

## COMMITTEE REPORT

**Date:** 21 April 2016  
**Team:** Major and Commercial Team  
**Ward:** Fulford and Heslington  
**Parish:** Fulford Parish Council

**Reference:** 13/03481/FULM  
**Application at:** Royal Masonic Benevolent Institute Connaught Court St Oswalds Road York YO10 4QA  
**For:** Erection of 14no. dwellings following demolition of existing bowling clubhouse and garage block  
**By:** RMBI And Shepherd Homes Ltd  
**Application Type:** Major Full Application (13 weeks)  
**Target Date:** 7 November 2014  
**Recommendation:** Approve subject to Section 106 Agreement

### 1.0 PROPOSAL

1.1 Erection of 14 detached houses on two parcels of land (Area A and Area B) within the grounds of Connaught Court care home. Ten of the houses would have 2.5 storeys; the remaining four houses would have two storeys. The houses would have 4, 5 or 6 bedrooms. All units would have integral or detached garages. An existing internal access road from St Oswald's Road would be widened and the junction improved. The bowling green on the site has been removed and a pavilion and greenhouse demolished.

1.2 The application was submitted to the Council in October 2013. On 6 February 2014 the application was deferred by the Area Sub-Committee pending amendments to the design and layout of Area A. The application as amended was returned to the Area Sub-Committee on 8 May 2014. Members resolved, in accordance with the officers' recommendation, to approve the application subject to a Section 106 agreement to secure financial contributions. The application was approved by the Area Sub Committee, and planning permission issued on 7 November 2014 following completion of a S106 agreement.

1.3 On 17 November 2014 a local resident sent a pre-action protocol letter to the Council to give notice that they intended to challenge the grant of planning permission on the grounds that:

- The Council failed to take into account the requirement in the National Planning Policy Framework (NPPF) that development within flood zone 2 should be subject to a sequential test; and

- The Council failed in its duty under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing a conservation area; and
- That consequently the decision to grant planning permission was unlawful.

1.4 The Council accepted that a sequential test should have been carried out and that the statutory duty under S72 of the 1990 Act had not been properly applied in the determination of the application. These legal flaws were sufficient to make the decision unlawful. A Consent Order was agreed and the planning permission was quashed by the High Court.

1.5 The application was therefore remitted back to the Local Planning Authority for determination.

1.6 The application was placed on the agenda for the 9 April 2015 Area Sub-Committee. Officers recommended that permission should be granted. The application was withdrawn from consideration before the meeting on the advice of the Monitoring Officer, and in consultation with the Chair, as it was not considered appropriate for a decision to be made prior to the elections (during the purdah period).

1.7 The application was placed on the agenda for the 11 June 2015 Area Sub-Committee. Officers recommended that permission should be granted. Reference was made to the completed section 106 agreement dated 23 October 2014 which contained Planning Obligations to secure developer contributions towards the provision of-site open space, improvements to bowling facilities at Scarcroft Green and additional school places at St Oswald's Junior School and Fulford Secondary School. Members resolved to grant planning permission subject to conditions and the decision notice was issued on 22 June 2016.

1.8 On 21<sup>st</sup> July 2015 a local resident sent a pre-action protocol letter to the Council to give notice that they intended to challenge the grant of planning permission in the High Court on the grounds that:

- The Council failed to take into account the requirement in the National Planning Policy Framework (NPPF) that development within flood zone 2 should be subject to a sequential test; and
- The Council failed in its duty under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing a conservation area;
- Legal agreement – pooling regulations; and

- That consequently the decision to grant planning permission was unlawful.

1.9 In the event, the claimant issued proceedings on only one ground of challenge, that the Planning Obligation relating to contributions towards the provision of off-site public open space breached Regulation 123 of the Community Infrastructure Levy Regulation, in that from 6 April 2015 a Planning Obligation may not constitute a reason for granting planning permission where the obligation provides funding or provision of an infrastructure project or type of infrastructure and 5 or more separate obligations which provide funding or provision of that project or type of infrastructure have already been entered into since 2010. Counsel's advice was sought by the Council and as it was agreed that this makes the decision unlawful. A Consent Order was therefore agreed and the planning permission was quashed by the High Court on 27<sup>th</sup> January 2016, and is remitted back to the Council for a decision to be made.

## REVISED DRAWINGS AND REPORTS

1.10 Following the decision of the High Court to remit the application for re-determination the applicant has submitted an updated planning statement, flood risk assessment, Tree report, tree protection plan, arboricultural method statement, open space and recreation statement, ecological assessment, design and access statement. Revised drawings have also been submitted clarifying that the existing railings to the St Oswalds Road boundary are to be retained and altered to provide pedestrian gates.

## RELEVANT PLANNING HISTORY

1.11 In 2007 the council refused outline planning permission for (principally) the erection of housing, extra care accommodation, an extension to the mentally frail unit, relocation of the bowling green on the site, a new access off Main Street and car parking (05/00022/OUTM). The subsequent appeal was dismissed due to impact on the character and appearance of the area, including Fulford Village Conservation Area. In the current proposal there is no access from Main Street, no replacement bowling green (a contribution towards off-site provision is offered), the housing along the southern boundary of the site has been deleted and there are no proposals for extra care flats to the east of the existing care home. The current proposal is confined to the areas south and east of Atcherley Close.

## 2.0 POLICY CONTEXT

2.1 Section 38 of the 1990 Act requires local planning authorities to determine planning applications in accordance with the development plan unless material considerations indicate otherwise. There is no development plan in York other than the saved policies of the Regional Spatial Strategy relating to the general extent of the Green Belt. (The application site is not within the Green Belt). Although there is

no formally adopted local plan the City of York Draft Local Plan Incorporating the Fourth Set of Changes was approved for Development Management purposes in April 2005. Whilst it does not form part of the statutory development plan for the purposes of s.38 its policies are considered to be capable of being material considerations in the determination of planning applications, where policies relevant to the application are consistent with those in the NPPF.

2.2 The most relevant Draft (2005) Policies are:

CYGP1	Design
CYGP4A	Sustainability
CYGP9	Landscaping
CGP15A	Development and Flood Risk
CYNE1	Trees, woodlands, hedgerows
CYNE6	Species protected by law
CYHE2	Development in historic locations
CYHE3	Conservation Areas
CYHE10	Archaeology
CYT4	Cycle parking standards
CYED4	Developer contributions towards Educational facilities
CYL1C	Provision of New Open Space in Development

2.3 Following a motion agreed at Full Council in October 2014, the Publication Draft of the York Local Plan (2014) is currently not progressing through its statutory consultation pending further consideration of the Council's housing requirements and how they should be met. The plan policies can only be afforded weight in accordance with paragraph 216 of the NPPF. 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 a material consideration in the determination of the planning application. The evidence base includes an assessment of housing requirements undertaken by consultants Arup (Housing Requirements in York: Evidence on Housing Requirements in York: 2014 Update, Arup, 2014), which informed the publication draft of the local plan, as approved by Cabinet in September 2014, and the Council's Site Selection Papers produced to support the emerging Local Plan (Site Selection Paper (2013) City of York Council) in respect of proposed housing allocations.

2.4 Relevant emerging policies are:

Policy DP1: York Sub Area  
Policy DP2: Sustainable Development  
Policy DP3: Sustainable Communities  
Policy SS1: Delivering Sustainable Growth for York  
Policy H1: Housing Allocations  
Policy D1: Landscape and Setting  
Policy D4: Conservation Areas

Policy D7: Archaeology  
Policy G15: Protection of Open Space and Playing Pitches  
Policy G16: New Open Space Provision  
Policy ENV4: Flood Risk  
Policy ENV5: Sustainable Drainage  
Policy T1: Sustainable Access

2.5 The National Planning Policy Framework (NPPF) was published in March 2012. It sets out government's planning policies and is material to the determination of planning applications. The sections in the NPPF most relevant to this proposal include:

Section 4 Promoting sustainable transport  
Section 6 Delivering a wide choice of high quality homes  
Section 7 Requiring good design  
Section 8 Promoting healthy communities  
Section 10 Meeting the challenge of climate change, flooding and coastal change  
Section 11 Conserving and enhancing the natural environment  
Section 12 Conserving and enhancing the historic environment

2.6 The NPPF is the most up-to date representation of key relevant policy issues and it is against this Framework that the proposal should principally be addressed.

2.7 The essence of the Framework is the presumption in favour of sustainable development which, for decision-taking, means approving without delay development proposals that accord with the development plan. Where the development plan is absent, silent or relevant policies are out of date, planning permission should be granted unless: (1) any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole; or (2) specific policies in the framework indicate development should be restricted (paragraph 14). A footnote to paragraph 14 gives examples of policies where the presumption in favour of sustainable development does not apply. They include policies relating to designated heritage assets and locations at risk of flooding. Both of these policy areas are relevant to the current application. Therefore, in this case, the presumption in favour of development does not apply. Instead, the application should be judged against, among other things, policies in sections 10 and 12 of the NPPF, which are specific to these areas (flood risk and heritage assets respectively) and which are considered later in this report.

2.8 In addition to policies in the Framework to protect heritage assets the Local Planning Authority has a statutory duty under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 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 (E.Northants DC v Secretary of State for Communities and Local Government [2014] EWCA Civ137). This means that even where harm is less than substantial (as in this application), 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 into account along with all other material considerations. The local planning authority has a further statutory duty under s.66 of the same Act to have special regard to the desirability of preserve the setting of listed buildings. These duties are considered later in this report.

2.9 As this is an application for housing development, paragraph 49 of the NPPF applies. It states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. However, the NPPF must be considered as a whole, and in this case, the proposal involves heritage assets and flood risk and therefore the presumption in favour of sustainable development set out at paragraph 14 does not apply. Instead more restrictive policies apply set out in Chapter 10 and 12 of the NPPF.

### **3.0 CONSULTATIONS**

3.1 Following the decision by the High Court to remit the application back to the local planning authority for re-determination the applicant submitted a number of updated documents to support the application. A further consultation process has been undertaken in respect of the revised information and to take account of any material change in circumstances. The original responses received are summarised below along with any further comments received following the recent re-consultation.

#### **INTERNAL**

#### **Communities and Neighbourhoods - Public Realm**

3.2 As there is no on-site open space commuted sums should be paid to the Council towards off-site provision of amenity open space, play space and sports pitches. Play and amenity open space payments will go toward facilities in Fulford Parish, sports pitch payments will be used within the south zone of the Sport and Active Leisure Strategy. The contribution is to be based on the latest York formula through a Section 106 Agreement. A contribution should also be paid for replacement open space due to the permanent loss of open space at Connaught Court. The contribution should be put towards the improvement of bowling facilities at Scarcroft Green. The investments reflect needs identified by existing and relocated bowlers.

### Comment following re-consultation

3.3 Open space - no off site open space provision is required for this site. This statement is based on:

A) Fulford Ward open space profile found in Local Plan Evidence Base: Open Space and Green Infrastructure Final Report September 2014. Open Space Study - Appendix D (Part 1). Which states “*This is a suburban/semi-rural ward with a complex pattern of provision dominated by proximity to the River Ouse corridor to the east. Generally, provision is reasonable across the majority of categories, with facilities in adjacent wards compensating for deficiencies.*”

B) At the time of the study (2013) Fulford and Heslington were separate wards, since then the areas have been combined to form one new ward. The authors of the report, AMEC note that use of open space does not respect ward boundaries as users will travel cross boundaries to use open space (Final Report page 8). Based on data for the new combined ward of Fulford and Heslington the situation remains the same – there is sufficient open space for both existing residents and new residents from this development (Final Report page 9). If recreational use of Walmgate Stray in the adjoining Fishergate ward is also taken into account the position is further strengthened.

3.4 Bowling Green: To mitigate the loss of the Bowling Green a contribution is required to improve bowling facilities at Scarcroft Bowling Green. This is one of the nearest bowling greens to the development and one where previous users of the Connaught Court Green have relocated to. We have not exceeded the limit of obligations for Scarcroft Bowling Green.

### **Flood Risk Management team**

3.5 No objections to the development providing our previously recommended conditions are applied. Please note that the areas of proposed housing were not affected during the December 2015 flooding event.

### **Highway Network Management**

3.6 No objections subject to standard conditions and submission of a construction method of works statement.

### Comment following re-consultation

3.7 Application is as per previous consultation and subsequent response.

## **Planning and Environmental Management - Landscape Architect**

3.8 The building line of properties within Area A is just outside of the recommended root protection area (RPA) of the protected trees located along St. Oswalds Road, however construction operations such as scaffolding and excavations for footings would be within the RPA. The submitted tree protection method statement should be adhered to. Pear trees of the stature of T294, which would be lost, are no longer commonplace so it would be preferable to retain this tree. New tree planting is suggested in the front gardens along the entrance into the site. The planting proposals are fine and include a number of additional trees along the boundary with Area B.

### **Comment following re-consultation:**

3.9 The updated tree survey presents no changes to earlier responses to the proposed development however changes to the previously recommended condition are required to cover phasing and construction details and methodology of works in proximity to the St Oswalds Road trees. The tree data schedule includes a recommendation for crown reduction of sycamore 319 to achieve a 2m clearance from the adjacent existing building off-site. This is deemed acceptable to prevent a nuisance

## **Planning and Environmental Management - Conservation Architect**

3.10 The vehicular areas at plots 3 and 4 (Area A) are extensive and prevent the houses being moved further from the trees along St Oswald's Road. Nevertheless the impact on the conservation area is acceptable. The 2 ½ storey gable wall of the house at plot 9 (Area B) would have a rather overbearing impact on the occupiers of No. 26 Atcherley Close. The council's pre-application advice/guidance to the applicant has been consistent in requesting lower massing in this location. Details of the verge to St Oswald's Road and the proposed gates in the existing railings should be made conditions of approval.

## **Planning and Environmental Management - Ecologist**

3.11 The development is unlikely to have any significant impact on Fulford Ings SSSI. The main habitats on the application site to be affected by the development are amenity grassland with standard trees, species-poor hedgerow, areas of tall ruderal and two buildings. The buildings that have been demolished (a bowling pavilion and garage block) were assessed as having low or negligible potential to support roosting bats. External daytime inspections and evening emergence surveys found no evidence of roosting bats. All of the trees identified for removal have negligible potential to support roosting bats. Fulford Ings and the adjoining habitats along the River Ouse provide excellent foraging habitat for bats and



therefore the loss of these habitats on the site would not significantly impact on bats within the wider area. The grassland, hedgerows and ruderal vegetation are of low value; their impact would not be significant.

Comment following re-consultation:

3.12 An updated ecological impact assessment has been submitted. The site has been subject of previous studies in 2005, 2012, 2013 and 2014. The updated Phase 1 Habitat Survey found habitats on site to be similar to the earlier (2013) survey, except where pre-development work e.g. excavations, and changes in management e.g. un-maintained grass, has led to minor changes in habitat structure. This is not considered to be a significant change and the habitats on site are still assessed as being of low conservation significance.

3.13 None of the trees identified with potential for bats are scheduled for removal as part of the development proposal. In the updated tree report a crown reduction has been recommended for a sycamore in the north east corner of the site along St. Oswald's Road (tree tag 319). This tree was assessed as having moderate potential to support roosting bats. The crown reduction work is not critical to the development and has been recommended by the arboriculturalist regardless of whether the development goes ahead or not. If this work is undertaken in the future and will directly disturb or remove timber with bat potential then a precautionary approach should be used.

3.14 The main impact from construction is the loss of habitats of low conservation significance. Habitats on site could support nesting birds. Fulford Ings and the adjoining habitats along the River Ouse provide excellent foraging habitat for bats and therefore the loss of the habitats on site will not significantly impact on bats within the wider area.

3.15 Other potential impacts from construction are identified as changes in hydrology and potentially pollution incidents which could affect the adjacent Fulford Ings Site of Special Scientific Interest (SSSI) and the River Ouse. These impacts can be avoided by putting reasonable avoidance measures in place typically used in construction best practice.

3.16 Conditions are recommended to control external lighting and to provide enhancements for birds and bats. Informatives are recommended regarding nesting birds and Himalayan balsam.

**Planning and Environmental Management – City Archaeologist**

3.17 The application site lies in an area of archaeological interest. The previous approval was subject to conditions requiring a written scheme of investigation (WSI) for an archaeological excavation and a WSI for an archaeological watching brief. The applicant submitted a WSI which set out the details of an archaeological

excavation of the area of the site adjacent to St Oswald's Road and an archaeological watching brief on the development of the remainder of the site. Work on the excavation area adjacent to St Oswald's Road commenced in October 2014 and finished in November 2014. Not all of this area was excavated at this time and further excavation will be required to fulfil the requirements of the WSI. As no development has taken place on the rest of the site, the watching brief element of the WSI has not been implemented. As the archaeological work has not been completed, no report on the archaeological work has been submitted. It is very important that this work is completed should development of this site proceed.

3.18 The excavation was very productive. Important and significant evidence was recorded for occupation during the Roman period consisting of a series of enclosure ditches and a possible trackway. There was also a large ditch of possible Iron Age date. An open day where residents and the general public was given access to view the excavation and finds was held at the end of the excavation.

3.19 If the re-determination of this application leads to an approval of the application, there must be an archaeological condition placed on the consent which requires the completion of the works set out in the WSI.

### **Planning and Environmental Management - Forward Planning**

3.20 In terms of the Council's 5 year housing land the issue is complicated given the current status of the emerging Local Plan and the very recent release of the DCLG household projections. The Council does not have an NPPF compliant five year housing supply unless the proposed housing sites within the present general extent of the green belt are included. Such sites cannot be included until the defined boundaries of the Green Belt have been identified through the Local Plan process. Consequently, until the Plan is progressed further, an NPPF compliant 5 year supply cannot be demonstrated. The site at Connaught Court is included as a draft housing allocation within the Publication Draft Local Plan (2014) - Site H47 and therefore is included and required as part of the five year housing supply. It is not within the general extent of the York Green Belt.

3.21 There is a possibility given the current position in terms of the housing demand figure for the Local Plan that the position in relation to the housing supply may change when the Local Plan recommences its passage to adoption.

3.22 In terms of flood risk, as the site is a draft housing allocation within the emerging local plan document (Publication Draft 2014) a level of assessment against flood risk has already been undertaken through the site selection methodology in line with the requirements set out in York's SFRA as outlined as necessary by the NPPF. This site selection methodology is explained further in a later section (Para 4.12) but involves the exclusion of any land within flood zone 3b or greenfield land within flood zone 3a from development. It also applies a net to

gross ratio to sites to allow for areas of flood zone 2 to be used as amenity land rather than part of the development.

3.23 The emerging planning policy in relation to flood risk (ENV4) states that new development shall not be subject to unacceptable flood risk and shall be designed and constructed in such a way that it mitigates against current and future flood events.

3.24 This emerging policy recommends that an assessment of whether there will be increased flood risk either locally or within the wider catchment is undertaken. It also asks that the vulnerability of any development be assessed in line with the SFRA to deem what is and isn't appropriate development on areas at risk of flooding. It states that development will be permitted should the authority be satisfied that any flood risk within the catchment will be successfully managed (through the management and maintenance plan for the lifetime of the development) and there are details of proposed necessary mitigation measures subject to a flood risk assessment being submitted. A further flood risk assessment should also be submitted which takes account of the potential effects of climate change. Areas of greater risk of flooding may be utilised for appropriate green infrastructure spaces.

3.25 The NPPF paragraph 103 asks that development be situated in areas of the site with the lowest flood risk and ensure that they are appropriately flood resilient, allow safe access and escape routes and give priority to the use of sustainable drainage systems.

3.26 In terms of Placemaking and Design there are a number of emerging policies which are relevant to this application including policy D1 landscape and setting, policy D2 placemaking, policy D4 conservation areas and policy D5 listed buildings.

3.27 The most relevant is policy D4 as the site lies entirely within a conservation area and close to another. This policy asks that proposals leave qualities intrinsic to the wider context unchanged, and respect important views and that they are also accompanied by an appropriate evidence based assessment to ensure the impacts of the development are clearly understood. Proposals will be supported where the new use would not significantly harm the special qualities and significance of the place. This level of harm would need to be assessed by the council's relevant Landscape/Heritage and Conservation officers.

3.28 As the site includes a designated Local Green Infrastructure Corridor for wildlife it is important for the site to have open space and garden land to allow for the migration of wildlife through the site. This will be helped by keeping the land to the south of the site open in line with the comments received through the site selection/further sites consultation process. The need to keep this land open in terms of the connection between Fulford Road and Fulford Ings is also addressed in the further sites consultation emerging evidence base document in terms of its landscape value.

## Comment following re-consultation

3.29 A report was taken to LPWG on 29<sup>th</sup> September 2015 to update Members on the Objective Assessment of Housing Need (OAHN) produced by consultants Arup to inform the preparation of the emerging Local Plan. The report informed members of the requirements in relation to OAHN and included an assessment of the revised national household projections published by the Department of Communities and Local Government (CLG) in February 2015 which are used as the starting point in the assessment of housing need.

3.30 Members of the working group were asked to note and consider this evidence on OAHN as the starting point for determining the amount of housing land required to be identified in the Local Plan. This figure does not therefore represent Council policy and should therefore should be seen in this context.

3.31 Since the Plan date of 1<sup>st</sup> April 2012 up to 1<sup>st</sup> April 2015 housing delivery has fallen short of the benchmark by -940 dwellings using the demographic led requirement of 758 dwellings per annum. It is recommended by Arup that a 2012 base date should be used for the calculation of past under-delivery. This is in line with the Zurich decision a high court case in March 2014.

3.32 The September 2015 LPWG report also includes an indicative five year housing land supply calculation at 1<sup>st</sup> April 2015. It is important to caveat that this position was reported as an indicative position only and is not considered to represent an NPPF compliant five year supply pending further work on the viability and deliverability of sites currently being undertaken to support the emerging Local Plan. This work is expected to be reported to Members in May/June 2016.

3.33 As listed in Annex 2 to the LPWG report the indicative 5YHLSC includes those sites with planning consent at 1<sup>st</sup> April 2015 including those which are under construction and part implemented and also those sites which at 1<sup>st</sup> April 2015 were awaiting legal/planning conditions approval. In total there were 4,390 dwellings with consent or awaiting legal/conditions approval.

3.34 NPPF states that deliverable sites for housing could include sites with planning permission (outline or full that have not been implemented) and those allocated for housing in the development plan unless there is clear evidence that schemes will not be implemented within five years. Having planning permission is not a pre-requisite for sites being deliverable in terms of the 5YHLS but local authorities need to provide robust, up to date evidence to support the deliverability of sites ensuring that judgements on deliverability are clearly set out.

3.35 In terms of emerging allocations included within the indicative 5YHLSC, drawing on the experience of the Brecks Lane Case the 5YHLSC does not include

any sites which are within the general extent of the York Green belt unless there is an extant permission for the site.

Indicative 5YHLSC 2015/2016 to 2019/20 (@1<sup>st</sup> April 2015)

Emerging housing target (incl. backlog from 2012)	5yr Housing requirement inclusive of 20% buffer	5 yr annualised average	Identified Supply (with 10% non-implementation discount)	Land Supply (years)
817	4,902	980	4,904	5.00

3.36 Officers are currently undertaking further work in relation to both objectively assessed housing need (OAHN) and further technical analysis on the previous draft allocations. This work will be reported to members of LPWG in May/June 2016 and will then be subject to further work on viability and deliverability and SA/SEA before consultation on a revised Publication Draft Local Plan later in 2016.

3.37 It is important to understand the current context of the emerging Local Plan and the current uncertainty regarding both housing demand and supply which will be subject to a series of future decisions by Members over the coming months.

### **Public Protection**

3.38 Add conditions re: unsuspected contamination, gas emissions from landfill sites, electrical recharging and hours of construction.

### **Comment following re-consultation**

3.39 Previous comments generally still apply subject to updating conditions and informatives relating to land contamination, air quality management and demolition and construction due to changes in the relevant standards.

EXTERNAL

### **Environment Agency**

3.40 No objections subject to conditions requiring adherence to the submitted flood risk assessment, submission of drainage details (including attenuation) and no erection of structures within flood zone 3.

### **Comment following re-consultation**

3.41 In order for the development to meet the requirements of the NPPF the Agency recommend conditions regarding provision of compensatory flood storage and flood resilience measures and the removal of permitted development rights for structures within flood zone 3.

### **Historic England**

3.42 No comments.

### **Natural England**

3.43 Does not wish to comment on the details of the application as it does not pose any likely or significant risk to those features of the natural environment for which we would otherwise respond.

### **Comment following re-consultation**

3.44 The advice provided in our previous response applies equally to this amendment although we made no objection to the original proposal. The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

### **Conservation Area Advisory Panel**

3.45 No objection. The panel commends this much improved scheme.

### **Ouse & Derwent Internal Drainage Board**

3.46 No objections.

### **Police Architectural Liaison**

3.47 No concerns or issues.

### **York Natural Environment Panel**

3.48 The Panel are glad to see the retention of an open corridor along the southern aspect of the site leading from Main Street down to the Ings. The proposals are contrary to policy GP10, converting what is essentially garden space into building land. The proposals represent a loss of green land when the priority should be for the development of brownfield sites, of which York has a significant provision. There is concern that the build line extends closer to the flood plain, an extent which is likely to expand over time given climate change and the associated increase in flooding incidence.

### **Fulford Parish Council**

3.49 Objection on the following grounds:

- The principle of development on the site.
- The proposed housing would have a detrimental effect on Fulford Village Conservation Area, Fulford Road Conservation Area and the parkland setting.
- The s.106 contributions and housing need are not public benefits that outweigh the harm to heritage assets.
- It is not appropriate to build in flood zone 2 and raise gardens in flood zone 3 when other areas are available.
- Allocation as a housing site should be re-evaluated.
- The appearance of the verge would be further changed by the proposed footpaths crossing it.
- The position of houses 1, 3 and 4 forward of the building line formed by Sir John Hunt Homes would harm both conservation areas.
- Houses 1, 2 and 3 are too close to prominent trees that contribute positively to the character of the conservation area.
- The setting of The Cottage, which is a listed building, would be harmed because the house at plot 3 would have an overbearing effect, due to its location and size.
- Several protected trees would be lost
- Several houses within area B are partly in flood zone 2. Sequential testing should be applied to this [Officers' response - A sequential test has since been applied].
- Raising the level of private gardens would obstruct the floodplain, contrary to guidance.
- The houses at plots 10-14 (Area B) would be very conspicuous from the Ings, which is in the green belt
- No affordable homes are provided, contrary to local planning guidance.
- The submitted bat survey is deficient.
- The proposed site is immediately adjacent to Fulford Ings, an SSSI. The local authority should ensure that it fully understands the impact of the proposal on the local wildlife site, before it determines the application.
- EIA regulations apply to the development site and an EIA should be carried out.
- The site is not allocated for housing in the consultation draft of the local plan.

### **Fulford Friends**

#### 3.50 Objection on the following grounds:

- Substantial harm to Fulford Village Conservation Area, to the setting of Fulford Road Conservation Area and to the historic character and setting of the City.
- The harm to heritage assets is not outweighed by the public benefits of the scheme.
- The iron railings and the verge contribute greatly to the rural character of the conservation area.

- The application should not include the line of trees or any part of the public verge within the curtilage of the new dwellings [Officers' response - The trees and railings will now remain outside the curtilage of the houses].
- Impact on the setting of the listed cottage.
- The number and height of dwellings at Area B should be reduced to minimise the impact on the local and wider environment.
- The sequential test has not been properly applied to these areas [Officers' response - The sequential test has since been applied].
- Loss of important trees/hedges, especially T294, T298 and T299, which have high amenity/wildlife value and contribute to the conservation area.
- Long-term risk to the trees along the St Oswald's Road frontage.
- Impact on bats should be fully assessed before any planning decision is taken.
- The need for the development does not outweigh the loss of the bowling green, which is a local community asset.
- The scale of development is just below that which would require the provision of affordable housing.
- The site should be treated as greenfield land not brownfield.
- The application should not be determined without a response from Yorkshire Water.
- The site should be fully assessed for allocation in the Draft Local Plan.
- The impact of the proposals on public views from or into the conservation area, particularly from the green belt, has not been taken into account.

### **Trustees for Sir John Hunt Memorial Homes**

3.51 No objection providing the boundary trees are not adversely affected and that the distance of the nearest house to our mutual boundary is not reduced, nor the house developed with rooms in the roof space. This support is subject to the Highways Department confirming that there would be no noticeable increase in traffic flows that could not be accommodated within the existing highway network.

### **Publicity and Neighbour Notification**

3.52 The initial public consultation period expired on 30 December 2013. A second public consultation exercise was carried out in March/April 2014 following submission by the applicant of revised plans. The public were consulted again following receipt of additional information after the planning permission had been quashed by the High Court. In total, representations have been received from 17 objectors raising the following issues:

- Overdevelopment.
- Impact on the conservation areas.
- Out of keeping with character of the area.
- Increase in traffic.
- Inadequate access.



- Traffic calming required.
- Verge should be kept to prevent kerbside parking in St Oswald's Road.
- Would exacerbate parking problems in St Oswald's Road.
- Loss of attractive open parkland.
- Loss of trees.
- Loss of open views from the river.
- Removal of railings.
- Bowling green should be retained as a community facility.
- There is no oversupply of bowling greens.
- Impact on the adjacent SSSI.
- Increase in flood risk.
- Impact of house 4 on the listed cottage.
- The temporary construction road is unnecessary and would damage protected trees.
- Insufficient mix of housing types.
- Overshadowing and overbearing.
- EIA needed.

#### Comment following re-consultation

3.53 Fifteen letters of objection, or stating concerns, have been received. Whilst many of the comments repeat those expressed in previous consultations they are summarised below for completeness:

- The conservation area and green corridor should be protected from development
- The development will erode the parkland which creates a buffer between urban Fulford and the rural lower St Oswalds Road.
- The decision should take into account recent permissions for a car park and sun room which will further erode the area of historic parkland.
- The size and character of the proposed houses on St Oswalds Road show no regard to the moderately sized Victorian Villas to the north.
- The size and type of the properties are inappropriate and conflict with the character of the conservation area. They should be lower density.
- Unimaginative low quality architecture, the site is already blighted by the nursing home.
- The proposed houses will dwarf the listed cottage and ruin the view along the street.
- Loss of views into and through the site.
- Harmful visual impact of proposed flood wall and fences on the Ings.
- Loss of green spaces adversely impacts on mental health and wellbeing.
- Impact of development on natural environment and loss of habitat.
- Risk to trees. New residents may campaign to have them removed if not properly managed.

- There should be no pavement in front of area A, the green verge should be preserved.
- The small addition to the housing stock does not outweigh the damage to this part of Fulford.
- No need for the new houses when significant new housing areas have been marked out in the area.
- The houses will not address York's affordability problem.
- Should not be approving new houses without the infrastructure necessary to service them.
- The existing railings to St Oswalds Road frontage should not be breached.
- Cumulative impact on flood plain
- Increased risk of flooding to surrounding properties.
- Increased traffic congestion in St Oswalds Road and at the junction with Fulford Road will lead to increased pollution levels and create dangerous conflicts with pedestrians and cyclists accessing the river side.
- Proposal will exacerbate existing parking problems which already exist for local residents and residents, visitors and staff at Connaught Court.
- Creating a pavement along St Oswalds Road frontage will reduce parking for existing residents. Creating a footpath access through the fence will encourage new residents and visitors to park in St Oswalds Road.
- Impact on access and parking during construction.
- Harmful impact on the residents of Connaught Court and potential for conflict with children in the new development.

3.54 One letter of support has been received stating that the design and siting is appropriate and that neglected land will be tidied and enhanced making the whole site more beneficial for residents.

## **4.0 APPRAISAL**

### **4.1 MAIN ISSUES**

- Principle of Development for Housing
- Trees and the Parkland Setting
- Heritage
- Recreation and Open Space
- Highways Issues
- Flood Risk and Drainage
- Neighbour Amenity
- Education Provision
- Bio-Diversity
- Archaeology
- Affordable Housing
- Environmental Impact Assessment

## CONNAUGHT COURT AND THE APPLICATION SITE

4.2 Connaught Court is a 90-bed care home (4.86ha) in a parkland setting, which includes trees protected by TPO. The site lies between Main Street, St. Oswald's Road, Atcherley Close, Fulford Park and Fulford Ings. The main vehicular access is from St. Oswald's Road. The site is dominated by a large 2 and 3 storey care home, with associated smaller buildings and dwellings grouped around it. The buildings are mainly grouped towards St. Oswald's Road and Atcherley Close. Most of the remainder of the site is private open space and included a bowling green which has now been removed. The site contains large number of protected trees, in particular near Main Street.

4.3 The whole of the site lies within the settlement limit of York. The land is mainly flat except at the south-western corner where it falls steeply down towards Fulford Ings and the River Ouse beyond. This part of the site lies in flood zones 3a and 3b (functional flood plain). The whole of the site is in Fulford Conservation Area and abuts, to the north, Fulford Road Conservation Area. The land at Fulford Ings, to the south west (outside the application site) is in an SSSI and the green belt.

4.4 The two parcels of land mainly comprise the current application total 1.28ha of private open space and lie to the east (Area A) and south (Area B) of Atcherley Close. The site area is significantly less than half of the site area of the previous 2005 planning application, which included land to the south and east of the care home buildings.

## PRINCIPLE OF DEVELOPMENT FOR HOUSING

4.5 The National Planning Policy Framework requires local planning authorities to boost, significantly, the supply of housing and to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. Local Planning Authorities should identify a supply of specific deliverable sites sufficient to provide five years worth of housing. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years.

4.6 In terms of the Council's five year housing land supply, the issue is complicated given the current status of the emerging Local Plan and the uncertainty surrounding the Communities and Local Government (CLG) household projections, however the latest available figures indicate that at 1 April 2015 the housing land supply was (without the Connaught Court site) marginally less than 5 years.

4.8 There is a possibility given the current position in terms of the Local Plan that the position in relation to the housing supply may also change when the Local Plan

recommences its passage to adoption. However a decision on a planning application has to be made on the policy position at the time of that decision.

4.9 Whilst the emerging local plan identified housing allocation sites, including Connaught Court, the Publication Draft of the plan was halted in late 2014 for further work regarding housing land and housing land supply. Limited weight can therefore be given to the emerging local plan in terms of its identified sites. However the evidence base used to identify and rank sites has more weight in the decision making process as it is considered to be NPPF compliant.

4.10 The application site was assessed within the Council's Site Selection Paper published as evidence base to support the Publication Draft Local Plan in September 2014 (Further Sites Consultation (2014) and Site Selection Addendum (2014) City of York Council). The site is considered to be suitable, available and achievable in accordance with the requirements of NPPF. The application site is in a sustainable location within defined settlement limits and with good access to public transport and local services.

4.11 The methodology used to determine the suitability of sites for allocation in the emerging draft Local Plan was set out in the Site Selection Paper (2013) and subsequent addendums (Further Sites Consultation (2014) and Site Selection Addendum (2014) City of York Council). These set out a 4-stage criteria methodology to sieve out sites which did not accord with the criteria. The chosen criteria are based upon the spatial principles for York as set out in the Spatial Strategy in the draft Local Plan. The assessment criteria included:

#### Criteria 1: Environmental Assets

Historic Character and setting (The Approach to Green Belt Appraisal, City of York Council, 2003 and Historic Character and Setting Technical Papers 2011 and 2013), Regional green corridors (The Local Plan Evidence Base Study: Open Space and Green Infrastructure, Amec (2014) Nature conservation sites (City of York Biodiversity Audit, City of York Council (2013), Ancient woodland (The Local Plan Evidence Base Study: Open Space and Green Infrastructure, Amec (2014) and High flood risk (flood zone 3b)) (City of York Council Strategic Flood Risk Assessment, Revision 2 (2013)

Criteria 2: Existing openspace;

Criteria 3: Greenfield sites in high flood risk (Flood zone 3a);

Criteria 4a: Access to services; and

Criteria 4b: Access to transport.

4.12 Criteria 4 used defined distances to determine access to the facilities and transport services. A minimum scoring threshold was used to sieve out sites with poor accessibility to ensure that there was sustainable access from these sites to aid the creation of a sustainable community. It was also acknowledged that sites over 100 hectares would be required to provide facilities sufficient to make a new sustainable community. In addition to the criteria assessment the sites were also subject to a Technical Officer Group made up of experts from around the Council who provided more site specific advice on the site. Where officers identified showstoppers for development, these sites were discounted from the list of suitable sites.

4.13 In terms of the application site at Connaught Court (Site 298/H47), it was included as a housing allocation subject to there being no built development within (a) with the strategic open space identified within the further sites consultation appendices document which includes areas of flood zone 3 and allows for a buffer to the regional green corridor of the Ouse (b) the open landscape corridor to the south of the site preserving views and biodiversity routes between Main Street and Fulford Ings. The planning application is in accordance with this draft allocation.

4.13 The National Planning Policy Framework defines "Previously Developed Land" within its Glossary as "Land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface structure". The definition lists exclusions to this definition, including "land in built-up areas such as private residential gardens, parks, recreation grounds and allotments". Officers consider the application site to be previously-developed land on the basis that Connaught Court is a residential institution (within class C2 of the Use Classes Order). Class C2 includes such uses as hospitals, nursing homes and residential schools. The applicant and Fulford Friends on the other hand consider that the application site should be treated as part of the residential garden of the care home and therefore excluded from the definition. Within the definition of previously developed land it is explicitly stated that it should not be assumed that the whole of the curtilage should be developed. The exclusion of private gardens from the definition of previously developed land was introduced in 2010 to prevent local authorities feeling forced to grant planning permission for unwanted development on garden land simply to reach the government's target for development on brownfield sites. The Framework requires local planning authorities to consider policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

4.14 Whatever the designation of the land, it is considered to be immaterial in this case and does not change officers' consideration of the site's suitability for housing development. The removal of residential gardens from the definition of previously developed land in the NPPF Glossary has not introduced a general presumption against the development of gardens. It has removed this as a positive factor in determining such applications. Local planning authorities are still expected to seek the efficient use of land, which focuses new residential development on sites in

sustainable locations. Any scheme still has to be judged against the impact on the character of an area, the impact on adjacent residents and any other material considerations. In this particular case, the change in the definition of previously developed land (which was introduced since the 2005 planning application) does not change officers' opinion that the principle of the use of the site for housing is acceptable.

4.15 All of the houses comprising the application have 5-6 bedrooms, which are larger than is typical for a housing development. In this case the development of a relatively-small number of large houses is preferable to a greater number of more varied houses because it would have less impact on the conservation areas, particularly the site's parkland setting.

## TREES AND THE PARKLAND SETTING

4.16 The National Planning Policy Framework states that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland unless the need for, and benefits of the development in that location clearly outweigh the loss (paragraph 118).

4.17 One of the key attributes of the care home's setting is the open swathe of parkland between Main Street and Fulford Ings. It helps to preserve the distinction between Fulford Village and the city suburbs. Unlike the 2005 planning application for Connaught Court, this part of the care home site would be left undeveloped. It does not form part of the current application.

4.18 The second key attribute of the parkland setting is the proliferation of mature trees of high amenity value. Most of these trees are at the eastern end of the Connaught Court site, near Main Street. This area is outside the application site. None of the trees in this part of the parkland setting would be affected by the application.

4.19 The application site does contain some attractive, mature trees, notably along the highway frontage facing St Oswalds Road. Whilst all of these frontage trees would abut plots 1, 2 and 3 of Area A they would all be retained. The application as first submitted had the three houses encroaching into the root protection area of these trees. Construction would have been likely to have caused them unacceptable damage. Furthermore, such close proximity of trees to houses frequently results in pressure on the local planning authority, from the occupiers of the houses, to agree to the trees' removal. Prior to the February 2014 committee meeting revised plans were submitted showing the houses 2.5m further from the trees. This is the minimum distance that would be acceptable without resulting in damage to the trees. Nevertheless the trees would still have to be properly protected during construction. Furthermore the position of the footpaths to plots 1 –

3 may need to be re-aligned slightly depending on site investigations in relation to locations of tree roots. This could be secured by planning condition.

4.20 The applicant initially included a temporary construction access road between two of the trees for use whilst the existing access road into the site was being widened and improved. The proposed construction route has since been amended to avoid having to pass between the trees. As now proposed it would enter the site through the front gate before following a new alignment parallel to the internal access road.

4.21 Eight trees and four sections of hedgerow would be removed mainly along the perimeter of the bowling green. None of the trees are classed as aged or veteran, as described in the National Planning Policy Framework. Six of the eight trees are category C, of 'minor value', The remaining two trees are category U, which are recommended for removal for arboricultural reasons. The loss of trees would be compensated for by landscaping, including replacement trees.

4.22 The layout as initially submitted included the loss of a further category C tree, a Pear, close to the private road through the site. The alteration to the layout has allowed the tree to be retained.

## IMPACT ON HERITAGE ASSETS

4.23 The whole of the site is within Fulford Village Conservation Area and abuts the curtilage of The Cottage, a grade II listed building. Immediately to the north of the application site (but entirely outside it) is Fulford Road Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, referred to earlier in this report, imposes a statutory duty on local planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Section 66 of the same Act requires that in determining planning applications for development which would affect a listed building or its setting the LPA shall 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.

4.24 The Courts have held that when a local planning authority finds that a proposed development would harm a heritage asset the authority must give considerable importance and weight to the desirability of avoiding such harm to give effect to its statutory duties under sections 66 and 72 of the Act. The finding of harm to a heritage asset gives rise to a strong presumption against planning permission being granted. The current application must be judged on this basis.

4.25 In the NPPF listed buildings and conservation areas are classed as 'designated heritage assets'. When considering the impact of proposed development on such assets local authorities should give great weight to the asset's conservation. Any harm or loss should require clear and convincing justification (paragraph 132).

4.26 The Fulford Village Conservation Area Appraisal states that '20th Century development within the park has still left significant large areas of open space, including some fine mature trees and a margin of parkland between Main Street and Fulford Ings which helps to preserve the distinction between Fulford Village and the city suburbs and the open space which encircles the settlement'. Any proposals for the eastern end of Connaught Court would be likely to have a significant impact on the character and appearance of the conservation area. However, the current application does not include this part of the conservation area, which lies to the east of the main care home buildings. Nor would the proposed houses be visible from Main Street. Furthermore, when viewed from Main Street the application would maintain the functional and visual gap between Fulford village and the city suburbs. The development would cause some harm to Fulford Village Conservation Area by allowing built development where there is currently very little, thereby affecting the openness of the overall site; however the landscape character of the boundaries would be preserved and the relative density of the new development would be low. The houses at Area A would inhibit views into the site from St Oswalds Road but generous spaces between the buildings would allow some views through and the line of mature trees forming the historic boundary would be preserved. Although the houses at Area B would be partially visible from Fulford Ings they would be seen against a backdrop of the main care home buildings, which are taller than the proposed houses and set at a higher level. The harm is assessed as minor but in these circumstances the council's statutory duty under s.72 gives rise to a strong presumption against planning permission being granted, and considerable importance and weight must be given to the harm, despite it being minor.

4.27 None of the application site lies within Fulford Road Conservation Area (the boundary runs along the centre line of St Oswald's Road) but plots 1, 2 and 3 would abut St Oswald's Road. The conservation area appraisal describes St Oswald's Road as a spacious and quiet residential cul-de-sac with a very strong sense of identity, quite different in character to anything else in the area. It goes on to say that the street has considerable townscape and architectural interest and that most of the houses bordering the site are of positive value to the area. The three proposed houses along the St Oswalds Road highway frontage would cause some harm to the setting of the conservation area by increasing the amount of development along the south side of St Oswalds Road and reducing the openness, at this point, between the two conservation areas. However, the houses would be set well back from the highway boundary and the line of mature trees along the boundary would be retained as would the existing boundary railings incorporating gates to match. All three houses would have a traditional design - two storeys high



with brick walls, pitched roofs, traditional detailing and front gardens. The impact on the setting of the Conservation Area is therefore assessed as minor.

4.28 Area A abuts the curtilage of The Cottage, a grade II listed building. The building lies adjacent to St Oswald's Road. Since submission of the application the house at plot 3 has been moved 2m further away from the curtilage of the listed cottage (from 3.5m to 5.5m). The house at plot 3 would be set back behind the frontage of the listed building by approximately 11m which, together with the increased separation distance, and the intervening 2m-high boundary wall, the proposed position would be sufficient to prevent any significant impact on the setting of the listed building. Any harm to the setting of the listed building is assessed as minor but the statutory duty under s.66 gives rise to a strong presumption against planning permission being granted. Any harm must be given considerable importance and weight in the planning balance, even where it is minor.

4.29 Whilst harm to heritage assets is assessed as being minor, such harm has been afforded considerable importance and weight in the overall planning balance.

## RECREATION AND OPEN SPACE

4.30 Paragraph 73 of the NPPF states that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreational facilities in the local area. Information gained from the assessments should be used to determine what open space, sports and recreational provision is required. Planning Practice Guidance states that open space should be taken into account in planning for new development and considering proposals that may affect existing open space.

4.31 The requirement for open space in new development has been a long standing policy objective for the City of York, included in the Draft Local Plan Incorporating the 4<sup>th</sup> Set of Changes (Development Control Local Plan) 2005 (policy L1c) and the City of York Local Plan - Publication Draft 2014 (policy G16).

4.32 Policy L1c (Provision of New Open Space In Development) requires that all housing sites make provision for the open space needs of future occupiers. For sites of 10 or more dwellings, an assessment of existing open space provision accessible to the proposed development site including its capacity to absorb additional usage will be undertaken. This is to ascertain the type of open space required and whether on-site or a commuted sum payment for offsite provision is more appropriate based on individual site circumstances.

4.33 Policy GI6 (New Open Space Provision) states that all residential development proposals should contribute to the provision of open space for recreation and amenity. The precise type of on-site provision required will depend on the size and location of the proposal and the existing open space provision in the area. The draft policy encourages on-site provision where possible but off site provision is considered to be acceptable if the proposed development site would be of insufficient size in itself to make the appropriate provision (in accordance with the Council's standards) feasible within the site.

4.34 The open space standards for new development are found in the evidence base study which sits behind the emerging Local Plan (Local Plan Evidence Base: Open Space and Green Infrastructure (Final Report September 2014)). The Study revisits the PPG17 compliant study which was undertaken in 2008, which analysed open space resources across the city. The study found that the former Fulford Ward (prior to the recent boundary changes) has reasonable provision across the majority of open space categories considered in the analysis with facilities in adjacent wards compensating for deficiencies. The Study also considers the 2015 changes to the ward boundaries and the situation remains the same. Regulation 122 of the Community Infrastructure Levy Regulations 2010 requires planning obligations to be necessary to make the development acceptable in planning terms. Given the conclusions in the Evidence Base, contributions to off-site facilities may be contrary to the legal test contained in Regulation 122 if it is concluded that open space is not necessary to make this development of 14 dwellings acceptable in the particular circumstances of this case.

4.35 The submitted drawings show no on site public open space within the development to cater for the needs of the new residents. The three types of public open space provision required by the draft local plans are: outdoor sports facilities, amenity open space and children's play space. Officer's view is that there is insufficient space to provide feasible outdoor sports facilities on site. Using recommendations from the emerging Local Plan Evidence Base the number of houses proposed would generate an amenity and play space area of 460sq.m. However, the constraints of this particular site requires a split of the application site into two separate parcels and provision of a small area of open space land without links to other open space areas would be of limited amenity value preventing open space being provided in a sensible or feasible way on site. Having regard to this, together with the evidence that alternative facilities already exist generally within the walking or public transport catchment, officers consider that the absence of on site open space provision does not give rise to a level of harm that would justify the refusal of the application. For these reasons, Officers consider that it is not necessary to require a commuted sum payment in lieu of on-site open space provision in this case.

4.36 The application proposes the loss of the bowling green facility at the site.. The bowling green itself has already been removed. Paragraph 74 of the National Planning Policy Framework allows existing open space to be built on where the land is surplus to requirements or would be replaced by equivalent or better provision or the development is for alternative sports and recreational provision that clearly outweighs the loss. The Connaught Court bowling green was constructed in the 1970s and was in regular use by care home members. More recently it was used by Connaught Court Bowling Club, which had a wider membership. The green was never open to the public. For the past few years membership has been in decline so the green was opened to other clubs. Usage continued to decline so the green was closed at the end of 2012. By that time the green was in very poor condition. The demand for bowling is in general decline and there is now an oversupply of bowling greens in the York area. However, there is not a surplus of open space per se. Accordingly the development of the Connaught Court green would be contrary to paragraph 74 of the National Planning Policy Framework unless it were to be replaced by equivalent or better provision of open space elsewhere.

4.37 Despite the general decline in the demand for bowling there is still a need for high quality facilities for the City's remaining bowling clubs. It is considered that the best way of catering for this need is to improve existing bowling facilities at strategic locations throughout the city. The applicant has agreed to a contribution of £19,381 to off-set the loss of open space at Connaught Court which will be used to improve the existing bowling green at Scarcroft Green. This contribution is considered to be:

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

and therefore complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010. This contribution would also comply with Regulation 123 as there have not been 5 or more separate obligations which provide funding or provision of that project or type of infrastructure since 2010.

## HIGHWAYS ISSUES

4.38 Access to the site would be via the existing access from St Oswalds Road. The care home's internal access road would be improved and widened as part of the proposals. Based upon experience of other sites around the city the level of development proposed can be expected to generate in the region of nine vehicle movements during the AM/PM peak network periods. This level of traffic would not have a material impact on the operation of the highway network and could be accommodated by adjacent junctions without detriment to the free flow of traffic or highway safety. The internal layout proposed is capable of being adopted as publicly maintainable highway and would provide turning facilities for servicing traffic. Car parking would be provided within the curtilage of each dwelling and it is not anticipated that the development would lead to a displacement of parking onto

the adjacent highway. Sufficient areas exist within the internal layout to accommodate visitors/casual callers. Whilst the provision of pedestrian gates to the front of the three proposed houses fronting St Oswalds Road may make street parking more attractive to future residents or their visitors it is not considered that the potential impact on the wider availability of on-street car parking would be significant. There is no new footway shown to be provided along the existing verge, whilst the three access paths are shown to extend on to the verge this area is outside of the application site and within the adopted highway.

4.39 The accessible location of the site would encourage the use of sustainable modes of transport. Fulford Road is serviced by regular bus services to the city centre, and the area is well served by cycle routes along Fulford Road and both sides of the river.

## FLOOD RISK AND DRAINAGE

4.40 The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk but, where development is necessary, making it safe without increasing flood risk elsewhere (paragraph 100). Local plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property and manage any residual risk by, among other things, applying the sequential test (paragraph 100). The aim of the sequential test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. A sequential approach should be used in areas known to be at risk from any form of flooding (paragraph 101). When determining planning applications local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment (FRA), and following the sequential test, it can be demonstrated that within the site the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location and development is appropriately flood resilient and resistant (paragraph 103). This is the planning policy context within which the application should be judged.

4.41 In the Framework and its associated Technical Guidance sites in flood zone 2 and 3 are classed as 'areas at risk of flooding'. Zone 2 has a 'medium probability' of flooding; Zone 3(a) has a 'high probability' while zone 3(b) is functional flood plain. Within zone 2 appropriate uses include buildings used as dwellinghouses, subject to the application of the sequential test. Development should not be permitted in zones 2 or 3 if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Of the 14 houses proposed 11 are in flood zone 1 and parts of the remaining three are in zone 2. There would be no houses in zone 3.

4.42 Environment Agency guidance advises that the geographic area of search over which the sequential test is to be applied will usually be the whole of the local planning authority area. The Environment Agency checklist to provide a framework for transparent demonstration of the application of the sequential test to planning applications is included within the CYC Strategic Flood Risk Assessment as Table 5.3. The checklist asks a sequence of questions regarding the site's allocation within planning policy documents and if unallocated within a planning policy document whether that document contains reasonably alternative site allocations that are situated in a lower flood risk zones, or reasonably available, alternative site allocations that are within the same Flood Zone and subject to a lower probability of flooding from all sources as detailed in the SFRA. Whilst the emerging local plan identified housing allocation sites, including Connaught Court, the Publication Draft of the plan was halted in late 2014 for further work regarding housing land and housing land supply. Limited weight can therefore be given to the emerging local plan in terms of its identified sites. However the evidence base used to identify and rank sites has more weight in the decision making process as it is considered to be NPPF compliant. Approximately 800 parcels of land were considered through the Site Selection process following the Call for Sites undertaken in 2012. These sites have all been assessed through the Site Selection Methodology and those that are considered suitable, available and deliverable, as required by NPPF, were included as draft allocations within the emerging Local Plan.

4.43 In line with the spatial strategy of the Local Plan, areas of high flood risk (flood zone 3b and Greenfield land within zone 3a) were excluded from consideration or the developable area reduced to exclude this area of land as part of the site selection criteria. Technical officer comments have also been gathered for all sites through the process including comments relating to flood risk and drainage.

4.44 The position in relation to the 5 year housing land supply as at 1 April 2015 (our most recent available figure) is such that it is not possible to say that there is an insufficient supply of housing land with a lower risk of flooding (i.e. zone 1) than this site that also meets the other tests (i.e. suitable, available and deliverable) when assessed against the Site Selection methodology. The site does not therefore pass the sequential test which is a material consideration in the planning balance.

4.45 The application is supported by a Flood Risk Assessment (February 2016). A retaining wall would be built along the general alignment of zone 3a and would separate the occupiers' main amenity area from their lower garden land in zone 3. The alignment of the proposed retaining wall, which would be straight for most of its length, does not follow exactly the zone 3 alignment. Nevertheless the variations (between the wall alignment and the zone 3 boundary) would balance and have been agreed with the Environment Agency and the council's flood risk engineers.

4.46 The FRA proposes that a planning condition be attached to the planning consent preventing the construction of any structures beyond this line (i.e. in zones 3a or 3b) other than the proposed post and rail boundary fencing. This would be a reasonable condition. Further conditions of approval should be attached to control finished floor levels of all the houses in Area B and to require fencing details to be submitted for approval.

4.47 Surface water run-off would be to the river Ouse via existing connections. Infiltration SUDS such as soakaways will not be viable on the site due to the presence of permeable clay and shallow ground water. The discharge rate would be attenuated to the Greenfield rate of 5l/s as agreed with the Environment Agency and the internal drainage board. The proposals reduce the surface water run-off by 30 percent (in accordance with the council's Strategic Flood Risk Assessment) and provide further betterment by storing more water underground than required and applying further restrictions to its discharge. Levels across the site would be laid out to allow any flood water to flow away from buildings. The minimum level for roads, paths and escape routes would be at, or above current site levels. In summary, the whole of Area A and the houses at Area B are not at significant risk of flooding. There remains a risk of flooding to the undeveloped, lower-lying garden areas of Area B but this residual risk would be managed by the mitigation measures outlined above. Bearing in mind that there are insufficient suitable and reasonably available sites in the city at a lower risk of flooding and that the proposal includes appropriate flood mitigation measures officers consider that the development satisfies the sequential test and is acceptable in terms of flood risk.

4.48 Officers accept that the part of the site that is in zone 2 could be avoided by locating all 14 houses entirely within zone 1. However such a scheme is not before the council. Moreover, such a scheme would be likely to result in a more cramped form of development that would be out of keeping with the character of the conservation area and provide a lower level of amenity for the occupiers. An alternative would be to avoid zone 2 by building fewer houses. Again, such a scheme is not before the council. It would also provide York with fewer much-needed houses. Furthermore neither of these options are necessary bearing in mind that the current scheme includes appropriate flood mitigation measures and is acceptable in terms of flood risk.

4.49 The Environment Agency (EA) was consulted at the pre-application stage and the layout modified to reflect discussions between the EA, applicant and local planning authority. The housing layout reflected those discussions. The EA was consulted on the application as initially submitted and had no objection to the application. Since the planning permission was quashed the applicant has submitted a revised FRA. The EA have been re-consulted and have no objections to the application.

4.50 Fulford Friends argue that the application should not be determined without the council first having received a response from Yorkshire Water because the drainage of the site is partly within the functional floodplain. In response, the surface water from this site will not drain into the public sewer and as such Yorkshire Water has no role in the surface water drainage of the site.

## NEIGHBOUR AMENITY

4.51 The development of Area A is unlikely to have any significant impact on neighbouring occupiers. Whilst there may be some impact on afternoon sunlight to the rear of The Cottage this is likely to be limited given the positioning of its outbuilding along its western boundary. The houses in Area B would lie behind and to the south of houses in Atcherley Close, i.e. nos 11 and 26. Whilst the proposed houses would have two main storeys, additional floorspace would be provided in the roof space, lit by rooflights. In response to concern about overbearing impact raised by residents the house at plot 9 has been moved 6m from the site boundary. The separation distance between the gable wall of the proposed house at plot 9 and the main elevation of the nearest existing house (No.26 Atcherley Close) is now 20.7m. An extension has been added to the rear of no.26 however the impact on this would not be significant. As there are no permitted development rights to extend beyond the side wall of a house in a conservation area a condition is not necessary.

4.52 Plot no.8 within area B is to the south of no.11 Atcherley Close. Plot 8 would have a rear garden of about 15m in length. Separation distances meet and exceed all normal requirements in relation to distances between the proposed house and the original rear elevation of no.11. It is noted that no.11 has been extended to the rear at ground floor level, however it is considered that limited weight can be given to the impact on the extended part of the dwelling which has been built closer to the rear boundary. As there no permitted development rights to extend beyond the rear wall of a dwelling in a conservation area at more than single storey level a condition is not necessary.

4.53 It is not considered reasonable to restrict garden buildings and structures (other than in the flood zone 3 as detailed above) as permitted development rights contain restrictions regarding heights of structures and proximity to boundaries.

## EDUCATION PROVISION

4.54 The development would generate the need for four additional places at St Oswald's Junior School and two additional places at Fulford Secondary School. These schools are currently at capacity. Financial contributions totalling £84,053 would therefore be required under policy ED4 of the 2005 local plan This contribution is considered to be:

- (a ) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development,

and therefore complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010. This contribution would also comply with Regulation 123 as there have not been 5 or more separate obligations which provide funding or provision of that project or type of infrastructure since 2010.

## BIO-DIVERSITY

4.55 The NPPF states that when determining planning applications local planning authorities should aim to conserve and enhance biodiversity. Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats unless the need for, and benefits of, the development in that location clearly outweigh the loss.

4.56 Fulford Ings Site of Special Scientific Interest (SSSI) is approximately 55m to the south-west of the site at its closest point. Assessed using Natural England's Risk Impact Zones, the development is unlikely to have any significant impact on Fulford Ings SSSI. There are no comparable habitats within the development site, the loss of which could have an indirect impact on the SSSI. However best working practices for construction should be followed e.g. waste water, dust control etc.

4.57 The main habitats on the application site to be affected by the development are amenity grassland with standard trees, species-poor hedgerow, areas of tall ruderal. The two buildings on the site were demolished in November 2014. None of the trees identified with potential for bats are scheduled for removal as part of the proposals. Fulford Ings and the adjoining habitats along the River Ouse provide excellent foraging habitat for bats and therefore the loss of the habitats on site will not significantly impact on bats within the wider area. The grassland, hedgerows and ruderal are of low conservation significance.

## ARCHAEOLOGY

4.58 The application site lies in an area of archaeological interest. The quashed approval was subject to conditions requiring a written scheme of investigation (WSI) for an archaeological excavation and a WSI for an archaeological watching brief. The applicant submitted a WSI which set out the details of an archaeological excavation of the area of the site adjacent to St Oswald's Road and an archaeological watching brief on the development of the remainder of the site. Work on the excavation area adjacent to St Oswald's Road commenced in October 2014 and finished in November 2014. Not all of this area was excavated at this time and further excavation will be required to fulfil the requirements of the WSI. As no development has taken place on the rest of the site, the watching brief element of the WSI has not been implemented. As the archaeological work has not been completed, no report on the archaeological work has been submitted. Planning conditions are recommended which requires the completion of the works set out in



the WSI.

## AFFORDABLE HOUSING

4.59 The National Planning Policy Framework states that local planning authorities should set policies for meeting identified need for affordable housing on site. To that end the Council seeks to ensure that new housing development of 15 dwellings or more in the urban area will include affordable housing. The current application is for 14 dwellings, thereby not triggering the need for affordable housing. Whilst the site is large enough to accommodate a greater number of dwellings a balance has to be struck between the provision of housing and protection of the Conservation Area, particularly its landscape setting. Officers consider that the application achieves this balance.

## ENVIRONMENTAL IMPACT ASSESSMENT

4.60 The local planning authority has carried out a screening opinion and taken into account the EIA regulations, the advice in National Planning Practice Guidance (March 2014), the documentation submitted with the application, consultation responses, the scale and characteristics of the development and knowledge of the site. The authority concludes that the development is unlikely to have significant environmental effects. Accordingly the proposal is not EIA development and an Environmental Statement is not required.

## COMMUNITY INVOLVEMENT

4.61 The application includes a statement of community involvement. It sets out how, following the appeal inspector's decision in 2008, the applicant set out its revised intentions for the site. Pre-application discussions were held with council officers followed by a range of public consultation exercises. The public response was lower than the applicant expected and some changes were made.

## 5.0 CONCLUSION

5.1 The application would provide 14 dwellings in a highly sustainable and accessible location. There would be some minor harm to designated heritage assets, i.e. Fulford Village Conservation Area, the setting of Fulford Road Conservation Area and the setting of the Grade II listed building (The Cottage). Having attached considerable importance and weight to the desirability of avoiding such harm the local planning authority has concluded that it is outweighed by the application's public benefits of providing housing in a sustainable location within defined settlement limits and with good access to public and sustainable transport links and local services. This is in line with the aim of the NPPF to boost, significantly, the supply of housing and to deliver a wide choice of high quality homes. In terms of flood risk the site fails the sequential test as there appears to be reasonably available sites for the proposed development in areas with a lower

probability of flooding. However following consultation with the Environment Agency the development would be appropriately flood resilient and resistant, limited parts of three of the proposed houses would be in flood zone 2 (areas of medium risk of probability of river flooding) with the remainder within flood zone 1. Whilst paragraph 100 of the NPPF states that development should not be permitted in such cases, it is considered that on balance the development provides wider benefits with the provision of new housing and that the submitted flood risk assessment has demonstrated that the site can be safely developed without increasing the risk of flooding elsewhere. All other issues are satisfactorily addressed. The developer would contribute £84,052 to fund additional school places arising from the development and £19,381 towards improvements to bowling green facilities at Scarcroft Green. These contributions are considered to be:

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

and therefore comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. These contributions can be secured through a s.106 Obligation. A Planning Obligation would also be in accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010 as there have not already been 5 or more separate obligations which provide funding or provision of that project or type of infrastructure.

The application accords with national planning policy set out in the National Planning Policy Framework. The proposal accords with the draft policies in the 2005 Development Control Local Plan and emerging policies in the Draft York Local Plan (2014 Publication Draft) where those policies are considered to have material weight in the decision process.

**6.0 RECOMMENDATION:** Approve subject to Section 106 Agreement and the following conditions

- 1 TIME2 Development start within three years
  
- 2 The development hereby permitted shall be carried out only in accordance with the following plans: Y81.822.02B, Y81.822.03Q, Y81.822.05F, Y81.822.10C, Y81.822.11C, Y81.822.12C, Y81.822.13C, Y81.822.14C, Y81.822.15C, Y81.822.16D, Y81.822.17D, Y81.822.18C, Y81.822.19C, Y81.822.20B, Y81.822.21B, Y81.822.22B, Y81.822.23B, Y81.822.24C, Y81.822.25C, Y81.822.26, Y81.822.27A, Y81.822.28, Y81.822.29, R/1496/1C, 34511/003F and 34511/004C.

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

3 Before the commencement of the construction of the houses in Area A details of the following matters shall be submitted to the local planning authority and approved in writing. The development shall be carried out in accordance with the approved details.

i/ Works to the highway verge along St Oswalds Road

ii/ Footpaths between the houses at plots 1, 2 and 3 and the public highway at St Oswalds Road

Reason: In the interests of the character and appearance of the conservation area, protected trees and mitigation of flood risk.

4 HWAY1 - Details roads,footpaths,open spaces req.

5 HWAY7 - Const of Roads & Footways prior to occup

6 No dwelling shall be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles and cycles have been constructed and laid out in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.

Reason: In the interests of highway safety.

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

- the routing that will be promoted by the contractors to use main arterial routes and avoid the peak network hours
- where contractors will park
- where materials will be stored within the site
- measures employed to ensure no mud/detritus is dragged out over the adjacent highway.

Reason: To ensure that the development can be carried out in a manner that will not be detrimental to the amenity of local residents, free flow of traffic or safety of highway users. The details are required prior to commencement in order to ensure that they are in force during the whole of the construction phase of the development.

8 The tree planting scheme shown on submitted plan numbered R/1496/1C shall be implemented within a period of six months from the completion of the development. Any plants which within a period of five years from the substantial completion of the planting and development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a

similar size and species, unless the Local Planning Authority agrees alternatives in writing.

Reason: In the interests of the character and appearance of the conservation area and to enhance the biodiversity of the area.

9 Development shall not begin until details of foul and surface water drainage works have been submitted to and approved in writing by the Local Planning Authority, and carried out in accordance with these approved details, which shall include:

- A. Peak surface water run-off from the proposed development to a maximum 5.0 lit/sec.
- B. Details of the future management and maintenance of the proposed drainage scheme.

The drainage details submitted and approved under this condition the drainage works shall be carried out in accordance with the following plans:

- a. Flood Risk Assessment - PR/34511 005G
- b. Drainage Layout - 34511 003F
- c. Plot Drainage Layout - 34511 012B
- d. Catchment Area Plan - 34511 013A
- e. Flow Control Detail-Manhole S5 Sheet 1 of 2 - 34511 015A
- f. Flow Control Detail-Manhole S5 Sheet 2 of 2 - 34511 016A
- g. External Works Plan - Area B Sheet 2 of 2 - 34511 19B
- h. External Works Plan - Area A Sheet 1 of 2 - 34511 14B
- i. Compensatory flood storage as shown on drawing no. 34511/004 Rev.C

There shall be no raising of land levels unless shown on the approved drawings.

Reason: So that the Local Planning Authority may be satisfied with the details for the proper drainage of the site. The details are required prior to commencement in order to ensure that groundworks and/or other operations early in the construction process do not prejudice the proper drainage of the site.

10 The finished floor levels on the ground floor of the dwellings hereby approved shall be built in accordance with the levels shown on drawing number 34511/004 Rev.C dated 25/05/13.

Reason: In the interests of the amenities of neighbouring occupiers and the character and appearance of the conservation areas and to reduce the risk and impact of flooding to the proposed development and future occupants.

11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any order revoking and re-enacting that Order with or without modification, no structure, enclosure or building shall be erected nor shall there be any changes to land levels within Flood Zone 3 (as shown on drawing no. 34511/004 Rev C) except for the 1.2m-high post and rail fencing to plots 9, 10, 11, 12, 13 and 14 shown on approved plan Y81:822.03 Rev.Q and detailed on drawing no. Y81.822.27 Rev A.

Reason: To ensure that there is no loss of flood storage and that no obstructions to flow are erected.

12 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order), no door, window or other opening shall at any time be inserted in the eastern elevation of the house at plot 3, the northern elevation of the house at plot 4 or the northern elevation of the house at plot 9 without the prior written planning permission of the local planning authority.

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

13 In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared, which will be subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

14 Prior to commencement of development: (a) gas monitoring and/or a risk assessment shall be carried out by a competent person to assess landfill gas generation and migration. The findings shall be submitted to and approved in writing by the local planning authority; (b) based on the results of the gas monitoring and/or risk assessment, the detailed design of a gas protection system shall be submitted to and approved by the local planning authority. Prior to occupation of the development, a verification report that demonstrates the effectiveness of the gas protection system shall be submitted to and approved in writing by the local planning authority.

Reason: To ensure that risks from landfill gas to the future users of the land and neighbouring land are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors. The details are required prior to commencement in order to ensure that they are in force during the whole of the construction phase of the development.

15 For each dwelling the applicant shall install a three pin 13 amp electrical socket in the garage which is in a suitable location to enable the charging of an electric vehicle using a 3m length cable.

Reason: To promote sustainable transport through the provision of recharging facilities for electric vehicles / bikes / scooters

NOTE: Any socket provided must comply with BS1363 or an equivalent standard, Building Regulations, be suitable for charging electric vehicles and should have a weatherproof cover if place outside. Where charging point is located outside an internal switch should be provided in the property to enable the socket to be turned off.

16 NOISE7 - Restricted hours of construction

17 An archaeological investigation shall be completed as detailed in the written scheme of investigation, CONNAUGHT COURT, FULFORD, YORK, WRITTEN SCHEME OF INVESTIGATION, JUNE 2014 prepared by MGA and a report on the fieldwork as set out in the WSI shall be submitted to the Local Planning Authority for inclusion in the Historic Environment Record no later than one month after the first occupation of a completed dwelling on this site.

Reason: The site is of archaeological interest and the development will affect important archaeological deposits which must be recorded prior to destruction. The details are required prior to commencement in order to ensure that no archaeological deposits are destroyed prior to them being recording.

18 The works hereby approved shall be carried out in accordance with the tree protection measures within the Tree Survey report by CAPITA dated 20 September 2013 (including the construction access alignment shown on plan ref: yfd1404 dated 9 April 2014 and the CAPITA Arboricultural Method Statement revised 28 March 2014 submitted with the application. A copy of each of these documents will at all times be available for inspection on site.

Reason: To protect existing trees which are covered by a Tree Preservation Order and to protect the character and appearance of the Fulford and Fulford Road conservation areas and to enhance the biodiversity of the area.

19 Prior to the commencement of the construction of any building details of measures to be provided within the design of the new buildings to accommodate bats and provide nesting sites for birds shall be submitted and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with these approved details. Features suitable for incorporation for this group include the use of special tiles, bricks, soffit boards, bat boxes, bird boxes etc.

Reason: To take account of and enhance the biodiversity and wildlife interest of the area.

20 Full details of the proposed external lighting to the site shall be submitted to, and approved in writing by the Local Planning Authority to show how the scheme will minimise light spillage including;

- i) External lighting requirements to be carefully designed to avoid light spillage affecting surrounding habitat.
- ii) Security lighting to be on a short timer and motion sensitive to large objects only.

Reason: To take account of and to enhance the habitat for a protected species.

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