

## COMMITTEE REPORT

**Date:** 3 November 2016      **Ward:** Clifton  
**Team:** Major and      **Parish:** Clifton Planning Panel  
Commercial Team

**Reference:** 15/00405/FUL  
**Application at:** 12 Water End York YO30 6LP  
**For:** Erection of 1no. dwelling  
**By:** Z Collinson  
**Application Type:** Full Application  
**Target Date:** 18 July 2016  
**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 Erection of a detached 2-bedroom single-storey dwelling 18m x 6m x 3.2m high to the roof plane. The building would have a contemporary style with a flat roof and three rooflights, one of which would project 0.8m above the roof plane. One off-street parking space would be provided for the new dwelling plus one replacement space for the host dwelling. A new access would be provided from a shared private road serving the host house and the adjacent John Burrill Almshouses. A dilapidated single garage on the site would be demolished to make way for the new dwelling.

1.2 When submitted the application was for a 2-storey dwelling with basement. It was unacceptable mainly due to impact on the Clifton Conservation Area and the amenity of local residents. The application has since been amended by reducing the height of the building from two storeys to one, lengthening the footprint on the ground floor, increasing the size of the basement and reducing the size of the new dwelling's curtilage.

1.3 The application was called in for determination by the Sub-Committee by (former) Councillor King due to the degree of local interest and feeling.

### 2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest: City Centre Area

Conservation Area: Clifton

Listed Buildings: Grade 2; 12 Water End York YO3 6LP

## 2.2 Policies:

CYGP1 - Design  
CYGP4A - Sustainability  
CYGP10 - Subdivision of gardens and infill devt  
CGP15A - Development and Flood Risk  
CYH4A - Housing Windfalls  
CYHE2 - Development in historic locations  
CYHE4 - Listed Buildings  
CYNE6 - Species protected by law  
CYNE7 - Habitat protection and creation

## 3.0 CONSULTATIONS

### INTERNAL

#### Planning and Environmental Management (Conservation Architect)

3.1 The revised scheme will largely be hidden within the conservation area and views between significant parts of the conservation area would be preserved, as would the setting of the nearby listed almshouses. In forming the new access into the site the boundary hedge should be protected and the opening made as narrow as possible.

#### Planning and Environmental Management (Landscape Architect)

3.2 Given the low design of the building it will recede in views from Water End. The boundary to the site should remain vegetated to retain the character of the lane. If the applicant wishes to change the boundary treatment we should condition boundary details. There are no trees that are worthy of protection by way of a tree preservation order.

#### Planning and Environmental Management (City Archaeologist)

3.3 The site is in an Area of Archaeological Importance. The proposed development will have an impact on any archaeological features and deposits. Add conditions ARCH1 (archaeological excavation) and ARCH2 (Archaeological watching brief) to ensure that important below-ground archaeology is recorded.

#### Planning and Environmental Management (Ecologist)

3.4 The submitted bat survey found no evidence of bats using the garage. No objection subject to a condition requiring the development to include a sensitive lighting scheme.

## Highway Network Management

3.5 No objections to the revised plans. Add conditions requiring details of car parking and cycle storage. The existing property is located in a residents parking zone but the proposed building would fall outside it. Therefore there would be no impact on the existing residents parking zone.

## Public Protection

3.6 No objection. Add electric vehicle recharging condition.

## Flood Risk Management

3.7 The proposed development is in medium Flood Zone 2. No objection to the proposed surface water attenuation measures.

## EXTERNAL

### Clifton Ward Planning Panel

3.8 Neither approves nor disapproves. Any approval must include safeguards to avoid the overlooking. Although the site lies within the Clifton Conservation Area, other building development in the immediate area and also located behind the houses facing the Green has been approved in recent years. The site of the proposed house is well away from the main property and from Clifton Green. Arrangements for refuse collection require technical consideration by the City Council. The proposals for felling and replacing trees should be agreed with the Council's professional staff.

## Public Consultation

3.9 Objections from four parties were received in response to the initial consultation for a 2-storey dwelling. A further four objections were received from the same parties to the re-consultation on the amended scheme for a single-storey dwelling. The objections raise the following planning issues:

- Impact on the conservation area and listed terrace
- Impact on landscape and wildlife
- Light pollution
- Would exacerbate parking problems
- Overlooking
- Overshadowing
- Overbearing impact on adjacent properties

- Bat survey outdated
- Vehicle access inadequate
- Highway safety.

## **4.0 APPRAISAL**

### **4.1 KEY ISSUES**

- Principle of development for housing
- Impact on heritage assets
- Landscape
- Design
- Neighbour amenity
- Highway matters
- Flood risk and drainage
- Ecology

### **THE APPLICATION SITE**

4.2 Part of the long, mature rear garden of an end-of-terrace house. The houses in the terrace are all listed and in Clifton Conservation Area. Along one side of the house and garden is a private vehicular access from Water End. It mainly serves the adjacent John Burrill almshouses but also serves a dilapidated garage within the application site and used by the occupiers of the host house. To the north of the application site the vehicular access becomes a green lane, which is part of an early public footpath and continues onto Shipton Road. The area is predominantly residential. The site lies within flood zone 2 and is in an area of archaeological importance.

### **PLANNING POLICY CONTEXT**

4.3 Section 38(6) 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 in the Green belt).

4.4 In the absence of a formally adopted local plan the most up-to date representation of key relevant policy is the National Planning Policy Framework (NPPF). Paragraph 7 says planning should contribute to the achievement of sustainable development by balancing its economic, social and environmental roles. The general presumption in favour of development does not apply in this case as the application affects designated heritage assets and is in a location at risk of flooding.

4.5 In addition to policies in the Framework to protect heritage assets Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a general 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 states that in determining planning applications for development which affects a listed building or its setting the local planning authority 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. The council's statutory duty under s.66 and s.72 requires considerable importance and weight must be given to any harm, even where that harm would be minor.

4.6 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(6) 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. The most relevant Draft (2005) policies are listed at paragraph 2.2 of this report.

## PRINCIPLE OF DEVELOPMENT FOR HOUSING

4.7 The NPPF states that local planning authorities should deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities (paragraphs 50-55). The proposal would provide much-needed housing in a sustainable location with good access to shops, services and public transport.

## IMPACT ON HERITAGE ASSETS

4.8 The NPPF states that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance (paragraph 126). When considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation. Any harm or loss should require clear and convincing justification (paragraph 132). Policy HE2 of the local plan states that within conservation areas and in locations that affect the setting of listed buildings development proposals must respect adjacent buildings open spaces, landmarks, and settings and have regard to local scale, proportion, design and materials. Proposals will be required to maintain or enhance existing urban spaces, views, landscapes and other townscape elements that contribute to the character or appearance of the area. Paragraph 4.7 of the draft plan states that high quality contemporary designs which respect the historic context will be encouraged. Policy HE4 states that consent for development will only be granted if it would not have an adverse effect on a listed building.

4.9 The house would be located in an area characterised by openness and mature landscape gardens. The openness is preserved by the large and long garden plots to the rear of houses fronting the main roads, i.e. Water End and Shipton Road. Green boundaries and a high degree of tree cover enhance the landscape quality of the area. The 2-storey house initially proposed would have appeared as a prominent, modern building out of keeping with the listed terrace and the open character of the conservation area. The application would have caused unacceptable harm to these heritage assets. The dwelling now proposed would be much smaller and less prominent and be over 22m from the rear elevation of the listed building, separated by a retained mature garden landscape. The two buildings would not be seen together from most public vantage points. The setting of the listed building and the character and appearance of the conservation area would be preserved.

## LANDSCAPE

4.10 Despite the mature landscaped character of the area the site has no trees that are worthy of protection by way of a tree preservation order. The most prominent of the trees proposed for removal is a large conifer. Its retention is desirable but as an individual tree it is not worthy of protection. The western boundary of the site abuts the private access lane/public footpath. Planting along the boundary is not of particular merit but it is visible from the lane and adds to the attractive character of the landscape. The western boundary would remain as existing - apart from the creation of a vehicular access into the site. A condition is recommended requiring submission of a landscape scheme (including replacement trees) and changes to the boundary treatment to ensure that the character of the landscape is largely retained.

## DESIGN

4.11 The NPPF states that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people (paragraph 56). Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions (paragraph 64). Policy GP1 'Design' of the 2005 local plan includes the expectation that development proposals will, among other things: respect or enhance the local environment; use materials appropriate to the area; avoid the loss of open spaces or other features that contribute to the landscape and incorporate appropriate landscaping. Policy GP10 'Subdivision of Gardens and Infill Development' states that planning permission will only be granted for the sub-division of garden areas or infilling to provide new development where this would not be detrimental to the character and amenity of the local environment.

4.12 The house would have a contemporary style, with a flat roof and large areas of glazing. The walls would be rendered. Whilst the buildings to the south (John Burrill Homes and the terraced houses at 2-12 Water Lane) are listed the proposed dwelling would read as an entirely separate building. The low height, flat roof and landscaped setting would minimise the building's visibility. The scale and appearance of the building are acceptable.

## NEIGHBOUR AMENITY

4.13 The NPPF seeks to improve the conditions in which people live (paragraph 9). Policy GP1 of the 2005 local plan states that development proposals will be expected to ensure that residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures.

4.14 The nearest residential dwellings are the John Burrill almshouses. They are only single-storey high and are separated from the site by the almhouse's 2m-high boundary wall, the shared private lane, the boundary fence to the application site and mature planting. The development would have no material impact on the occupiers. The proposed bungalow would be 43m from the host house at No.12 Water End. This separation distance is well in excess of established minimum standards and would prevent any material impact on the occupiers of either dwelling. The initial, 2-storey, proposals would have caused overlooking, overbearing and some overshadowing of neighbouring gardens, particularly the garden on the north-west side of the application site. The reduction in height of the building significantly reduces these impacts, which are now acceptable.

## ECOLOGY

4.15 Policy NE6 of the local plans states that where a proposal may have a significant effect on protected species or habitats applicants will be expected to undertake an appropriate assessment demonstrating their proposed mitigation measures. Planning permission will only be granted that would not cause demonstrable harm to protected species. Policy NE7 states that development proposals should retain and, where possible, enhance important natural habitats.

4.16 The proposed development includes the demolition of a pre-fabricated domestic garage. The application includes a bat survey undertaken in 2013. It involved a daytime inspection followed by an evening emergence survey, which found no evidence of bats using the garage. Since then the condition of the building has not changed. The council's ecologist is satisfied with the findings of the survey and remains of the view that the garage is unlikely to be a roosting site for bats. During the emergence survey low numbers of bats were recorded foraging and commuting in the immediate area. The introduction of additional lighting can be detrimental to commuting and foraging habitat for bats (and other wildlife). The lighting of the house should therefore be sensitively designed, with external lights on

short timers and motion sensors and minimal light spill onto surrounding vegetation. This approach is detailed in the method statement of the submitted bat survey report. Compliance with the method statement should be made a condition of approval.

## HIGHWAY MATTERS

4.17 Access to the site from the public highway would be from Water End as existing. The drive is private. It is mainly used by the occupiers of John Burrill Homes but also by the occupiers of the host house at No.12 Water End. The number of traffic movements generated by the development would have no material impact on traffic levels in the area or highway safety.

4.18 The proposals include two accesses into the site from the private drive. One access would be as existing (it currently serves the garage to be demolished) and would serve the new house. The second access would be to a replacement parking space for the host house at No.12. Cycle storage has not been detailed so should be made a condition of approval.

4.19 The applicant's right to use the drive is disputed by the trustees of John Burrill Homes. However, property rights are not relevant to consideration of the planning merits of the application.

## FLOOD RISK AND DRAINAGE

4.20 The site is in flood risk zone 2 so the application is accompanied by a flood risk assessment. The NPPF states that when determining planning applications local planning authorities should ensure flood risk is not increased elsewhere (paragraph 100). Development in areas at risk of flooding should only be considered appropriate where the most vulnerable development is located in areas of lowest flood risk and the development is resilient to flooding (paragraph 103). Policy GP15a of the local plan states that developers should ensure that the site can be developed, serviced and occupied safely and that discharges from new development should not exceed the capacity of existing/proposed sewers and watercourses. In National Planning Guidance a dwelling with a basement is classed as highly vulnerable (although in the current case the basement would be used only for a games room, utility room, bathroom and plant room). The application is therefore subject to the sequential test and exception test.

4.21 The aim of the sequential test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are suitable and reasonably available sites in areas with a lower probability of flooding. The council does not have a NPPF-compliant 5-year housing land supply and the city has a shortfall of deliverable housing land within flood zone 1.



Therefore, in order to meet the development needs of the city, the council has to consider applications for housing within flood zone 2. As the current application is for windfall housing development it cannot, by definition, be planned for.

Consideration of the sequential test should therefore be within the context of the wider housing land requirement and the 5-year land supply. Planning Practice Guidance advises that a pragmatic approach should be undertaken. Therefore as the application is for windfall housing development in a sustainable location in an existing residential area, the sequential test can be deemed to have been passed.

4.22 For the exception test to be passed it must be demonstrated that: (1) the development provides wider sustainability benefits to the community that outweigh flood risk; and (2) a site-specific flood risk assessment demonstrates that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. The application has wide benefits in that it would contribute to the provision of housing in the city, for which there is a clear need. The flood risk assessment submitted with the application includes flood resilience and mitigation measures in the event of flood.

4.23 Surface water run-off from the site would be stored on site and released at a restricted rate. The council's flood risk engineer has no objections to proposals.

## ARCHAEOLOGY

4.24 The application site lies in an area of archaeological importance which has produced evidence of deposits from Roman to post-medieval origins therefore the potential for groundworks disturbing remains must be considered. The site also lies at the centre of a possible Anglo-Scandinavian village. Preservation of potential deposits will require controlled archaeological excavation prior to development. In order to ensure that important below ground archaeology is recorded conditions should be attached to any approval requiring archaeological excavation and an archaeological watching brief during construction.

## 5.0 CONCLUSION

5.1 The site is in a sustainable location and the application would contribute to the provision of much-needed housing in the city. The application would cause no harm to the Clifton Conservation Area and the listed buildings at Water End. The impact on archaeology can be mitigated through the recommended conditions. The proposal is acceptable in all other respects and complies with national planning policy in the National Planning Policy Framework and relevant policies of the 2005 City of York Local Plan.

## 6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out in accordance with approved plans numbered C116.01.01/D and C116.01.02/C.

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

3 No development shall take place until there has been submitted and approved in writing by the Local Planning Authority a detailed landscaping scheme which shall illustrate the number, species, height and position of trees (including replacement trees), shrubs and boundary treatment. The scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species within the site.

4 VISQ8 Samples of exterior materials to be app

5 ARCH1 Archaeological programme required

6 ARCH2 Watching brief required

7 No roof hereby approved shall at any time be used as a roof terrace or external seating area or for any other purpose incidental to the residential use of the development.

Reason: To protect the amenity of neighbouring residents.

8 All ecological measures and/or works shall be carried out in accordance with the details contained in Section 7.2 Method Statement of the Bat Survey report dated August 2013 by Wold Ecology Ltd submitted with the planning application and agreed in principle with the local planning authority prior to determination. In particular the measures and/or works shall include the provision of at least one bat box to be provided on trees within the application site or grounds of 12 Water End and for a sensitive lighting scheme to be installed.

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

9 Within one month of commencement of development details of secure cycle storage for at least one cycle, including means of enclosure, shall be submitted to by the local planning authority and approved in writing. Prior to first occupation of the dwelling hereby approved the cycle storage shall be provided within the site in accordance with the approved details and not be used for any purpose other than the parking of cycles.

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

10 The building shall not be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles 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.

11 No development shall take place until details of the proposed means of foul and surface water drainage, including details of any balancing works and off site works, have been submitted to and approved by the Local Planning Authority.

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

12 Unless otherwise approved in writing by the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.

Reason: So that the Local Planning Authority may be satisfied that no foul and surface water discharges take place until proper provision has been made for their disposal.

13 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) development of the type described in Classes A, B, C or E of Schedule 2, Part 1 of that Order shall not be erected or constructed unless permission has first been granted by the Local Planning Authority.

Reason: To protect the character and appearance of the Clifton Conservation Area and the setting of nearby listed buildings.

14 Prior to first occupation of the development the applicant shall install within the curtilage of the proposed dwelling a three-pin 13-amp electrical socket in a suitable position to enable the recharging of an electric vehicle within the curtilage using a 3m length cable.

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

NOTE: Any socket provided must comply with BS1363, or an equivalent standard, Building Regulations, and be suitable for charging electric vehicles. The socket for the proposed dwelling should be suitable for outdoor use and have an internal switch within the property to enable the socket to be turned off.

15 NOISE7 - Restricted hours of construction

## **7.0 INFORMATIVES: Notes to Applicant**

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

In considering the application, the local planning authority implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) by seeking solutions to problems identified during the processing of the application. In order to achieve an acceptable outcome the local planning authority negotiated a reduction in scale and massing to reduce the impact on the conservation area, listed buildings and neighbouring occupiers.

### **2. CONTAMINATION**

If, as part of the proposed development, the applicant encounters any suspect contaminated materials in the ground, the Contaminated Land Officer at the council's Environmental Protection Unit should be contacted immediately. In such cases, the applicant will be required to design and implement a remediation scheme to the satisfaction of the Local Planning Authority. Should City of York Council become aware at a later date of suspect contaminated materials which have not been reported as described above, the council may consider taking action under Part IIA of the Environmental Protection Act 1990.

### **3. DRAINAGE**

The developer's attention is drawn to Requirement H3 of the Building Regulations 2000 with regards to hierarchy for surface water dispersal and the use of Sustainable Drainage Systems (SuD's). Consideration should be given to discharge to soakaway, infiltration system and watercourse in that priority order.

Surface water discharge to the existing public sewer network must only be as a last resort therefore sufficient evidence should be provided i.e. witnessed by CYC infiltration tests to BRE Digest 365 to discount the use of SuD's.

If the proposed method of surface water disposal is via soakaways, these should be shown to work through an appropriate assessment carried out under BRE Digest 365, (preferably carried out in winter), to prove that the ground has sufficient capacity to except surface water discharge, and to prevent flooding of the surrounding land and the site itself. City of York Council's Flood Risk Management Team should witness the BRE Digest 365 test.

If SuDs methods can be proven to be unsuitable then In accordance with City of York Councils Strategic Flood Risk Assessment and in agreement with the Environment Agency and the York Consortium of Internal Drainage Boards, peak run-off from Brownfield developments must be attenuated to 70% of the existing rate (based on 140 l/s/ha of proven by way of CCTV drainage survey connected impermeable areas). Storage volume calculations, using computer modelling, must accommodate a 1:30 year storm with no surface flooding, along with no internal flooding of buildings or surface run-off from the site in a 1:100 year storm. Proposed areas within the model must also include an additional 20% allowance for climate change. The modelling must use a range of storm durations, with both summer and winter profiles, to find the worst-case volume required.

If existing connected impermeable areas not proven then a Greenfield run-off rate based on 1.4 l/sec/ha shall be used for the above.

Surface water shall not be connected to any foul / combined sewer, if a suitable surface water sewer is Available.

The applicant should provide a topographical survey showing the existing and proposed ground and finished floor levels to ordnance datum for the site and adjacent properties. The development should not be raised above the level of the adjacent land, to prevent runoff from the site affecting nearby properties.

#### 4. CONTROL OF POLLUTION ACT

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

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

Monday to Friday	08.00 to 18.00
Saturday	09.00 to 13.00
Not at all on Sundays and Bank Holidays.	

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

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

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

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

There shall be no bonfires on the site.

**Contact details:**

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