



Notice of meeting of

Planning Committee

To: Councillors R Watson (Chair), D'Agorne, Firth, Funnell, Horton, Hudson, Hyman, Jamieson-Ball, Moore, Morley, Pierce, Potter (Vice-Chair), Reid, Simpson-Laing, B Watson and Wiseman

Date: Thursday, 17 December 2009

Time: 4.30 pm

Venue: The Guildhall, York

There are no site visits scheduled for this meeting

Please note that at 3.15pm, prior to the meeting, there will be a presentation on the revised Terry's scheme.

AGENDA

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. **Minutes** (Pages 3 - 6)

To approve and sign the minutes of the meeting of last meeting of the Planning Committee held on 29 October 2009.

3. **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 5.00pm on Wednesday 16 December 2009. 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.

4. Plans List

This item invites Members to determine the following planning applications:

a) Land to the West of Metcalfe Lane, Osbaldwick, York (09/01768/FULM) (Pages 7 - 18)

Change of use of agricultural land into nature conservation area with public access [*Osbaldwick Ward*].

b) MFI Furniture Centre Ltd, Foss Islands Road, York YO31 7UL (09/02071/LEGAL) (Pages 19 - 28)

Variation of legal agreement to allow food retail to be traded from the premises [*Guildhall Ward*].

5. Planning Performance Agreements - Charter (Pages 29 - 40)

Following public consultation, to consider the formal adoption of a Charter for use in the formulation and implementation of Planning Performance Agreements (PPA's).

6. Appeals Performance and Decisions Summary (Pages 41 - 54)

This report informs Members of the Council's performance in relation to appeals determined by the Planning Inspectorate in the 3 month period up to 31 October 2009 together with a summary of the salient points from those appeals.

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

Democracy Officer:

Name: Jill Pickering

Contact Details:

- Telephone – (01904) 552061
- E-mail – jill.pickering@york.gov.uk

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

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- Business of the meeting
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- Monitor best value continuous service improvement plans

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City of York Council

Committee Minutes

MEETING	PLANNING COMMITTEE
DATE	29 OCTOBER 2009
PRESENT	COUNCILLORS R WATSON (CHAIR), FIRTH, HORTON, HUDSON, HYMAN, JAMIESON-BALL, MOORE, MORLEY, PIERCE, POTTER (VICE-CHAIR), REID, SIMPSON-LAING, B WATSON, WISEMAN, BOWGETT (SUB FOR CLLR FUNNELL) AND TAYLOR (SUB FOR CLLR D'AGORNE)
APOLOGIES	COUNCILLORS D'AGORNE AND FUNNELL

20. DECLARATIONS OF INTEREST

Members were invited to declare at this point in the meeting any personal or prejudicial interest they might have in the business on the agenda.

Councillor Jamieson-Ball declared a personal prejudicial interest in Plans item 4a (Proposed University Campus lying between Field Lane and Low Lane, A64 Trunk Road and Hull Road, York) as he had spoken at the Planning Inquiry regarding the outline permission and he left the room and took no part in the discussion or voting thereon.

Councillor Pierce declared a personal non-prejudicial interest in Plans item 4a (Proposed University Campus lying between Field Lane and Low Lane, A64 Trunk Road and Hull Road, York) as a member of the Heslington East Community Forum and former member of staff and student of the University.

Councillor Morley declared a personal non-prejudicial interest in Plans item 4a (Proposed University Campus lying between Field Lane and Low Lane, A64 Trunk Road and Hull Road, York) as a member of the Heslington East Community Forum.

21. MINUTES

RESOLVED: (i) That the minutes of the meeting of the Committee held on 23 July 2009, be approved and signed by the Chair as a correct record.

(ii) That the minutes of the last meeting of the Committee held on 24 September 2009, be approved and signed by the Chair as a correct record subject to the following amendment:

In Minute 14 (Declarations of Interest) in the declaration by Cllr Firth the deletion of the words 'with the mess' and their replacement with 'its Mess'.

22. PUBLIC PARTICIPATION

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

23. PLANS LIST

Members considered a report of the Assistant Director (Planning and Sustainable Development) relating to the following planning application, outlining the proposals and relevant planning considerations and setting out the views of consultees and officers.

23a Proposed University Campus between Field Lane and Low Lane, A64 Trunk Road and Hull Road, York (09/01574/REMM)

Consideration was given to a major reserved matters application, submitted by the University of York, for landscaping to Kimberlow Hill, the Central Lake and eastern mounding of Heslington East Campus.

Officers circulated the following revised Condition (to replace Condition 1 in the report) to incorporate revised plans now received:

1. The development hereby permitted shall be carried out only in accordance with the approved plans numbered DD110317.L.401/L, DD110317.P.231/F, DD110317.P.220/F, DD110317.P.221/E, DD110317.P.222/E, DD110317.P.223/E, DD110317.P.224/E, DD110317.P.225/E, DD110317.P.226/E, DD110317.P.227/E, DD110317.P.228/E, DD110317.P.229/E, DD110317.P.230/E, DD110317.P.232/A, DD110317.P.233, DD110317.P.235 and D011.L.106/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.

Officers also reported that they had had some concerns in relation to the maintenance regimes in relation to the landscaping but it was confirmed that the University had now provided additional information which alleviated these concerns. It was stated that this information would be included in a revised environmental site management plan (ESMP), as required by draft condition 2 in the report.

Representations in support of the application were received from the applicant's agent. She confirmed that this was the final phase of the landscaping for the campus. She reported that the application was to landscape the eastern section of the campus which included woodland areas around Kimberlow Hill and adjacent to the A64, planting of the reed beds and wetland areas and for a hay meadow between the lake and movement spine. She confirmed that their design team had worked closely

with the University to create a range of habitats and to produce a Bio Diversity Action Plan.

Members questioned details of the earth levelling works and their effect on the landscaping proposals and expressed concern that sufficient details had still not been received to show that surface water would be properly attenuated. In answer to Members questions Officers confirmed that the Travel Plan for the campus had now been received and that a meeting had been arranged with the University to discuss its content.

The applicant's agent confirmed that details of the temporary surface water drainage arrangements had recently been submitted to the Authority. She stated that Drainage Officers had indicated that they were happy with the proposals in principle but that confirmation of this was expected next week.

RESOLVED: (i) That the application be approved subject to the conditions listed in the report and the replacement of Condition 1 with the following updated condition:

1. The development hereby permitted shall be carried out only in accordance with the approved plans numbered DD110317.L.401/L, DD110317.P.231/F, DD110317.P.220/F, DD110317.P.221/E, DD110317.P.222/E, DD110317.P.223/E, DD110317.P.224/E, DD110317.P.225/E, DD110317.P.226/E, DD110317.P.227/E, DD110317.P.228/E, DD110317.P.229/E, DD110317.P.230/E, D110317.P.232/A, DD110317.P.233, DD110317.P.235 and D011.L.106/C or any plans or details subsequently agreed in writing by the Local Planning Authority as an amendment to the approved plans.¹

REASON: In the opinion of the Local Planning Authority the proposal, subject to the conditions listed, would not cause undue harm to interests of acknowledged importance, with particular reference to the principle of the use, landscape amenity, bio-diversity, sustainable transport and drainage. As such the proposal complies with policies ED9, GP1, GP9, NE7, T4, GP4a and GP15A of the City of York Local Plan Deposit Draft.

(ii) That consideration be given to the University Travel Plan at the November meeting of the Planning Committee.²

Action Required

1. Issue the decision notice and include on the weekly planning decision list within the agreed timescales.

MM

2. Include as item for November meeting.

MM

R WATSON, Chair

[The meeting started at 4.30 pm and finished at 4.55 pm].

COMMITTEE REPORT

Committee: Planning Committee **Ward:** Osbaldwick
Date: 17 December 2009 **Parish:** Osbaldwick Parish Council

Reference: 09/01768/FULM
Application at: Land To The West Of Metcalfe Lane Osbaldwick York
For: Change of use of agricultural land into nature conservation area with public access
By: Mr Mark Warters
Application Type: Major Full Application (13 weeks)
Target Date: 28 December 2009

1.0 PROPOSAL

1.1 The site is to the east of the City on the outskirts of the main urban area and covers approximately 20.5 hectares. To the north of the site lies Burnholme College and the residential area of Meadlands, and to the west the residential areas of Fifth Avenue and Temple Avenue. Metcalfe Lane runs parallel with the site's eastern boundary connecting Meadlands with Osbaldwick. It provides the only access to National Grid's operational land to the east of the application site. Other cycle tracks and footpaths cross the site linking Metcalfe Lane to the east and Burnholme College to the north with Fifth Avenue and Temple Avenue to the west.

1.2 It is proposed to change the use of the agricultural land to a nature conservation area with public access. Further information submitted by the applicant confirms the type of activities proposed within the site to be dog walking, general walking, general play, bird watching, hedgerow fruit gathering, horse riding and all other related leisure activities. Whilst parts of the fields may have already been used for such purposes they have not been formalised through the planning system and as such are unauthorised.

RELEVANT PLANNING HISTORY

1.3 In May 2007 the Secretary of State granted outline planning permission for residential development for approximately 540 dwellings, including public open space, associated footpaths, cycleways, roads, engineering works and landscaping (planning ref. No. 03/02709/OUT).

1.4 Following the Secretary of State's decision a Reserved Matters application for part of the site (known as Phase 1) was submitted to build 64 dwellings, including public open space, associated footpaths, cycleways, roads, engineering works and landscaping (07/02789/REMM). Permission was granted in February 2008.

1.5 In April this year planning permission was given to erect a two storey building containing a single storey plant room and two storey ancillary community facility with separate foul water pumping station and access road. (08/02757/FUL).

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Conservation Area GMS Constraints: Osbaldwick CONF

City Boundary GMS Constraints: York City Boundary 0001

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

Floodland GMS Constraints: Flood Zone 3

Floodland GMS Constraints: Flood Zone 2

Floodzone 2 GMS Constraints: Flood Zone 2 CONF

Floodzone 3 GMS Constraints: Flood Zone 3

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

2.2 Policies:

CYSP9
Action Areas

CYH1
Housing Allocations

CYH3B
Managed Release of Allocated Housing Sites

CYGP3
Planning against crime

CYGP4A
Sustainability

CYGP9
Landscaping

CYGP15
Protection from flooding

CYNE1
Trees, woodlands, hedgerows

CYNE2
Rivers and Stream Corridors, Ponds and Wetland Habitats

CYNE6
Species protected by law

CYNE7
Habitat protection and creation

CYHE3

Conservation Areas

CYHE11
Trees and landscape

CYT4
Cycle parking standards

CYL1
Open spaces in new residential devts

CYV1
Criteria for visitor related devt

3.0 CONSULTATIONS

EXTERNAL

3.1 Neighbours consulted, site notices posted, and Press Notice published. Consultation expired on 28th October 2009:

i). Twelve letters of support received, with the following comments made:

- the proposal would make the best use of land as it is a place of natural beauty and would benefit the surrounding communities;
- the site contains protected species such as Water Vole, Great Crested Newts and various types of protected bats;
- the meadows are frequently used by local residents. Thus various species of wildlife should be protected;
- this application would benefit the people of York if successful;
- planning permission should only be given for nature conservation area;
- The Environmental Statement submitted with the proposed residential development in 2003 highlighted the significance and value of the marshy field at Metcalfe Lane. The report also stated that the majority of the hedgerow on the site can be considered to be of high ecological quality.
- the site also contains a variety of birds including scarce birds such as "Firecrest"
- housing schemes should be situated on brownfield sites;
- houses should not be built on greenbelt land;
- the proposal has the potential for community engagement and educational usage;
- the proposal would benefit local residents more than the approved housing development;

ii). In addition one letter received with the following comments:-

- this application can only be supported if the scheme is supported by a clear management plan with suitable structures and if the proposal is properly funded;
- the scheme should stop the current intermittent use of land for unofficial motorcycle/quad bike purposes;
- the site should be better managed;
- The public enquiry already concluded that the site can be used for housing; nevertheless brownfield sites should come forward in the future for such purposes;

iii). One letter of objection received expressing the following concerns:

- the area will become even more scruffy than it already is if approval is given to the scheme;
- the Council will be unable to afford the maintenance and upkeep of the area to a better standard if they still own the land after the approval;
- the land already has planning permission for much needed affordable housing and the CYC should pursue that line of use;
- the residents at Grid House has never been consulted by the applicant about the scheme;

3.2 Osbaldwick Parish Council - response received on 20th October 2009 supports the application.

3.3 Meadlands Area Resident Association (MARA) - response received on 27th October 2009: It states:-

- This area provides recreational facilities for very many local residents.
- It is recognised by the authority that the area east of the city is deficient in the provision of recreational and open space east of the city.
- On behalf of the residents association MARA strongly supports this application.

3.4 Natural England consulted, response received on 13th October 2009:

- No comments made other than to refer to the Council's own ecological advisor (Countryside Officer) for an appropriate assessment.

3.5 York Natural Environment Trust (YNET) consulted. Response received on 27th October 2009: States:-

- The York Natural Environment Trust (YNET) supports this application
- the site is already a nature conservation area, though currently in need of a return to proper management to restore and protect its full potential.
- It has a long established and continuing pattern of public access. Approval of this application would therefore do no more than ratify this historic position, to the potential continuing benefit of the people of York.
- The application concurs with YNET's long held position that the proper use of these publicly owned meadows is for landscape, nature conservation and public amenity.
- The site offers access to natural green space, with no particular effort or journey required to enjoy it, which concurs with Natural England policies, in a part of the city now demonstrated to have a major shortfall of open space generally.
- The size and importance of the site also gives it the potential to fulfil public natural open space requirements for a larger area.
- The application concurs with Government policy, supported by YNET, that development should happen sequentially on brown field sites before green field sites and therefore offers an acceptable and desirable alternative to other approved plans for the site.
- YNET has stated its support for suitable development of the York Central and British Sugar sites and has made specific recommendations for progressing this within the current economic climate. Transfer of intentions and resources allocated for housing development on Osbaldwick meadows to these major brown field

holdings, could stimulate these currently stalled developments and this too would concur with YNET's aspirations.

- At the 2006 'Derwenthorpe' Public Inquiry YNET indicated its positive experience of neglected meadow restoration at its Rawcliffe Meadows Nature Reserve, using Government Countryside Stewardship funding and its experience of working with community groups at all of its nature reserves.

- It advocated similar management of the Osbaldwick Meadows for nature conservation and public amenity group by a local community group and offered its support if requested. YNET re-affirms this offer of support in the case of developments arising from this application.

- This application offers potential benefits for York that go far beyond its immediate parameters and York Natural Environment Trust strongly requests members to approve this application.

3.6 Police Architectural Liaison Officer consulted :-

No objections raised.

3.7 Environment Agency consulted. Response received on 19th November 2009 :-

No objections; informative recommended.

INTERNAL

3.8 City Development consulted, response received on 29th October 2009:

- Based on the significance of this site in terms of the City's future housing supply, which is recognised in the draft Local Plan and the emerging LDF evidence base and housing trajectory, the team raises a policy objection to this application.

3.9 Council's Countryside Officer consulted, response received on 20th November 2009:

-In summary, the site contains species derived from the old species-rich swards that were formally much more common. The distribution of these species is though very patchy and many of them were not found in great numbers. It is this paucity of distribution that prevents their designation as a SINC grassland. Although not of SINC quality, these grassland are still of considerable local interest.

3.10 Highway Network Management - Response received on 20th October 2009:

- No objections as it is understood that no car parking is to be provided.

4.0 APPRAISAL

4.1 The key issues are:-

i). Principle of the proposed change of use;

ii). Ecology and nature conservation considerations

PRINCIPLE OF THE PROPOSED CHANGE OF USE

4.2 Planning Policy Statement no.3 (PPS 3) set out the national planning policy framework for delivering the Government's housing objectives. This PPS reflects the Government's commitment to improving the affordability and supply of housing in all communities. Paragraph 10 of PPS3 sets out a list of specific outcomes that the planning system should deliver, these include:

- i). A sufficient quantity of housing taking into account need and demand;
- ii). A mix of housing, both market and affordable, particularly in terms of tenure and price, to support a wide variety of households in all areas, both urban and rural, and
- iii). Housing developments in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure.

4.3 PPS1 "Delivering Sustainable Development" sets out the key principles that should be applied to ensure that development plans and decisions taken on planning applications contribute to the delivery of sustainable development.

4.4 PPS1 (Supplement) "Planning and Climate Change" sets out how planning should contribute to reducing emissions, stabilising climate change and take into account the unavoidable consequences.

4.5 Policy H1 "Provision and Distribution Housing" of the Yorkshire and Humber Regional Spatial Strategy (RSS) (2008) states the region's housing stock should be improved and increased to provide accommodation for all households wanting homes. The main mechanisms to achieve this are Local Development Frameworks (LDFs), Development Control, and Local Housing Strategies.

4.6 Policy T1 of RSS (2008) "Personal travel reduction and modal shift" states the region will aim to reduce travel demand, traffic growth and congestion, shift to modes with lower environmental impacts, and improve journey time reliability.

4.7 Policy H1 "Housing Allocation" of the City of York Draft Local Plan sets out a list of sites across the City to accommodate 4,491 dwellings. The site is identified as site H1.6 to accommodate approximately 520 dwellings.

4.8 The site is also recognised as a long standing housing allocation, dating from 1994 in the York Green Belt Plan and Southern Ryedale Local Plan, and most recently in the City of York Draft Local Plan.

4.9 The site is further identified in the emerging LDF evidence base (the Strategic Housing Land Availability Assessment) as significant in terms of contributing to the City's long term housing supply and features in the first 5 years of the housing trajectory.

4.10 In addition, the site is identified in policy SP9 as an Action Area for a 14ha residential urban extension and open space. This policy states planning permission will not be granted for any development, which could prejudice the implementation of their comprehensive redevelopment.

4.11 Policy GP4a "Sustainability" of the City of York Draft Local Plan sets out a list of criteria required to be considered for all developments which require planning permission.

4.12 This application seeks planning consent to change the use of an allocated Housing site for purposes other than its intended purpose. As such the proposed use would have an adverse effect on York's future housing supply, contrary to policy H1 of RSS 2008, policies H1 (Housing Allocation) and SP9 (Action Areas) of the City of York Draft Local Plan, the findings of the Strategic Housing Land Availability Assessment, and Government's objectives set out in paragraphs 10 and 69 of PPS3. It would also undermine the government's objective of providing sufficient quantity of housing to meet needs and demands, and the need to provide a mix of housing, both market and affordable, particularly in terms of tenure and price to support a wide variety of households in all areas.

4.13 There is a shortfall in natural and semi-natural open space in the eastern part of the City's urban area. Nevertheless it is not considered that such a shortfall should be addressed by losing a significant housing site in an area considered by the Secretary of State as a sustainable location for housing.

ECOLOGY AND NATURE CONSERVATION

4.14 Planning Policy Statement no.9 (PPS9) "Biodiversity and Geological Conservation" sets out the Government's national policies on protection of biodiversity and geological conservation. Paragraph 1 (v) of PPS9 states "Development proposals where the principle objective is to conserve or enhance biodiversity and geological conservation interests should be permitted".

4.15 Policy ENV8 "Biodiversity" of the Regional Spatial Strategy to 2026 states the Region will safeguard and enhance biodiversity and geological heritage, and ensure that the natural environment functions as an integrated network of habitats.

4.16 The site is also identified on the proposals map as "Recreational Opportunity Area". Policy L1d of the City of York Draft Local Plan states open space in these areas will be brought forward for public access in conjunction with the development of associated allocations.

4.17 The Countryside Officer's latest findings accord with the Inspector's conclusions in his report to the Secretary of State dated 3 March 2007, which ruled that "the site is not a SINC. On the basis of the evidence presented and the current 'guidelines in operation, (he) considered that it would not now merit designation as a SINC" (paragraph 24.134).

4.18 In line with PPS 9 and policies NE6 and NE7 of the Draft Local Plan the proposal is unlikely to have a material harm on species protected by law and important natural habitats. No objections have been raised by the Countryside Officer.

AMENITY AND HIGHWAY SAFETY

4.19 It is proposed that the new nature conservation area would be used by members of the public for activities such as dog walking, general walking and play,

bird watching, hedgerow fruit gathering, horse riding, and other similar leisure activities. The applicant claims that the site is visited by approximately 200 to 300 visitors a day, and that this is likely to grow if planning consent is granted to formalise the (currently unauthorised) use of the site for leisure purposes.

4.20 There is currently no car parking within site, and under the proposal this would remain unchanged as it is expected by the applicant that visitors would tend to arrive by walking and cycling. Approximately 5 to 10 cycle parking spaces would be introduced along the Sustrans cycle route if permission were granted. No objections have been raised by the Council's Highway Network Management team, although since granting permission would legitimise the use of the site for publicly accessible nature conservation feature (subject to owner consent) it may well lead to additional potentially car borne visitors, who would park on the highways adjacent to the site.

4.21 In terms of the hours of opening, the site would be opened to the public 24 hours a days, 7 days a week. It is not envisaged that any full or part time staff would be employed, although certain maintenance tasks such as hay and hedge cutting would be carried out by contractors on a yearly basis. Smaller tasks would be undertaken by voluntary groups. Whilst the Police Architectural Liaison officer has not raised concerns with the application, the proposed unfettered public use and access does raise potential security issues in respect of the rear of properties off Ennerdale, Ambleside Avenue, and the rear of Meadlands.

4.22 There would be no building work or operations proposed as part of the scheme. The layout of the site would also remain unchanged. All trees, hedges, grass areas, wild flowers etc are intended to be preserved and protected.

4.23 Due to the nature, type and scale of the proposed use it is unlikely that the scheme itself would unacceptably harm the amenity of the local residents and school pupils, although from the above, concerns may arise if car borne visitors were to start visiting the site and there may be security implications for properties backing onto the site. The open use also gives rise to the possibility of large numbers of visitors congregating or attending one off events at the site. The visual appearance and natural features of the site would remain unchanged as no building work or other engineering operations have been proposed as part of the scheme.

OTHER MATERIAL CONSIDERATIONS

4.24 SITE MANAGEMENT - Concerns have been raised regarding anti-social behaviour within the site. If planning permission is given a site management plan condition setting out how the nature conservation area would be managed and secured would be considered necessary.

4.25 CONSERVATION AREA - Part of the site along the south east boundary forms part of Osbaldwick conservation area. Due to nature, type and scale of the proposed use and the screening provisions afforded by the existing boundary hedge and planting it is unlikely that the proposal would have an adverse impact on the character and appearance of the conservation area. If permission were to be granted a landscaping scheme would be required by condition.

5.0 CONCLUSION

5.1 Having taken all relevant matters into account, including the key issues above and representations received, it is considered that the proposed change of use to nature conservation area from agricultural land would:

- i). have an adverse effect on York's future housing supply;
- ii). undermine the government's objective of providing sufficient quantity of housing to meet needs and demands;
- iii). affect the Government's objective of providing a mix of housing to support a wide variety of households in all areas

5.2 As such the proposal is contrary to paragraph 27 (parts iv, v and vii) of Planning Policy Statement no.1, paragraph 10 of Planning Policy Statement no.1 (Supplement), paragraphs 10, 36 and 69 of Planning Policy Statement no.3, policies H1 and T1 of Regional Spatial Strategy Yorkshire and Humber 2008, policies H1 (Housing Allocation) and SP9 (Action Areas) of the City of York Draft Local Plan, and the findings of the Strategic Housing Land Availability Assessment. Thus this application is recommended for refusal.

5.3 Other matters relating to the security of adjacent properties, off site parking and occasional or possibly frequent use by large groups are noted and would need to be considered if the principle of the use had been acceptable.

6.0 RECOMMENDATION: Refuse

1 The site has planning permission for residential development. It is also identified as site H1.6 under Policy H1 of the City of York Draft Local Plan to accommodate approximately 520 dwellings. As such the proposed use would:

- i. have an adverse effect on York's future housing supply;
- ii. undermine the government's objective of providing sufficient quantity of housing to meet needs and demands; and
- iii. affect the government's objective of providing a mix of housing, both market and affordable, particularly in terms of tenure and price to support a wide variety of households in all areas.

As such the proposal is contrary to policy H1 of Regional Spatial Strategy Yorkshire and Humber 2008, policies H1 (Housing Allocation) and SP9 (Action Areas) of the City of York Draft Local Plan, the findings of the Strategic Housing Land Availability Assessment, and the Government's objectives set out in paragraphs 10 and 69 of Planning Policy Statement 3 (Housing).

7.0 INFORMATIVES:

Contact details:

Author: Billy Wong Development Control Officer
Tel No: 01904 551326

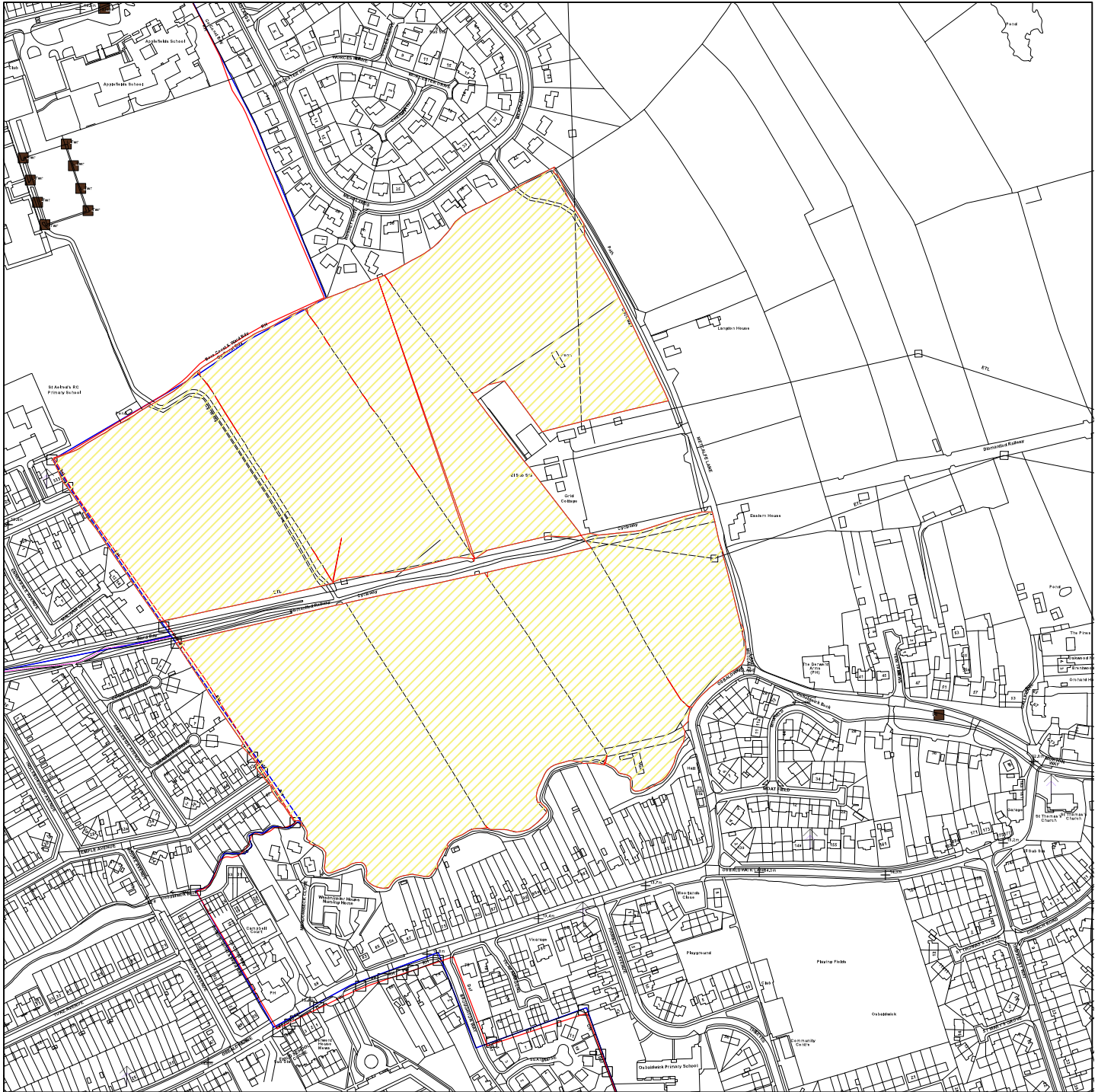
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Land to West of Metcalfe Lane

09/01768/FULM



GIS by ESRI (UK)



Scale : 1:5000

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Organisation	City of York Council
Department	Planning and Sustainable Development
Comments	Application Site
Date	07 December 2009
SLA Number	Not Set

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COMMITTEE REPORT

Committee: Planning Committee **Ward:** Guildhall
Date: 17 December 2009 **Parish:** Guildhall Planning Panel

Reference: 09/02071/LEGAL
Application at: M F I Furniture Centre Ltd Foss Islands Road York YO31 7UL
For: Variation of legal agreement to allow food retail to be traded from the premises
By: CB Richard Ellis Limited
Application Type: Legal Agreement
Target Date: 30 November 2009

1.0 PROPOSAL

1.1 The application site is situated beyond the edge of York's Central Historic Core to the east of Foss Islands Road. Directly opposite the site, further to the west and across Foss Islands Road, lies the remains of York's ancient City walls. Foss Islands Retail Park, which includes the likes of Kwik Fit, Homebase, Morrison's and fast food outlets with associated car park lies to the north. To the east lies a series of single storey warehouses, and to the south is a car garage/workshop.

1.2 In pursuance of Section 106A "Modification and Discharge of planning obligations" of the Town and Country Planning Act 1990 (as amended) this application seeks consent to vary the legal agreement imposed when it was occupied by B&Q Plc in 1994, and the original legal agreement imposed in 1986 (known at that time as Section 52 Agreement).

1.3 Paragraph 4, part 1 of the 1994 legal agreement restricts the site to be used for the retail sale of non-food goods and ancillary snack bar, sale of fuel for motor vehicles, and the sale or display of motor vehicles. In addition paragraph 3 of the 1986 Section 52 Agreement restricts the site to be used only for the sale of furniture, decorating materials, building products, floor coverings, do-it-yourself and related out of door products, leisure goods and maintenance products. It is proposed to vary the above stipulations to allow a food retailer to trade from the premises.

1.4 In addition to this Legal Agreement application 3 separate planning applications have been submitted to:

- i. introduce new traffic lights and pedestrian refuge;
- ii. alter the existing car park layout; and
- iii. alter the existing building to include new entrance, shop front and ancillary facilities.

1.5 These applications are of a relatively minor nature and are likely to be dealt with under delegated powers.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:
Contaminated Land GMS Constraints:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: Central Area 0002

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

Floodland GMS Constraints: Flood Zone 2

Floodland GMS Constraints: Flood Zone 3

Floodzone 2 GMS Constraints: Flood Zone 2 CONF

Floodzone 3 GMS Constraints: Flood Zone 3

2.2 Policies:

CYS2

Out of centre retail warehouse criteria

CYSP7A

The sequential approach to development

CYGP4B

Air Quality

CYT13A

Travel Plans and Contributions

3.0 CONSULTATIONS

3.1 Neighbours notified, site notice posted and press advert, expires on 16 December 2009 - no response received to date.

3.2 Guildhall Planning Panel. Consultation expires on 10 December 2009 - no response received to date.

3.3 City Development team - Response received on 24 November 2009:

- The proposed store would be on an existing unit which has an unrestricted retail consent so could therefore be used for any comparison goods such as clothing and footwear which could have a significant impact on the city centre.

- In terms of the convenience retail proposal, although in quantitative terms there is no immediate capacity, the Assessment completed by CBRE, CB Richard Ellis has established that the impact on the city centre is relatively small and it is in an accessible location which is centrally located.

- In addition if the store is considered in how it relates to the Foss Islands development which is restricted to bulky goods and food retail the team would look positively at a convenience goods retail application in this location.

- The team would thus not wish to raise a policy objection.

3.4 Highway Network Management team consulted - response received on 26 November 2009:

- the team would like to see a draft of the proposed S106 and from a highways viewpoint it should contain the following:

- i. A financial contribution towards the Foss Basin Masterplan of £90.5k
 - (a) 50% (£45.25k) to be paid prior to the implementation of the consents associated with the legal agreement.
 - (b) 50% (£45.25k) to be paid within 1 month of the store opening having a clawback if funds remain unspent of 10 years.
- ii. A requirement that traffic count surveys are undertaken 12 and 24 months from the date of the store opening with the approved food retail use. The dates, locations and nature of the surveys are to be agreed in writing with the authority prior to the surveys being carried out. The full count survey results shall be provided to the authority and agreed in writing within 1 month of the date of the surveys being carried out.

Should the level of vehicular trips associated with the store during the weekday PM peak be greater than a net increase of 90 vehicular trips, then the developer shall pay £914.46 per additional vehicular trip. Such additional funding should be agreed in writing by the authority and the sum received from the developer within 3 months of agreement of the figure. The funds shall be spent within 10 years of receipt or otherwise returned to the developer.

iii. A financial contribution of £5k towards the amendment/creation/extinguishment of Traffic Regulation Orders in the vicinity of the site. The scheme is to be paid upon completion of the agreement having a clawback if funds remain unspent of 10 years.

iv. Travel Plan requirement

3.5 Environmental Protection Unit (Air Quality) - response received on 18 November 2009:

- In January 2002 City of York Council declared an Air Quality Management Area (AQMA) based on predicted surpass of the annual average nitrogen dioxide objective in five areas of the city.
- The declaration of the AQMA placed a legal duty on the council to improve air quality in the city and to demonstrate that it is actively pursuing the 40ug/m³ annual objective.
- In order to demonstrate a commitment to improving air quality the council was required to prepare an Air Quality Action Plan (AQAP).
- The AQAP identifies measures the council intends to take to improve air quality in the city following the declaration of the AQMA.
- The proposed development site is adjacent to City of York Council's AQMA and Lawrence St (which is in close proximity to the site) and forms one of the five areas of 'technical breach', where excessiveness of the annual average nitrogen dioxide objective have been monitored.
- The Environmental Protection Unit (EPU) undertakes monitoring of nitrogen dioxide at a number of sites along Lawrence Street.
- Concentrations of nitrogen dioxide monitored at these sites have indicated extensive breaches of the health based annual average nitrogen dioxide objective in recent years.

- Based on national air quality guidance, air quality may be a significant consideration where changes in Annual Average Daily Traffic Flow (AADT) are shown to increase by more than 5%, on roads with existing flows of 10,000 vehicles or more.
- The change in proportion of HGVs entering and leaving the site can also be a consideration when considering whether an air quality assessment is required for a development proposal.
- The traffic assessment for the site provides turning movements in terms of Passenger Car Units.
- In order to assess this proposal in terms of air quality, further information is required from the applicants.
- For all links covered in the traffic assessment, and for all scenarios, the following is required :

- i. Annual Average Daily Traffic Flows (AADTs)
- ii. % HGV / % LGV
- iii. Average speed for each link
- iv. % change in AADT between the base case and the 'with-development' scenarios.

- Ideally this information will be tabulated to allow an easy comparison between the base case traffic movements and those with the development in place.

4.0 APPRAISAL

4.1 The main planning issues to be considered are:

- i. Vitality and viability of York City and District Centres;
- ii. Highway considerations; and
- iii. Air Quality

VITALITY AND VIABILITY OF YORK'S CITY AND DISTRICT CENTRES

4.2 In accordance with Planning Policy Statement (PPS) no.6 "Planning for Town Centres", Policy E2 "Town centre and major facilities" of the Regional Spatial Strategy for Yorkshire and Humber (2008), and Policies SP6 "Location Strategy" and S2 "Out of Centre Retail Warehouses" of the City of York Draft Local Plan retail developments must have regard to the followings:

- i. That there are no unacceptable impacts on existing centres
- ii. That there are no more central sites for the development
- iii. That the development is of an appropriate scale
- iv. That the locations are accessible.
- v. The need for development

i. Impact

4.3 In relation to impact, results from a telephone survey from York's Retail Study showed that 80% of the local expenditure on main food shopping was going to out of town shops including 35% to Asda at Monks Cross and 29% to Tesco at Clifton Moor. Only 9% were using Sainsbury's at Foss Bank. The new Morrison's store was not trading at the time of the survey. The impact analysis table given by the report submitted with the application shows that the main impact would be on the out of

centre and out of town supermarkets such as Morrison's, Foss Islands (8.4%), Sainsbury's Foss Bank (5.2%), Sainsbury's Monks Cross (6%), Asda, Monks Cross (4.3%), Tesco, Clifton Moor (4.3%) rather than on York City Centre which has an expected impact of 2.6%. These figures indicate that the main impact of the new store would be on out of centre food stores. The retail study also indicated those stores which are trading above company averages.

ii. Sequential Test

4.4 In addition to the issue of impact it is also important to consider whether there are any sequentially preferable sites available. The applicants have assessed allocated sites within the Local Plan and other sites currently known. This has been done in a satisfactory manner in relation to 'availability, suitability and viability'. The result shows that there is no available, suitable and viable site within the sites identified by the City Development team.

iii. Scale

4.5 An existing purpose built building for retail currently stands on this site, at an appropriate scale for the nature of the proposed food store.

iv. Accessibility

4.6 The store is located 900m from the Central Shopping Area. This is classed as being out-of-centre in PPS6 terms but the site is adjacent to the city centre inset boundary in an accessible location which is well related to residential areas. In policy terms, this site is sequentially preferable to other retail concentrations elsewhere in the City of York urban area, notably free standing food stores and Monks Cross and Clifton Moor retail parks, which are located in out of town locations.

v. Need

4.7 The York's Retail Study recommends that York should seek to re-address the balance between the over concentration of existing out of centre food stores which are trading above company averages towards the city centre and neighbourhood centres. The city centre is constrained by its historic environment which means that it is difficult to provide a site of a larger food store in York city centre, and therefore sites such as Foss Islands is the next best option for a large food store.

4.8 In terms of 'need', York's Retail Study (2008) indicates that there are some capacity issues for convenience goods across York which need to be taken into account as part of this application. It concludes that by 2012 there is capacity for 3,146 sq m net convenience floorspace, growing to 5,034 sq m net by 2017.

4.9 Taking into account recent commitments which need to be deducted from this forecast including the extension to Morrison's at Acomb (760 sq.m), the Aldi Store at Monks Cross (1,125 sq m), the Change of Use of a retail unit at Foss Islands (1,115 sq m) and the extension to the Sainsbury's Store at Monks Cross (302 sq m) the retail capacity would stand at -153sq.m net to 2012 and 1732sq.m net to 2017. Whilst in quantitative terms there is no immediate capacity the above analysis shows the impact on the city centre from the food store is relatively small and it is in an accessible

location which is centrally located. In addition the adjacent Foss Islands development is restricted to bulky goods and food retail. Therefore the sale of convenience goods such as food in this location is considered to be acceptable.

4.10 Another food retail store 'Morrison's' which is also located at Foss Islands has a condition restricting ancillary non-food goods to 15% of the net floorspace. It is considered that a similar requirement should be imposed as part of this Section 106 variation application. The applicants have accepted this.

HIGHWAY CONSIDERATIONS

4.11 The Transport Assessment submitted with the application shows the level of traffic from a non-food to food retail store will increase. For instance according to the assessment carried out by the applicants' highway consultant the daily vehicular trips on Saturdays would increase by 2777, and on weekdays there would be an additional 3084 trips added to the daily vehicular trips. The following financial contributions have been requested by Highway Network Management:

- i. £90.5k towards Foss Basin Masterplan;
- ii. traffic count surveys to be undertaken 12 and 24 months from the date of the store opening, with £914.46 to be paid per additional vehicular trip after deducting the net increase of 99 vehicle trips; and

iii. Travel Plan

4.12 In addition, as part of the scheme it is proposed to introduce new traffic lights and pedestrian refuge on Foss Islands Road at the applicant's own cost. A financial contribution of £5k has therefore been requested towards the amendment/creation/extinguishment of the Traffic Regulation Orders.

4.13 Upon further negotiation the applicants are prepared to pay £90K towards the Foss Basin Masterplan, £5k towards Traffic Regulation Order and prepare a travel plan. However the open-ended contribution arising from the 12 month and 24 month traffic count surveys are not considered to be appropriate largely because the scale of the financial contribution is not fully known until 12 and 24 months after the store opens. Such a requirement is not considered to be reasonable, since the application must be assessed for its likely impact at the time of submission. Any expected future increase in traffic levels should be anticipated and accommodated for in the measures proposed at the time of consideration of the application. The Council's Legal Services Section confirms this position. In addition, to expect further contributions generated from as yet unknown possible increases in traffic levels would add considerable risk for any future occupier who will be responsible for paying this open-ended contribution.

AIR QUALITY

4.14 According to the Air Quality officer, where changes in Annual Average Daily Traffic Flow (AADT) are shown to increase by more than 5% on roads with existing flows of 10,000 vehicles or more air quality may be a significant consideration. Therefore in order to assess this proposal in terms of air quality further information is required from the applicants to determine whether air quality assessment is required.

4.15 At the time of writing the applicants' traffic consultants are in the process of preparing the requested details. Whilst the annual average daily traffic flow is likely to increase as a result of the proposed food store the application site is situated outside the Air Quality Management Area (AQMA). In addition, Lawrence Street, an area where nitrogen dioxide exceeds the annual average is over 140m away from the store. Whether there is a need to conduct air quality assessment will be updated at the committee meeting.

5.0 CONCLUSION

Subject to a new Section 106 Agreement requiring:

- i. 15% restriction on ancillary non-food goods by net floorspace;
- ii. £90.5k towards Foss Basin Masterplan;
- iii. Travel Plan; and
- iv. £5k towards the Traffic Regulation Orders

The proposed variation to the existing Section 52 Agreement is regarded as acceptable.

6.0 RECOMMENDATION: Approve

1 Authorise variation of the legal agreements to allow for the sale of food subject to the additional obligations outlined in section 5.0.

REASON FOR APPROVAL:

In the opinion of the Local Planning Authority the proposal, subject to the new Section 106 Agreement requirements listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to the vitality and viability of York's city and district centres, highway considerations and air quality. As such the proposal complies with national and local planning policy, in particular with most relevant Policies S2, SP7a, GP4b and T13a of the City of York Development Control Local Plan.

7.0 INFORMATIVES:

Contact details:

Author: Billy Wong Development Control Officer
Tel No: 01904 551326

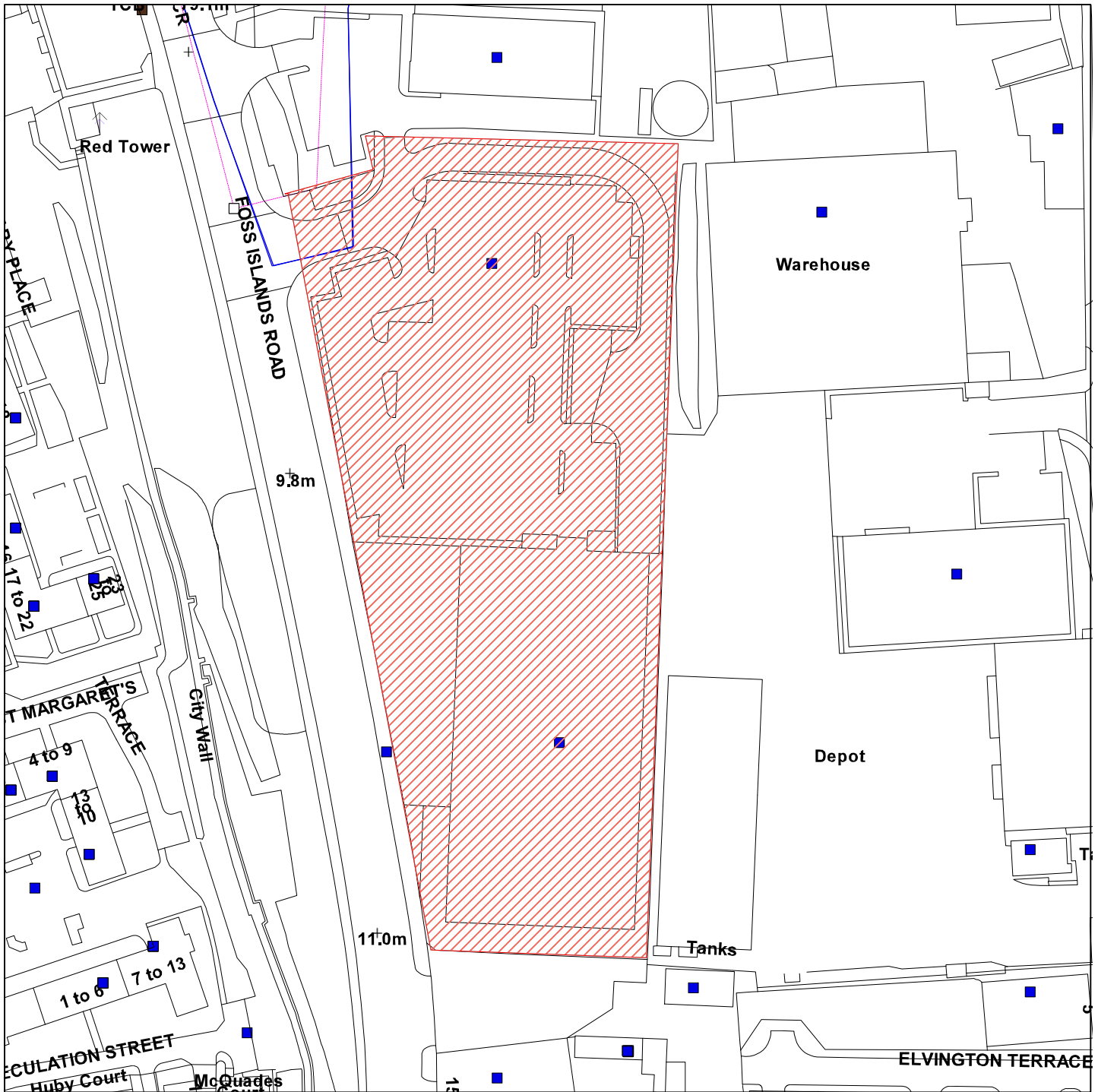
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MFI Furniture Centre

09/02071/LEGAL



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Organisation	City of York Council
Department	Planning and Sustainable Development
Comments	Application Site
Date	07 December 2009
SLA Number	Not Set

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Planning Committee

17 December 2009

Report of the Director of City Strategy

Planning Performance Agreements - Charter

Summary

1. To request the formal adoption by Members of a Charter for use in the formulation and implementation of Planning Performance Agreements (PPAs).

Background

2. Members will recall that a draft Charter for PPAs was presented to Committee on 27 August 2009, for comments prior to public consultation. It was reported that PPAs were formally introduced on 6th April 2008, with the objective being to improve the quality of major or complex planning applications and the decision making process involved. They aim to bring together the Local Planning Authority, applicant and key participants in the formulation, consultation and assessment of development schemes. The Charter sets out the framework for drawing up a PPA, including the level of commitment, engagement, resources to be employed, and the process that will be followed.

Consultation

3. Members approved the draft Charter subject to some minor alterations and subject to a 6 week consultation period to include:-
 - Consultation with planning agents and consultants
 - Consultation with community groups and amenity bodies
 - Consultation with statutory and the main non statutory consultees
 - Placement of the Charter document on the Council's website and in the Council Offices

Analysis

4. The results of the consultation process are tabulated at Annex 1. Of the 7 responses received, 5 were from national consultee organisations and 2 from local planning agents. The comments received were generally supportive of the Charter, with some of the respondents requesting that more information be submitted by applicants to be able to better assess proposals. As a result of the consultation exercise no significant changes to the Charter are proposed (see Annex 2), although the main responsibilities of CYC and of the developer are listed in paragraphs 12 and 14 for clarity (changes highlighted in italics and underlined).

Options

5. Option A. Do not approve and adopt the PPA Charter. This option is not recommended.
6. Option B. Approve the PPA Charter as set out in Annex 2. This option is recommended
7. Option C. Approve the PPA Charter with modifications. This option is not recommended.

Corporate Objectives

8. The charter and the introduction of Performance agreements for large schemes will help to support the City's economy, and help to ensure the special qualities of the City are considered at the earliest stages of development process. The Charter therefore supports the corporate objectives relating to making York a thriving city and a sustainable city, as well a contributing towards a more effective organisation.

Implications

- 9 Financial – There are no financial implications directly arising from the adoption of a charter for Planning Performance agreements
- 10 Human Resources – There are no Human Resources implications directly involved within this report and the recommendations within it other than the need to allocate officer time towards the more formalised pre application processes.
11. Legal – There are no known legal implications associated with this report or the recommendations within it.
12. There are no known Equalities, Property, Crime & Disorder or other implications associated with the recommendations within this report.

Risk Management

13. In compliance with the Council's Risk Management Strategy. There are no risks associated with the recommendations of this report.

Recommendations

14. That Members agree Option B to approve the Charter for use in the preparation of Planning Performance Agreements.

Reason

15. To provide a project management framework for handling large scale or complex major planning applications which will provide certainty for all development partners.

Contact Details

Author:

Jonathan Carr,
Head of Development Control
Directorate of City Strategy

Chief Officer Responsible for the report:

Mike Slater
Assistant Director Planning & Sustainable
Development, Directorate of City Strategy

01904 551303

Report Approved

Date

7 December 2009

Specialist Implications Officer(s) None.

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

Planning Performance Agreements: a new way to manage large-scale major planning applications - Government response to consultation replies. Department of Communities and Local Government (CLG). May 2007

Implementing Planning Performance Agreements: Guidance Note by CLG and Planning Advisory Service. June 2009

Development Management Guidance and Discussion Document :Planning Advisory Service and Addison Associates. June 2008

Killian Pretty Review - Planning Applications: A faster and more Responsive system November 2008 CLG

Government Response to the Killian Pretty Review: CLG. March 2009

Annexes:

Annex 1 – Summary of comments received on Consultation Draft Document

Annex 2 - Revised Draft of Charter

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Consultee Comments on Draft Planning Performance Agreement Charter

Consultee	Consultee Comment	Officer Response
Coal Authority	Supports principles in the Charter and would be willing to enter into pre application discussions where appropriate.	Noted.
Forestry Commission	Happy to support the Charter, and to provide general advice relating to regional and national forestry policy priorities and objectives.	Noted.
Sport England	Reference should be made to assisting Statutory consultees in getting sufficient information to make substantive responses. Details of existing and proposed sports facilities are required to be able to assess the impact of such applications, with information on a scale plan.	Noted. See changes made at Para 14.
Civil Aviation Authority	General comments relating to the need to consider officially safeguarded aerodromes in development plan and consultation with the CAA Other background information on development/aviation the issues e.g. location of telecom masts and wind turbines is included in the response.	Noted. No change to document.
Natural England	Welcomes the Charter and committed to responding to consultations consistently and efficiently to secure benefits to the Natural Environment.	Noted. No change to document.
O'Neill Associates	No formal comments but refers to another authority's charter as providing clarity for roles and responsibilities of the LPA, developer etc	The other authority's document sets out in bullet point form the roles and responsibilities. The same points are largely contained in the York draft agreed format, although the main points could be included in this format for clarity. Amendments made at Paras. 12 and 14.

<p>Matthew Laverack, Laverack Associates Architects</p>	<p>Asks what is regarded as a complex major project and whether any of his developments would be affected. Also asks if the charter replaces the Customer Contract for Development Control.</p>	<p>The PPA is intended to cover certain Major developments as defined Town and Country Planning General Development Procedure Order. Those which are large scale of complex would be included; as such it is unlikely that it would include small-scale developments of less than 10 residential units.</p> <p>The Charter does not replace the Development Control Customer Contract, which was never formally adopted by the Council and was not subject to public consultation. It is intended to bring forward a new customer contract as part of the shift towards a Development Management approach to application processing.</p>
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POST- CONSULTATION DRAFT



PLANNING PERFORMANCE AGREEMENTS (PPA) CHARTER

INTRODUCTION

- 1 This document (the “PPA Charter”) sets out the approach of City of York Council to Planning Performance Agreements (PPA). The Department for Communities and Local Government (CLG) consultation publication: ‘Planning Performance Agreements: a new way to manage large-scale major planning applications’ (May 2007) defines a PPA as an ‘agreement between a local planning authority and an applicant to provide a project management framework for handing a major planning application’. It also follows further guidance published by the Advisory Team for Large Applications (ATLAS), which recommends that if PPAs are to be used regularly, a Local Planning Authority is encouraged to establish a formal process document (“Charter”) to set out their broad methodology for dealing with large complex development projects.
- 2 The establishment of this PPA charter is consistent with the Council’s commitment to collaborate with developers/applicants to deliver major and complex developments that address Planning and Sustainable Development Service Plan objectives:
 - To provide effective stewardship of the City’s historic and natural environment alongside the complementary objective of economic growth within the City.
 - To influence development schemes, to ensure the highest quality of design and appearance which enhances the unique character and future well being of York.
- 3 The Planning Service also has strategic objectives to improve planning application performance without compromising the quality of development.
- 4 The objective of this Charter is to clarify the Council’s expectations of the PPA process, summarised as:

Commitment: The commitment of City of York Council, statutory agencies and service providers to the PPA process and the approach and actions that developers/applicants are expected to commit;

Engagement: Expectations for community involvement and the method of engagement with Members;

Resources: The expectations of the Local Planning Authority with regard to the delivery of the PPA process and support from the developer/applicant;

Process: The key requirements of the statutory application process and the expected content of a PPA.

PPA APPLICATIONS

- 5 Inclusion within the PPA process will be determined by complexity of the project at both pre-application and application phase rather than its scale, albeit that the DCLG definition of a small scale major application forms the minimum threshold. Where a sufficiently complex major development proposal has the potential to accord to the provisions of the relevant Development Plan, or in the case of a Departure from the Plan, to meet any of the City Council's broader regeneration or community objectives, the management of the application through the PPA process will be promoted.
- 6 Any planning application for which a PPA is in place at the pre-application stage will be exempted from the Best Value performance indicator N157a (formerly 109a) (13-weeks determination period) if the agreed PPA timescale is subsequently met, to allow applicants and the Local Authority to negotiate a flexible timescale that reflects the complexity and requirements of the individual application.
- 7 CYC anticipates promoting a PPA for strategic and very complex projects and other significant proposals which have one or more complex planning issues that need careful and well planned consideration with the assistance of a statutory consultee.

COMMITMENT TO THE PPA PROCESS

City of York Council

- 8 An initial approach regarding any large-scale development project should be directed towards City Strategy officers in either Development Control or City Development (Major Projects Team). As the project evolves towards the PPA process, a Project Team will be created involving relevant officers from other Council departments to ensure a unified and consistent approach.
- 9 The Development Control Area Team Leader will oversee those development proposals that have a PPA, unless undertaking the role of the Council's Lead Officer in the Project Team. The Project Team will report to the Area Team Leader directly. The Assistant Director (Planning And Sustainable Development) or Head of Development Control will oversee those developments where the Area Team Leader is the Council's Lead Officer. For most development proposals with PPAs a DC Officer or Assistant Team Leader will be the Council's Lead Officer.

- 10 The responsibilities of the Overseeing Officer are to advise or direct the Project Team on the:-
- links with other relevant corporate initiatives of the Council
 - direction of the project to meet corporate objectives;
 - most appropriate form of consultation including with members;
 - timescales to be achieved
- 11 The responsibilities of the Council's Lead Officer include:-
- coordination of the project team
 - primary contact with the developers' project team
 - delivery of tasks to timetable
 - liaison with stakeholders including public consultation
 - regularly reporting back to Overseeing Officer
- 12 As part of the Council's commitment :-
- All Council officers will work on behalf of CYC in the wider public interest to secure the optimum scheme that delivers the Council's planning and regeneration objectives and accords with relevant planning policy, including relevant supplementary planning documents.
 - Officers will express their own professional opinions that will form guidance for the applicant. This guidance will not, however, bind officers to a final recommendation nor override the requirements for a formal planning application to be determined without prejudice and within the statutory requirements of current planning legislation.
 - The Council will use best endeavours to meet the agreed programme, and will repond to requests for information, advice and meetings in a timely way.
 - Officers will facilitate the presentation of proposals to Members at appropriate stages, where required within a PPA.
 - Officers will idenitfy issues and information that need to be addressed, as well as any likely Legal Agreement obligations, at an early stage of pre application discussions.
 - Officers will facilitate discussion and negotiation with external consultees involved in the PPA.

Service Providers and Statutory Agencies

- 13 For the larger complex applications, it is anticipated that other stakeholders from partner statutory agencies are likely to be required to provide pre-application advice in a timely and proactive manner. The most relevant Statutory Agencies in respect of applications in York are the Environment Agency, English Heritage and Natural England, who have all committed in principle to pre-application involvement as part of the PPA process.

Applicant

- 14 The developer/applicant will be expected to:-
- Approach any project in a direct, collaborative and creative manner and to work co-operatively with the Council in the sharing of information.

- Provide Sufficient detail and information for consultees to properly assess a proposal and provide substantive responses at pre-application and application stage.
- Allow adequate time for the assessment of proposals by the Council and consultees involved
- Appoint the appropriate professional consultants with sufficient experience to reflect the complexity of the project.
- Use best endeavours to meet the agreed programme.
- Agree to contribute to and participate in public consultation, undertaking pre application consultation with local communities and stakeholders in accordance with the Council's Statement of Community involvement.
- Respond within the agreed timescales to requests for further information and/or revisions
- Recognise that new/additional issues may arise from the consultation or negotiation processes which may affect previously agreed timescales

COMMUNITY ENGAGEMENT

- 15 As set out in the Statement of Community Involvement (SCI), CYC is committed to engaging with the people and organisations of York in planning for sustainable development in an open and constructive manner. Appropriate methods of pre-application consultation therefore play a significant role in understanding the views of residents and organisations at an early stage. The SCI can be viewed at www.york.gov.uk following the links 'Planning' and then 'Local Development Framework'.
- 16 The applicant will be obliged to ensure that all pre-application community consultation is meaningful and not seen as a public relations exercise to win support for a pre-determined proposal. Additionally, the responsibility for carrying out pre-application consultation (and the costs of doing so) will rest with the applicant.

MEMBER INVOLVEMENT

- 17 CYC will ensure that its Members are openly engaged in the PPA process. This will be through means considered most appropriate by the Overseeing Officer depending on the complexity and strategic impacts of the proposal. This could involve briefing;
- The Executive
 - Ward Members
 - Planning Committee Chairs and Vice-Chairs
 - Planning Committee
- 18 The purpose of the briefing will be to allow Members to gain a full understanding of the project and other pertinent issues. Members will not express views about the planning merits of the project nor will they engage privately with the applicant.

- 19 The role of Members in such briefings is principally to facilitate community involvement in the planning process. There will be no conflict between this role and the proper conduct of Members who are involved in determining applications as Members of a Planning Committee and they will be expected to adhere to the Code of Conduct for Members on planning matters and must not predetermine their view on an application. Members attending briefings who are not on the Planning Committee are free to express a view on the scheme if they so wish.

FEES

- 20 At the present time, City of York does not intend to charge a fee for the PPA process unless circumstances change or exceptional service is required.

PPA PROCESS EXPECTATIONS

- 21 CYC will expect any applicant engaged in the PPA process to sign a Planning Performance Agreement to which the Council will also commit. It is envisaged that the process will comprise three key phases:

Screening and Scoping

- Early pre-application review of the project and agreement to engage in the PPA process.
- Agreement on whether an Inception Day is to be held and if so whether a facilitator is to be appointed and paid for by the developer and when it should be held.
- Nomination of the Council's and Applicant's Project Team Leaders and other's responsibilities.

Inception Phase

- 22 This phase (which may include an Inception Day) is designed to achieve–
- Agreement of a shared vision and development objectives as far as possible;
 - Review of policies and identification of key technical issues including identification of differences and how these might be resolved;
 - Agreement of community involvement including member engagement and involvement of statutory agencies;
 - Development of a project plan to identify key tasks and responsibilities of project team
 - Development of work programme with target dates and milestones including project review.
- 23 The phase is concluded with the signing of the PPA by the Council, applicant and any critical consultees.

Implementation Phase

- 24 This phase includes the delivery of the work required by the work programme, regular review of the PPA project plan and includes the final review of the process.

The Form of Planning Performance Agreements

- 25 The Council, applicant and any critical consultees engaged in the PPA process will collaboratively set out and reach agreement on the following key headlines –

- Project lead for both the Council and applicant
- Vision and Objectives
- Project Structure
- Consultation Strategy
- Project Issues and Task List
- Project Programme
- Decision Making Framework

- 26 The Council will publish a template to clarify the expected format of any PPA although the precise format will depend on the complexity and nature of each individual project.

Further Information

- 27 For further information on the PPA process please contact the Development Control or City Development teams team by -

- Phone – (01904) 551553
- E mail – planning.enquiries@york.gov.uk



East Area Planning Sub Committee	10 th December 2009
West and City Centre Area Planning Sub Committee	14 th December 2009
Planning Committee	17 th December 2009

Appeals Performance and Decision Summaries

Summary

- 1 This report (presented to both Sub Committees and Main Planning Committee) informs Members of the Council's performance in relation to appeals determined by the Planning Inspectorate in the 3 month period up to 31st October 2009, and provides a summary of the salient points from appeals determined in that period.

Background

- 2 Appeal statistics are collated by the Planning Inspectorate on a quarterly basis. Whilst the percentage of appeals allowed against the Council's decision is no longer a Best Value Performance Indicator, it has been used to abate the amount of Housing and Planning Delivery Grant (HPDG) received by an Authority performing badly against the average appeals performance. To date, there has been no abatement of this Council's level of HPDG as a result of appeals performance, as performance has been close to the national average for a number of years.
- 3 Whilst the Inspectorate breaks down the appeals by type in reporting performance, the table below includes all types of appeals such as those against refusal of planning permission, against conditions of approval, enforcement notices, listed building applications and lawful development certificates. Figure 1 gives a breakdown of appeals decided by the Inspectorate, both by CYC area and decision type for the 3 months and also the combined area (CYC)12 month performance.

**Fig 1 : Appeals Decided by the Planning Inspectorate
For 3 months to 31st October 2009**

	East 3 months	West & CC 3 months	CYC 3 months	CYC 12 months
Allowed	1	0	1	15
% Allowed	12.5%	0%	9.09%	26.32%
Part Allowed	1	0	1	4
% Part Allowed	12.5%	0%	9.09%	7.02%
Dismissed	6	3	6	38
% Dismissed	75%	100%	81.81%	66.67%
Total Determined	8	3	11	57
Withdrawn	0	0	0	4

Analysis

- 4 The table shows that for the 3 months to 31st October 2009, a total of 11 appeals relating to CYC decisions were determined by the Inspectorate. Of those, one was allowed and one part-allowed. At just over 9%, the rate of appeals allowed is well below the national average of around 33% and a significant improvement over performance in the preceding 3 month period (27.27% allowed).
- 5 For the 12 months up to 31st October 2009, CYC performance was 26.32% allowed, an improvement over the previously reported 12 month period of 33.33%.
- 6 The summaries of appeals determined in the last 3 months to 31st October 2009 are included at Annex A. Details as to whether the application was dealt with under delegated powers or Committee (and in those cases the original officer recommendation) are included with each summary. In the period covered only two of the appeals determined related to applications considered by Committee, namely 08/02441/TCNOT - telecoms mast Oak Tree Lane Haxby, and 08/00525/OUTM – Laverack Joinery, Birch Park.

Consultation

- 7 This is essentially an information report for Members and therefore no consultation has taken place regarding its content.

Corporate Objectives

- 8 The report is relevant to the furthering of the Council's objectives of making York a sustainable City, maintaining its special qualities, making it a safer city, and providing an effective organisation with high standards.

Implications

- 9 Financial – There are no financial implications directly arising from the report

- 10 Human Resources – There are no Human Resources implications directly involved within this report and the recommendations within it other than the need to allocate officer time towards the provision of the information
- 11 Legal – There are no known legal implications associated with this report or the recommendations within it.
- 12 There are no known Equalities, Property, Crime & Disorder or other implications associated with the recommendations within this report.

Risk Management

- 13 In compliance with the Council’s risk management strategy, there are no known risks associated with the recommendations of this report.

Recommendation

- 14 That Members note the content of this report.

Reason: So that Members can continue to be updated on appeal decisions within the CYC area and informed of the planning issues surrounding each case for future reference in determining planning applications.

Contact Details

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Chief Officer Responsible for the report:

Mike Slater
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Report Approved **Date** 25th November 2009

Specialist Implications Officer(s) None.

Wards Affected:

All

For further information please contact the author of the report

Background Papers: None

Annexes: Annex A – Appeal Case Summaries

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Appeal Summaries for Cases Determined 01/08/2009 to 31/10/2009

Application No: 05/02470/FUL
Appeal by: Mr S N Smallwood
Proposal: Retention of agricultural buildings to house livestock and equipment
Site: Fircroft□Moor Lane□Haxby□York□YO32 2QW□
Decision Level: DEL
Outcome: DISMIS

A farmer had built two sheds for industrial use on agricultural land in the green belt. A subsequent enforcement notice (upheld at appeal) required the farmer to remove the buildings. Instead, he sought planning permission to use the buildings for agriculture. The council refused planning permission on the grounds that agricultural need had not been demonstrated and that the design of the buildings was out of keeping with the rural/green belt location. The inspector found that: (a) The buildings were inappropriate development in the green belt because they were built for a non-agricultural purpose, did not look like agricultural buildings and were not needed for agriculture even though they currently had farm machinery in them; (b) The buildings eroded the openness of the green belt and their stark industrial appearance was harmful to the rural character of the area. He took into account that the farm had permitted development rights for new buildings. But they would only allow a much smaller volume of development, would have to be reasonably needed for agriculture and, in any case, would need prior approval from the council. The inspector concluded that the case made by the applicant did not amount to very special circumstances that outweighed the harm caused by the development. The appeal was dismissed.

Application No: 08/00525/OUTM
Appeal by: Robert Laverack
Proposal: Erection of 14 dwellings after demolition of existing factory
Site: Laverack Joinery□Unit 1□Birch
Park□Huntington□York□YO31 9BL□
Decision Level: CMV
Outcome: PAD

The council granted outline planning permission, subject to conditions, for the erection of 14 dwellings. The appeal was against nine of those conditions. The inspector's findings are as follows: Condition 4 (Details of security gate). The substance of the condition could be included within Condition 17. Condition 5 (Submit sustainability assessments to show compliance with CoSH Level 3) was allowed subject to slight rewording. Condition 6 (Minimum of 10% of energy from on-site renewable sources) was allowed. Condition 8 (A noise survey shall be carried out and any sound insulation measures installed prior to first occupation). Whilst in this case there is some uncertainty over the potential for noise disruption from an existing business, a noise survey and possibly noise mitigation is necessary. The condition was allowed subject to slight rewording. Condition 12 (No development until details of the road layout have been approved). The appellant felt that the timing set by the condition was too onerous. During the hearing more onerous wording was agreed and the condition was varied accordingly. Condition 13 (Measures to prevent mud, etc during construction) was deleted. Condition 15 (£31,500 for public open space) agreed subject to very minor rewording. Condition 16 (£32,540 education) was deleted because two secondary schools in the adjacent catchment, and not much further from the appeal site than Huntington School, have available spaces and the nearest primary school had surplus places. Condition 17 (Secured by Design) was allowed subject to a variation to include reference to the security gate. See Condition 4.

Application No: 08/00770/FUL
Appeal by: Mr And Mrs Gatenby
Proposal: Alterations and extensions to existing dwelling and erection of a detached double garage
Site: The Old Gatehouse□Wheldrake Lane□Elvington□York□YO41 4AZ□
Decision Level: DEL
Outcome: DISMIS

The works mainly comprise an extension to a modest detached house to provide enlarged living accommodation and a new double garage in connection with the adjacent caravan park/B&B. The council refused planning permission on the grounds of (a) inappropriate development in the Green Belt due to disproportionate additions to the original dwelling; and (b) cumulative impact on the openness of the Green Belt. The site lies within open countryside in the green belt. The premises mainly comprise bed and breakfast accommodation and a seasonal caravan park, both operated by the applicants. The business has a range of buildings including a large house (which has been considerably enlarged over the years to provide separate living and B&B accommodation). The rear part of the site comprises the caravan park. Within the grounds is a modest brick building which the applicants converted it to a residential dwelling without planning permission. It subsequently became established. This is the building the applicants wanted to extend and add the garage. The inspector found that although the size of the extended dwelling would still be modest the additions proposed amounted to disproportionate additions to the very small existing building. It was therefore inappropriate development in the Green Belt. Existing screening from most vantage points would not prevent the loss of openness. Enlarging the residential use would have an urbanising effect on the site, harming its character. Whilst the proposed removal of some of the outbuildings on the site would increase openness their removal would not arise from the development. The existing dwelling has been occupied by the applicants for some years, during which their circumstances have not significantly changed, so there is little evidence of need for the extension. The inspector concluded that the case made by the applicant did not amount to very special circumstances that outweighed the harm caused by the development.

Application No: 08/02361/FUL
Appeal by: Mr Simon Crowther
Proposal: Erection of a replacement dwelling
Site: Newlands □ Back Lane South □ Wheldrake □ York □ YO19 6DT □
Decision Level: DEL
Outcome: DISMIS

Planning permission was refused by the Council for a replacement dwelling. The existing house is a small, timber clad, single storey dwelling which offered a modest level of accommodation space. The replacement dwelling was approx. 6 m longer, 5 metres deeper and 2.5 m higher than existing. The application was refused on the grounds that it amounted to inappropriate development in the Green Belt as the replacement was much larger than the one it was replacing. It was also deemed to harm the openness of the Green Belt. A further reason for refusal was on flooding grounds as no drainage information was submitted with the application. The Inspector agreed with the Council that the 'far larger building than the one it would replace' was inappropriate development and therefore, by definition, harmful to the Green Belt. He also concluded that the larger building would also 'erode the character of the Green Belt'. He concluded this not only on the basis of size, but also on design grounds. The existing house is a timber building with 'rustic character that fits easily within its rural setting'. The replacement was a larger, brick built bungalow which the Inspector concluded would have an 'urbanising effect on the site' which would harm its character further, particularly against the backdrop of open fields. This effect, he concluded, further harmed the openness of the Green Belt. On the question of flooding, given there was an existing house on the site, the Inspector concluded that the additional effect on drainage was likely to be minimal and no evidence had been forwarded by the Council that the existing house had caused any drainage problems in the past. Therefore a condition could reasonably be imposed to agree details which would be acceptable, even though the proposed house would be larger. Appeal therefore dismissed on the harm to the Green Belt only.

Application No: 08/02441/TCNOT
Appeal by: Vodaphone Limited
Proposal: Proposed installation of 12.2 metre high telecommunications mast with associated equipment
Site: Proposed Telecommunications Pole Fronting 39 Oak Tree Lane Haxby York
Decision Level: COMM
Outcome: DISMIS

The appeal was against a refusal, by the Council, to grant approval for a Telecommunications mast and associated equipment. Its height, including antenna, was 12.2 metres and was sited on a footpath fronting a two storey parade of shops with flats above in a locality that is predominantly residential in character. Officers recommended that approval be granted but members overturned this at committee on the grounds that by virtue of its appearance and height it represented an intrusive development which harmed the character of the streetscene. The Inspector agreed with this view saying that the mast would be considerably higher than adjacent lampposts and distinctly thicker. This was made worse by there being no scope to provide effective landscaping or other screening to reduce the impact of the mast, as PPG8 advocates. It would therefore be a prominent feature within the street scene which would project significantly above the ridge line of adjacent buildings and dominate the skyline. It would also be visible from surrounding dwellings and gardens, which added weight to the Inspector's concerns. The Inspector also considered that the appellant had not clearly demonstrated why a less visually harmful site could not be provided within the search area. For example, the appellant rejected an installation could not be provided at the nearby church as it required 'significant structural works' but did not specify what these works entailed. It was also noted that a number of nearby grass verges and open areas nearby had not even been considered, let alone rejected. Other concerns expressed by residents over the appearance of the equipment cabinet, health and restricting the footway width were not considered reasons for dismissing the appeal. Therefore, appeal dismissed on grounds of the intrusive impact of the development and effects on the character of the streetscene.

Application No: 08/02487/FUL
Appeal by: Mr White
Proposal: Bungalow to rear garden of 10 Burton Avenue with access from rear of Cromer Street
Site: 10 Burton Avenue □ York □ YO30 6DE □
Decision Level: DEL
Outcome: ALLOW

A bungalow to the side/rear of a two storey semi detached dwelling (10 Burton Avenue) served by a separate vehicular access to the side off Cromer Street. Two main issues were effect on character and appearance of area and on living conditions of neighbouring dwellings. Several properties on Burton Avenue have established vehicular accesses off Cromer Street and the proposed driveway off Cromer Street would not be appear contrived or at odds with the general residential layout of the area. The Inspector considered that a single storey dwelling, which would be modest in size, would not be harmful to the character or appearance of the surrounding area. The driveway would run along the rear gardens of adjacent properties away from existing dwellings. The amount of traffic generated by a one bedroom bungalow would be minimal and thus not create so much noise and disturbance that it would be harmful to the living conditions of adjacent dwellings. 10 Burton Avenue would retain a good sized rear garden, the eaves of the bungalow would be only slightly higher than a 2 metre high boundary fence. The hipped roof pitched away from the boundary would have very limited visual impact. The issue of security was referred to by residents, however the Inspector considered that the proposal would lead to an increased presence of people in the area and improve natural surveillance.

Application No: 08/02737/FUL
Appeal by: Paul Cooper
Proposal: Erection of studio apartment after demolition of garage
Site: 162 Burton Stone Lane □ York □ YO30 6DF □
Decision Level: DEL
Outcome: DISMIS

Application was for the demolition of an existing garage and erection of a 1 bedroom studio apartment in its place. It was refused on the grounds that by virtue of its size, scale, design and location, it would harm the character and appearance of the area. Considered the dwelling would appear shoehorned into the site which would result in an overdeveloped appearance to the area which would appear out of keeping with the surrounding area. A previous, larger scheme had been refused and rejected on appeal. □ □ Inspector agreed with the Council. He concluded that even this smaller scheme would be twice as high as the building it would replace, with a significantly greater width. Consequently, the openness of the area would be reduced, harming its character. The appellant said that the building would be far smaller than the terraced properties but the Inspector took his reference from the domestic garages and outbuildings serving these properties. He noted that the proposal had 3 windows on the gable fronting the road and this further identified it as a building containing an upper floor. The Inspector concluded that this would appear as an 'oddity' relating to neither the dwellings, nor their outbuildings. This would strike a 'jarring' note in the street scene, harming its character and appearance.

Application No: 09/00221/FUL
Appeal by: Aligul Kala
Proposal: Variation of condition 2 of planning permission 97/02348/FUL (granted on appeal) to extend opening hours of existing take away to 1100-0100 Mon-Thurs, 1100 - 0200 Fri-Sat and Sun to 1100 - 2400 (midnight) (existing permitted hours 11.00-2400 Mon-Sat and 1100-2330 Sun)
Site: 51 Blossom Street □ York □ YO24 1AZ □
Decision Level: DEL
Outcome: DISMIS

The application was recommended for refusal on the grounds that extended hours would harm the residential amenity of those living near to the site from increased noise and disturbance. The applicant wanted to extend the hours to 11.00 - 01.00 Monday to Thursday, 11.00 - 02.00 Friday to Saturday and 11.00 to 24.00 on a Sunday (the existing permitted hours are 11.00 - 24.00 Monday to Saturday and 11.00 - 23.30 on a Sunday). A previous application has been refused for the extension of the hours (06/02689) to Sun-Thurs and 0900 - 0145 Fri-Sat 11.00 - 24.00 Monday to Saturday. The inspector agreed with the council, that whilst the takeaway was on a busy principle route into York and of a prevailing commercial character the area would be much quieter after midnight and therefore the extended hours and the noise and disturbance caused by patrons of the site would harm the living condition of the residents living nearby. The Inspector also noted that all the nearby takeaways did not open beyond midnight. The Inspector did not consider that the support from a number of businesses and other occupiers in the area was sufficient to outweigh planning objections.

Application No: 09/00331/FUL
Appeal by: Mrs Carolynne Crosbie
Proposal: Detached dwelling and garage to rear of property (resubmission)
Site: Elmgarth □ Malton Road □ Heworth □ York □ YO31 9LT □
Decision Level: DEL
Outcome: DISMIS

Application was for a detached dwelling in the rear garden of the host house called Elmgarth. Planning permission was refused on the grounds that the use of the access to the proposed dwelling would result in an unacceptable loss of amenity for the occupiers of Elmgarth. The Inspector concluded that the development represented 'tandem development'. He agreed with the Council that the length and proximity of the access to the new dwelling would result in noise and disturbance and a lack of privacy to the occupiers of Elmgarth from comings and goings of the occupiers and delivery services etc. This could not be overcome by conditions requiring the re-siting of existing side doors and windows. Appeal dismissed.

Application No: 09/00410/FUL
Appeal by: Mr Terry Wheatley
Proposal: Retention of UPVC windows and door frames to flats 1-4,
 10 St Marys
Site: Flat 1 □ 10 St Marys □ York □ YO30 7DD □
Decision Level: DEL
Outcome: DISMIS

Officer recommendation of refusal. This appeal relates to the retention of Upvc doorframes and double glazed windows to the front and rear elevations of a mid terraced property, which has been split into 4 flats. The property is located within the Central Historic Core Conservation Area but is not listed. The application was refused by reason of the appearance and detailed design of the frames harming the architectural character and appearance of 10 St. Marys and the streetscene. The Inspector notes the predominance of timber sliding sash windows and comments that the impression of St. Marys is a street where period fenestration is consistent. The Inspector comments that the windows installed in No.10 St. Marys, because of their materials, opening mechanism and design, have a poor appearance and look out of place in this street and diminish the qualities of the conservation area. With reference to the rear elevation, it is noted that although uPVC windows are more common here than at the front, they similarly detract from the conservation area.

Application No: 09/00717/FUL
Appeal by: Mr Charles Kemp
Proposal: Dormer to front
Site: 13 Ullswater □ York □ YO24 2RY □
Decision Level: DEL
Outcome: DISMIS

The host dwelling is a small modern semi-detached bungalow. A side extension with front dormer has already been erected (having been recommended for refusal but overturned at committee). This submission was for another larger dormer within the original roof, and was refused due to the fact it would harm the appearance of the dwelling within the surrounding area. Differing styles of dwellings, one and two-storey, are in place along this long street, but only 1 small front dormer currently in place, some distance from the host. Inspector agreed that the scale and mass, would appear incongruous within the streetscene and harm the appearance of the dwelling

Decision Level:	Outcome:
DEL = Delegated Decision	ALLOW = Appeal Allowed
COMM = Sub-Committee Decision	DISMIS = Appeal Dismissed
COMP = Main Committee Decision	PAD = Appeal part dismissed/part allowed

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