

COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Bishopthorpe
Date: 13 November 2008 **Parish:** Acaster Malbis Parish
Council

Reference: 08/01177/FUL
Application at: The Orchard Tyn Garth Acaster Malbis York YO23 2LX
For: Replacement of 3no. moorings
By: Mr Tony Lumb
Application Type: Full Application
Target Date: 15 September 2008

1.0 PROPOSAL

1.1

The Orchard, Tyn Garth comprises a substantial detached dwelling currently in the process of erection adjacent to the bank of the River Ouse at Acaster Malbis. Associated with the site are the rights to three moorings along the river bank. The moorings have been re-constructed with fresh concrete foundations, new steel and timber decking and a 2 metre bow topped close boarded timber fence at either side of the river side public footpath. It is this development which is the subject of the current retrospective planning application.

1.2

The application was deferred from the 15th September West/Centre Development Control Sub-Committee to seek legal clarification of the possibility of withdrawing the applicant's Permitted Development Rights for the erection of fencing notwithstanding the fact that the development has already been undertaken. The legal advice has been given that it would be feasible to withdraw the applicant's Permitted Development Rights in respect of the erection of fencing however to do so would create a liability for the Authority to pay compensation to the applicant for the loss of those rights that have already been exercised. Furthermore DoE Circular 9/95 sets a firm test of exceptional circumstances and the presence of a real and specific threat to amenity for these powers to be exercised in these circumstances.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

City Boundary York City Boundary 0001

DC Area Teams West Area 0004

DC Area Teams East Area (1) 0003

Floodzone 2 Flood Zone 2 CONF

Floodzone 3 Flood Zone 3

2.2 Policies:

CYGP1
Design

CYGB2
Development in settlements "Washed Over" by the Green Belt

CYNE2
Rivers and Stream Corridors, Ponds and Wetland Habitats

CYGP15
Protection from flooding

3.0 CONSULTATIONS

INTERNAL:--

3.1 Highway Network Management raise no objection to the proposal.

3.2 Design, Conservation and Sustainable Development were consulted with regard to the proposal and no response has been received.

3.3 Public Rights of Way were consulted with regard to the proposal and no response has been received

EXTERNAL:-

3.4 Natural England raise no objection to the proposal.

3.5 Acaster Malbis Parish Council raise no objection to the replacement of the moorings but object to the associated fencing erected to either side of the river bank footpath.

3.6 The Rambler's Association raise no objection to the replacement of the moorings but object to the associated fencing erected to either side of the river bank footpath.

3.7 The Environment Agency object to the design of fencing erected directly adjacent to the river bank. They feel that the close boarded design adopted would impede the

free flow of flood water causing an increased risk of flooding elsewhere in the vicinity. A post and rail fence would however be deemed to be acceptable.

3.8 British Waterways were consulted in respect of the proposal and no response has been received.

3.9 Acaster Internal Drainage Board were consulted in respect of the proposal and no response has been received.

3.10 Some 22 letters of objection have been received in respect of the proposal. These raise no objection in respect of the re-instatement of the moorings, but object to the associated fencing on the grounds that it destroys the open character of the riverbank, would set a precedent for other similar developments elsewhere, would increase the risk of flooding elsewhere, creates an undesirable urbanising element within the local townscape and create a fear of crime for those using the riverbank right of way.

4.0 APPRAISAL

KEY ISSUES:-

4.1 Impact upon containment of flood risk arising from the fencing as erected,
Impact of the fencing upon the visual amenity of the riverbank area,
Fear of crime arising from the design and layout of the fencing erected,
Impact of the proposal on the nature conservation value of the river bank.
Impact of the proposal on the open character and purposes of designation of the Green Belt.
The implications of the "fall back position" in terms of potential refusal and subsequent enforcement.

FLOOD RISK:

4.2 Policy GP15a) of the York Development Control Local Plan following on from Central Government advice contained PPS 25 "Planning and Flood Risk" sets down a clear policy presumption that new development must successfully manage flood risk with minimal environmental effect ensuring that the site can be developed, serviced and occupied safely. In the current context the simple renewal of the existing moorings would be unexceptionable, however the fencing erected has given rise to substantial concerns on a number of fronts. The Environment Agency object strongly to the fencing erected which in their opinion greatly exacerbates the level of flood risk within the immediate area of the development. The Environment Agency indicate that they are unhappy with fencing but would settle for a more rural open post and rail type fence that would not in any way impede the free flow of floodwater, if fencing were deemed essential. Any permission should therefore be conditioned to require relocation and re-design of the fencing in a more appropriate manner.

VISUAL AMENITY OF THE RIVERBANK AREA:

4.3 The Ouse riverbank as it passes through Acaster Malbis generally comprises a pleasant relatively wide tree lined walkway with a mix of mature trees and lengths of

hedgerow along the village side and a more open shrub lined character along the river side. Several cottages including ones Listed as of Special Architectural or Historical Importance line the walkway. Policies GP1 and NE2 of the York Development Control Local Plan are of particular relevance in this context. Policy GP1 gives a firm policy presumption in favour of new developments which respect or enhance the local environment, are of a layout, scale and design compatible with neighbouring spaces and the character of the area and retain and enhance public views and the rural character and setting of villages. Policy NE2 sets a policy presumption to resist development which would have an adverse impact upon the landscape character of the river bank and ensuring that the design of structures and engineering works along the river bank are appropriate in their form and setting. The fencing as erected creates a visually inappropriate, discordant, alien and urbanizing element within an otherwise pleasant sylvan river bank setting. The terms of Policies GP1 and NE2 are thus not complied with in respect of the proposal. In order to secure compliance any approval will need to be conditioned to require re-design and re-location of the fence combined with the planting of a hedge more visually characteristic of the riverbank area.

IMPACT UPON THE OPEN CHARACTER AND PUPOSES OF DESIGNATION OF THE GREEN BELT:

4.4 Policy GB 2 of the York Development Control Local Plan set a clear policy presumption in favour of developments which would not detract from the open character of the Green Belt and on a specific scale would be appropriate to the form and character of the settlement in terms of its location, scale and design. The intrinsic character of the Green Belt in the vicinity of Acaster Malbis lies in its largely rural sylvan character with a low density of built development. The fencing as erected introduces a dense and oppressive urbanising element to the Green Belt in the area of Acaster Malbis village contrary to its open character. In order to comply with Green Belt Policy in respect of Acaster Malbis the fence will require relocation together with landscaping in a more visually appropriate manner.

FEAR OF CRIME:

4.5 The fencing as erected does create a clear and distinct sense of enclosure alien to that section of the river bank. Notwithstanding other issues it does not however generate a specific and well founded fear of crime.

IMPACT OF THE PROPOSAL ON THE NATURE CONSERVATION VALUE OF THE RIVERBANK:

4.6 Policy NE 3 of the York Development Control Local Plan sets a firm policy presumption in favour of the protection of open water bodies for their wildlife and recreational value. Natural England in their consultation response to the proposal confirm that the impact of the proposal on the nature conservation value of the river bank would be minimal.

IMPACT OF THE FALLBACK POSITION IN TERMS OF POTENTIAL ENFORCEMENT:

4.7 The design of the fencing directly associated with the the renovated moorings has resulted in a quality of development somewhat below that which would ordinarily be acceptable in this context. However ,in the event of a refusal of the proposal and a subsequent enforcement case should the fence be retained a planning inspector will be required to have due regard to the "fallback position" whereby the applicant may erect a very similar fence utilizing his permitted development rights. The courts have held that in coming to a decision a planning authority must have substantial regard to the impact of this "fallback position" particularly where on the balance of probabilities there is a strong likelihood that the " fallback position" will be implemented .It is felt that in the event of a refusal of the current proposal that there is a strong likelihood that the concerns arising from the fence will remain as a consequence of the " fallback position" being implemented.The imposition of robust conditions within the context of a permission for the replacement moorings which are acceptable is felt to be the most appropriate course of action.

5.0 CONCLUSION

5.1

The three disused moorings adjacent to The Orchard Tyn Garth form part and parcel of the usual river side activity associated with the river bank in the vicinity of Acaster Malbis.Their restoration is acceptable. The key issue of concern is the domestic and urbanizing fencing that has been erected in association.In order for the impact of the development to be rendered at all acceptable it is imperative that any approval is conditioned to relocate the fencing to enable the pre-existing hedge to be re-instated, together with the fence being stained to enable it to blend in with the surrounding landscape.

6.0 RECOMMENDATION: Approve

1 Notwithstanding the application details hereby approved, an amended plan illustrating the fence separating the area of renovated moorings from the adjoining land shall be submitted to and approved in writing by the Local Planning Authority within 28 days of the date of this permission.The plan shall specify the fence to be relocated 0.5 metres closer to the River Ouse than the existing, that it shall be no higher than 1.8 metres above ground level , should be post and rail in design and construction and should be dark stained to the satisfaction of the Local Planning Authority. The development shall thenceforth be undertaken in strict accordance with the details thereby approved.

Reason:

To secure and safeguard the visual amenity of the river bank area and to secure compliance with Policies GP1 ,NE 2,GP15 and GB2 of the York Development Control Local Plan,

2 Notwithstanding the application details hereby approved , a hedge utilizing species previously agreed in writing by the Local Planning Authority shall be planted directly parallel to the fence stipulated in Condition 1 to further separate the renovated moorings from adjoining land.The hedge shall be allowed to grow to a minimum height of 1.8 metres and shall be planted within the first planting season following the date of this permission.Any part of the hedge so planted which dies, or is removed or becomes seriously damaged or diseased shall be replaced in the next planting season to the satisfaction of the Local Planning Authority.

Reason:

To safeguard and secure the pleasant rural ambience and visual amenity of the riverbank area and to secure compliance with Policies NE2 and GB2 of the York Development Control Local Plan.

3 Notwithstanding the provisions of the 1995 Town and Country Planning General (Permitted Development) Order or any other similar order currently in force, no domestic paraphernalia shall be stored or otherwise erected within the enclosed area surrounding the moorings hereby approved.

Reason:

To safeguard and secure the pleasant rural ambience and visual amenity of the river bank area and to secure compliance with Policies NE2 and GB2 of the York Development Control Local Plan.

7.0 INFORMATIVES:

Notes to Applicant

1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to management of floodrisk, fear of crime,impact of fencing upon visual amenity,impact upon nature conservation, impact upon Green Belt and the "Fallback Position" and as such complies with Policies GP 15,GP1,L4,GB2,and NE2 of the City of York Local Plan Deposit Draft.

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