

## COMMITTEE REPORT

**Date:** 12 August 2010  
**Team:** East Area

**Ward:** Wheldrake  
**Parish:** Elvington Parish Council

**Reference:** 10/01265/FUL  
**Application at:** The Villa Main Street Elvington York YO41 4AG  
**For:** Erection of 1no. dormer bungalow with attached single garage (resubmission)  
**By:** Mr Paul Lofthouse  
**Application Type:** Full Application  
**Target Date:** 9 August 2010  
**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 This is a full planning application to erect a four-bedroom dormer bungalow within what was the rear garden of a detached property.

1.2 The rear garden area of the Villa was approximately 45 metres long and 20 metres wide. The proposal is to use the former rear section (approximately 24 metres) of the garden as a separate plot with a vehicular access along the area of garden between 'The Villa' and 'Glen House'.

1.3 The recent planning history at the site is as follows:

20/9/07 (07/01806) Erection of three bedroom dormer bungalow with attached single garage (approved).

14/7/08 (08/0892) Erection of four bedroom dormer bungalow with attached double garage (refused).

25/9/08 (08/01868) Erection of four bedroom dormer bungalow with attached single garage (refused and dismissed at appeal).

1.4 In 2007 planning permission was granted for a three bedroom dormer bungalow and double garage on the site. Since this approval the applicant has submitted to two separate planning applications that sought to increase the internal space within the property. Members will recall that the most recent proposal for a four bedroom dormer bungalow with single garage was refused in September 2008. It was refused for the following reason:

"The proposed dwelling would be located in close proximity to the garden boundary of surrounding properties, particularly Grange House and 1 and 3 Lorraine Avenue. It is considered that the increase in eaves height in comparison to the approved scheme would increase the mass and dominance of the proposed house to a degree that would make it unduly prominent and intrusive when viewed from these properties and have a detrimental impact on the established character and amenity

of the local environment. As such the proposal fails to comply with Policy GP1 (criterion a, b and l), Policy GP10 and Policy H4a of the City of York Local Plan 4th Set of Changes 2005."

1.5 The applicant appealed against this decision. On 6 August 2009 the Inspector dismissed the appeal. In his appeal statement the Inspector stated that he did not feel that the proposal was unacceptable in respect to the impact on the living conditions of neighbours or the character and appearance of the area. He did, however state that in his opinion the appellant had not agreed to make a financial contribution to open space improvements (£3,006). The inspector felt that the requirement for this funding was reasonable and as such the appeal was dismissed.

1.6 This application is a re-submission of the scheme that was refused by committee in September 2008. The drawings are the same. The applicant has confirmed that he is willing to pay £3,006 towards off site open space provision.

1.7 The site is adjacent to a property occupied by a Council employee. It has been referred to Committee in order to ensure transparency in the decision making process. A site visit was carried out in July 2008 and as such it is not considered that a new site visit is required.

## **2.0 POLICY CONTEXT**

2.1 Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: East Area (1) 0003

2.2 Policies:

CYGP1  
Design

CYGP10  
Subdivision of gardens and infill devt

CYGP15  
Protection from flooding

CYNE1  
Trees, woodlands, hedgerows

CYH4A  
Housing Windfalls

### **3.0 CONSULTATIONS**

#### **3.1 Internal**

Highway Network Management - No objections subject to conditions including those relating to the provision of a turning area within the site and a minimum access width of 3.7m.

Landscape Architect - Repeat concerns in respect to overdevelopment and the impact on trees.

#### **3.2 External**

Parish - Object as the scheme represents overdevelopment. There is not sufficient space to create an access without damaging trees. There is inadequate turning space within the site and access on to Main Street is dangerous.

Neighbours - At the time of writing this report objections from four neighbours have been received. The following issues have been raised:

The land is no longer in the ownership of 'The Villa' and the present occupier should be notified of the application. (Case officer - the new owner has been notified).

-The application should be determined at committee.

-The design and access statement dates from 2008 and does not make reference to recent changes to PPS3.

-It should be ensured that the works do not harm the protected tree adjacent to Main Street.

Internal Drainage Board - No objections subject to provision of a sustainable drainage scheme. (Planning officer response - as the previous application was not recommended for refusal on drainage grounds and the Inspector did not raise this issue in his statement it is not considered reasonable to impose a new drainage condition on this application. It is also the case that there is little difference in the building footprint of this scheme and the scheme that has planning permission).

### **4.0 APPRAISAL**

4.1 It would not appear that the setting of the application site has materially altered since the inspector's decision. It is also the case that there has been no material change in the thrust of planning policy that relates to the overall acceptability of this specific planning application. The Inspector's decision is material to this application. Despite the planning officer's previous recommendation that the application should be refused and Members refusal of the application it is not considered that a further refusal of the application could be reasonably defended at appeal.

4.2 It is noted that on 10 June 2010 a third edition of Planning Policy Statement 3 (Housing) (PPS 3) was published. In this revised statement, advice was provided in respect to proposals for housing in gardens. It is not considered, however, that this advice should change the assessment of the application.

4.3 There are two key changes contained within PPS3. The first relates to the definition of previously developed land in annex B of the document - the definition now excludes private residential gardens. The second change removed the national indicative minimum housing density of 30 dwellings per hectare from paragraph 47 of the statement.

4.4 In assessing the previous application it was stated in the committee report that the application site was previously developed land as classified by PPS3, however, this was qualified by the statement that in assessing the proposal it was important that the proposal did not cause harm to issues of importance. The planning officer and committee considered that the proposal was unacceptable in respect to the impact on neighbours, however, the Inspector disagreed. In his statement he gave considerable weight to policies GP1 (Design), GP10 (Subdivision of Gardens and Infill Development) and H4a (Housing Windfalls) of the Local Plan. These policies make no reference to gardens being classified as brownfield land and emphasise the need to ensure that new development is not detrimental to the character and amenity of the local environment. Although the Inspector's judgement in respect to the acceptability of the scheme differed from that of the City Council, it is not considered that the judgement hung on whether in PPS3 the site was classified as brownfield land or not.

4.5 In respect to housing density, paragraph 47 of PPS3 did state that a minimum housing density figure of 30 units per hectare should be used for decision making. This figure is also contained in policy H5a (Residential Density) of the Local Plan. The June 2010 revision to PPS3 removes any reference to a prescribed minimum density figure. The application site is approximately 700 sq.m in size. Density figures are of limited value for assessing small back land schemes, however, the proposed density figure for the site (around 14 dwellings per hectare) is well below the minimum figure previously set out as a guide.

## **5.0 CONCLUSION**

5.1 The application is a re-submission of planning application 08/01868/FUL. This application was refused at committee. The applicant appealed against the decision. The Planning Inspector dismissed the application at appeal in August 2009, however, this was only because he considered that the applicant did not agree to pay the required planning obligation to improve public open space. The Inspector did not feel that the proposal harmed neighbours' living conditions or was otherwise unacceptable.

5.2 The applicant has confirmed in writing that he is willing to pay £3006.00 towards open space improvements. It is not considered that any physical changes on site or to the surroundings, or any changes to local or national planning policy and guidance since the Inspector's decision are such that they materially justify the refusal of this planning application or the introduction of substantially different planning conditions or obligations. The application is therefore recommended for approval.

**6.0 RECOMMENDATION:** Approve

1 The development shall be begun not later than the expiration of the three years from the date of this permission.

Reason: To ensure compliance with Sections 91 to 93 and Section 56 of the Town and Country Planning Act 1990 as amended by section 51 of the Compulsory Purchase Act 2004.

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

Plans and elevations LO2/809/01 and LO2/809/04 received by the Local Planning Authority on 11 June 2010.

or any plans or details subsequently agreed in writing by the Local Planning Authority as 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 Notwithstanding the information contained on the approved plans, the height of the approved house shall not exceed 6.8 metres, as measured from existing ground level. Before any works commence on the site, a means of identifying the existing ground level on the site shall be agreed in writing, and any works required on site to mark that ground level accurately during the construction works shall be implemented prior to any disturbance of the existing ground level. Any such physical works or marker shall be retained at all times during the construction period.

Reason: to establish existing ground level and therefore to avoid confusion in measuring the height of the approved development, and to ensure that the approved development does not have an adverse impact on the character of the surrounding area.

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

Reason: So as to achieve a visually cohesive appearance.

5 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order), development of the type described in Classes A to E of Schedule 2 Part 1 of that Order shall not be carried out to the dwelling house and within its curtilage without the prior written consent of the Local Planning Authority.

Reason: In the interests of the amenities of the adjoining residents the Local

Planning Authority considers that it should exercise control over any future extensions or alterations which, without this condition, may have been carried out as "permitted development" under the above classes of the Town and Country Planning (General Permitted Development) Order 1995.

6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order), no windows, doors or other openings shall be inserted within the external elevations, or the roof of the approved development other than those shown on the approved plans.

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

7 Prior to the commencement of the development, the developer shall submit for the written approval of the Local Planning Authority an initial Code for Sustainable Homes (CSH) Design Stage assessment for the development. Unless otherwise agreed in writing with the Local Planning Authority, this shall indicate that at least the minimum code level 3-star rating will be achieved. This shall be followed by the submission of a CSH Post Construction Stage assessment, and a CSH Final Certificate (issued at post construction stage). These documents shall be submitted to the Local Planning Authority after completion and before first occupation of the building. Both documents submitted shall confirm that the code rating agreed in the initial CSH Design Stage assessment has been achieved.

Reason: In the interests of sustainable development.

8 Unless otherwise agreed in writing by the Local Planning Authority, a minimum of 5% of the expected energy demand for the development hereby approved shall be provided through on site renewable generation for heat and/or electricity. Prior to the commencement of development a statement outlining how this is achieved shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved statement unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development is sustainable and accords with Policy GP4a of the draft City of York Local Plan and the City of York Interim Planning Statement on Sustainable Design and Construction.

9 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 and shrubs that exist around the site (including proposals for their retention/protection) along with new vegetation that will be planted. The plan should include the location of the proposed house and all access routes and turning areas. This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which 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 otherwise 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.

10 Details of all means of enclosure to the site boundaries shall be submitted to and approved in writing by the Local Planning Authority before the development commences and shall be provided before the development is occupied.

Reason: In the interests of the visual amenities of the area.

11 No part of the site shall come into use until turning areas have been provided for both the proposed new dwelling and the existing dwelling in accordance with details which have been previously submitted to and approved in writing by the Local Planning Authority. Thereafter the turning areas shall be retained free of all obstructions and used solely for the intended purpose.

Reason: To enable vehicles to enter and leave the site in a forward gear thereby ensuring the safe and free passage of traffic on the public highway.

12 Any gates shall be erected a minimum distance of 6 metres back from the carriageway of the existing highway and shall open into the site.

Reason: To allow a vehicle entering or leaving the site to stand clear of, and thereby avoid obstructing the public highway, in the interests of road safety.

13 Prior to the development coming into use, all areas used by vehicles shall be surfaced and drained, in accordance with details which have been previously submitted to and approved in writing by the Local Planning Authority.

Reason: To prevent the egress of water and loose material onto the public highway and reduce surface water run-off.

14 The driveway shall be constructed at a minimum width of 3.7m and with a minimum height clearance of 4.5m throughout its length.

Reason: To ensure that the dwelling is accessible by emergency vehicles (fire tenders).

15 The building shall not be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles (and cycles, if shown) 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.

16 Prior to the development commencing details of the measures to be employed to prevent the egress of mud, water and other detritus onto the public highway, and details of the measures to be employed to remove any such substance from the public highway shall be submitted to and approved in writing by the Local Planning Authority. Such measures as shall have been approved shall be employed and

adhered to at all times during construction works.

Reason: To prevent the egress of water and loose material creating a hazard on the public highway.

17 The hours of construction, loading or unloading on the site shall be confined to 8:00 to 18.00 Monday to Friday, 9.00 to 13.00 Saturday and no workings on Sundays or public holidays.

Reason: To protect the amenities of adjacent residents.

18 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 shall thereafter be provided in accordance with the approved scheme or the alternatives arrangements agreed in writing by the Local Planning Authority and thereafter implemented, prior to first occupation of the development.

Reason: In order to comply with the provisions of Policy L1c of the Development Control Local Plan which requires that all new housing sites make provision for the open space needs of future occupiers.

#### 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 application site, requiring a financial contribution towards off site provision of open space. The obligation should provide for a financial contribution calculated at £3,006.

No development can take place on this site until the public open space has been provided or the Planning Obligation has been agreed and you are reminded of the local planning authority's enforcement powers in this regard. The property shall not be occupied until the sum has been paid.

#### **Notes to Applicant**

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.

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:

1. 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.	

2. 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".

3. 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.

4. 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.

5. 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.

6. There shall be no bonfires on the site.

#### 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 impact on the street scene, neighbours' light, outlook and privacy, trees and vegetation and highway safety. As such the proposal complies with Policies GP1, GP10, GP15a, NE1, H4a of the City of York Development Control Local Plan and advice contained in Planning Policy Statement 1 and Planning Policy Statement 3.

#### Contact details:

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