

## COMMITTEE REPORT

**Date:** 22 October 2015      **Ward:** Micklegate  
**Team:** Major and      **Parish:** Micklegate      Planning  
Commercial Team      Panel

**Reference:** 15/01623/FULM  
**Application at:** Former Terrys Offices Bishopthorpe Road York YO23 1DE  
**For:** Conversion of former headquarters building to care home with 82no. Care bedrooms and 8no. Care apartments with rooftop extension and car parking  
**By:** Springfield Healthcare Group & Henry Boot Developments Ltd...  
**Application Type:** Major Full Application (13 weeks)  
**Target Date:** 20 October 2015  
**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 The Terry's Headquarters Building comprises a Grade II Listed brick and stone built former office block to the east of the former entrance to the Terry's chocolate manufacturing complex dating to the early 1920s. The site also lies within the Terrys/Racecourse Conservation Area. The premises have been vacant and deteriorating since 2011 when after chocolate manufacture at the site ceased, the subsequent office tenant vacated the premises. Planning permission is now sought for conversion of the premises into an 82 bed care home with 8 extra care apartments. The proposal includes a single storey roof level mansard extension.

### 2.0 POLICY CONTEXT

2.1 2005 Draft Development Plan Allocation:

Conservation Area GMS Constraints: Racecourse CONF

Contaminated Land GMS Constraints:

Listed Buildings GMS Constraints: Grade 2; Terry's Of York Head Offices Bishopthorpe Road

2.2 Policies:

Development Control Draft Local Plan (2005) Relevant Policies include:-

- CYHE3 Conservation Areas

- CYHE4 Listed Buildings

Application Reference Number: 15/01623/FULM

Item No: 4b

- CYC1 Community Facilities
- CYHE2 Development in Historic Locations

City of York Local Plan – Publication Draft 2014 Relevant Policies include:-

- D4 Conservation Areas
- D5 Listed Buildings
- EC2 Economic Growth in the Health and Social Care Sectors

## POLICY FRAMEWORK

2.3 In the absence of a formally adopted local plan the National Planning Policy Framework (NPPF) is the most up-to date representation of key relevant policy issues (other than the Saved RSS Policies relating to the general extent of the York Green Belt) and it is against this policy Framework that the proposal should principally be assessed.

## 2.4 STATUS OF THE EMERGING YORK LOCAL PLAN PUBLICATION DRAFT (2014)

2.5 Publication Draft York Local Plan (2014); Following the motion agreed at Full Council in October 2014, the publication draft of the York Local Plan is currently not progressing through its statutory consultation; pending further consideration of the Council's housing requirements and how it should meet those requirements.

2.6 The emerging Local Plan policies can only be afforded weight in accordance with paragraph 216 of the NPPF and at the present early stage in the statutory process such weight will be limited. However, the evidence base that underpins the proposed emerging policies is capable of being a material consideration in the determination of the planning application.

## STATUS OF THE DRAFT YORK DEVELOPMENT CONTROL LOCAL PLAN (2005 4th Set of Changes).

2.7 The City of York Draft Local Plan Incorporating the Fourth Set of Changes was approved for Development Control purposes in April 2005; its policies remain material considerations in respect of Development Management decisions although it is considered that their weight is limited except where in accordance with the National Planning Policy Framework.

LEGISLATIVE AND POLICY CONTEXT FOR HERITAGE ASSETS  
STATUTORY DUTY – PLANNING (LISTED BUILDINGS AND CONSERVATION  
AREAS) ACT 1990 (AS AMENDED)

2.8 Section 66 of this Act requires the Local Planning Authority when determining planning applications for development that affects a listed building or its setting to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

2.9 Case law has made clear that when deciding whether harm to a listed building or its setting is outweighed by the advantages of a proposed development, the decision-maker must give particular weight to the desirability of avoiding such harm. There is a “strong presumption” against the grant of planning permission in such cases. The exercise is still one of planning judgment but it must be informed by that need to give special weight to the desirability of preserving the building.

2.10 This means that even where harm is less than substantial, such harm must still be afforded considerable importance and weight, i.e. the fact of harm to the listed building is still to be given more weight than if it were simply a factor to be taken account along with all other material considerations.

STATUTORY DUTY - PLANNING (LISTED BUILDINGS AND CONSERVATION  
AREAS) ACT 1990 (AS AMENDED)

2.11 Section 72 of this Act requires the Local Planning Authority when determining planning applications for development within a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Case law has made clear that when deciding whether harm to a Conservation Area is outweighed by the advantages of a proposed development, the decision-maker must give particular weight to desirability of avoiding such harm. There is a “strong presumption” against the grant of planning permission in such cases. The exercise is still one of planning judgment but it must be informed by that need to give special weight to maintaining the Conservation Area.

2.12 This means that even where harm is less than substantial, such harm must still be afforded considerable importance and weight, i.e. the fact of harm to the Conservation Area is still to be given more weight than if it were simply a factor to be taken account along with all other material considerations.

2.13 The legislative requirements of Sections 66 and 72 are in addition to the government policy contained in Section 12 of the NPPF, notably paragraphs 132 to 134. The NPPF classes listed buildings and Conservation Areas as “designated heritage assets”. The NPPF advises on heritage assets as follows:

-Paragraph 132 advises that “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be” ... “As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.”

-Paragraph 133 advises that “Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of four specified criteria apply

-Paragraph 134 advises that “Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum use.”

### **3.0 CONSULTATIONS**

#### **INTERNAL**

3.1 Environmental Protection Unit raise no objection to the proposal

3.2 Highway Network Management raise no objection in principle to the proposal but express some concern with regard to the relationship with the detached parking area to the south west of Bishopthorpe Road, the treatment of the entrance forecourt and provision for pedestrians visiting the premises.

3.3 Planning and Environmental Management raise no objection in principle to the proposal subject to the design and location of external plant being clearly identified and any permission being conditioned to adequately secure the pattern of fenestration and external decoration.

3.4 Forward Planning raise no objection to the proposal.

3.5 Adult Social Care support the proposal in principle but raise concerns in respect of the level of external amenity space.

3.6 Strategic Flood Risk Management Team were consulted with regard to the proposal on 6th August 2015. No response has been received at the time of writing.

#### **EXTERNAL**

3.7 Historic England raises no objection in principle to the proposal subject to the detail of the proposed internal alterations being suitably conditioned.

3.8 Micklegate Planning Panel objects to the proposal on the grounds that the design of the proposed roof top extension is inappropriate in terms of its height and Modern design.

3.9 One Letter of Support has been received in respect of the proposal.

## **4.0 APPRAISAL**

### **KEY CONSIDERATIONS**

4.1 Key considerations include:-

- Impact upon the character and appearance of the Terry's/Racecourse Conservation Area;
- Impact upon the Listed Building;
- Loss of employment land and premises;
- Impact upon the amenities of prospective residents;
- Impact upon safety and convenience of local highway users.

### **IMPACT UPON THE CHARACTER AND APPEARANCE OF THE CONSERVATION AREA**

4.2 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on the Council "to have special regard to the desirability of preserving and enhancing the character and appearance of Conservation Areas. As a statutory duty any harm to the conservation area must be afforded considerable weight and importance when considering the planning balance and this is outlined below. Where any harm is identified to a Heritage Asset there will be a strong presumption against the grant of permission. The presumption in favour of sustainable development set out at para 14 of the NPPF does not apply in these circumstances.

4.3 Central Government Planning Policy as outlined in paragraph 131 of the National Planning Policy Framework urges Local Planning Authorities to give significant weight to the desirability of sustaining and enhancing the significance of heritage assets and putting them to uses consistent with their conservation.

4.4 The complex of preserved early 20th Century Industrial buildings together with the adjacent racecourse complex along with its landscape setting is designated as a Conservation Area in view of its significant contribution to the wider townscape and visual character of the City. The seriously deteriorating structural state of the various buildings particularly when seen against the context of the racecourse to the north west has harmed the appearance of the Conservation Area. The proposal seeks to bring the second principal building of the complex back into a beneficial use which

would have the effect of arresting any further decline. A scheme to restore the Peace Garden to the south west of the Multi-Storey Factory and previously consented in association with its conversion is also envisaged to create an informal open space for the wider locality including residents of the proposed care home. The proposed roof level extension as amended would also be visible to a modest extent within views of the wider Conservation Area. It is felt that the proposed works taken together do not cause any harm to the Conservation Area, and would secure its preservation and enhancement in accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act.

## IMPACT UPON THE LISTED BUILDING

4.5 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on the Council to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses." As a statutory duty, any harm to the listed building or its setting must be afforded considerable weight and importance when considered in the planning balance and this is outlined below. Where harm is identified to a Heritage Asset there will be a strong presumption against the grant of permission. The presumption in favour of sustainable development set out at para 14 of the NPPF does not apply in these circumstances.

4.6 Central Government Planning Policy as outlined in paragraph 131 of the National Planning Policy Framework urges Local Planning Authorities to give significant weight to ensuring the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality and ensuring the desirability of new development making a positive contribution to local character and distinctiveness.

4.7 The Terry's Headquarters Building comprises a two storey brick and stone detailed office building with a central glass atrium and glazed north lit typing pool dating to the early 1920s. It is Listed Grade II as a significant example of early purpose built office design. The building incorporated the principal office and laboratory functions associated with chocolate manufacture at the site and continued in use up until manufacture ceased in 2005. A section of the building was subsequently used as a solicitor's office until 2011. The building has however been subject to significant deterioration since office use ceased and the marketing exercise undertaken by joint developer Henry Boot failed to result in any substantive enquiries from potential office users.

4.8 The proposal envisages the conversion of the offices and laboratories into a mix of single and twin bed care rooms with a series of extra care suites within the roof level extension. The roof level extension would also give access to a south facing roof level terrace providing amenity space for residents and an area to undertake craft therapy activities outdoors. The central north lit typing pool area would be

converted to provide an all weather amenity area with an artificial garden including a cafe, entertainment area and memory space where residents would be able to entertain visitors and community activities may take place. With the exception of the roof level extension the level of external intervention proposed is modest and felt to be broadly acceptable giving rise to less than substantial harm. Some less than substantial harm is felt to be caused by the window design for the proposed roof level extension notably the pattern of glazing, the use of fibre glass surrounds and metal fittings. It is felt that the less than substantial harm is effectively outweighed by the public benefit of arresting the physical decline of the building and ensuring its continued viable use, even when considerable importance and weight is given to that harm. Additionally, the harm caused by the window design for the proposed roof level extension may be effectively mitigated by condition to any approval requiring a revised window design.

4.9 Harm has been identified in respect of the internal works which are the subject of the parallel Listed Building Consent application and the impact of the internal works is considered in that Report elsewhere on the Agenda. However, the concerns raised are being addressed by the applicant and it is felt that the public benefits of the scheme in terms of protecting the building and securing its significance for the long term benefit of the community and the wider area outweighs the less than substantial harm caused by the scheme as amended even when considerable importance and weight is given to that harm.

## LOSS OF EMPLOYMENT LAND AND PREMISES

4.10 The application site was purpose built as an office development and the previous hybrid (Outline/Full) planning permission for redevelopment of the site envisaged its retention in an office use which would be the most favourable alternative in terms of compliance with Government policy relating to Conservation contained in the National Planning Policy Framework. A subsequent partial use of the premises as offices for a firm of solicitors has not however proved successful. The joint developer in respect of the current application, Henry Boot Ltd has undertaken an exhaustive exercise to market the premises since purchasing the premises in 2012. No substantive proposals to reuse the premises for offices have been brought forward with the character and internal layout not readily lending itself to the requirements of Modern office use. In these circumstances where there is not a reasonable prospect of a site being retained in employment use paragraph 22 of the National Planning Policy Framework makes clear that planning applications should be determined on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.

## IMPACT UPON THE AMENITIES OF PROSPECTIVE RESIDENTS OF THE PREMISES

4.11 Paragraph 17 of the National Planning Policy Framework "Core Planning Principles" indicates that Local Planning Authorities should give significant weight to the provision of a good standard of amenity to all new and existing occupiers of land and buildings. Concern has been expressed in respect of the access afforded residents of the proposed premises to secure external amenity space. The proposal does however incorporate an external roof terrace at the level of the roof extension specifically geared to the undertaking of craft activities, supervised access would be readily available to the restored Peace Garden to the south west of the Multi-Storey Factory and a substantial internal amenity area geared to a variety of therapeutic and entertainment uses would be provided within the area of the former typing pool. It is therefore felt that the provision of amenity space for prospective residents is acceptable and that the requirements of paragraph 17 of the NPPF can be achieved.

#### **IMPACT UPON THE SAFETY AND CONVENIENCE OF LOCAL HIGHWAY USERS:-**

4.12 The proposal identifies a disabled parking and drop off area within the existing forecourt together with the provision of a further 22 dedicated spaces within the former surface level car park associated with the factory to the south of Bishopthorpe Road. Subject to the submission and approval of a detailed plan safeguarding the identified spaces the proposal is felt to be acceptable.

### **5.0 CONCLUSION**

5.1 The Grade II Listed Terry's Headquarters Building has been vacant and deteriorating since 2011 when after chocolate manufacture at the site ceased, the subsequent office tenant vacated the premises. Planning permission is now sought for conversion of the premises into an 82 bed care home with 8 extra care apartments. It is felt that whilst the proposal would give rise to less than substantial harm to the special character of the Listed Building that such harm is more than outweighed by the clear public benefit of arresting the building's physical decline whilst ensuring its future in a long term viable use, even when considerable weight and importance is attached to that harm. It has been clearly demonstrated that a long term office use is unlikely and that adequate amenity space can be provided within or adjacent to the site to serve the needs of residents and visitors. The development is therefore felt to be acceptable in planning terms and approval is recommended.

### **COMMITTEE TO VISIT**



## **6.0 RECOMMENDATION:** Approve

1 TIME2 Development start within three years

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

Drawing Refs:- A10 00 15; A10 00 02; A20 00 01; A20 00 02; A20 00 03; A20 00 99; A20 01 01; A20 01 02; A20 01 03; A20 01 04; A20 01 99; A20 02 01; A20 02 02 ; A20 02 03; A20 02 99; A20 03 01; A30 00 01; A30 00 02; A30 00 03; A30 00 04.

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

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

Note: Because of limited storage space at our offices it would be appreciated if sample materials could be made available for inspection at the site. Please make it clear in your approval of details application when the materials will be available for inspection and where they are located.

Reason: So as to achieve a visually cohesive appearance.

4 Large scale details of the items listed below shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of individual apartments and the works shall be carried out in accordance with the approved details.

Full external details windows to the roof top extension including profiles and materials

Any additional guarding required to parapet

External lighting and signage proposals should also be submitted

Landscape proposals should also include a co-ordinated set of street furniture. Details should be submitted

The outer wall of the curved drum over the lantern (terne coated steel to be used and elevations revised to accord with plan)

Location and design of any vents in the external wall (to be avoided if possible)  
Details of privacy measures in windows to bathrooms on outer wall

Details of automatic doors and associated push-plates as they affect the exterior of the building

Reason: So that the Local Planning Authority may be satisfied with these details.

5 Before the commencement of development, a Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise, vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development and manage Heavy Goods Vehicle access to the site. It shall include details of measures to be employed to prevent the egress of mud, water and other detritus onto the public highway. It shall include for the provision of a dilapidation survey of the highways adjoining the site. Once approved, the Construction Environmental Management Plan shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

REASON: To safeguard the amenity of residential occupants on the site and in the

6 All construction and demolition works and ancillary operations, including deliveries to and dispatch from the site shall be confined to the following hours:

Monday to Friday 08.00 to 18.00

Saturday 09.00 to 13.00

Not at all on Sundays and Bank Holidays.

Reason. To protect the amenity of local residents

7 Details of all machinery, plant and equipment to be installed in or located on the use hereby permitted, which is audible at the boundaries of the nearest residential properties when in use, shall be submitted to the local planning authority for approval. These details shall include maximum sound levels ( $L_{Amax(f)}$ ) and average sound levels ( $L_{Aeq}$ ), octave band noise levels and any proposed noise mitigation measures. All such approved machinery, plant and equipment shall not be used on the site except in accordance with the prior written approval of the local planning authority. The machinery, plant or equipment and any approved noise

mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Note: The combined rating level of any building service noise associated with plant or equipment at the site should not exceed the background noise level at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics. Whilst it is acknowledged that at background levels of less than 30dB(A) use of BS4142 is inappropriate, EPU consider that in such circumstances the combined rate level of plant inclusive of any character correction should not exceed 30dB(A).

Reason: To protect the amenity of local residents

8 HWAY18 Cycle parking details to be agreed

9 HWAY19 Car and cycle parking laid out

10 Provision for 22 car parking spaces will be made available upon first use of the care home hereby authorised and maintained as such thereafter for the dedicated use of the care home within the existing car park, as shown on plan A10 00 15.

Reason: - To secure the safety and convenience of local highway users.

11 LAND 1 Landscaping details to be approved

## **7.0 INFORMATIVES:**

### **Notes to Applicant**

#### **1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

- i) Details of Proposed Off Site Car Parking;
- ii) Details of Intermediate Office Use of the Site

#### **2. CONTROL OF POLLUTION ACT 1974:-**

The developer's attention is drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to

ensure that residents are not adversely affected by air pollution and noise, the following guidance should be adhered to; failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(a) All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday 08.00 to 18.00

Saturday 09.00 to 13.00

Not at all on Sundays and Bank Holidays.

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

(c) All plant and machinery to be operated shall be sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturer's instructions.

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

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

(f) There shall be no bonfires on the site

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