

COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Micklegate
Date: 18 December 2008 **Parish:** Micklegate Planning Panel

Reference: 06/02687/FUL
Application at: Proposed Development Toft Green Rear Of 112 Micklegate York
For: 4 storey building and roof dormer comprising 4no flats
By: London Ebor Development PLC And Mr And Mrs Blades
Application Type: Full Application
Target Date: 31 January 2007

1.0 PROPOSAL

1.1 The proposal is to develop a vacant site on Toft Green, at the rear of 112 Micklegate, to provide 4 flats. The proposed building would be four-stories high, with a room also in the roofspace and a rear dormer window; giving accommodation over five floors in total. A cycle store for 5 cycles is also included. The scheme is reduced in size from the original submission, which was for a building fully five-stories high, to accommodate 5 flats.

1.2 The application is long and narrow, with a frontage to Toft Green only 5.1 metres wide. It is between the York Brewery and an office block at 10 Toft Green, and stretches back some 22 metres from the street frontage. Historically, the site has been developed, but has been vacant for many years; becoming a left-over piece of land bounded by the rather unsightly side and rear elevations of surrounding buildings.

1.3 When the application was originally submitted, Councillor Merritt requested that it be brought to Committee, as otherwise an officer delegated decision could have been taken. A site visit is arranged because an objection has been received to the scheme.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006
Conservation Area Central Historic Core 0038
City Boundary York City Boundary 0001
DC Area Teams Central Area 0002

2.2 Policies:

CYGP1
Design

CYGP4A
Sustainability

CYGP13
Planning Obligations

CYHE2
Development in historic locations

CYH4A
Housing Windfalls

CYH5A
Residential Density

CYED4
Developer contributions towards Educational facilities

CYL1C
Provision of New Open Space in Development

3.0 CONSULTATIONS

INTERNAL

3.1 Highway Network Management

No objections. The amended (reduced) scheme now shows the cobbled forecourt to be within the applicant's control. A condition shall be applied to ensure the provision of the proposed cycle facilities before first occupation of the scheme.

3.2 Education Planning

No contribution is required.

3.3 Lifelong Learning and Culture

As there is no on-site provision of open space, commuted sums should be paid towards amenity space and sports pitch provision in the area.

3.4 Environmental Protection

Residents of the proposed dwellings would be exposed to noise from the activities of the adjacent York Brewery, where noise from use of the licensed bar area could cause potential loss of amenity. This licensed premises does not have any restrictions on hours of operation for the playing of music but is restricted on the sale of alcohol to 23:00. A noise survey was carried out in August 2008 as a result of which the applicant has proposed installing 8.8mm Pilkington Optilam glazing and secondary glazing to provide the necessary levels of attenuation against noise from the rear / York Brewery. Noise calculations submitted by their acoustician appear to show that the World Health Organisation internal noise levels could be achieved using this proposed scheme, but it is worth bearing in mind that the stated levels of attenuation are theoretical/laboratory based levels and may actually perform to a

slightly lower level. Furthermore, the generation of such levels of attenuation would be dependant upon the windows being non opening. As a result, the environmental protection unit would not be a position to object to the proposals subject to conditions.

There appears not to be any issues of concern with the submitted contaminated land desk top study but a watching brief condition is recommended.

Notwithstanding the above, the Environmental Protection Unit does have concerns about the site and the potential amenity issues of potential tenants. Officers also have concerns over the implications of granting permission on the operations of the York Brewery, since should any complaint be received and a noise nuisance be witnessed then the Council would have to consider taking formal action, which could result in the service of a noise abatement notice.

3.5 Design, Conservation and Sustainable Development

The scheme accords with the outcome of negotiations for a reduced scheme. It is now acceptable from a conservation/urban design point of view. Conditions should be applied for external materials and detailing of the front balconies. A query is raised about how the elevational treatment and plan tie up in the submitted scheme for the design of the rear dormer. The cladding material for the dormer needs to be carefully chosen and detailed.

3.6 The site is within the Area of Archaeological Importance, which has produced very important archaeological deposits. Approval can be recommended, subject to conditions.

EXTERNAL

3.7 Police Architectural Liaison Officer

No objections. However the access alongside the proposed ground floor, should not become a thoroughfare for other adjoining properties, which could weaken the security of the development.

3.8 Conservation Areas Advisory Panel

The Panel welcomed the improved roof profile but still had some concerns regarding the elevational treatment.

3.9 Micklegate Planning Panel

The Panel objected to the original submission, considering it to be an over development. However the Panel do not object to the revised scheme.

3.10 Neighbours (Revised scheme consultation expired 24 August)

One letter of objection has been received from the York Brewery who adjoin the application site. Their objection was made to the original scheme, but still stands for the revised scheme. The Brewery objects strongly for the following reasons. They received planning permission over 10 years ago, after difficulty in finding a suitable site, not near residential buildings. The Brewery chose the site at Toft Green because there was no such problem at the time. Subsequently flats have developed on Toft Green, with no adverse comments from residents. However, in this case the

proposed development directly adjoins the brewery. The main activities of the brewery are described in their words as:-

- Brewing 4 to 6 times each week and the smell of hops might not suit everyone living next door.
- Receiving deliveries and loading delivery vehicles throughout the working day: 8 am to 11 pm.
- Showing hundreds of tourists around the specially designed showcase brewery each week; often in evenings, with the bar closing at 11 pm.
- Brewery club, open to members until 11 pm, including special events with music until 11 pm, and similarly coach parties are catered for.
- Refrigeration equipment is needed, with outside condensers which generate noise.
- Noise from routine activities: washing and moving of casks, shifting bottled beer, cleaning various vessels, washing down.
- Cask washing and racking is to be re-located to the rear of Brigantes restaurant.

Following complaints from a resident in Micklegate, air conditioning and double glazing was installed in the bar. The Brewery is concerned that people with low tolerance of noise may choose to live in this city centre night spot zone. Residents in the proposed development may complain about noise or smell. How can the Brewery respond, they ask. In conclusion the Brewery considers the scheme is wrong, with flats in this location being a bad idea. Other uses would be more suitable e.g. offices.

4.0 APPRAISAL

4.1 Key Issues

- Principle of Residential Development
- Design and Massing of scheme and effect upon setting of Listed Buildings and the Conservation Area
- Amenity for future residents
- Amenities of adjoining occupants
- Relationship with York Brewery
- Contributions towards education and open space provision

4.2 The relevant DEVELOPMENT CONTROL LOCAL PLAN POLICIES are as follows:-

POLICY GP1 - DESIGN - in relation to this application, this policy requires proposals to (i) respect or enhance the local environment (ii) have a density and design that is compatible with neighbouring buildings, spaces and the character of the area (iii) provide and protect private and communal amenity space (iv) ensure that neighbours are not unduly affected by overlooking.

POLICY GP4a - SUSTAINABILITY - requires proposals to have regard for principles of sustainable development for example accessibility by means other than the car; creating safe and specially inclusive environments; high quality design conserving and enhancing local character.

POLICY HE2 - DEVELOPMENT IN HISTORIC LOCATIONS - requires proposals in Conservation Areas to respect adjacent buildings, spaces, landmarks, and settings and have regard to local scale, proportion, detail and materials.

POLICY HE3 - CONSERVATION AREAS - within Conservation Areas, external alterations and changes of use will only be permitted where there is no adverse effect upon the character and appearance of the area.

POLICY H4a - HOUSING WINDFALLS - proposals for residential development, on land not allocated on the Proposals Map, will receive planning permission where (a) the site is within the urban area and is vacant, derelict or underused, or involves infilling, redevelopment or conversion (b) the site has good accessibility to jobs, shops and services by non-car modes (c) scale and density is appropriate to surrounding development.

POLICY 5a - RESIDENTIAL DENSITY - the scale and design of proposed residential development should be compatible with the character of the surrounding area and must not harm local amenity. In the city centre net residential densities of greater than 60 dwellings per hectare should be achieved.

POLICY ED4 - DEVELOPER CONTRIBUTIONS TOWARDS EDUCATION FACILITIES requires that in considering proposals for new residential development any consequences for existing schools will be assessed in accordance with the SPG - Developer Contributions to Education Facilities.

POLICY L1C - PROVISION OF OPEN SPACE - commuted payments will be required for off-site open space provision, based upon local need and facilities.

PRINCIPLE OF RESIDENTIAL DEVELOPMENT

4.3 Toft Green has evolved over recent years as a mixed use area; with offices, the York Brewery, service uses, entertainment uses and flats. These are accommodated in buildings both historic and new, creating overall a sense of renewal to an area of formerly declining commercial uses. Toft Green backs closely onto the rear of Micklegate; the latter also having a mix of uses but mostly housed in historic buildings. The traditional pattern of development between the two streets was of long, relatively narrow plots of land; from which the application site survives.

4.4 In principle, the proposed residential development fits into this overall mix of uses. However this is subject to several particular issues arising from the narrowness of the site and the adjoining York Brewery, discussed later in this report.

4.5 In July 2000, planning permission was granted for a four-storey building to provide 4 flats, with roof space accommodation also. This permission has now expired. In May 2006 the applicant of the current scheme submitted an application for a five-storey building of 8 flats. It was withdrawn following officer advice that this was an over-development of the site.

DESIGN and MASSING of the scheme and effect upon setting of LISTED BUILDINGS and the CONSERVATION AREA

4.6 On the Toft Green frontage, the application site is sandwiched between a modern quite bulky three and a half storey office block, and the traditional scale, two-storey York Brewery (which is actually lower than most buildings on Toft Green). The original submission was considered too bulky and angular with the building stepping back to a fifth floor flat roof. The revised scheme has a more traditional form. Officers consider that it achieves a successful transition between the two. It fills the "missing piece" along this section of Toft Green's frontage, with a traditional pitched roof and a simple, contemporary elevation. The frontage is slightly set back, enabling the upper floor flats to each have a balcony, and avoiding the ground floor flat being set right on the busy street frontage.

4.7 Extending beyond the rear roof slope, the proposed building then takes the form of a flat roof rear extension. This follows the outline of the adjoining office block, and of the July 2000 scheme. The upper floor is set back by 1.6 metres from the lower floors, to reduce the massing of the building. It also means that the upper flat can have a small rear balcony.

4.8 There are no listed buildings along this section of Toft Green, but all the buildings along Micklegate are listed, except the more modern infill at Nos 108-110. The massing and design of the revised scheme is considered to be compatible with these surroundings; as part of the setting for the Listed Buildings and in relation to the character of the Conservation Area.

AMENITIES FOR FUTURE RESIDENTS

4.9 The application site itself offers little scope for pleasant outdoor amenity space because it is constricted, and at the rear looks onto the rather untidy elevation behind 112 Micklegate. The upper floor flats have front balconies and their outlook amongst adjoining rooftops improves by becoming more extensive the further up the building one goes. The top floor flat also has a rear balcony. The ground floor flat is more hemmed in. However a small front forecourt has been created on Toft Green. Also to the rear a small open yard space has been created, given privacy from the rear of 112 Micklegate by the cycle store.

AMENITIES OF ADJOINING OCCUPANTS

4.10 The windows in the rear elevation of the proposed flats and the balcony of the top floor flat face the rear of buildings on Micklegate which include some residential uses, for example at No 118. However officers believe that with the traditional "haphazard" layout of buildings in the area and intervening commercial uses, there would be no undue loss of privacy for adjoining occupants. Also all rear rooms in the development are bedrooms rather than living rooms. The side elevation, facing York Brewery, has a large glazed area for the stairwell, but this again is not thought to create privacy problems.

RELATIONSHIP WITH YORK BREWERY

4.11 A satisfactory relationship between flats and the activities at York Brewery is essential. This is mutually necessary (i) to ensure adequate levels of amenity are

available for residents (ii) to avoid residents feeling the need to make complaints about York Brewery, potentially inhibiting the company's ability to carry out and evolve their business if the existence of statutory nuisance is established.

4.12 The main issues identified by the Environmental Protection Unit and by York Brewery themselves, in their objection letter were the subject of a request by Environmental Protection for further information. The applicant has responded and a contaminated land desk top study and further noise survey have been submitted.

4.13 These issues are noise from (a) the bar and function room (b) the delivery and collection of barrels (c) the clanking of barrels arising during cleaning etc (d) externally mounted air handling and compressor units. Environmental Protection have also expressed concerned about odour from the brewing process and the question of possible contamination on the application site from past uses.

4.14 The noise survey, carried out in August 2008, measured noise levels associated with an event which was taking place in the York Brewery on a Saturday evening. The applicants state that internal noise levels in the proposed flats can be made acceptable by fitting a specific type of primary and secondary glazing. This would involve the installation of non opening windows and mechanical ventilation. Based on this data, the Environmental Protection Unit have stated that they would not be in a position to object to the proposals on noise grounds subject to conditions relating to (i) the standards of construction for the building envelope, (ii) the requirement for non opening windows and (iii) the need to provide details of a mechanical ventilation system together with a maintenance schedule for the ventilation system.

4.15 The Environmental Protection Unit have reviewed the contaminated land desk top study submitted by the applicant and are satisfied that there does not appear to be any issues of concern. A watching brief condition is recommended.

4.16 The question of odour from the Brewery is more subjective. It is believed that complaints have not been received from other residents in the Toft Green and Micklegate area. These residents do not immediately adjoin the Brewery, as opposed to the application site, although odour does tend to pervade the wider area in any case. The predicament for the Brewery arises if the source of a complaint has to be classed as statutory nuisance. The onus would then fall upon the Brewery to mitigate the problem, potentially affecting their current business operations.

4.17 The requirement for non opening windows and for a mechanical ventilation system to mitigate against noise levels as detailed above, would also serve to protect future residents from odour, subject to the ventilation system including odour abatement filtering. The details of such a system would be conditioned.

CONTRIBUTIONS TOWARDS EDUCATION AND OPEN SPACE PROVISION

4.18 Policy ED4 requires that the consequences for existing schools from any residential development have to be assessed in accordance with the SPG - Developer Contributions to Education Facilities. In this case Education Planning have confirmed that they do not require a contribution.

4.19 Policy L1c of the Draft Local Plan considers that all residents should have access to safe, attractive and useable public open space. In this case, because there is no opportunity to provide open space on the site, a commuted sum payment would be acceptable. A contribution of £1440 would be appropriate, in accordance with the Council's SPG "Open Space in New Developments" and Policy L1c.

SUSTAINABILITY

4.20 The application was submitted in November 2006 prior to the City of York Council's Interim Planning Statement on Sustainable Design and Construction and as such the level of information provided on the issue of sustainability is not comparable with applications submitted in 2008.

5.0 CONCLUSION

5.1 The application site is a rather awkwardly shaped and neglected piece of land, a "missing link" in the otherwise quite lively frontages along this section of Toft Green. Suitable development would complete the streetscape. Officers believe residential development would be compatible with the mix of uses in the area.

5.2 The site has few natural advantages, being hemmed in by adjoining buildings, other than its central location. The proposed massing and architectural design of the revised proposal, it is considered, does manage to resolve the differences in scale of the adjoining buildings, with a simple contemporary elevational design that will complement the surroundings. The reduced bulk of building at the rear of the scheme in the revised version, sits more comfortably into the historic surroundings at the rear of Micklegate.

5.3 Amenities for future residents are constrained by the nature of the site. However balconies provide some opportunity for relief and a sense of contact with the outside. The ground floor flat would not have such a benefit, but a small space is provided at the rear.

5.4 This leaves the question of the relationship with York Brewery, which is crucial to the proposal being acceptable and workable for both residents and the Brewery in the long run. There are other flats in the area, including recent redevelopment schemes nearby in Toft Green. They are part of an area of varied uses, including pubs, restaurants and commercial uses. The proposed flats at the application site would similarly be entering that general mix, typical of many City Centre locations. However, in addition the flats would be immediately adjoining the Brewery.

5.5 The Brewery was operating when the previous scheme for flats was approved in July 2000 although this permission has now lapsed. The predicament for the Brewery would arise if any complaints upon odour, or noise, became classed as a statutory nuisance. Then the onus would be on the Brewery to find a solution, potentially affecting its current operations.

5.6 On the basis of the recent noise survey undertaken by the applicant, it would appear that internal noise levels in the proposed flats can be made acceptable by

fitting a specific type of primary and secondary glazing and by specifying non opening windows. On this basis, the Environmental Protection Unit do not object. Possible odour nuisance is more subjective, without the same technical specifications being available, compared with noise assessments. Notwithstanding this, with non opening windows and a mechanical ventilation system with odour abatement filtration, Environmental Protection state they are no position to object to the scheme.

5.7 Whilst not objecting to the scheme and recommending conditions to mitigate against noise and odour nuisance, the Environmental Protection Unit remain concerned regarding the implications on the operations of York Brewery should complaints be received. In protecting future residents from excessive noise and odour, Officers also acknowledge that the standards of residential amenity for future occupants of these flats would be compromised to some degree by the installation of non opening windows and mechanical ventilation. Notwithstanding this, Officers note the July 2000 permission for residential development and accept that Toft Green lies in an area of varied uses in a City Centre location. Officers also consider that the proposed development would complement this part of the Conservation Area and complete the missing link in this lively frontage along Toft Green. On balance, the application is therefore recommended for approval.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out only in accordance with the following plans and other submitted details:-

Design and Access Statement received on 16th August 2007

Dwg No: 05:62:71 Rev B received on 13th June 2007

Location Plan 05:62:59 received on 16th August 2007

Environmental Noise Impact Assessment - Issue Date 12th September 2008

or any plans or details subsequently agreed in writing by the Local Planning Authority as an amendment to the approved plans.

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

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

- i. Brick Detailing
- ii. Balconies
- iii. Windows and window surrounds, entrance door
- iv. Eaves and verge treatment

- v. Rear dormer
- vi. Rear open space and means of enclosure

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

- 4 VISQ7 Sample panel ext materials to be approved
- 5 VISQ8 Samples of exterior materials to be app
- 6 VISQ10 Details of External services to be app
- 7 HWAY6 Car/Cycle parking to be provided
- 8 ARCH2 Watching brief required
- 9 ARCH3 Foundation design required
- 10 NOISE8 Restricted hours of work

11 All windows to the development shall be non opening and mechanical ventilation shall be provided from the rear of the building. Details of the ventilation system, which shall include odour abatement filtering, together with a maintenance schedule clarifying responsibility for running costs and maintenance of the system, shall be submitted for the written approval of the Local Planning Authority. The approved scheme shall be fully implemented before the building is occupied by the use hereby approved.

Reason: To safeguard the amenity of occupants.

12 The building envelope shall be constructed so as to provide sound attenuation against externally generated noise to achieve internal noise levels of not more than 30dB(A) Leq 8 hour from 11.00pm to 7.00am, 45 dB(A) Lmax between 11.00pm and 7.00am, and 35dB(A) Leq from 7.00am to 11.00pm in all bedrooms of the development. The detailed scheme shall be approved by the local planning authority and fully implemented before the use hereby approved is constructed. All works which form part of the scheme shall be completed before any part of the development is occupied. The works provided as part of the approved scheme shall be permanently retained and maintained as such except as may be agreed in writing by the Local Planning Authority. The aforementioned written scheme shall demonstrate that the noise levels specified will be achieved.

Reason: To safeguard the amenities of occupants

13 In the event that contamination is found at any time when carrying out the approved development, the findings must be reported in writing immediately to the Local Planning Authority. In such cases, an investigation and risk assessment must be undertaken, and where remediation (clean-up) is necessary a remediation scheme must 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 must be prepared, which is subject to the approval in writing 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.

Reason: To protect the health and safety of future occupiers.

14 No development shall commence unless and until details of provision for public open space facilities, or alternative arrangements have been submitted to and approved in writing by the Local Planning Authority. The open space provision shall thereafter be provided in accordance with the approved scheme or the alternative arrangements agreed in writing by the Local Planning Authority and thereafter implemented, prior to first occupation of the development.

Reason: To comply with the provisions of Policy L1c of the City of York Draft Development Control Local Plan, incorporating the 4th set of changes (April 2005).

INFORMATIVE

The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990, by those having a legal interest in the site; requiring a financial contribution towards off site provision of open space. The obligation should provide for a contribution calculated at £1440.

15 The area to the front of the application site, shown edged blue on Dwg No. 05:62:59 (received on 16th August 2007) shall remain cobbled.

Reason: In the interests of the appearance of the Conservation Area.

7.0 INFORMATIVES: Notes to Applicant

1. 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 the setting of adjoining listed buildings, the character and appearance of the conservation area, and the amenities of the occupants of adjoining premises. As such the proposal complies with Policies GP1, GP4a, GP13, HE2, HE3, H4a, H5a, ED4, and L1c of the City of York Development Control Local Plan.

Contact details:

Author: Rachel Tyas Development Control Officer
Tel No: 01904 551319