

COMMITTEE REPORT

Date: 11 November 2010 **Ward:** Derwent
Team: Major and Commercial **Parish:** Kexby Parish Council
Team

Reference: 10/01818/FULM
Application at: Derwent House Residential Home Hull Road Kexby York YO41 5LD
For: Erection of 26 high dependency units with associated facilities (extension to care home) (resubmission) (please note amended number of units, in previously submitted building footprint)
By: Mr Martin Taylor
Application Type: Major Full Application (13 weeks)
Target Date: 16 November 2010
Recommendation: Approve after referral to Sec. of State

1.0 PROPOSAL

1.1 This is a full planning application for the erection of a two storey extension to the side of an existing residential nursing home (formerly the Kexby Bridge Hotel). The building is to provide high dependency care and rehabilitation for people with brain injuries at ground floor and care for dementia patients at first floor.

1.2 The site is located on the north side of the A1079 York to Hull road at Kexby, to the west of Kexby Bridge and the River Derwent. The River Derwent marks the boundary between the City of York Council administrative area and the East Riding of Yorkshire. Kexby Bridge is a grade II listed building and the River Derwent is part of a Site of Special Scientific Interest (SSSI) and a Special Area of Conservation (SAC). The site has a frontage to Hull Road of approximately 150 metres and a maximum depth of 228 metres. The 3.2 ha plot comprises the former hotel building, consisting of a two storey structure built in red brick with a pitched, tiled mostly hipped roof. Associated parking is located to the front of the building. The land to the rear of the building is predominantly in the form of a parkland-type landscape, with two ponds within the site boundary. The building is now in use as a 32 bedroom care home.

1.3 The proposal, the internal layout of which has been amended since first submission to reduce the number of beds from 30 to 26, consists of the following:-

- a two-storey extension to the east side of the existing building. The building will project 24.5 metres out from the side of the building and will form the main elevation on to Hull Road. The depth of the structure will be 27 metres. The height of the extension to eaves will be approximately 5.5 metres and to ridge 8 metres. The extension is designed with a hipped roof to reflect the roof detail of the existing building. The proposed accommodation is to be provided over two floors with 11 care units on the ground floor and 15 care units on the first floor. There are communal living and ancillary rooms on each floor.

- the provision of 7 car parking spaces accessed via the existing access road from the A1079.

- details of landscaping which incorporates the retention and enhancement of existing landscape features.

1.4 The application is supported by a design and access statement, flood risk assessment, biodiversity assessment, greater crested newts survey, archaeological scheme of investigation, a pre-construction energy report and an outline transport assessment.

HISTORY

1.5 There is a substantial site history on this property dating back to 1979. However the most recent and /or relevant to this application are as follows:-

- Permission was granted in 1998 for the erection of pitched roof two storey extension to form additional bedrooms and conference and wedding facilities. (Planning reference 98/02859/FUL)

- In 2004 a renewal of the 1998 permission was granted. This permission was due to expire in June 2009 however having discharged the pre-commencement conditions the development was commenced in January 2009 and the permission therefore remains extant.

- Permission was refused in 2006 for the erection of 6 single storey ,detached timber lodge guest bedroom units in connection with the hotel use. The refusal was based on the impact on the Green Belt and lack of information relating to the natural environment and drainage.

- Permission was granted in February 2008 for the change of use of the hotel into a care home for the elderly. This permission was subject to a condition that restricted the use to use as a care home for the elderly only and to no other use within class C2.

- An application for a similar proposal to that now submitted was withdrawn in October 2009 to address policy concerns about the development.

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:

CYGB1

Development within the Green Belt

CYH17

Residential institutions

CYC1

Criteria for community facilities

CYGP1

Design

CYGP4A

Sustainability

CYGP9

Landscaping

3.0 CONSULTATIONS

INTERNAL

Highways Network Management - the assertions regarding traffic and the highway contained in the submitted statements are accepted. The change in number of units from the original proposal either require an additional 2 car parking spaces or confirmation that shift patterns will be staggered. Conditions are requested to ensure that the development is carried out in accordance with the submitted scheme.

Countryside Officer - accepts the findings of the biodiversity assessment. A bat survey carried out on the site in May 2009, considered the building to have medium potential for supporting roosting bats, the Countryside Officer agrees with this conclusion. The overall surrounding area is of high value to Bats the bridge is a designated site of importance for nature conservation for this Bat interest. The proposal represents a good opportunity to carry out some Bat habitat enhancement works and further increase the wildlife value of the site, particularly as the extension is on the side adjacent to the River Derwent. A condition is suggested to ensure that bat habitat features are incorporated in to the new extension. Also of importance is the river Derwent which runs adjacent to the site directly to the east and is a designated SSSI and an SAC (special area of conservation). Any application which could potentially have a significant affect on a European site such as an SAC may require an Appropriate Assessment to be carried out. However in this case, it is not considered that the proposed extension to the hotel is likely to significantly impact on the SAC, and therefore no Appropriate Assessment is required.

Otters have also been recorded regularly along the River Derwent within this location, and whilst no evidence of otters using the site was found following an otter survey, their presence along this stretch of the river again still needs to be taken into

account. Within the site itself there are also areas of suitable habitat which others could potentially use to rest up in. It is unlikely that these areas will be affected by the proposals, but it is recommended that they are retained and enhanced where possible for their wildlife interest. Further lying up habitat, for example, could be created to enhance existing habitat, and would be particularly beneficial near the smaller pond close to the river in the North East corner of the site. Again, the biodiversity report also highlights some mitigation recommendations with regard to this matter.

Structures and Drainage - Object to the application on the basis of a lack of information in relation to the potential impact the proposals may have on the existing drainage systems.

Environmental Protection - No objections however an informative is suggested in relation to working practices during construction.

City Strategy - Green belt policy is relevant. Understand that the approved hotel extension remains valid in relation to the proposed new use as a care facility. Additional visual impact would be negligible. In general terms are aware that there is a growing number of people with complex needs. Widening access to a greater range of housing options for people with specialist care needs is one of the council's emerging housing strategy priorities. The site is accessible by public transport. Facilities for residents will be a licensing requirement. No objections.

Strategic Services, Adults, children and Education - no objections or concerns. Agree that there is a local need for new dementia care within the city and understand that there may be a need for the small specialist unit for acquired brain injury within the wider local region.

Landscape Architect - no objection in principle although there are some discrepancies between the submitted landscape plans that need to be addressed

Sustainability Officer - The information submitted does not provide sufficient information to show compliance with the interim planning statement on sustainable development. Further information needs to be sought and /or conditioned.

EXTERNAL

Kexby Parish Council - No comments received.

Natural England - Advise the Authority to ensure that the development is carried out strictly in accordance with the mitigation strategy provided in the biodiversity assessment and to condition that no building or engineering operations are carried out within 50 metres of the bank top of the River Derwent. Based on the details provided it is considered that the location, scale and nature of the proposed development will not be likely to have a significant effect on the interesting features of the River Derwent SAC. The biodiversity features incorporated in to the scheme to benefit protected species are welcomed.

Environment Agency - no objections to the development as submitted. Request informative adding with regard to the designation of the River Derwent and protected species. At no stage should the proposed work impact upon the river. All materials involved in demolition or construction must be stored well away from the river bank and if needed be bunded to prevent accidental spillage. If alterations to the roof are proposed then the applicants are advised to have a check made for bats, by an appropriately licensed and experienced person. The Environment Agency point out that the Environmental protection regulations regarding the discharge of domestic sewage effluent from septic tanks and sewage treatment plants has changed from April 2010. The applicant will need to apply for a new Environmental permit.

Two letters of objection have been received covering the following points:-

- The proposal will double the size of the building and will house more population than the population currently living in the village
- The site is very unsustainable, next to a very busy road and a river both of which are dangerous
- There are already a lot of these kinds of units within the area is there justification for another
- Parking facilities are not adequate
- Bus service is not adequate for staff to use this will put pressure on parking places
- Concerned about the added pressure caused by the development on existing utility services which are very poor. In particular the drainage which is to a septic tank also the water pressure is very low and with the increased laundry etc. facilities, there will be a greater impact on water supply. The nursing home comes before the houses for both water and electricity supply
- The application should be conditioned that the home should have its own supply for all utilities therefore not burdening adjoining properties
- At the time of the application for the change of use from the hotel to a nursing home the Parish Council were assured that there would be escalation of the operation into C2. Now we have an application for a mini hospital with associated facilities.
- The kind of care proposed would be much more labour intensive than a normal residential care home
- Applicant says that the work has not started but footings have been put in
- The entrance to the site is difficult.
- Permission should not be given in green belt if it will be detrimental to other properties
- Concerned that it is unclear what will be happening in the building, a C2 use could accommodate asylum seekers, a borstal or young offenders institution, why the secrecy
- There must be much better sites for this use that do not intrude into the green belt

Any additional comments as a result of the amendments to the internal layout of the building will be reported direct to Planning Committee.

PUBLICITY

The application has been advertised by means of a site notice, notification in The Press and neighbourhood notification letters. Neighbours have been reconsulted on the changes to the internal layout.

4.0 APPRAISAL

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4.1 Key Issues:-

- Policy Background
- Principle of the development within green belt and consideration of very special circumstances
- Need for the facility
- Proximity to Local Facilities
- Design and Landscaping
- Highways, access and parking
- Ecology
- Drainage
- Sustainability
- Restriction of use

POLICY BACKGROUND

4.2 The application relates to the erection of an extension to a nursing home (converted from a hotel) to provide specialist care to people with brain injuries on the ground floor and care for dementia patients to the first floor. The site is within an area of Green Belt. The recent revocation of the Regional Spatial Strategy does not affect the status of the Green Belt. The Green Belt has been tested and established through previous appeal decisions and debated throughout the RSS examination. The Green Belt will remain in draft until the boundaries are agreed through the Local Development Framework, once adopted.

4.3 Central Government advice in Planning Policy Guidance Note 2 "Green Belts" (PPG2) is relevant to the proposal. This states that there are five purposes of including land in Green Belts: to check the unrestricted sprawl of large built up areas; to prevent neighbouring towns from merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. It also states that one of Green Belts most important attributes is its openness and that there is a general presumption against inappropriate development within the Green Belt. Such development should not be approved, except in very special circumstances. PPG2 states that inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. PPG2 states that the construction of new buildings inside a Green Belt is inappropriate unless it is for agriculture or forestry, essential facilities for outdoor sport or outdoor recreation, limited extension, alteration or replacement of existing dwellings, limited infill within existing villages or limited infill on major developed sites. The advice within PPG2 is reflected in policy GB1 of the City of York Draft local Plan (CYDLP)

4.4 Other Local Plan policies relevant to the consideration of this proposal are:-

- Policy H17 which states that planning permission will only be granted for residential institutions where the development, together with existing residential institutions or unimplemented planning permissions for that use, would not give rise to a concentration likely to have an adverse impact on residential amenity and where it is positively located relative to local facilities and public transport.
- Policy C1 says that planning applications for social, health, community and religious facilities will be granted provided that the proposed development is of a scale and design appropriate to the character and appearance of the locality and it would meet a recognised need.
- Policy GP1 'Design' includes the expectation that development proposals will, inter alia; respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with neighbouring buildings and spaces, ensure residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures, use materials appropriate to the area; avoid the loss of open spaces or other features that contribute to the landscape; incorporate appropriate landscaping and retain, enhance or create urban spaces, public views, skyline, landmarks and other features that make a significant contribution to the character of the area.
- Policy GP4a 'Sustainability' of the City of York Council Development Control Local Plan (2005) states that proposals for all development should have regard to the principles of sustainable development and sets out those issues to consider as part of a sustainably designed development. The interim planning statement on Sustainable Design and Construction supports Policy GP4a in setting out ways to achieve sustainability furthermore the document requires that 10% onsite renewables are achieved.
- Policy GP9 requires where appropriate developments to incorporate a suitable landscaping scheme

Principle of the Development Within Green Belt and Consideration of Very Special Circumstances

4.5 It is considered, and accepted by the applicant, that within the meaning of PPG2 and policy GB1 of the CYDLP the proposal represents inappropriate development. Paragraph 3.2 of PPG2 says that any harm, by reason of inappropriateness would need to be clearly outweighed by the presence of very special circumstances. Within the design and access statement supporting the submitted application the applicant sets out the issues that are considered to outweigh harm by reason of inappropriateness. The three considerations put forward by the applicant as 'very special circumstances', relate to the extant permission for an extension to the side of the building and are; the physical differences between the two schemes are limited, the use of the extension as a care facility will have less impact on the openness of the Green Belt and the landscape quality of the scheme.

4.6 In terms of the extant permission for the extension, this would have expired in June 2009, however, the extension has commenced on site within the definition of commencement set out in section 56 of the Town and Country Act 1990 and there has been written confirmation of this. Therefore the approved extension can be lawfully constructed. However the extension was granted as an extension to an hotel and the site is now in use as a nursing home. The Council's solicitor considers that the extension can still be constructed and used in connection with the nursing home and therefore it is reasonable to consider the approved extension as a 'fall back position' (in other words assess the likely impact of the extant consent as compared to the proposed scheme). Furthermore there is evidence of need for the development as discussed in paragraph 4.12 below and given this need/ demand it is considered that there is a reasonable prospect that the extant permission would be implemented were no other consents to be granted.

VERY SPECIAL CIRCUMSTANCES

4.7 Physical differences - The existing permission allows for two storey accommodation in an "L " shape. The front wall of the extension is set back from the existing frontage by 5 metres and then half way along by a further 3 metres. The front elevation runs parallel with the Hull Road for a distance of 27 metres then extends 22 metres back into the site. The existing approval provides 990 square metres of accommodation. The proposed extension would have a very similar frontage length although the step in the middle of the front elevation is omitted. The returning depth is greater at almost 28 metres and the building would be squared off rather than L-shaped to the rear. The approved scheme shows a balcony in a semi-circular arrangement on the east elevation extending 6 metres out from the flank wall this has been altered to a simple 2 metre projection on the proposed scheme. The total floor area of the proposal would be 1247 square metres , an additional floor area of 257 square metres over the original approval. In terms of the development of outside space the original consent provided an access road and 21 parking spaces to the front of the site in a single row along the frontage, the car parking and access road extending significantly beyond the built area of the development. By contrast the proposal includes 7 additional parking spaces and a corresponding reduction in access road, thus reducing the overall level of hard surfacing to the front of the site. The conclusion of the applicant is that the revised built form would have no greater impact on the openness of the Green Belt and that the revised external arrangements would have a reduced impact. Officers would concur with this conclusion and therefore consider the physical form of the proposed scheme will have no greater impact on the openness of the Green Belt than that which could be implemented.

4.8 Use of building - the applicant points out that on the application for the change of use of the existing building to a nursing home, Highways (Network Management) acknowledged that the change would be likely to reduce the overall traffic movements to the site. The extant permission is for wedding and conference facilities. It can be seen in paragraph 4.7 above that the use as a care home has already resulted in the proposed scheme having a reduced car parking requirement from 21 spaces to 7, thus again implying that the number of visitors to the extended use will be far below that of a wedding /conference facility. The main activity associated with the proposed use is also likely to be during the normal day much the

same as a domestic residential arrangement albeit on a larger scale. The use of outside space and traffic movements would similarly be during the day. Conference and wedding use would be much less predictable and in Officers opinion more likely to consist of heavy peak weekend use for weddings with conference, vehicle generating, uses during the week. In Green Belt terms the movement of vehicles and use of outside space is capable of impacting on openness and in Officers view the proposal, when compared with the hotel use, represents a significant reduction in the overall visual consequences of the development, thereby reducing the impact on openness. Officers further conclude that a general nursing care unit is unlikely to differ significantly from elderly care home use and this is supported by the fact that they are both categorised within the same use class within the Town and Country Planning Use Classes Order 2004. In Green Belt terms, therefore, there are no concerns regarding the impact on openness resulting from traffic movements specific to a brain injury unit or a dementia unit when compared with a care home for the elderly.

4.9 Landscape - the proposal has resulted in a significant reduction in the hard surface at the front of the site. The proposal provides for an appropriate landscaping scheme which retains much of the existing tree cover on the site and concentrates on enhancing the front of the site rather than changing the parkland setting of the building to the rear. The landscape strategy for hard and soft surfacing means that the proposed scheme provides a greener less intrusive setting for the extension as compared with the original proposal so that the openness of the area will be maintained to a greater extent.

4.10 It is considered believe that the above considerations represent very special circumstances sufficient to outweigh harm to openness caused to the Green Belt.

4.11 A further consideration is that the 2004 permission was granted subject to a very limited set of conditions. This proposal would be subject to an extensive range of conditions reflecting current government advice and having regard to the sensitive location of the site adjacent to an SSSI and SAC. The addition of such conditions will safeguard the future uses of the site by restricting the extension to a care home, help to enhance biodiversity, ensure the site is properly drained and that sustainable measures are incorporated into the building. The ability to attach these conditions is, in combination with the issues discussed above, considered to be a very special circumstance sufficient to outweigh any harm by reason of inappropriateness.

NEED FOR THE DEVELOPMENT

4.12 Policy C1 of the CYDLP says that community facilities should meet a recognised need. The applicant points out that the principle of need for a care home facility has already been accepted at this site by virtue of the planning permission granted for the nursing home. However this proposal is to provide an additional facility of a further 26 bedrooms and is to provide high dependency care for acquired brain injury victims and care for dementia patients.

4.13 The text to policy C1 states that the purpose of the policy is to ensure that proposals are needed and that they are designed in a way that compliments the local

area. Since the last application on this site was withdrawn the applicant has discussed the need for the facility with the Councils Adults, Children and Education Services. Adults, Children and Education agree that there is a need for dementia care and understand that there may be need for the small specialist unit for acquired brain injury within the wider local region. Based on this advice it is considered that the requirements of C1 in terms of need are satisfied.

PROXIMITY TO LOCAL FACILITIES

4.14 Policy H17 only supports residential institutions where there development would not give rise to a concentration likely to have an adverse impact on residential amenity and where it is positively located relative to local facilities and public transport. Officers have examined appeal cases where this issue has been considered and it appears that there is little support for refusal on the basis of a lack of local facilities. In the main this is because the registering authority for care homes (Care Quality Commission) considers this issue through the licensing process. Consideration of the issue through the planning process would, therefore, merely duplicate controls that already exist under licensing legislation. Furthermore paragraph 65 of circular 3/2005 states that in relation to care homes that have to be registered, registration can be refused on the grounds that the home would not provide adequate services or facilities reasonably required by residents or patients. Therefore, it is considered that the main impact to be assessed is the impact of the proposed use on amenity and the environment.

4.16 The nearest properties to the site are located on the western side of the site, separated from the site by a public footpath. The proposed extension is located on the east side of the building away from existing properties. There will be no impact on adjacent residents as a result of the siting of the extension. The vehicle movements to and from the site and the use of the outside garden area can also be accommodated without detriment to the nearest neighbours.

DESIGN AND LANDSCAPE CONSIDERATIONS

4.17 Kexby is a small settlement of well dispersed development. On the approach to the site, on the north side of Hull Road, are a small number of semi and detached properties. The existing former hotel building is a two storey brick built structure with low pantile roof which is mainly hipped. To the front of the building is a tarmac car park providing 30 parking spaces. The proposed extension is set back from the face of the existing structure by approximately 5 metres and is designed in a similar style to the main building using brick construction and hipped roof. In terms of materials, design, scale, layout and density the building is considered to be compatible with the existing structure and to accord with the principles set out in GP1 of the CYDLP.

4.18 From a landscape perspective the existing hedging to the front boundary will be maintained and trees to the frontage will be retained and enhanced with further planting. The existing planting on the frontage will be significant in minimising the bulk of the building. New planting will soften and enhance the setting of the building and of the new car park area. In terms of policy GP1 and GP9 the landscape proposals are considered to be acceptable.

HIGHWAYS, ACCESS AND PARKING

4.19 The application is supported by an outline transport assessment which says that the proposal will result in a care facility that will in total have 58 bedrooms. The total facility will have a staffing requirement of 30 with 12 staff being on duty after 8 pm and 23 working, to a large extent, normal office hours. None of the 58 residents would have their own cars. The operational requirements of the home are considered to be 5 or 6 deliveries per week with ambulance/doctor requirements on top of this. Laundry would be carried out in house. In terms of staff it is considered that there would be 34 inward movements per day or 68 two-way movements, with the majority of the traffic movements taking place when shifts change. Shifts have been staggered between administration and maintenance staff. The care workers work in two shifts 8am to 8pm and 8pm to 8am.

4.20 The proposal includes the provision of 7 additional car parking spaces giving a total for the site of 37 spaces (this includes the 30 that exist at the site).

4.21 Highways Network Management are satisfied with the information put forward in the outline transport assessment, however they required that shift patterns be staggered or two additional car parking spaces be provided. The scheme has been amended since the submission of the Highway comments to reduce the number of bedrooms by 4 and to stagger some of the shifts. The further comments of Highways Network Management will be reported direct to committee on whether the reduced numbers and changed shift patterns negates the need to provide additional parking.

ECOLOGY

4.22 The River Derwent corridor is an SSSI and an SAC and is located on the eastern boundary of the site. The application is supported by a Great Crested Newts survey and an ecology assessment. The Great Crested Newts survey concludes that there are no Great Crested Newts in either of the two ponds within the site. The biodiversity assessment examined the species and habitats of bats, ponds, Great Crested Newts, Water Vole and Otter. The assessment concurs with the newt survey in its conclusions and also concludes that there is no evidence of Water Vole or Badgers within the study area. The study says that the east elevation of the building is unlikely to support bat roosts consequently the impact to bats of extending the building is considered to be negligible. However it is considered that the existing building has a medium probability of bat interest as the building has features which could support roosting bats. The Countryside Officer concurs with this view and proposes a condition which requires bat roosting boxes to be provided. The ecology report also concludes, and their conclusions are supported by our Countryside Officer and Natural England, that the study area may be occasionally used by resting Otters and suggests an exclusion zone of 50 metres, adjacent to the River Derwent be created for the development. Natural England have suggested a similar condition which it is proposed to include.

4.23 In overall terms, Natural England and the Countryside Officer consider that the proposals subject to conditions would not be likely to have a significant effect on the

internationally important interest features of the River Derwent SAC or any of the features of special scientific interest of the River Derwent SSSI.

DRAINAGE

4.24 The site is located within flood zone 1 (low probability of flooding). The Environment Agency have not raised any objections to the principle of the development although they make reference to the ecological value of the site and suggest an informative with regard to this. This issue is dealt with in the ecology section above and appropriate conditions are proposed. The Council's Structures and Drainage Section have objected to the application because it is not supported by a full drainage strategy for the disposal of surface water. In particular Structures and Drainage are seeking assurances that the site can be drained via soakaways. Additional information regarding the drainage system has been requested from the applicant and further comments on the drainage strategy will be reported direct to Committee.

SUSTAINABILITY

4.25 The Sustainability Officer acknowledges that from the information submitted with the application there is a commitment to achieve the required BREEAM rating. However the pre-construction assessment does not contain information on the likely score the development will achieve. A post-construction assessment would also be needed. Given the commitment to achieve a BREEAM 'very good' the application will be conditioned to require the pre and post construction assessments.

4.26 The applicant has submitted a report indicating how it is proposed to achieve 10% renewables on site. The Sustainability Officers comments that the calculations submitted are not based on the total energy demand for the building in accordance with the requirements of the Interim Planning Statement on Sustainable development. It is proposed to condition the permission to ensure that 10% renewables are achieved based on the energy demands of the building.

RESTRICTION OF THE USE WITHIN CLASS C2

4.27 Members may recall that in considering the change of use application for the hotel a restriction was placed on that permission so that the building can only be used for care of the elderly. Officers reported in that case that

' Circular 11/95 - "The Use of Conditions in Planning Permission" makes it clear that there is a presumption against conditions designed to restrict future changes of use which, by virtue of the Use Classes Order or the General Permitted Development Order, would not otherwise constitute development. The Secretary of State will regard the imposition of such conditions as unreasonable unless there is clear evidence that in the particular circumstances the uses excluded could have serious adverse affects on the environment or on amenity not susceptible to other control. Paragraph 26 goes on to say that if exceptionally conditions restricting changes of use are justified they should be drafted so as to prohibit a change to a particular potentially unacceptable use or uses, rather than in terms which require future approval of any change of use.

In Officers' view any use that provides care is likely to have similar impacts in terms of amenity and the environment and therefore to restrict the use to care for the elderly only or to restrict the use of the building to a hospital would not fall within the guidance within circular 11/95. However, Officers are concerned that the use of the site for a residential education or training centre may have different characteristics, may attract more traffic and visitors and the impact of this use on the openness of green belt and on the nearby residents would need to be considered on their own merits. It is therefore proposed to restrict the permission such that any future application for residential education or training centre would need a separate planning permission.

4.28 Members will note that Officers were of the view that any type of care at this site was unlikely to have such different characteristics that it warranted restricting the permission to a particular kind of care. Officers' views remain the same, and consider that the brain injury unit is likely to have very similar requirements and characteristics to that of elderly care. It is still proposed that training centres are restricted because of their potential differing impacts on the openness of Green Belt, and given the increase in the size of the building and therefore potential intensity of any use, the restriction of a hospital use is also considered appropriate.

4.29 Members should also note that secure residential institutions such as young offenders institutions come within class C2A. Planning permission would therefore be required were such a use proposed at this site.

OTHER MATTERS

4.30 The objectors have raised concerns about the low water pressure to properties on the north side of the Hull Road. Section 37 of the 1991 Water Industry Act requires that water undertakers maintain an efficient and economical system of water supply and make supplies available to owners and occupiers of premises in the locality. Section 146 of the Act provides for a charge to be made for connection to a water supply which is in addition to requisitioning costs under Section 42. Paragraph B52 of circular 05/2005 further points out that the use of planning obligations for infrastructure should not be necessary in respect of water supply, sewerage or sewage disposal because it will already be the developers responsibility to requisition the provision of connections by the water company under Sections 46 and 98 of the Water Industry Act 1991. Any associated infrastructure improvements to enable these connections to function without detriment to existing networks are financed by infrastructure charges levied by water companies under Section 146 of the Water Industry Act 1991. It is Officers view that it is the responsibility of the Water Authority to resolve the problems with water supply and is not a basis to refuse planning permission.

5.0 CONCLUSION

5.1 It is considered, and accepted by the applicant, that within the meaning of PPG2 and Policy GB1 of the CYDLP the proposal represents inappropriate development within the Green Belt. Paragraph 3.2 of PPG2 says that any harm, by reason of inappropriateness would need to be clearly outweighed by the presence of very

special circumstances. The main thrust of the argument for very special circumstances is the existence of the extant permission for the erection of an extension to the side of the building. This permission was last approved in 2004 but remains extant because the development has been commenced. It is considered reasonable to treat the extant permission as a 'fall back position'. Officers consider that the very special circumstances put forward by the applicant namely that the physical differences between the two schemes are limited, that the use of the extension as a care facility will have no greater impact on the openness of the Green Belt and the landscape quality of the scheme are sufficient to outweigh any harm caused by inappropriateness. Furthermore the proposal would be subject to an extensive range of conditions reflecting current government advice and having regard to the sensitive location of the site next to an SSSI and SAC. The ability to attach these conditions is, in combination with the issues discussed above, considered to constitute very special circumstances sufficient to outweigh any harm by reason of inappropriateness.

5.2 Policy C1 of the CYDLP says that community facilities should meet a recognised need. Since the last application on this site was withdrawn the applicant has discussed the need for the facility with the Councils Adults, Children and Education services. Adults, Children and Education agree that there is a need for dementia care and understand that there may be need for the small specialist unit for acquired brain injury within the wider local region. Based on this advice it is considered that the requirements of C1 in terms of need are satisfied.

5.3 In terms of policy GP1 the design and landscape proposals are considered to be acceptable. Highways Network Management are satisfied with the information put forward in the outline transport assessment. The additional comments of Highways network management are awaited on the reduction in numbers of bed spaces by 4, comments received will be reported direct to committee.

5.4 There is still insufficient information with the application with regard to drainage. It is hoped that this issue will be resolved prior to the meeting. The achievement of sustainability objectives are proposed to be conditioned.

5.5 By virtue of the Town and Country Planning (consultation) (England) direction 2009 green belt development over 1000 square metres needs to be referred to Government Office. If committee members are minded to approve the application the application will need to be referred given the floor area of the scheme.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve after referral to Sec. of State

1 TIME2 Development start within three years

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

AL (9)903 rev B

AL (9)901 rev D

AL (0)001 rev D
AL(0)41 rev A
AL(0)002 Rev C
AL(0)40 rev A

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

- 3 HWAY9 Vehicle areas surfaced
- 4 HWAY19 Car and cycle parking laid out
- 5 HWAY21 Internal turning areas to be provided
- 6 HWAY31 No mud on highway during construction

7 No development shall take place until details have been submitted to and approved in writing by the Local Planning Authority of measures to be provided within the design of the new buildings to accommodate bats. The approved works shall be completed in accordance with the approved details before the extension hereby approved is occupied.

Reason: In order to take account of and enhance the habitat for bats in accordance with national advice contained within Planning Policy Statement 9: "Biodiversity and Geological Conservation" .

8 No building, engineering or other operations shall be carried out within 50 metres of the top of the bank of the River Derwent without the prior written approval of the Local Planning Authority.

Reason: To ensure that the local otter population is not adversely affected by the development in accordance with the submitted biodiversity assessment dated May 2009 .

9 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 1995 or any subsequent re-enactments thereof, the development hereby approved shall be used as a care home only and for no other purpose whatsoever, including any other purpose in Class C2 of the Town and Country Planning (Use Classes) Order 1987 or any subsequent re-enactment, without formal planning permission first being obtained.

Reason: The site is prominently located within an area of Green Belt and in close proximity to existing residential properties. Any change of use will need to be considered in terms of the impact of the development on the openness of Green Belt, the proximity of the site to an SSSI and SAC and impact on residential amenity.

10 Prior to the start of development, the developer shall submit in writing and be approved by the local planning authority a appropriate preliminary BREEAM Design

and Procurement stage assessment of the development. It shall be followed by a BREEAM Post Construction Review and the BREEAM Certificate for this review is to be submitted to the local planning authority after construction and before occupancy of the building. Both assessments shall confirm the minimum 'Very Good' rating anticipated in the preliminary BREEAM Design and Procurement stage assessment submitted with the application. Should the development fail to achieve a 'very good' BREEAM rating a report shall be submitted for the written approval of the Local Planning Authority demonstrating what remedial measures shall be undertaken to achieve a 'very good' rating. The remedial measures shall then be undertaken within a timescale to be approved in writing by the Local Planning Authority.'

Reason: In the interests of achieving a sustainable development in accordance with the requirements of GP4a of the City of York Development Control Local plan and the Interim Planning Statement 'Sustainable Design and Construction'

11 No building work shall take place until details have been submitted and approved in writing by the Local Planning Authority to demonstrate how the development will provide, from on-site renewable energy, 10 per cent of the developments predicted energy demand. The development shall be carried out in accordance with the submitted details unless otherwise agreed in writing by the Local Planning Authority. The approved scheme shall be implemented before first occupation of the development. The site thereafter shall be maintained to at least the required level of generation.'

Reason: In the interests of achieving a sustainable development in accordance with the requirements of GP4a of the City of York Development Control Local plan and the Interim Planning Statement 'Sustainable Design and Construction'

12 ARCH2 Watching brief required

13 VISQ8 Samples of exterior materials to be app

14 The landscaping scheme shown on Drawing no. AL(9)901 rev D 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.

15 Prior to the commencement of the development or within such longer period as may be agreed in writing with the Local Planning Authority (LPA) details of all proposed external lighting for the development shall be submitted to and approved in writing by the LPA. Thereafter the scheme shall be implemented to the satisfaction of the LPA and no other lighting shall be installed without the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity

16 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Development Order 1995), (or any Order revoking or re-enacting that Order), no fences, gates, walls or other means of enclosure shall be erected other than shown on the approved plans without the prior written approval of the Local Planning Authority through the submission of a formal planning application.

Reason: In the interests of visual amenity on this green belt location which is sensitive because of its proximity to a SSSI and a SAC and because the site is an open 'parkland' setting.

7.0 INFORMATIVES:

Notes to Applicant

1. 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:

- Policy Background
- Principle of the development within green belt and consideration of very special circumstances
- Need for the facility
- Proximity to Local Facilities
- Design and Landscaping
- Highways, access and parking
- Ecology
- Drainage
- Sustainability
- Restriction of use

As such the proposal complies with Policies GB1, H17,C1, GP1, GP4a and GP9 of the City of York Local Plan Deposit Draft.

In addition, the Local Planning Authority is satisfied that there are very special circumstances in this case sufficient to clearly outweigh the limited harm that would be caused to the Green Belt. In particular, it is considered that the extant permission represents a 'fall back position' and that the physical differences between the two schemes are limited, the use of the extension as a care facility will have less impact on the openness of the Green Belt and the landscape quality of the scheme will reduce the impact on the openness of the green belt. Furthermore the approval of the extension will allow for the imposition of conditions to ensure that the development meets sustainability, ecology and drainage objectives. Thus it is considered that the proposal does not conflict with national planning advice contained within Planning Policy Guidance Note 2 "Green Belts".

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