of residential amenity by adding to its attractiveness as an evening congregating point. In the absence of clear cut harm conflicting with Draft Policy S6 up to this point justifying rejection of the appeals, I consider that it would be appropriate to grant planning permission for the use to continue for a trial period of 1 year to enable a proper assessment of the impact of the use on the anti-social behaviour problems of the locality to be made. The ground (a) appeal and appeal against refusal of planning permission will be allowed on this basis.

### ***Conditions***

22. In addition to the time limiting condition, a condition restricting the opening of the premises to customers outside specified hours is needed to ensure that undue disturbance, particularly in late evening hours, does not occur. My earlier conclusions suggested that activity up to 2300 hours would be reasonable in its noise impact. There were complaints that the 2300 hours closing time, said to be applied, was not being strictly observed. The Appellant saw a need for modest flexibility because of the practical implications of customers leaving the premises at closing time. This suggests that there would be some potentially disturbing noise after the specified hour of closing. Delivery drivers, who were allowed to take food home with them, would also be leaving the site in cars after the specified time. For these reasons I consider it necessary to apply an evening closing time of 2230 hours. The evidence did not suggest that different times should be applied on Sundays or Bank Holidays. The suggestion made by Mr Arrowsmith that evening closing should be at 1800 hours would be unjustified on the basis of my conclusions and arguably negating the benefit of a permission.
23. Various forms of condition were discussed at the hearing relating to the ventilation, extraction and filtering systems to deal with cooking odours. The current installation appeared to be performing satisfactorily. There were no details of what this constituted. The external flue was an
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item of operational development requiring planning permission in its own right, and for which no planning permission existed. Bearing in mind these matters and the trial nature of the permission being granted, I consider that a condition requiring retention of the extraction and filtering units, as currently installed, their operation at all times when food was being prepared and their regular inspection and maintenance in accordance with manufacturers recommendations would be appropriate, sufficient and necessary. The technical matters associated with a system for the longer term could be considered at a later stage if the temporary permission were renewed, and/or a separate application was made for the external ducting.

### **Formal Decisions**

#### **Appeal A: Ref. APP/C2741/C/062010833**

24. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the change of use of the Land to include use of the Land for the sale of hot food for consumption off the premises at 58 Green Lane, Acomb, York, as shown on the plan attached to the notice, subject to the following conditions:

- 1) The use hereby permitted shall be discontinued and the land restored to its former condition on or before the expiry of 1 year from the date of this permission.
- 2) The use hereby permitted shall not be open to customers outside the times between 1200 hours (noon) and 2230 hours on any day.
- 3) Unless otherwise agreed in writing by the local planning authority, the system for the extraction and filtering of air from around the cooking equipment as installed at the premises at the date of this permission shall be retained and operated at all times when food is being prepared. It shall be inspected and maintained regularly in accordance with the manufacturer's recommendations.

#### **Appeal B: Ref. APP/C2741/A05/1178994**

25. I allow the appeal, and grant planning permission for the conversion of a retail shop (Class A1) to hot food takeaway (Class A5) at 58 Green Lane, Acomb, York in accordance with the terms of the application, Ref 04/02707/FUL, dated 17 July 2004, and the plans submitted therewith, subject to the same conditions as are attached to the permission above in respect of Appeal A.

*Alan Upward*

INSPECTOR

**PERSONS SPEAKING AT THE HEARING**

## FOR THE APPELLANT:

Mr H Dag	Appellant
Ms Dag	Appellant's daughter
Mr M Hardy	Planning and Development Consultant

## FOR THE LOCAL PLANNING AUTHORITY:

Mr R Mowat	Development Control Officer, York City Council
Sergeant J Manuel	North Yorkshire Police Community Safety Dept

## INTERESTED PERSON:

Mr R J Arrowsmith	Of 125 Green Lane, Acomb, York YO24 4PS
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**PLANS**

Plan	A	Copy of plans 04/13/02, 04/13/03, 04/13/04, 04/13/05, 04/13/06A & 04/13/06
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