



NORTH AND EAST PLANS PANEL

Meeting to be held in Civic Hall, Leeds on
Thursday, 12th March, 2015
at 1.30 pm

N.B. – There are no site visits ahead of this meeting

MEMBERSHIP

Councillors

R Grahame	B Cleasby	J Procter
M Harland		G Wilkinson
C Macniven		D Cohen
M Lyons		
R Charlwood (Chair)		
B Selby		
S McKenna		

**Agenda compiled by:
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Governance Services
Civic Hall
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A G E N D A

Item No	Ward	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 15.2 of the Access to Information Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 15.2, written notice of an appeal must be received by the Head of Governance Services at least 24 hours before the meeting)</p>	
2			<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p>RESOLVED – That the press and public be excluded from the meeting during consideration of the following parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information, as follows:-</p>	

Item No	Ward	Item Not Open		Page No
3			<p>LATE ITEMS</p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p>DECLARATIONS OF DISCLOSABLE PECUNIARY INTERESTS</p> <p>To disclose or draw attention to any disclosable pecuniary interests for the purposes of Section 31 of the Localism Act 2011 and paragraphs 13-16 of the Members' Code of Conduct.</p>	
5			<p>APOLOGIES FOR ABSENCE</p>	
6			<p>MINUTES</p> <p>To approve the minutes of the North and East Plans Panel meeting held on 5th February 2015</p> <p>(minutes attached)</p>	1 - 10
7	Harewood		<p>APPLICATION 14/05100/FU - 7 BRACKEN PARK SCARCROFT</p> <p>To consider a report of the Chief Planning Officer on an application for raised roof height of main dwelling; two storey extension to front; two storey extension to side/rear; single storey extension to side; dormer windows to rear roof plane and create living space in roof</p> <p>(report attached)</p>	11 - 20

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8	Alwoodley		<p>APPLICATION 15/00554/FU - LAND AT KING LANE MOORTOWN LS17</p> <p>Further to minute 115 of the North and East Plans Panel meeting held on 8th January 2015, where Panel received a pre-application presentation on proposals for a two storey medical centre with associated car parking and public pharmacy, to consider the formal application</p> <p>(report attached)</p>	21 - 36
9	Roundhay		<p>APPLICATION 13/03606/FU - LAND AND BUILDINGS ADJACENT TO DEVONSHIRE LODGE DEVONSHIRE AVENUE - APPEAL DECISION</p> <p>Further to minute 68 of the North and East Plans Panel meeting held on 25th September 2014, where Panel resolved not to accept the Officer's recommendation to approve a development for a scheme of later living retirement housing accommodation, to consider a report of the Chief Planning Officer providing details of the Inspector's decision on the appeal lodged against the refusal to grant planning permission</p> <p>(report attached)</p>	37 - 62
10			<p>DATE AND TIME OF NEXT MEETING</p> <p>Thursday 9th April 2015 at 1.30pm</p>	

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Third Party Recording

Recording of this meeting is allowed to enable those not present to see or hear the proceedings either as they take place (or later) and to enable the reporting of those proceedings. A copy of the recording protocol is available from the contacts named on the front of this agenda.

Use of Recordings by Third Parties-- code of practice

- a) Any published recording should be accompanied by a statement of when and where the recording was made, the context of the discussion that took place, and a clear identification of the main speakers and their role or title.
- b) Those making recordings must not edit the recording in a way that could lead to misinterpretation or misrepresentation of the proceedings or comments made by attendees. In particular there should be no internal editing of published extracts; recordings may start at any point and end at any point but the material between those points must be complete.

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NORTH AND EAST PLANS PANEL

THURSDAY, 5TH FEBRUARY, 2015

PRESENT: Councillor R Charlwood in the Chair

Councillors R Grahame, M Harland,
C Macniven, J Procter, G Wilkinson,
M Lyons, B Cleasby, B Selby, S McKenna
and D Cohen

120 Chair's opening remarks

The Chair welcomed everyone to the meeting and asked Members and Officers to introduce themselves

121 Exempt Information - Possible Exclusion of the Press and Public

RESOLVED - That the public be excluded from the meeting during consideration of the following part of the agenda designated exempt on the grounds that it is likely, in view off the business to be transacted for the nature of the proceedings, that if members of the public were present there would be disclosure to them of exempt information as designated as follows:

The appendix to the main report referred to in minute 134 under Schedule 12A Local Government Act 1972 and the terms of Access to Information Procedure Rule 10.4(5) and on the grounds it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. It is considered that if this information was in the public domain there would be potential legal implications in respect of the information contained within the appendix

122 Late Items

The Chair admitted one late item to the agenda, reference 14/00927/UHD3 – Reighton House Moor Lane East Keswick LS17. The item was considered to require urgent consideration due to the sudden recommencement of works on the site whilst there were outstanding concerns about the lawfulness of such works. A copy of the covering report and related exempt information had been circulated to the Panel prior to the meeting (minute 134 refers)

123 Declarations of Disclosable Pecuniary Interests

There were no declarations of disclosable pecuniary interests, however the Panel's Lead Officer, Mr Newbury, stated that in respect of

application 14/02832/FU – 1 East Park Parade, that he knew the applicant, so would leave the room when the application was considered (minute 130 refers)

124 Minutes

RESOLVED - That the minutes of the North and East Plans Panel meeting held on 8th January 2015 be approved

125 Application 14/06905/FU - Land rear of Shoulder of Mutton Public House Garmont Road Leeds LS7

The Panel's Lead Officer informed the meeting that the applicant had withdrawn the proposals and had notified the Council of this shortly before the meeting had commenced

126 Application 13/03881/FU - Jewitt Lane Collingham - Appeal decision

Further to minute 118 of the North and East Plans Panel meeting held on 27th March 2014 where Panel did not accept the Officer's recommendation to approve an application for four dwellings on land at Jewitt Lane Collingham, the Panel considered a report of the Chief Planning Officer setting out the Inspector's decision

It was the decision of the Inspector to dismiss the appeal

RESOLVED - To note the report

127 Application 14/01805/FU - 16 Park Avenue Roundhay LS8 - Appeal decision

Further to minute 75 of the North and East Plans Panel meeting held on 23rd October 2014, where Panel resolved not to accept the Officer's recommendation to approve an application for a single dwelling within the grounds of an existing property, the Panel considered a report of the Chief Planning Officer setting out the Inspector's decision

The decision of the Inspector was to allow the appeal

Concerns were raised about the shared drive arrangements, with the Panel's Lead Officer advising that the Inspector had issued a full planning permission and was satisfied with the access arrangements proposed

The Head of Planning Services informed Members of notifications received in respect of appeals on a number of PAS sites. Members were also informed of a recently received appeal decision at Devonshire Lodge, which had been considered by Panel on several occasions in the last quarter of 2014. The appeal had been dismissed due to the low level of affordable housing being provided, although different offers of affordable housing had been made at the appeal hearing. A costs application had been made by the appellant and the Inspector had concluded in this case that the Council had

acted unreasonably as it had not provided a viability statement. Members were informed that a detailed report would be submitted to Panel in due course and that discussions were ongoing with Legal Services to challenge the costs application

RESOLVED - To note the report and the comments now made

128 Application 13/01537/FU - Nine detached dwellings with access road and alterations to existing bungalow at land rear of 20 - 30 Syke Lane Scarcroft

Plans, photographs, drawings and a model of the proposals were displayed at the meeting. A Members site visit had taken place earlier in the day

Officers presented the report which sought approval for nine dwellings on a brownfield site at the rear of 20-30 Syke Lane, Scarcroft, which was situated close to the Green Belt and surrounded by trees, a number of which were covered by TPOs

Members were informed that Officers were of the view that the principle of development was acceptable; that the design and character of the scheme were not out of keeping in what was a mixed area; that the proposals did not affect the residential amenity of neighbours; that slight alterations to plots 8 and 9 were required to improve the spatial setting of these dwellings in relation to the neighbouring property and that no objections had been received to the proposals from neighbours or the Parish Council

In relation to accessibility, the site accessed on to the A58 and there were bus services within the village envelope, however, these did not meet the Council's Core Strategy Accessibility Standards, but on balance, taking into account other material planning considerations, it was felt the application could be recommended for approval

The Panel considered the proposals, with comments being made on a range of issues, which included:

- previous applications for development on the site
- drainage issues, including the permeability of the site and whether all drainage works would be undertaken within the site boundary. Members were informed that Yorkshire Water were satisfied with the proposals and that all of the drainage works would occur within the site
- accessibility
- highways issues including the need for construction traffic to be properly managed in view of the narrowness of Syke Lane and the proximity of a busy Golf course nearby
- detailed design issues relating to plots 8 and 9 and their visibility from the road due to their elevated position, with particular concerns about the views of the gable ends of these properties; parking arrangements at the existing bungalow and that alterations to enable parking at the rear of the bungalow should be considered, rather than the front parking indicated on the model; the height of proposed retaining walls and the need to

ensure that no street lights were included within the development

The Panel considered how to proceed

RESOLVED - To defer and delegate approval to the Chief Planning Officer, subject to the conditions set out in the submitted report with an amendment to condition no 14 to include details for contractor delivery routing and to address the following issues, in consultation with Ward Members:

- the drainage impact on local springs and surface water run off
- amendments to the proposed dwellings for plots 8 and 9
- parking arrangements to the existing bungalow
- no street lighting to be provided within the scheme

129 Application 14/04558/FU - Detached house within grounds at Boston Spa Methodist Church High Street Boston Spa Wetherby

Plans, photographs and drawings were displayed at the meeting. A Members site visit had taken place earlier in the day

Officers presented the report which sought approval for a detached house within the grounds of Boston Spa Methodist Church. Members were informed that the proposal formed part of a wider project to improve the access arrangements and internal configuration of the church, with these works forming a separate application which was currently being considered by Officers. The scheme before Panel was a revision of a larger scheme which had been submitted originally and was felt to better respect the setting of the nearby Listed Church and the Conservation Area

The access and parking arrangements were outlined, with Members being informed that parking provision was from a shared driveway into the site, with a number of other residences, offices and a doctor's surgery. Whilst Highways Officers had raised concerns about aspects of the proposals, Planning Officers were of the view that one additional dwelling would not lead to significant harm to highway safety and that this was also balanced against the applicant's need to fund improvement works to the adjacent church

If minded to approve the application, two additional conditions were suggested, these relating to provision of further details of the access and that the driveway to be of a no dig construction

The Panel discussed the application, with the main issues raised relating to:

- the maximum number of dwellings served off a private drive, which was stated as being five in the Street Design Guide
- that the Street Design Guide policy requirements were not included in the policy section of the report
- that the access arrangements were not policy compliant in relation to the number of dwellings off a private drive, but were being put forward for approval. Members were informed that the policy regarding the number of dwellings served off a private drive was not being ignored; the objectives of that policy, including highways safety had been taken account and weighed up against other elements in this case. Members were

concerned that the submitted report did not provide sufficient detail on this matter

- the likely outcome at appeal if the application was refused on highways grounds, with the Head of Planning Services stating the Council could find it difficult to defend in this case
- the design of the dwelling and how this would relate in context to the historic Ebor Way. The Panel was informed that the section of the Ebor Way which contained the site had been taken into account when considering the design proposals submitted by the applicant and that a clean-cut building which made use of the views to the river was proposed, rather than replicating features of other buildings within the locality. Concerns remained about the design of the dwelling in this location
- the impact of the proposals on the garage at 203 High Street and what measures could be taken. Members were informed that a condition was proposed which would require the submission of existing and finished ground levels
- the associated proposals for the church; that both applications should be considered side by side and the lack of a binding link between these two applications to justify the enabling development of the application before Members
- concerns that Ward Members had not been kept informed of changes to the application

The Panel considered how to proceed

A proposal to defer determination of the application for Officers to assess the application for the works to the church was made, seconded and voted upon. Following an equality of votes, the Chair used her casting vote against the motion to defer. A proposal to accept the Officer's recommendation to approve the application was made, seconded and voted upon. Following an equality of votes, the Chair used her casting vote

RESOLVED - That the application be granted subject to the conditions set out in the submitted report, plus additional conditions requiring the driveway to be of a no dig construction; further details regarding the design of the driveway and a method of construction to prevent possible subsidence of the existing garage at 203 High Street

130 Application 14/02832/FU - Change of use of doctors surgery to 8 bedroom house in multiple occupation (HMO) - 1 East Park Parade LS9

Having a declared an interest in this matter, through knowing the applicant, the Panel's Lead Officer, Mr Newbury, withdrew from the meeting at this point

Further to minute 101 of the North and East Plans Panel meeting held on 27th November 2014, where Panel deferred determination of the application for further discussions with the applicant on the type of accommodation being proposed, particularly the inclusion of shared toilet facilities, Members considered a further report

The Panel was informed that each of the residential units would now be en-suite, although the shared nature of the development would remain through the provision of a communal lounge/dining room

The receipt of a further letter of objection from a previous objector was reported, with its contents being outlined to Panel

RESOLVED - That the application be granted subject to the conditions set out in the submitted report

Following the determination of this application, the Panel's Lead Officer resumed his seat in the meeting

131 Application 14/06409/FU - Alterations and side extension to existing end terrace dwelling to form block of 6 apartments including associated landscaping - 146 Chapeltown Road LS7

Plans, photographs, drawings and an artist's impression of the proposals were displayed at the meeting. A Members site visit had taken place earlier in the day

The Panel's Lead Officer presented the report which sought approval for the refurbishment of 146 Chapeltown Road and to extend the property to create a modern extension of 6 apartments. The site was located in a Conservation Area and close to a nightclub and was considered to be critical in terms of the regeneration of the area. Members were informed that a fire on the site in 2005 had led to the book-end terrace being demolished and no 146 Chapeltown Road being badly damaged. As no positive development proposals had come forward, the Council was well advanced with the legal matters involved to recover the site. The proposals for the residential development would be in partnership with a Housing Association and although no 146 Chapeltown Road could revert to residential use without planning permission, there would not be the opportunity to protect the amenity of the apartments, which the application as presented, could provide

The condition of a horse chestnut tree in the corner of the site was the subject of debate, with the Council's Landscape Officer being of the view this was healthy, and the applicant – Leeds City Council Regeneration – disputing this. Due to the proximity of the proposals, the tree was threatened and whilst it could be controlled by condition, it was felt that greater weight should be put on delivering the proposed scheme over the future health of the tree

The existence of a nightclub close by, which also held activities outside the premises posed implications for future residents of the apartments and that noise mitigation measures were proposed

Detailed design issues were outlined to Panel. It was reported that one objector had produced a plan of a different form of development which related more closely to the existing architecture, however this was not the scheme which was under consideration

The Panel heard representations from two objectors who outlined their concerns, which included:

- the importance of the site to the Conservation Area
- detailed design issues including reinstatement of the book-end terrace property

- the need for the site to be redeveloped
- that detailed plans for the development of a multi-purpose function room extending into the site had been developed but were not supported by the Council
- matters relating to the legal process for the recovery of the site

Members then heard representations from the applicant's representative who provided information to the Panel, which included:

- the need for residential accommodation in the area
- the positive statement the proposals would make
- detailed design issues

Members discussed the application, with the main areas of discussion focussing on:

- the funding for the scheme
- the legal issues associated with the recovery of 146 Chapeltown Road
- whether the correct procedure had been followed in terms of serving the Certificate of ownership. The Panel's Lead Officer explained the process and confirmed that it had been correctly carried out
- possible noise nuisance from the nightclub and the extent of noise assessments which had been undertaken to support the recommendation to grant planning permission
- hours of opening for licensable activities with concerns that prospective residents would not be attracted to the accommodation, despite its good design, in view of possible noise nuisance from the nightclub. Members were informed that the noise mitigation measures proposed included sound insulation to the adjoining wall; appropriate glazing; siting the bedrooms to the rear of the development and possibly including mechanical ventilation and a high wall to the front
- the number of residential units above licensed premises in the City Centre and that with the appropriate measures in place these two uses could be successfully accommodated in close proximity
- that consideration of the application was premature in view of the land not yet being in the ownership of the Council

Members considered how to proceed

RESOLVED - That the application be granted subject to the conditions set out in the submitted report, with the amendment of condition no. 11 to be amended to require a full noise assessment to be submitted and a scheme to mitigation noise from the nightclub to be submitted and approved prior to occupation

132 Application 14/06550/FU - Application for single storey rear extension at Flat 6 The Acres The Avenue LS17

Plans, drawings and photographs were displayed at the meeting

The Panel's Lead Officer presented the report which sought approval for a single storey extension to the rear of Flat 6, The Acres LS17

Members were informed that the proposals were for a relatively modest extension and although the original proposal was for a first floor extension and balcony, these features had been deleted from the scheme before Panel

There were no planning concerns about the degree of separation from the proposed extension to neighbouring dwellings, although a condition was proposed requiring obscure glazing on two windows, with the position of these being highlighted to Members, for the avoidance of doubt

The Panel heard representations from an objector who advised he was representing a number of local residents. The issues raised included:

- the proposals represented overdevelopment
- the existing over-dominance of the building would have a further negative impact on neighbouring properties
- issues relating to loss of privacy and overlooking

Members discussed the application with concerns being raised relating to overdevelopment and overlooking

A proposal to refuse the application was made and seconded but did not receive majority support

The Panel considered how to proceed

RESOLVED – To defer and delegate approval to the Chief Planning Officer subject to the conditions set out in the submitted report and further negotiations with the applicant on the provision of non-opening windows and any other measures considered appropriate to protect the amenity of neighbouring residents

133 Application 14/02451/FU - Alterations including two storey front and side extensions, two storey rear extension, roof terrace to rear - Quarry House - 49 Bracken Park Scarcroft

Plans, photographs and drawings were displayed at the meeting. A Members site visit had taken place earlier in the day

Officers presented the report which sought approval for extensions to the front, side and rear of Quarry House, 49 Bracken Park Scarcroft

The main issues associated with the scheme were outlined to Panel

Members discussed the proposals with concerns being raised at the extent of the proposals and the impact large dwellings had in terms of highways and parking issues

RESOLVED - That the application be granted subject to the conditions set out in the submitted report

134 Late Item - Application 14/00927/UHD3 - Unauthorised alterations to dwelling at Reighton House, Moor Lane, East Keswick, Leeds, LS17 9ET

Plans, photographs and drawings were displayed at the meeting

With reference to minute 105 of the North and East Plans Panel meeting held on 27th November 2014, where Panel resolved to obtain Counsel's opinion on works undertaken at Reighton House, Moor Lane, East

Keswick, and whether these constituted a breach and what enforcement action could be taken, the Panel considered a further report. It was noted that this report required urgent consideration as works had very recently resumed on the property. Appended to the report of the Chief Planning Officer was a report which contained exempt information relating to legal advice obtained by the Council and was considered in private

The Panel's Lead Officer informed Members of the current position in respect of works which had recommenced on site. Whilst the matter had been due to be considered at the North and East Plans Panel of 8th January 2015, this was deferred as issues had been raised about the Certificate of Proposed Lawful Development, however, in view of the urgency of this matter, Members were being asked to consider the course of action to be taken

For reference, the extent of the works covered by the Certificate of Proposed Lawful Development was outlined to Panel

A detailed discussion took place on the matters under consideration, with the Head of Planning Services, the Panel's Lead Officer and the Council's Legal representative commenting on aspects of the issues involved

The main areas of discussion included:

- the issuing of the Certificate of Proposed Lawful Development
- the advice sought and obtained from Counsel
- the way forward for the Council
- enforcement action
- that the submission of a planning application be sought

Having considered the information in the report; the exempt appendix, the Officer presentation and comments of Members and Officers, it was:

RESOLVED - To note the report and that Members were minded to consider Enforcement Action but at this time chose to reserve their position and for the Chief Planning Officer to undertake discussions with the developer on an alternative scheme as part of a planning application and that a further report be submitted to Panel in due course

135 Date and Time of Next Meeting

Thursday 12th March 2015 at 1.30pm in the Civic Hall, Leeds

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Originator: A RUSTON

Tel: 0113 222 4409

Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 12th March 2015

Subject: 14/05100/FU - Raise roof height of main dwelling; two storey extension to front; two storey extension to side/rear; single storey extension to side; dormer windows to rear roof plane and create living space in roof at 7 Bracken Park, Scarcroft, Leeds. LS14 3HZ

APPLICANT

Mr and Mrs Khan

DATE VALID

27th August 2014

TARGET DATE

10th December 2014

Electoral Wards Affected:

Harewood

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: GRANT PERMISSION subject to the following conditions:

1. Time limit on full permission;
2. Development carried out in accordance with approved plans
3. Materials to match the existing;
4. Pre-commencement Tree Survey required. Recommendations to be implemented;
5. Permitted development restriction – No windows to side elevations/roof plane of proposed extensions;
6. Pre-commencement condition requiring approval in writing of bat roosting provision to be made on the site.
7. Pre-commencement details of tree protection methods.
8. Retention of garage for parking.

1.0 INTRODUCTION

- 1.1 This application seeks permission to raise the roof height of the main dwelling to create a second floor, to erect a two storey side and rear extension, a single storey side extension and dormer windows to rear.

1.2 The application is brought to Panel at the request of a Ward Member, Councillor Rachael Procter who is concerned with the impact that the proposal will have on the character of the area.

2.0 SITE AND SURROUNDINGS:

2.1 The application relates to a gable roofed, random coursed stone built rectilinear large detached residential dwelling of modest and simple form and style set down from the highway set back from the highway behind a low wall and a front garden dominated by a driveway with two access points off Bracken Park. The property is characterised by a chalet style form, thus rather than appearing as a two storey structure it has a single storey with living space and dormers in the roof. The property has a large garden to the rear with mature planting and trees and solid timber fencing and high hedge boundary treatment which is to be retained.

2.2 The property has a detached double garage set to the side of the main property and the tarmacked driveway allows at least two cars to be parked clear of the highway.

2.3 Bracken Park is located on a cul-de-sac of large residential dwellings of similar size, scale, form and style to the applicant property in a rural-fringe location within the envelope of the village of Scarcroft to the north east of the City of Leeds.

3.0 PROPOSAL

3.1 It is proposed to make alterations to the existing property by raising the height of the existing roof and create living space in the roof void. It is also proposed to erect a two storey front extension and two storey side extension and two storey and single storey side/rear extension.

3.2 It is proposed to raise the height of the roof of the application dwelling from approximately 7m tall to ridge and 3.3m tall to eaves to approximately 8m tall to ridge and 6m to eaves. The gabled roof form will be retained.

3.3 Proposals involve a two storey gable roofed transverse extension to the wall forming the front (south) elevation of the application dwelling. This will measure approximately 4.2m wide by 8m tall to ridge and 6.3m eaves measured from ground level.

3.4 The proposed two storey, gable roofed side extension will be to the east elevation and will measure approximately 7m wide by 15.2m deep by 7.5m tall to ridge and 5.4m tall to eaves. It will be set back behind the front elevation by approximately 0.8m and project beyond the wall forming the rear elevation by approximately 7.2m including the chimney stack

3.5 The proposed single storey side mono-pitched roofed extension will measure approximately 3m wide by 8m deep by 4.4m tall to ridge and 2.8m tall to eaves measured from ground level. It will be set back from the front elevation of the proposed two storey side extension by approximately 3.3m. It will also be set 2.2m at its nearest point away from the side boundary with no. 9 Bracken Park, and 3.0m away at its furthest point.

3.6 It is proposed to create a living space into the roof space of the main part of the application property with three flat roofed box dormers to the rear (north) roof plane. Each dormer will measure approximately 2m wide by 1.7m deep by 1.2m tall.

4.0 RELEVANT PLANNING HISTORY:

Application number:	14/02450/FU
Proposal:	Alterations including three storey, two storey and single storey front/side/rear extensions; dormer windows to front/rear and balconies to side/rear
Status:	Withdrawn

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 No pre-application discussions per se have been. However, this application is a re-submission of an earlier application for a similar proposal that was withdrawn.
- 5.2 Revised plans have been submitted in light of officer concerns and following consultation with the ward member, Rachael Procter.
- 5.3 The original submission proposed a significantly longer side extension and taller roof height. The initial plans also proposed a balcony sited on the rear elevation, now removed and replaced with a Juliet balcony.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 The initial application was advertised by neighbour notification letters sent on 3rd September 2014.
- 6.2 The publicity period for the application expired on the 28th September 2014 and 22nd December 2014 following submission of revised plans. To date one objector from no. 9 Bracken Park has made comments. Concerns expressed are in relation to the initial plans :
- Inaccuracy of the plans.
 - The proximity of the proposal to the boundary and closure of the gap between properties
 - Over-dominance.
 - Overshadowing.
 - Scale and massing of rear extension.
 - Contrary to the Council's House Holder Design Guide.
- 6.3 Revised plans were received on 13th January 2015 and consultation letters sent out on 14th January 2015 with an expiry date of 24th January 2015 for responses. The neighbour at no. 9 Bracken Park has re-iterated their previous objections.
- 6.4 Further plans were received on the 21st January 2015, 30th January 2015 and 12th February 2015. As these reduced the scale and mass of the scheme consultation letters were not sent out.
- 6.5 **Scarcroft Parish Council:** Recommend that officers carry out a site visit to clarify issues raised by objector.

7.0 CONSULTATIONS RESPONSES:

- 7.1 Sustainability-Nature Team: The applicants, on advice from the Nature Officer, have provided a Bat Emergence Survey. This has been reviewed by the Nature Officer who concludes that the report is satisfactory and advises that should planning permission be approved a condition be attached that requires the provision of bat roosting features.

Landscape: Note that the proposal does not appear to be in conflict with any trees but advise a condition requiring trees to be protected during construction works.

8.0 PLANNING POLICIES:

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Leeds currently comprises the Core Strategy, saved policies of the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013), as well as relevant SPGs and SPDs.

Local Planning Policy

- 8.2 Relevant saved UDP policies include:

GP5: Seeks to ensure that development proposals resolve detailed planning considerations, including amenity.
BD6: Seeks to ensure extensions respect the scale and form of the existing dwelling.

Local Development Framework - Core Strategy

- 8.3 Policy P10 requires a high standard of design.

Supplementary Planning Guidance/Documents

- 8.4 Leeds City Council Householder Design Guide was adopted on 1st April and carries significant weight.

HDG1 All alterations and extensions should respect the scale, form, proportions, character and appearance of the main dwelling and the locality/ Particular attention should be paid to:

- i) The roof form and roof line;
- ii) Window detail;
- iii) Architectural features;
- iv) Boundary treatments
- v) Materials.

HDG2 All development proposals should protect the amenity of neighbours. Proposals which harm the existing residential amenity of neighbours through excessive overshadowing, overdominance or overlooking will be strongly resisted.

National Planning Policy

- 8.5 The National Planning Policy Framework (2012) sets out the Government's planning policies for England and how these are expected to be applied. The NPPF requires places an importance on achieving good design.

9.0 MAIN ISSUES

- 1) Design and Character
- 2) Neighbour Amenity
- 3) Highway Safety
- 4) Consideration of Objections

10.0 APPRAISAL

Design and Character

- 10.1 The National Planning Policy Framework states that “good design is indivisible from good planning” and authorities are encouraged to refuse “development of poor design”, and that which “fails to take the opportunities available for the improving the character and quality of an area and the way it functions, should not be accepted”. Leeds Unitary Development Plan Policy GP5 states that “development proposals should seek to resolve detailed planning considerations including design” and should seek to avoid “loss of amenity”. These policies are elucidated and expanded within the Householder Design Guide.
- 10.2 The existing property is as noted a large residential dwelling of modest and simple style and form and the proposal will increase the width, height and depth of the property.
- 10.3 The application property is set in a depression and is thus lower than the surrounding street scene. The rise in roof height within this context does not significantly impact on the wider street scene.
- 10.4 The extensions which are proposed adequately complement the existing dwelling. They have a simple shape and form and their size and scale reflect the pattern and scale of surrounding development. As such, subject to a condition to match the materials of the existing house, no harm is anticipated to the dwelling or the wider street scene.
- 10.5 In terms of size and scale, the proposed application property will be similar to other properties in Bracken Park and whilst the proposal represents a significant change to the application property the size and scale is in keeping with neighbouring properties in Bracken Park.
- 10.6 There has been some concern expressed in relation to the reduction of the gap between the application property and 9 Bracken Park. The proposal will result in a gap of approximately 3m between the proposed single storey side (east) extension and the single storey garage at 9 Bracken Park and approximately 8m between the proposed single storey side (east) extension and the main dwelling at 9 Bracken Park.

- 10.7 In terms of the gap and the effect of the proposed two storey side (east) extension on the gap, it will result in a gap of approximately 6m between the proposed side (east) elevation and the single storey garage at 9 Bracken Park and 11.5m from the side to the main dwelling at 9 Bracken Park.
- 10.8 Whilst the gap will be reduced, there will still be a clear visible gap when read from the street and as such it is considered that the proposal will not significantly harm the character and nature of the application property, 9 Bracken Park or the wider street scene.

Neighbour Amenity

- 10.9 Policy GP5 (UDPR) notes that extensions should protect amenity and this advice expanded further in policy HDG2 which notes that “all development proposals should protect the amenity of neighbours. Proposals which harm the existing residential amenity of neighbours through excessive overshadowing, overdominance of overlooking with be strongly resisted”.

Overshadowing:

- 10.10 In respect of overshadowing the potential greatest impact is on 9 Bracken Park. This is a two storey house of similar size and scale to the applicant property. Under the proposed scheme the main dwelling would be separated from the application property by a gap and its own a single storey attached garage.
- 10.11 The applicant property is set lower than 9 Bracken Park and the proposed two storey side (east) and rear (north) extension have been stepped down relative to the applicant property. The ridge height of the main dwelling as proposed will be slightly taller than 9 Bracken Park and the proposed two storey side extension will be slightly lower than the main dwelling at 9 Bracken Park. In terms of the track of the sun in relation to the proposed side (east) extension, it is considered that overshadowing will not be to a significantly greater degree than in relation to the existing.
- 10.12 In respect of the proposed two storey rear (north) extension, it is likely that this will cause some overshadowing during the afternoon. However, the garage of 9 Bracken Park is located to the side (west) and it will be that area to the rear of the garage that will be most affected by the proposal. It is noted that 9 Bracken Park has a large garden with a significant amount of private amenity space that will not be affected by the proposal and given the distance from the main dwelling at 9 Bracken Park and proposed two storey rear (north) extension, approximately 11.6m, overshadowing is not considered to have such a significantly harmful impact that it would justify a refusal.

Overdominance:

- 10.13 In light of the degree of separation (11m to the main house) and scale of the extensions it is not considered that the resultant house would dominate 9 Bracken Park that it would justify a refusal.

Overlooking:

- 10.14 5 Bracken Park is the adjacent property set approximately 19m to the side (west) of the application property.

- 10.15 It is proposed to install windows at ground and first floor level into the side (west) elevation of the proposed two storey rear (north) extension. These windows will be approximately 24m from the common boundary with 5 Bracken Park and 37m from the main dwelling at 5 Bracken Park. As such they exceed the distances advised in the HDG and are not uncommon within residential contexts. Accordingly, overlooking is not considered to be significantly harmful enough to justify refusal.
- 10.16 Other proposed windows will allow views toward the front (south) and over the highway and rear (north) and over open countryside. There will be no windows located in the side (east) elevation and thus no overlooking toward 9 Bracken Park.

Highway Safety

- 10.17 Leeds Unitary Development Plan Policy GP5 states that “development proposals should seek to resolve detailed planning considerations including highway safety”. In order to be considered acceptable in respect of highway safety development proposals must not prevent two cars parking within the curtilage of a dwelling.
- 10.18 The works which are proposed remove the existing garage and replace it with a new garage as part of the proposed two storey side extension. This measures approximately 6.4m wide by 5.8m deep. This falls marginally short of the size advised in the HDG to be considered as a parking space for two cars (3m wide x 6m long per car). However, this standard is aimed towards more dense housing developments which do not comprise any other storage facilities. In this instance, the garage is large enough for 2 vehicles while the house and garden is large enough to cater for the storage needs of the occupants of the dwelling. There is also additional parking provision within the site frontage. As such the application is considered acceptable in this regard.

Consideration of Objections

- 10.19 The concerns and issues raised by the neighbour at no. 9 Bracken Park have been addressed above.

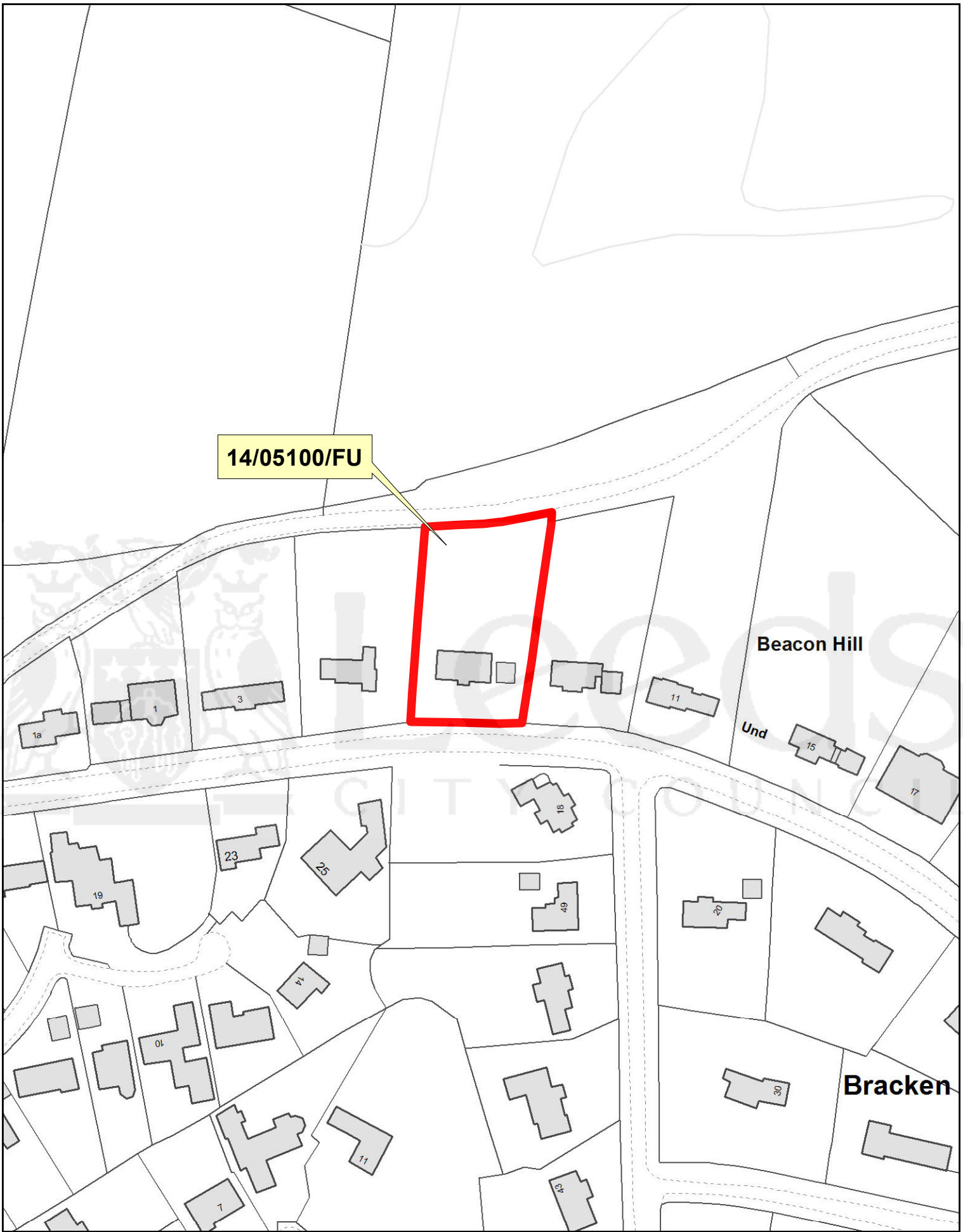
11.0 CONCLUSION

- 11.1 The application is considered to be acceptable. The proposal would not harm the design and character of the applicant dwelling or Bracken Park nor harmfully impact on neighbour amenity or highway safety. As such, the application is compliant with the relevant policies and guidance.

Background Papers:

Application file: 14/05100/FU

Certificate of ownership: Certificate A signed



NORTH AND EAST PLANS PANEL



REV.	DATE	REVISION	BY	R/W
A	19.02.14	Plans amended to client's requirements	FV	DMC
B	04.04.14	Floor Plan Amendments	AE	DMC
C	17.04.14	General floor plan changes, amended as per	AE	DMC
D	04.05.14	General amendments - client meeting	AS	DMC
E	12.05.14	Demolition lines added	AE	DMC
F	02.06.14	Footprint amended	AE	DMC
G	16.07.14	Roof amended	AE	DMC
H	20.08.14	Floor Plan & Site Amended	AE	DMC
I	03.11.14	Topo Survey Added	AE	DMC
J	13.12.14	Footprint Amends	AE	DMC
K	19.02.14	Porch amended	AE	DMC
L	13.02.15	Gable Wall Moved - Planning Amendments	AS	DMC
M	21.01.15	Porch Size updated	AS	DMC

LEEDS CITY COUNCIL
21 JAN 2015
REVISED



KEY

--- Site Boundary

studio MAP
Architecture and Project Management

Bridge House
1-2 Station Bridge, Harrogate
North Yorkshire, HG1 1SS
Tel: 01423 799192
Fax: 01423 799183
Email: admin@studiomap.co.uk

CLIENT

Mr & Mrs Z Khan

PROJECT

7 Bracken Park
Scarcroft
Leeds

TITLE

Proposed Site Plan

STATUS

Preliminary

DATE

Feb. '14

SCALE

1:200 @ A1

DRAWN BY

AS

REVIEWED BY

DMC

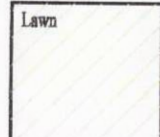
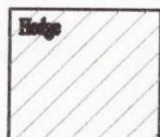
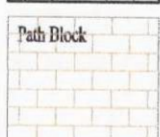
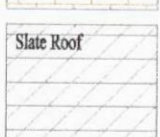

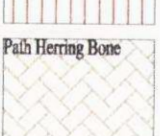
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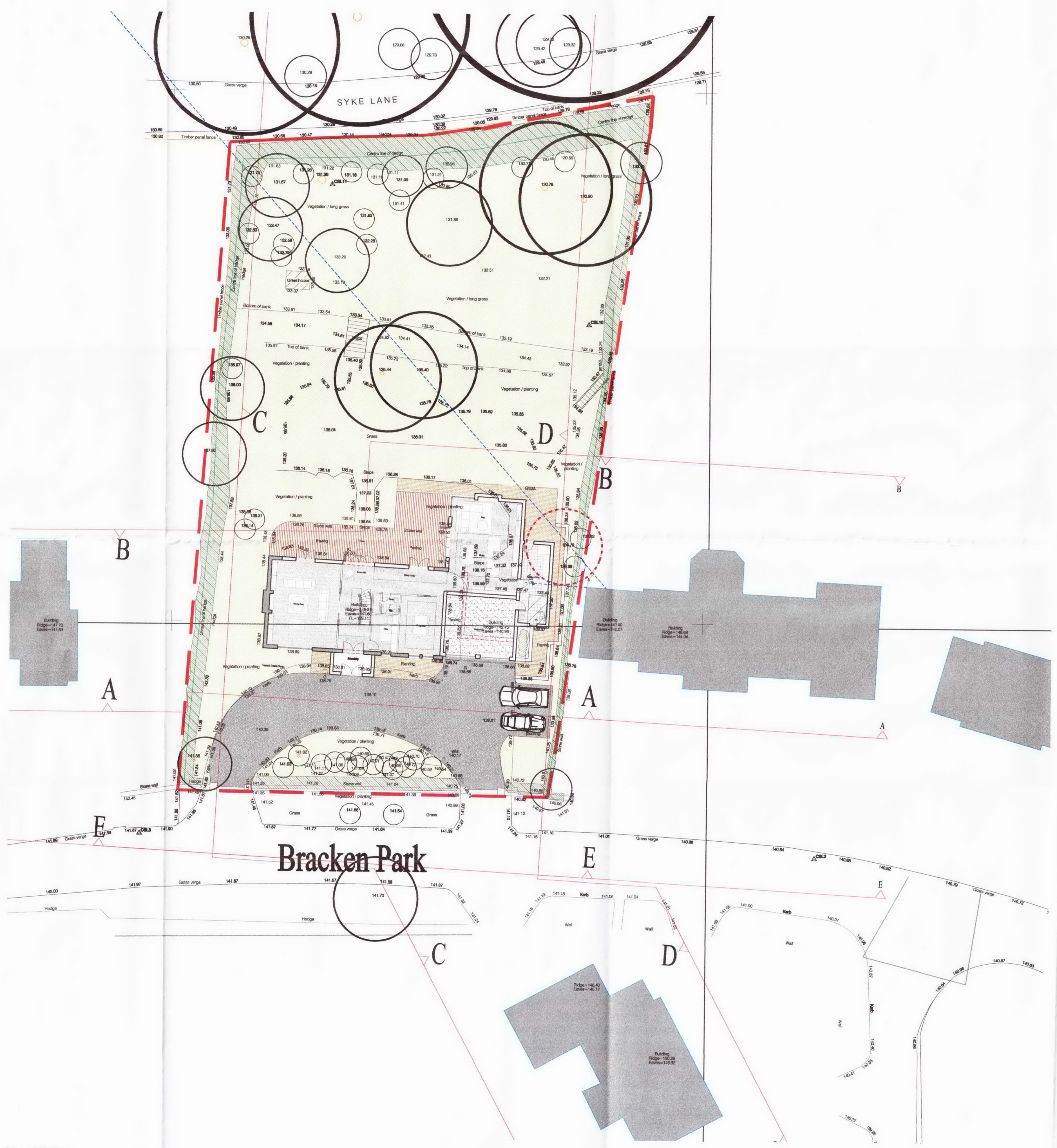
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CAD DETAILS

1:Scale Site

Proposed Materials Key

-  Lawn
-  Slip
-  Peb Block
-  Site Roof
-  Floor Finish
-  Peb Tiling Base



Proposed Site Plan

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Originator: Daniel Child
Tel: 0113 247 8050

Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 12th March 2015

Subject: 15/00554/FU FULL APPLICATION FOR TWO STOREY MEDICAL CENTRE WITH ASSOCIATED PARKING AND PHARMACY (A1), LAND AT KING LANE, ALWOODLEY

APPLICANT	DATE VALID	TARGET DATE
Abstract Integrated Healthcare Limited - Mr C Potter	30 th January 2015	01 st May 2015

Electoral Wards Affected:

Alwoodley

Yes Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

To DEFER and DELEGATE APPROVAL to the Chief Planning Officer subject to: the expiry of the public consultation period and no significant new objections beings received raising matters not already covered in the report; subject to conditions to cover those matters outlined below (and any others which he might consider appropriate), and; either the completion of a S106 agreement or the receipt of a satisfactory unilateral undertaking to cover the following:

- Public transport contribution of £40,838;
- Travel plan review fee of £2500;
- Highways contribution to cover on-street parking restrictions of £10,000;
- Offsite biodiversity and landscape enhancement and management.

In the circumstances where the Section 106 has not been completed or a satisfactory unilateral agreement has not been received before 06th April 2015, the final determination of the application shall be delegated to the Chief Planning Officer.

1. Time limit on full permission.
2. Development carried out in accordance with approved plans.
3. Highways conditions.

4. Cycle parking provision.
5. Motorcycle parking provision.
6. Electric vehicle charging provision.
7. Prior approval of all external building and surfacing materials.
8. Window and door sections and profiles to be agreed.
9. PD rights removal for means of enclosure.
10. Uses to be those applied for only.
11. Details of existing and proposed ground and finished floor levels.
12. Sustainable foul and surface water drainage details.
13. Prior approval of external plant/machinery and noise mitigation measures.
14. Section 278 Agreement to be entered into for off-site highway works (to include the stopping up and reinstatement of the former bus terminus route).
15. Scheme of footpath improvement works.
16. Construction Management Plan (to include construction traffic routes).

1.0 INTRODUCTION:

- 1.1 A pre-application presentation was given by the applicants to the 08th January 2015 meeting of North and East Plans Panel, Members of the Panel having visited the site earlier that morning. Following the site visit and presentation, having heard representations from Councillor Buckley and following debate, the Panel resolved that, with regard to the needs of the community Members were supportive of the principle of the development in this location, subject to it not forming a precedent for future inappropriate development in Urban Green Corridors (UGC).
- 1.2 In arriving at the resolution to support the principle of the development, Members commented on a number of detailed considerations relating to: the means of access; the number of disabled persons parking spaces; the design of the building; the potential for noise from any plant and equipment; the Green Space and UGC mitigation/compensatory measures, and; the level of Green Space provision in the area and whether or not the proposals would lead to a shortfall. The applicant's response to these considerations is set out and assessed in detail below.
- 1.3 Ward Councillors have been consulted and in response Councillors Peter Harrand and Neil Buckley have commented that they both support the application.

2.0 PROPOSAL:

- 2.1 The proposal involves the merger of 2 existing GPs practices (Moorcroft Surgery and Nursery Lane Surgery) to form a joint primary care centre and has the backing of the NHS and GPs. The application proposes the construction of a two-storey medical centre with associated car parking, landscaping and biodiversity enhancement measures. Access is proposed to be taken from Saxon Mount and includes on, and off-site, compensatory landscaping and biodiversity enhancement measures. 71 parking spaces are proposed with 5 disabled persons parking bays. The application is brought to panel as a departure, given the location of the site within the Urban Green Corridor (UGC), Green Space and Local Nature Area (LNA) saved UDPR policy designations.

3.0 SITE AND SURROUNDINGS:

- 3.1 The site relates to part of the undeveloped Green Space and UGC which flanks either side of King Lane, north of the outer ring road, beyond Moor Allerton retail centre and library. The site is also part of a wider designated LNA, connecting with adjacent mature woodland, though the site itself is mown grassland forming the wide western highway verge of King Lane.

3.2 The site is east of and adjacent to St Stephen's Church. To the south are red-brick three storey flatted dwellings on Saxon Mount, to the south west is Saxon Vicarage. Across King Lane to the east are the Lingfields, which are lined by further three storey blocks of flats and two storey semi-detached red-brick dwellings. To the north across King Lane is the King Lane Park and Ride facility, beyond which is Allerton High School.

3.3 In terms of policy designations the site is located within the strategic network of green spaces which link the main urban area with the countryside, as designated under saved Policy N8 'Urban Green Corridors' and Policy N1 'Greenspace' of the UDPR. Some trees are protected trees within the corridor to the south of the site.

4.0 RELEVANT PLANNING HISTORY:

4.1 PREAPP/14/00795 – Health Centre – North & East Plans Panel 08th January 2015.

5.0 HISTORY OF NEGOTIATIONS:

5.1 In June 2014 the applicants submitted a preliminary feasibility document outlining 3 options for sites closer to the roundabout on the verge of the outer ring road, lower down King Lane. Following detailed consultation with GPs and a technical review one option was progressed in greater detail and this was presented to the Council in September 2014 and pre-application advice was given on the need to reflect the UGC policy designations and wider context. Advice was also given on UDPR Green Space requirements to seek to offset the impact/mitigate the loss caused by development within it, and to provide details of a sequential approach to site selection.

5.2 Though anticipation of formal submission was expected to be in September 2014, mains utilities were identified underneath the original site identified, necessitating relocation further up King Lane. This was the site that was the subject of the pre-application presentation of 08th January 2015.

5.3 Following the pre-application presentation officers have continued to negotiate on the basis of Member's comments and planning policy considerations. Officers have given detailed advice on improvements to design and access considerations, landscape and biodiversity enhancement measures and Section 106 requirements. Amended plans have been received following these negotiations, seeking to improve the design, landscaping, biodiversity and access aspects of the proposal.

6.0 PUBLIC/LOCAL RESPONSE

6.1 The application has been publicised by site notice dated 13th February 2015 (expiry 06th March 2015) and press notice (Yorkshire Evening Post, expiry 26th March). At the time of writing the report one public objection has been received. Objection raised therein can be summarised as follows:

- Notwithstanding the benefits the location is fundamentally unacceptable in terms of its harmful impact on the functions of the Urban Green Corridor which the Council has historically sought to protect.
- The submitted information refers to a site search which had not been finalised at the time of submission – it identifies other locations which would be far preferable from a planning perspective – Moor Allerton District Centre would be most suitable from a planning policy and viability perspective.

- The District Centre has for many years struggled to attract tenants and a medical centre and pharmacy would be ideally sited there to enhance the centre. Vacant units remain within the centre and, should these not be available or suitable, the opportunity exists to redevelop the library site.
- Notwithstanding the Urban Green Corridor designation the development as currently proposed would appear as incongruous in its setting. The District Centre is successfully screened behind mature vegetation whereas the proposed development identifies only a narrow planting strip that would do little to filter views of the car park or the building.
- The BREEAM assessment suggests that the site is of low ecological value, yet it is part of a Local Nature Area.
- It is unclear whether gradients between the car park and main entrance would be easily accessible.
- Though the community has waited a long time for a medical centre we can wait a little longer to get it in a more appropriate location than currently proposed.

7.0 CONSULTATION RESPONSES

LCC Transport Development Services

- 7.1 No objections in principle to the access proposals from Saxon Mount, subject to conditions and the provision of £10,000 for on-street parking restrictions to prevent overspill parking on King Lane and Saxon Mount. A Construction Management Plan should be required, together with a scheme of footpath improvement works. It should be a condition of any permission that a Section 278 Agreement is entered into, to cover the stopping up and reinstatement of the highway (former bus terminus access/egress).
- 7.2 The proposed development will generate a large number of trips, a proportion of which will have to be accommodated on the public transport network. The scheme has, therefore, been assessed in accordance with the City Councils adopted Supplementary Planning Document (SPD) "Public Transport Improvements and Developer Contributions".
- 7.3 As a result of this assessment, it is clear that the proposed use will have a significant travel impact, which will need to be addressed. Under the terms of the SPD guidance, therefore, a financial contribution proportionate to the travel impact of the scheme will be required towards the cost of providing the strategic transport enhancements (detailed in the SPD) which are needed to accommodate additional trips on the network. In this case a contribution of **£40,838** should be sought.
- 7.4 In accordance with the SPD on Travel Plans the Travel Plan should be included in the Section 106 Agreement along with the following:
- a) Leeds City Council Travel Plan Review fee of £2500

LCC Flood Risk Management

- 7.5 No objection to the proposed medical centre with car parking at this site but the proposed surface water drainage for the site needs investigating. The applicant should firstly consider infiltration drainage for discharging all or part of the surface

water from the site. Soil tests will be required to establish if the site is suitable, our records indicate that the soil type at this site will be highly compatible with infiltration SUDS. We recommend the applicant undertake infiltration testing (To BRE Digest 365 standard) and any proposed soakaway to be designed to LCC Minimum Development Control Standards for Flood Risk. This is to determine if soakaways will work on this site and to establish its best location and size.

- 7.6 If disposal of surface water via infiltration SUDS are not feasible, disposal to a sewer may be acceptable at our Greenfield runoff rate of 2.1 l/s Ha. The restricted discharge rate could be achieved by installing surface water storage on site with an appropriate system controlling the discharge rate into a public sewer. Sustainable drainage methods such as permeable paving and water butts should also be looked at where possible to reduce the surface water run-off from the site.

LCC Sustainable Development

- 7.7 Landscape - The development will be harmful in the UGC. The corridor will be visually broken by this development. But, if this development is regarded as a special case, an exception that overturns the UGC policy, then a scheme that satisfies our combined biodiversity and landscape comments, in conjunction with Parks and Countryside, is the best landscape mitigation possible within the context.
- 7.8 Ecology – A condition will be required to ensure delivery of the wildflower pollinator strips – to be delivered as a Biodiversity Enhancement and Management Plan, with the wording to be agreed.

LCC Forward Planning and Implementation

- 7.9 Any proposal on this site should address Policies N1 and N8 of the UDP, and G6 of the Core Strategy. The Open Space Audit indicates that there is a 0.78ha surplus of amenity space in Moortown. This means that the proposal addresses Policy G6 (i) (given that the only typologies that Moortown is deficient in are Allotments and Outdoor Sports – neither of which would be deliverable on this site). This is enough to satisfy G6.
- 7.10 However the proposal should still address Policies N1 and N8, in particular N8 which states that to be in accordance with the Policy “any existing corridor function of the land is retained, enhanced or replaced”.

LCC Sustainable Development Unit

- 7.11 Design – The last discussions were about breaking down the massing with a setback between the one and two storey elements. It was also advised that they should look at dividing up the big square plate glass windows into more manageable pieces. We understand that they have only partially done the set back and as yet no further information has been forthcoming about reducing the impact of the windows with additional glazing bar elements.

8.0 RELEVANT PLANNING POLICIES

National Planning Policy Framework (NPPF)

- 8.1 The NPPF advocates a presumption in favour of sustainable development. It sets out 12 core land-use planning principles. Development should “...take account of and support local strategies to improve health, social and cultural wellbeing for all,

and deliver sufficient community facilities to meet local needs’, and ”...always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings”. One of the broad principles of sustainable development is achieving a healthy and just society, and the protection of the environment and promotion of healthy communities are part of the social and environmental roles the planning system serves, as set out in the NPPF.

8.2 Section 4 promotes sustainable transport, Section 7 provides guidance relating to the design of new development, Section 8 provides guidance on promoting healthy communities, and section 11 sets out guidance on conserving and enhancing the natural environment.

8.3 With regard to the Urban Green Corridor location under Section 8 promoting healthy communities, significantly paragraph 73 states that:

“Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreational facilities in the local area. Information gained from the assessments should be used to determine what open space, sports and recreational provision is required.”

8.4 Under Section 8 Paragraph 74 states:

“Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.”*

8.5 With regard to plan making and health and wellbeing, Paragraph 171 states:

“Local planning authorities should work with public health leads and health organisations to understand and take account of the health status and needs of the local population (such as for sports, recreation and places of worship), including expected future changes, and any information about relevant barriers to improving health and well-being.”

8.6 With regard to the proposed pharmacy, Section 2 sets out the approach towards ensuring the vitality of town centres. It stipulates that local planning authorities should apply a sequential test to planning applications for town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering out of centre proposals, preference should be given to accessible sites that are well connected to the town

centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

8.7 Again with regard to the proposed pharmacy, paragraph 26 requires that “*when assessing applications for retail development outside of town centres, which are not in accordance with an up-to-date Local Plan, LPA’s should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:*

- *The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
- *The impact of the proposal on town centre vitality and viability, including local customer choice and trade in the town centre and wider area....”*

8.8 At paragraph 27 the NPPF advises “*Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.*”

Development Plan

8.9 The development plan consists of the Core Strategy and the saved policies within the Leeds Unitary Development Plan (Review 2006) (UDPR) and the adopted Natural Resources and Waste DPD (2013). Objective 10 of the Core Strategy, in reflecting the Spatial Vision, is to “*Support the provision of community infrastructure that is tailored to meet the needs of the community including high quality health, education and training, cultural and recreation, and community facilities and spaces.”, whereas Objective 21 is to “Protect and enhance Green Infrastructure, strategic green corridors, green space, and areas of important landscape character, taking the opportunity to improve their quality, connectivity and accessibility through the development process.” [My emphasis].*

Local Development Framework Core Strategy policies:

- 8.10
- | | |
|------|--|
| SP1 | Location of development |
| SP13 | Strategic green infrastructure |
| G6 | Protection and redevelopment of Green Space |
| G8 | Protection of important species and habitats |
| G9 | Biodiversity improvements |
| EN1 | Climate change |
| EN2 | Sustainable design and construction |
| EN5 | Managing flood risk |
| T1 | Transport management |
| T2 | Accessibility requirements and new development |
| P9 | Community facilities and other services |
| P10 | Design |
| P11 | Conservation |
| P12 | Landscape |

Saved Policies of Leeds Unitary Development Plan Review (UDPR):

- 8.11
- | | |
|-----|---------------------------------|
| GP1 | Land use and the proposals map |
| GP5 | General planning considerations |
| N1 | Greenspace |

N8	Urban Green Corridor
N9	Urban Green Corridors and development
N25	Landscape design and boundary treatment
T7A	Cycle parking guidelines
T24	Parking provision and new development

Relevant Supplementary Planning Guidance

- 8.12 Supplementary Planning Document: “Street Design Guide”.
 Supplementary Planning Document: Travel Plans.
 Supplementary Planning Guidance “Neighbourhoods for Living”.
 Supplementary Planning Document – Sustainable Design and Construction
 “Building for Tomorrow, Today”
 Supplementary Planning Document – Travel Plans
 Supplementary Planning Guidance 25 – Greening the Built Edge

9.0 MAIN ISSUES

Principle of Development
 Design and Layout
 Highway Safety
 Open Space
 Landscape Enhancement Measures
 Biodiversity Enhancement Measures
 Representations
 Community Infrastructure Level
 Sequential Test

10.0 APPRAISAL

Principle of Development

- 10.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 state that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 10.2 Paragraph 12 of the National Planning Policy framework indicates that development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused, unless other material considerations indicate otherwise. The starting point for any consideration of the development must therefore be the provisions of the saved policies of the UDPR and adopted Core Strategy, in order to assess whether the development is in accordance with the development plan.
- 10.3 Under saved UDPR policy the application site is part of the strategic network of Urban Green Corridors, part of a Local Nature Area, and is also designated as Green Space. The development would disrupt the physical continuity of the corridor on this side of King Lane. It would lead to the loss of Green Space and result in the loss of grassland from the LNA. The starting point for the consideration of the development therefore must be that it is unacceptable in principle and should be resisted. The application does however deliver some significant benefits to which weight can legitimately be given to balance against these concerns, and these are considered in detail below.

- 10.4 The key benefit the proposal delivers is an improved community health facility. It allows for the amalgamation of two existing GP practices, to provide a single, accessible and modern primary care facility, with enhanced treatment options. The existing surgeries the proposal is to replace are more akin to single dwellings than modern medical centres and have outlived their usefulness in the delivery of modern GP services. It is understood that these would more than likely be returned to family dwelling uses. The proposal would deliver significant improvements in terms of accessibility and patient care in a modern purposes built premises, and these are clearly important considerations, in terms of local access to high quality health facilities. It is considered that significant weight should be given to these considerations.
- 10.5 Core Strategy policy P9 Community facilities and other services states: *“Access to local community facilities and services, such as education, training, places of worship, health, sport and recreation and community centres, is important to the health and wellbeing of a neighbourhood. New community facilities and services should be accessible by foot, cycling, or by public transport in the interests of sustainability and health and wellbeing. Facilities and services should not adversely impact on residential amenity and should where possible, and appropriate, be located in centres with other community uses. The scale of the facility or service should be considered in conjunction with the level of need within the community and its proposed location within the Settlement Hierarchy.”*
- 10.6 In terms of principle, given that the site is located within a UGC, as designated in the UDPR, the terms of saved policies N1, N8 and N9 are relevant. The Spatial Vision states objective (v) Managing Environmental Resources, (point 21) - *“Protect and enhance Green Infrastructure, strategic green corridors, green space, and areas of important landscape character, taking the opportunity to improve their quality, connectivity and accessibility through the development process.”*. Balanced alongside this, the Core Strategy also talks of improving health and addressing deprivation and health inequality, and it recognises this is a part of the key challenges the city faces in achieving its growth targets.
- 10.7 Saved UDPR Policy N1 states that development of land identified on the proposals map as protected greenspace will not be permitted for purposes other than outdoor recreation, unless the need in the locality for greenspace is already met and a suitable alternative site can be identified and laid out as greenspace in an area of identified shortfall. Saved UDPR Policy N8 sets out that the strategic network of UGCs link the main urban area with the countryside, and that these corridors have the potential to provide for informal recreation and also contribute to visual amenity and nature conservation. Under criterion i) of Policy N8, within these corridors, development proposals should ensure that any existing corridor function of the land is retained, enhanced or replaced. Saved UDPR Policy N9 states that all development should respect and where possible enhance the intrinsic value of land fulfilling a corridor function, in terms of access, recreation, nature conservation and visual amenity.
- 10.8 The associated text to policy N8 states:

“The strategic network of Urban Green Corridors identified on the Proposals Map focuses upon the main urban area of Leeds. This technique has been adopted in order to secure a strategic approach towards Urban Green Corridors in areas where considerable pressures tend to erode existing linkages, and in contrast where opportunities exist to enhance and extend the network. It should also be recognised that many other places serve to provide a corridor function, on a less ‘strategic’

basis. A fine grained network exists in many areas, providing important local visual breaks, wildlife habitats, and informal recreational routes and facilities. This can include linear features such as streams, railway routes, major roads, hedgerows, footpaths and bridleways, along with concentrations of urban green space, allotments, playing fields and cemeteries. Within these areas, features such as trees, flora and water make important contributions to their visual character and value to wildlife and local residents. Outside the strategic Urban Green Corridors, this local corridor function must also be protected and supported'.

- 10.9 Core Strategy Policy G6 Protection and Redevelopment of Greenspace states that Green Space will be protected from development unless there is, either: an adequate supply of accessible green space/open space within the analysis area and the development site offers no potential for use as an alternative deficient open space type [this test is met] or; the green space/open space is replaced by an area of at least equal size, accessibility and quality in the same locality, or where supported by evidence and in the delivery of wider planning benefit, redevelopment proposals demonstrate a clear relationship to improvements of existing green space quality in the same locality. Adopted Cores Strategy and saved UDPR policy require that UGCs, Green Space and LNA are protect for from development their own sakes and their wider contribution to the network of open and green spaces linking the city with the wider countryside, and for their own biodiversity value.
- 10.10 Whilst there are clearly benefits which are capable of being given significant weight, and whilst the application proposes development on Green Space that is in a locality where there is not a deficit of such provision, and whilst a comprehensive package of mitigation/enhancement measures are advanced, in this policy context the development is therefore clearly a departure and the application has been advertised as such.

Design and Layout

- 10.11 Core Strategy Policy P10 relates to design and requires that new development should be based on a thorough contextual analysis and good design that is appropriate to its location, scale and function. Policy P10 states that proposals will be supported where they accord with the following [summarised] key principles:
- i) Size, scale, design and layout are appropriate to context and respect the character and quality of surrounding buildings, the streets and spaces that make up the public realm, and the wider locality.
 - ii) Development protects and enhances the district's existing historic and natural assets, locally important buildings, spaces, skylines and views.
 - iii) Development protects the visual, residential and general amenity of the area, through high quality design.
 - iv) Car parking, cycle, waste and recycling storage is designed in a positive manner and is integral to the development.
 - v) Development creates a safe and secure environment.
 - vi) Development is accessible to all users.
- 10.12 Saved UDPR policy GP5 sets out general planning criteria for new development, with reference to access, drainage, contamination, stability, landscaping and design. Policy GP5 requires that proposals seek to avoid problems of environmental intrusion, loss of amenity, pollution, danger to health or life, highway congestion, highway safety, and promote energy conservation and the prevention of crime. Under policy GP5 proposals should also have regard to any framework or planning brief prepared for the site or area.

- 10.13 Following pre-application stage detailed discussions have been held to assist the applicant in improving the design. Whilst some members were of the view that the building ought to be of pitched roof design, it is not considered critical to success of the design that this is the case. A number of considerations support this view, namely that there are other flat roofed significant structures in the locality, such as the school, and that to pursue a pitched roof building would add significantly to the cost, would be impractical in construction terms due to the span of the building, and would actually serve to have a greater impact on the openness of the UGC.
- 10.14 Following advice the applicant's architects have sought to break up the mass of the building, seeking to distinguish the single storey from the two storey elements by introducing a visual break. They have also sought to add overhanging eaves, in order to cast a shadow over the face of the building to add some relief. The wing wall to King Lane above the single storey block has been omitted to reduce the mass of the building and a brick plinth introduced to better define the base of it. Materials shown now propose timber cladding to the pharmacy with cladding above the brick plinth to the main building. The landscape proposals have been revised to provide a better visual setting, with enhanced tree planting within adjacent to and off site. Taken together, these improvements result in a proposal that better respects its UGC context and, on balance, meets planning policy requirements subject to some further minor revisions.

Highway Safety

- 10.15 The proposed scheme involves access from Saxon Mount. This obviates the need for consideration to be given to the provision of a right-turn land from King Lane. The site is within easy walking distance of bus stops served by the 7 and 7A services, providing a combined service of around 9 buses per hour, and the site is adjacent to a cycle way. In accessibility terms it is therefore in a relatively sustainable location, and in principle there are no specific highway safety objections, subject to conditions, travel plan measures, public transport and travel plan review fee contributions, and contributions towards off-site highway restriction measures. The restrictions are required to prevent overspill parking on King Lane and Saxon Mount.

Open Space

- 10.16 The Open Space Audit indicates that there is a 0.78ha surplus of amenity space in Moortown. This means that the proposal addresses Policy G6 (i) (given that the only typologies that Moortown is deficient in are Allotments and Outdoor Sports – neither of which would be deliverable on this site). This is enough to satisfy UDPR policy G6.

Landscape Enhancement Measures

- 10.17 In order to meet 'ordinary' policy requirements for a good standard of landscaping to assimilate the development in its surroundings, the location within the UGC, Green Space and LNA designations, policy requires that there are off-site landscape mitigation and enhancement measures. The submitted scheme includes the provision of tress and shrub planting within the site and tree planting to the north south and east of the site, within the wider UGC. Pollinator planting beds are also proposed. Following officer advice the amended landscaping plans now incorporate larger tree species, trees in the car park to break up the visual impact of parked cars, and clarification that boundary fencing will be low knee-rail fencing.

- 10.18 The application also proposes the 'grubbing up' and re-seeding of the tarmac surface of the former bus terminus to the south of the site, also within the UGC, Green Space and LNA designations in order to partly mitigate against the loss of grassed area of the site of the proposed building and car park. Whilst smaller in area, these measures when taken together with the wider landscape and biodiversity enhancement proposals are considered to be in line with the views of Panel and are reasonable offers in respect of adopted UDPR policies N1, N8 and N9. The principle of development aside, these landscaping proposals and enhancement measures reflect office advice and are considered to be about the best that can be achieved in the circumstances.

Biodiversity Enhancement Measures

- 10.19 The applicant has sought the advice of the Council's Sustainable Development Unit and Parks and Countryside staff in order to demonstrate biodiversity enhancements that are deliverable [on Council owned and maintained land] so as to satisfy the above Core Strategy and saved UDPR policy requirements for developments on or within LNAs and UGCs. Following this advice pollinator strips have been introduced to the east of the site across King Lane, on land which is currently grassed. The pollinator strip first shown to the east of King Lane has been extended, additional trees have been introduced, and it is concluded that the measures now provide sufficient structural planting to provide softening between the building/car park and the UGC. Predominantly native shrub species are included in the landscaping measures around the building to further soften the impact of it and provides an appropriate species mix. Subject to a requirement to implement and maintain them, when taken together, the proposed enhancement measures are considered to be policy compliant.

Representations

- 10.20 The application was publicised as a departure on site (13th Feb and 05th March 2015 – expires 26th March 2015) and in the press (Yorkshire Evening Post 05th March 2015 – expires 26th March 2015). At the time of writing this report one letter of objection has been received. The objector raises concern over: the principle of the development being contrary to policy; the lack of any detailed alternative site search information [the site should be in the existing Moor Allerton District Centre], and; objection to the visual impact of the development on the UGC.
- 10.21 In considering this objection at pre-application advice stage a number of sites were highlighted to Members and discounted as being unavailable or unsuitable. Further sequential test information has been submitted and is discussed below. The applicants have responded to the suggestion that they should seek to locate within vacant units in Moor Allerton District Centre, by stating that none were available for lease that could accommodate the level clinical accommodation sought on one floor [the first floor of the King Lane proposals being for office/storage use and not for patients].

Community Infrastructure Levy

- 10.22 At the time of making the application and Panel's consideration of it the S106 regime as it currently exists remains extant. However, on 06th April 2015 the Community Infrastructure Levy Charging Schedule replaces the current system for infrastructure requirements. The current S106 monetary ask is for a public transport contribution of £40,838, travel plan review fee of £2,500 and traffic restriction

measures contribution of £10,000. The applicant is seeking a determination prior to the introduction of CIL, due to GP's having given notice to quite existing facilities and the tight NHS funding package timescales, together with the need to appoint contractors within the project timeframe. Whilst financially disadvantageous, due to these considerations the applicants are therefore pursuing a unilateral undertaking to cover the above costs in order to seek an earlier decision.

- 10.23 However, if for any reason the application is determined on or after 06th April 2015, the public transport contribution would fall away, leaving a CIL liability [calculated at £5,505]. The necessary CIL questionnaire and certificates have been submitted to cover this eventuality. The local impact of the development in terms of travel plan and parking restriction measures (together with enhancement measures), would still however fall to be considered under a Section 106 agreement.

Sequential Test

- 10.26 With regard to Paragraph 24 of the NPPF the proposed pharmacy is below the locally set 200 square metres Core Strategy Retail Impact Assessment threshold for A1 uses in residential areas. The applicant asserts however that the pharmacy cannot be disentangled from the medical centre (which is above 1000 square metres). Members at pre-application stage wanted some comfort in this regard and an objector has raised this as a concern. The submitted assessment helps in the consideration of whether or not there are alternative sites available within local centres that could accommodate the building, without impacting upon the function of the site.
- 10.27 The applicants have submitted a sequential test for the proposed development prepared by White Young Green. Following Core Strategy Policy P8 it uses the 5 minute inbound off-peak drive time catchment area. It assesses the two Town Centre locations within this drive time area: Moortown Corner; Moor Allerton, and also Chapel Allerton (which lies on the boundary of the catchment area). It discounts a number of sites as not on the market/unavailable and concludes that within the catchment area no suitable site exists.

11.0 CONCLUSION

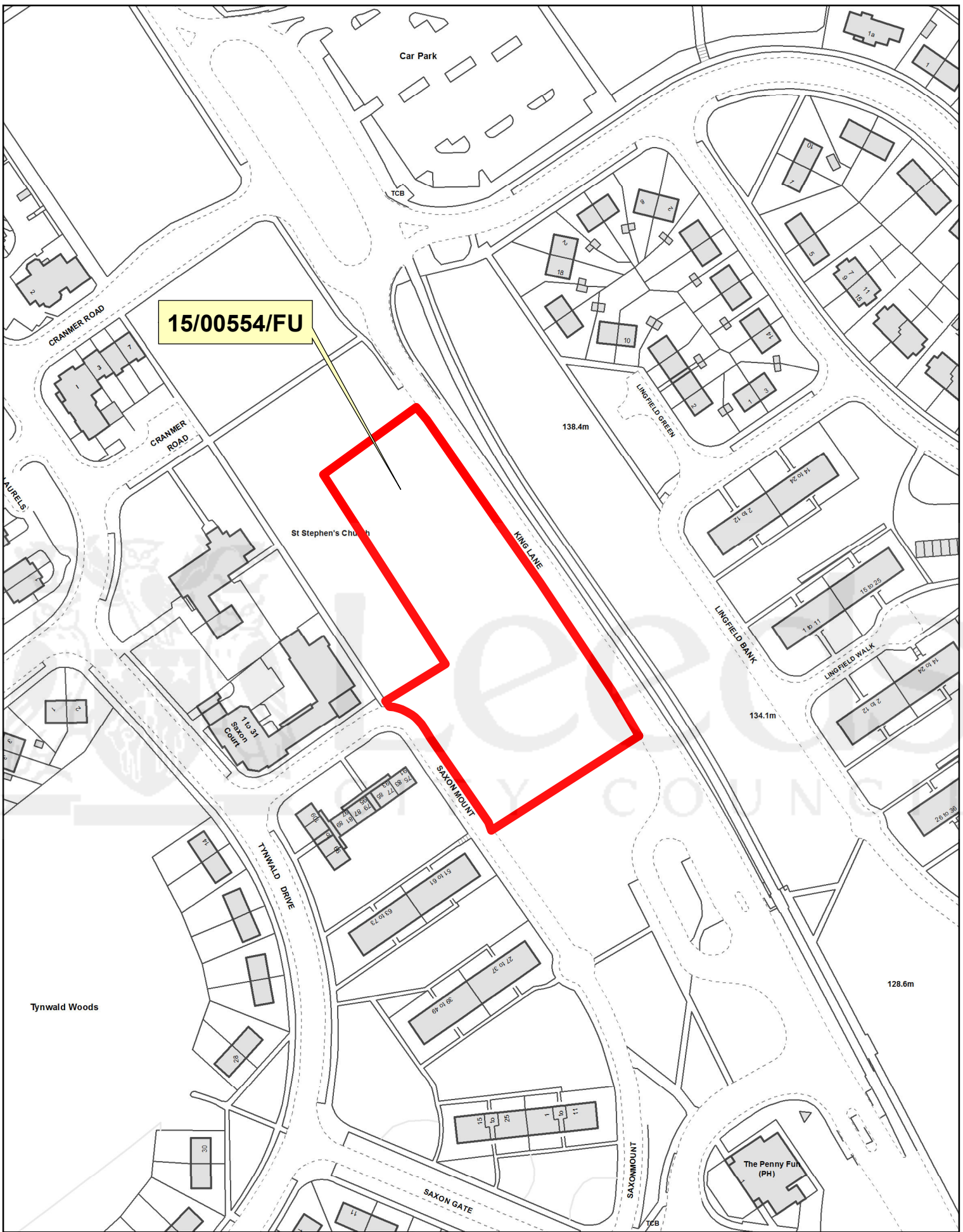
- 11.1 The application site is within local green space and ecology designations. The proposal will impact on the visual appearance and continuity of the Urban Green Corridor. It will lead to the loss of Green Space and part of the grassed area within the wider Local Nature Area designation. Significant weight should be given to these considerations which are supported in local and national planning policy terms and which render the development unacceptable in principle.
- 11.2 However, whilst in principle the proposal is contrary to policy the site represents an opportunity to amalgamate two medical practices in a more modern and accessible primary health care centre, for which NHS Trust support and funding has been given. Clearly there are a number of important benefits to this proposal in terms of promoting healthy communities which are supported in local and national planning policy terms. Significant weight should therefore also be given to these considerations.
- 11.3 In balancing these considerations it should be noted that the proposal is not in an area with an identified deficit of open space. The proposed landscape and biodiversity enhancements and compensatory measures are such that the harm to the Urban Green Corridor and Green Space is in part mitigated. When taken

together these considerations coupled with the significant benefits of improved facilities for public health the development would bring are considered to outweigh the impact on Urban Green Corridor, Green Space and Local Nature Area designations.

The recommendation is therefore to grant planning permission in accordance with the recommendation above as a departure, subject to the expiry of the public consultation period and no significant new objections beings received raising matters not already covered in the above report.

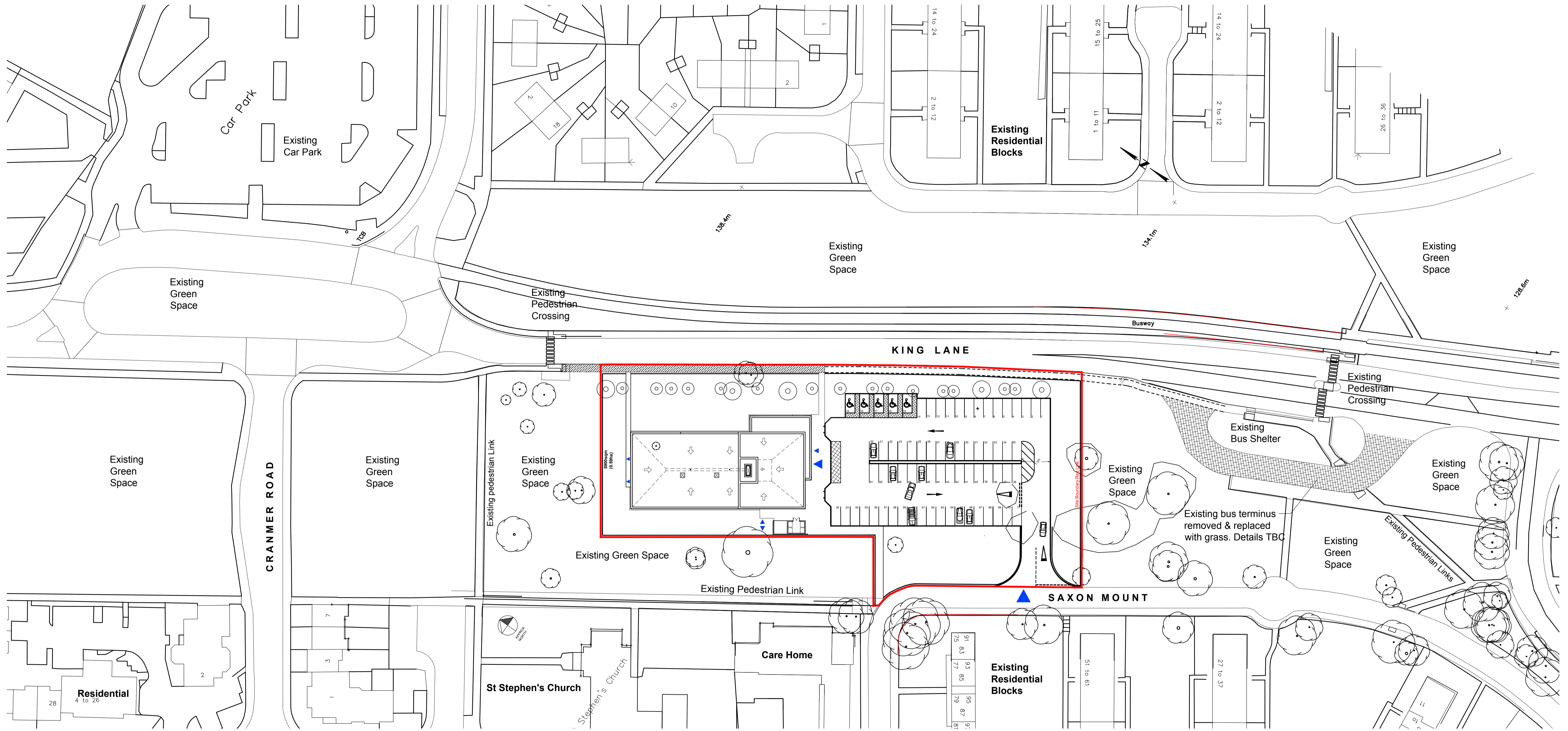
Background Papers:

Application files: 15/00554/FU
Certificate of ownership: Notice served on Leeds City Council
PREAPP/14/00795



NORTH AND EAST PLANS PANEL





NOTE:
NEW TREES & PLANTING STRATEGY
SUBJECT TO FURTHER DISCUSSION
& AGREEMENT WITH LEEDS CITY
COUNCIL LANDSCAPE TEAM

Rev D 28.01.2015, PJK - Screening wall to Bins / Cycle stores added. Potential footpath to King Lane revised.
 Rev C 20.01.2015, PJK - Site Access / Egress revised to Saxon Mount. Car Parking numbers increased from 59 to 71 following Planning Meeting 19.01.2015. Site boundary revised accordingly.
 Rev B 07.01.2015, PJK - Orientation of drawing revised to suit plans drawings. Paving reduced next to wheelchair space 13. Existing trees & shrubs indicated.
 Rev A 23.12.2014, PJK - Highways design updated in accordance with JMP information 23.12.14.

Issue Purpose: PLANNING APPLICATION

P+HS Architects
 The Old Station Station Road Stokesley TS9 7AB 01642 712684
 Queens House 34 Wellington Street Leeds LS1 2DE 0113 245 4332
 Studio 14 Blackstock Mews London N4 2BT 0207 288 1232



Client	Abstract	Issued From	LEEDS
Project	Alwoodley Medical Centre	Date	Jan 2015
Title	Proposed Site Layout Context	Scale	1:500 @ A1
Drawn	PJK	Auth	

Drawing Number: 2318 - D - 90 - 003 - D
 Revision: D
 Do not scale from this drawing. Work to typical dimensions, and any discrepancy to be reported to the Architect.
 Refer to larger scale drawings where available. © P+HS Architects Limited
 Revision Identification: Design - D Construction - C



Originator: Glen Allen

Tel: 0113 24 78023

Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 12th March 2015

Subject: Appeal by McCarthy and Stone Ltd Against the decision of Leeds City Council to refuse planning permission for a later living housing scheme at Devonshire Lodge,

The appeal was dismissed however a full award of costs was made against the Council – Ref. 13/03606/FU

Electoral Wards Affected:

Roundhay

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

Members are asked to note the following appeal result and award of a full costs application against the Council and also to note the on-going negotiations and actions of officers following the issuing of this decision.

1.0 BACKGROUND

1.1 The application was last considered at Plans Panel on 25 September 2014 following three previous reports to June, July and Augusts Panel meetings respectively. Members resolved not to accept the officer recommendation that planning permission be granted. An appeal was lodged and subsequently dismissed (a copy of the appeal decision and a decision on costs are attached to this report). The key issue considered at the appeals related to the viability of the scheme and what figure should be attributable to the commuted sum payment for the provision of off-site affordable housing.

1.2 The appeal was submitted on the basis of different figures for the affordable housing contribution to those that Plans Panel had determined the application upon as the appellants submitted a unilateral undertaking that offered a commuted sum payment for off-site affordable housing provision of £68,171. However the Unilateral Undertaking also allowed provision for the Inspector to consider an amount of £286,276 defined as Enhanced Affordable Housing Contribution. This was on the

basis that the appellants basic starting point was the lower figure but if the Inspector considered the higher figure to be compliant with Regulation 122 of the Community Infrastructure Levy and/or the National Planning Policy Framework (Para 204), that this amount would become liable.

- 1.3 The appeal was initially defended on the basis that the offer made by the appellants in the unilateral undertaking was not policy compliant either in the sum of £68,171 or £286,276 and that the whole of the policy ask of £712,268 towards off site affordable housing contribution should be paid by the appellants. This was later modified to an argument that a figure closer to circa £505,000 was the appropriate amount given that the Councils expert advisor could only justify this amount given the circumstances surrounding the case. The principle still stood however that whichever figure was taken that was on offer by the appellant, the contribution fell significantly short of what could reasonably be expected by the Council.
- 1.4 The sum of £95,966 towards off site greenspace contribution was not in dispute and was incorporated into the Unilateral Undertaking as a sum to be paid by the developer should the appeal be successful. Members will re-call that the earlier reports had 'lumped' these two figures together along with £50K for the release of a covenant on the land as a 'pot' to be paid to the Council, should planning permission be granted.
- 1.5 In addition to this, the appeal was determined under the policies found in the Core Strategy rather than those found in the former UDPR this was a material change in Policy context between the two events which was also referred to in the Statement of Common Ground where the Policies that should be used by the Inspector to determine the appeal were laid out.

2.0 ISSUES IDENTIFIED BY THE INSPECTOR

- 2.1 The main issue highlighted by the Inspector was;

“The main issue in this case is whether the proposed affordable housing contribution would be appropriate and reasonable in the context of the viability of the development, the Development Plan, the National Planning Policy Framework, National Planning Practice Guidance and all other material considerations.”

- 2.2 This conclusion by the Inspector followed her consideration of the various arguments and the assessment of the planning merits of the development itself including its design, siting, bulk, massing, impact on surrounding properties and the streetscene. Regard was had to the contents of a Statement of Common Ground agreed between the Council and the appellants agents which clearly stated that in all respects the development was considered acceptable other than the offered amount for Off Site Affordable Housing Contribution.

3.0 SUMMARY OF COMMENTS

- 3.1 The appeal Inspector summarised the various arguments relating to the affordable housing contribution put forward by both parties which were based on different figure to those considered by Plans Panel. This variation in the figures was for a variety of reasons including the fact that the original figures for the assessment were somewhat out of date by the time of the appeal hearing given that negotiations had been undertaken on the development for over 12 months, but most notably, from the

appellants side, that they had revised their figures down to a significantly lower figure than that originally offered by them during the final stages of negotiations at the planning application stage.

3.2 The Inspector also concluded that whilst Policy H5 of the Core Strategy allowed for flexibility for assessing viability, that it does not provide for balancing viability against planning merits.

3.3 The Inspector then summarised the National Policy context of the development which likewise allows for flexibility in measuring viability against the policy requirements of a given development. Significantly, the appellants argued that their figures were based on a 20% developers profit which they claimed was what the financiers were demanding as a minimum in the current economic climate. The Council argued that a developers profit of 18.5% was more reasonable given the improving economic climate and that similar development in this region (Yorkshire as a whole), were at or around 18.5% developers profit. The Inspector was not persuaded by the need for a 20% developers profit neither was she persuaded that a developers profit any lower than 18.5% was justified either, rather she concluded;

“In September 2014 the appellant was satisfied that the value generated by the proposed scheme would provide sufficient incentive for the land to come forward and the development to be undertaken with an 18.5% profit margin. I recognise that the offer was made for expediency, but it was also made in the knowledge of the size and risk profile of the development project that is before me now. Therefore, I find that 18.5% is a reasonable profit margin for the nature of this project, on this brownfield site.”

The conclusion she drew was also based on other figures that had been the subject of the discussion at the hearing and included a 9% general external works budget, 5% contingency Budget and 9% professional fess budget. (All of which were debated at length during the hearing).

3.4 In conclusion the inspector said:

Drawing all of the viability considerations together I conclude that the proposal does not include provision for an appropriate proportion of affordable housing and that, overall, the December 2014 viability appraisal does not satisfactorily demonstrate and verify that the viability of the development justifies a reduced contribution in lieu of on-site provision of £68,171. The proposal is therefore contrary to Policy H5 of the Core Strategy and guidance in the Affordable Housing Supplementary Planning Guidance No 3 Annex Update 2005; revision April 2012. It follows that the Affordable Housing Contribution in the Unilateral Undertaking would not make the proposed development acceptable and the proposal is contrary to Policy ID2 of the Core Strategy which requires Section 106 planning obligations to provide contributions that are necessary, directly related to the development and reasonably related in scale and kind.

3.5 The Inspector then discussed the appellants higher offer of £286,276 as the Enhanced Affordable Housing Contribution, however came to the conclusion that “the derivation of the Enhanced Affordable Housing Contribution figure is flawed and the proposal does not satisfactorily demonstrate and verify that the viability of the development justifies a reduced contribution of £286,276 in lieu of on-site provision.”

3.6 She then considered the invitation to consider a figure up to but not exceeding the enhanced Affordable Housing offer, but considered that any lesser figure than the £286,276 maximum would not be justified.

Other Considerations:

3.7 The Inspector considered the arguments forwarded by Officers that the development, whilst in itself bringing positive contributions to the locality in terms of economic impact, would result in the loss of 90% of the B1(a) office floorspace in the Local Centre which in itself contributes in a positive manner to the vitality and viability of that Local Centre. She was not however persuaded that this loss would be of such a magnitude to outweigh the benefits of the scheme.

3.8 Likewise, she acknowledged the contribution that the existing structure makes to the character of the area but concluded that its loss would not be significant. She also concluded that the drainage issues raised by third parties could be dealt with by condition, and that the proposal would not adversely impact on the amenities of nearby buildings.

Costs Application:

3.9 The appellants made an application for an award of costs against the Council on the basis that we had acted unreasonably. The basis of the application was as follows:

The Council acted unlawfully and unreasonably by failing to produce on appeal evidence which provides a respectable basis for the authority's refusal.

The Council raised the principle of development and impact upon the local centre, when only one reason for refusal was given on the decision notice which relates to the viability of the development and Core Strategy Policies H5 and ID2.

The Council accepted that the full affordable housing contribution could not be delivered and that policy provides for a lower contribution. A contribution had been offered and agreed by the Council's expert advisers. The Council did not assert that the development could viably deliver any greater contribution than that offered and they failed to critique the applicant's viability evidence.

Refusing a proposal for specialist accommodation for the elderly for which there is a critical need because it cannot viably deliver another form of development for which there is a lesser need and does not derive from the applicant's proposal is absurd and unreasonable.

3.10 The Councils response to these allegations were:

The advice of the District Valuers' Service (DVS) was consistently that the scheme could afford to contribute £507,000 to affordable housing. Although £432,242 was put before the Plans Panels, so too was £507,000. The Panel had ample evidence before them. The applicant's appraisals based on 18.5% profit were perfectly proper and confident that they would make a profit. At the Hearing decanting tenants was accepted as not being an abnormal cost and the applicant failed to explain how the available sum suddenly dropped to £164,137. Critiquing the applicant's viability assessment put forward at appeal goes nowhere.

There are two separate concerns, viability, and the scheme's wider effects overall having regard to paragraph 14 of the National Planning Policy Framework and the three dimensions of sustainable development. The Council did not seek to add a new reason for refusal or invent a new test, the Plans Panel decision included consideration of both the viability and the planning merits. Members of the Plans Panel had to exercise judgement, not mechanically implement rules and the applicant's assessment failed to consider the dis-benefits and present a balanced case.

- 3.11 The Inspector concluded that notwithstanding the view of the Council that the full amount could not be justified towards off site Affordable Housing Contribution, that this did not justify the Council ignoring or not critiquing the applicants latest evidence. Notwithstanding that the DVS was in attendance at the Hearing that the Council did not submit a written critique prior to the Hearing as to how and why they had arrived at their decision amounts to unreasonable behavior. She then argues that had the Council produced our own viability evidence and responded to the applicants in advance of the Hearing, areas of conflict could have been summarised, the consequences of differences set out, and an opportunity for resolving concerns between the parties either before or at the Hearing. This she concludes leads her to award full costs against the Council.

4.0 DECISION

- 4.1 The appeal was dismissed but the costs application against the Council was awarded in full.

5.0 IMPLICATIONS

- 5.1 Notwithstanding that the Council have been justified in making the decision to refuse planning permission for the reasons set out by the appeal Inspector, the decision to then make a full award of costs against the Council seems perverse, especially given that the award of costs is not on the grounds for which it was claimed by the appellants. It should be noted that recent changes to the regulations allows an Inspector to make an award of costs against either party that they considered have acted unreasonably even in the absence of a formal application from the opposing party, however, the Inspector clearly understood that the Council had a fundamental objection to the lower amounts offered for off-site Affordable Housing Contribution and agreed that the Councils case in this regards had been made clearly and succinctly. In appointing the DVS to appear on our behalf, a reasonable case to counter the arguments of the appellants was made at the hearing and it is considered that little, if any additional work was needed by the appellants given this fundamental disagreement between us.
- 5.2 To this end preliminary steps have been taken to consider the possibility of a Judicial Review of the Cost Award given that the position of the Council had not altered since the decision made at Plans Panel and therefore the issues between the Council and the appellants were clearly outlined in the statements and there was a comprehensive Statement of Common Ground submitted.
- 5.3 Also, following the receipt of the decision, the appellants have issued a letter to the Inspectorate which questions the validity of the Inspectors decision. At the time of

writing the purpose behind this is unclear, it may be that they are seeking the possibility of a Judicial Review on the decision made or it may be an opening gambit to re-open negotiations for a re-submission. Should the Inspectorate respond an oral update will be given at Plans Panel.

5.4 The implications of this decision at this juncture however are as follows:

Notwithstanding the potential absurdity of any offers towards Affordable Housing Contributions made in future cases the Council will need to employ expert services to rebuff that offer if it falls below a reasonable offer.

That flexibility in the assessment of Affordability Appraisals needs to be addressed both by officers and Members in determining future applications. Where independent assessment of submitted appraisals shows that a certain figure for any particular development site is reasonable, this needs to be seriously considered in the final determination of development proposals.

That notwithstanding the above comment, none-compliance with Policy H5 and to a lesser degree ID2, and advice in the NPPF, is considered to result in unsustainable development that should be refused.

Background papers:

Application file: 13/03606/FU



Quality Assurance Unit
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000

Mary Bradshaw / Sarah Rhodes
Leeds City Council
Development Department
Planning And Development
Services
Leonardo Building
2 Rossington Street
Leeds
LS2 8HD

Your Ref: 13/03606/FU
Our Ref: APP/N4720/A/14/2227584
Date: 5 February 2015

Dear Madam

Town and Country Planning Act 1990
Appeal by McCarthy & Stone Retirement Lifestyles Ltd
Site at Land At Devonshire Lodge, Devonshire Avenue, Roundhay, LS8 1AY

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

If you have queries or feedback about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

You should also note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly. Please contact the Administrative Court for further information.

Yours sincerely

Rebecca Sippitt

COVERDL2

You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button

The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 – section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment¹. This is handled by:

The Senior Court Costs Office²
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 020 7947 7124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court³. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or their Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

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¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. These rules are available online at http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm

You can buy these Rules from The Stationery Office bookshops or look at copies in your local library or council offices.

² Formally named the Supreme Court Costs Office

³ Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.

Appeal Decision

Hearing held on 16 December 2014

Site visit made on 21 January 2015

by Helen Heward BSc Hons MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 February 2015

Appeal Ref: APP/N4720/A/14/2227584

Land at Devonshire Lodge, Devonshire Avenue, Roundhay, Leeds

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by McCarthy & Stone Retirement Lifestyles Ltd against the decision of Leeds City Council.
 - The application Ref 13/03606/FU, dated 01 August 2013, was refused by notice dated 26 September 2014.
 - The development proposed is described as "Erection of Later Living retirement housing (category II type accommodation), communal facilities, landscaping and car parking".
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by McCarthy & Stone Retirement Lifestyles Ltd against Leeds City Council. This application is the subject of a separate Decision.

Procedural Matters

3. I have used the description of the proposed development on the application form because there is no evidence of any agreement to a change.
4. The decision notice refers to Policies H11 and GP7 of the Leeds Unitary Development Plan Review (2006) (the UDP) and Policies H5 and ID2 of the Local Development Framework Core Strategy (the Core Strategy). Leeds City Council formally adopted the Local Development Framework Core Strategy (the Core Strategy) and both parties agree that the proposal should be considered against the Core Strategy policies. After the Hearing closed, the final adopted Core Strategy was printed and the Council provided copies of the policies as printed. The parties agree that these are as considered at the Hearing.
5. At the Hearing the appellant submitted a signed Unilateral Undertaking and the Council requested an opportunity to consider and check titles after the Hearing. This resulted in the appellant submitting a revised Unilateral Undertaking with the second page dated and the Council has raised no further concern with this agreement. I have taken this Unilateral Undertaking into consideration in my decision below.

6. The parties agreed that two elevation sections were missing. To correct this, the appellant submitted Drawing 1871-01-08 Sectional West Elevation after the close of the Hearing, and the Council raise no objection to this drawing.
7. The appellant asked to be able to submit to the Hearing two tables summarising and comparing their viability evidence with an earlier appraisal¹. With the agreement of all parties and to assist the Hearing I accepted this information.
8. The Council asked to be able to submit new viability evidence to the Hearing. Having regard to section E9 of The Procedural Guide to Planning Appeals, and without any exceptional reason for late submission, I ruled that this new evidence was not acceptable. With the agreement of all parties, and to assist the discussion at the Hearing, I allowed the Council to submit a table comparing previously submitted different appraisals². However, I ruled that column 5 be struck out and disregarded because it contained information based upon the declined new evidence.
9. After the close of the Hearing the appellant was requested to provide factual clarification of the floor space of the proposed building. They submitted a revised version of Drawing 1871-01-06 Revision A with floor space measurements added and summarised. The Council was offered an opportunity to comment and I have taken the Drawing into consideration in my decision below.

Main Issue

10. The main issue in this case is whether the proposed affordable housing contribution would be appropriate and reasonable in the context of the viability of the development, the Development Plan, the National Planning Policy Framework, National Planning Practice Guidance and all other material considerations.

Reasons

11. The parties agree that Core Strategy Policy H5: Affordable Housing is relevant, up-to-date, and compliant with national planning policy and guidance. They agree that under the provisions of this policy the on site affordable housing requirement is for 15% of the number of units proposed. The Council would accept that an off-site contribution in lieu of on-site provision is justified in this case. The appellant accepts that the full contribution in lieu would be £712,268 under the provisions of the Council's guidance³.
12. Policy H5 includes provision for applicants to choose to submit individual viability appraisals to verify that the affordable housing target cannot be met; in such cases affordable housing provision may be reduced accordingly. The Policy is also clear that there is no automatic assumption that the requirement for affordable housing will be waived or reduced for elderly persons sheltered housing, but that individual viability appraisals will be taken into account. The

¹ Devonshire Avenue Roundhay Leeds Hearing Note No 4 Viability Appraisal Issues (Areas of inconsistency and disagreement), reference PGJB/80176 dated 9 December 2014 together with Comparative Analysis Sheet A dated 11 December 2014

² Leeds -Devonshire Avenue – McCarthy & Stone Tabulated Appraisal Comparison prepared by Philip R Lee 16 December 2014

³ Revised SPG No. 3 Affordable Housing Policy Guidance Note February 2003, Appendix A Leeds Interim Affordable Housing Policy 2011 and Appendix 1 Affordable Housing SPG Annex Update 2005 Revision April 2012.

Council do not dispute that the viability justifies a reduced contribution, nor do they seek a full contribution. However, the parties disagree as to the sum of money that the proposed development can afford.

13. The appellant's initial offer for affordable housing was £62,662, taking into consideration £150,000 for release from a covenant⁴. The District Valuer (DV) considered the scheme "*could provide four affordable houses which equates to a commuted sum of approximately £570,000*"⁵. After some negotiating the appellant put forward £357,242 for all contributions and the release from the covenant "*on the basis of commercial expediency and to secure a prompt first time permission from the Council*"⁶. This offer assumed a developer profit of 18.5%. The Council rejected this seeking a "*meeting roughly halfway*" and a minimum total contribution of £430,000⁷. The appellant reappraised and offered £432,242⁸ to cover planning contributions and the covenant release. This appraisal included £95,966 for green-space, £110,000 for relocating tenants and a developer profit margin which "*falls below 17.5%*"⁹. The appellant's final offer on 13 September 2014 was this sum of £432,242 together with an alternative deferred payment offer of £482,242; although they maintained that their initial offer was justifiable, and this offer "*squeezed the margins they work to*"¹⁰. The application was recommended for permission, but the Council refused the application, considering the planning merits of the scheme and the viability issues not to outweigh the need for affordable housing.
14. Policy H5 provides flexibility for assessing viability but does not provide for balancing viability with the planning merits. Therefore I deal first with the viability of the development and Policy H5, and then other considerations.

Viability

15. Paragraph 173 of the National Planning Policy Framework (the Framework) advises that "*to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable*".
16. The National Planning Practice Guidance (the NPPG) advises that competitive returns "*will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected where possible*"¹¹. The NPPG states that "*a site is viable if the value generated by its development exceeds the costs of developing and also provides sufficient incentive for the land to come forward and the development to be undertaken*"¹². It also advises that where the applicant is able to demonstrate to the satisfaction of the local planning authority that the

⁴ HCA Development Appraisal by Chris Butt 29 July 2013

⁵ Alison Mobbs to Chris Butt 18 December 2013 13.00

⁶ Email Chris Butt to Ward Adam 14 February 2014 12.37

⁷ Email Paul Wilson to Chris Butt 24 April 2014 12.48

⁸ Email Chris Butt to Paul Watson 12 May 2014 16.51

⁹ Email Chris Butt to Martin Sellens 12 September 2014 12.17

¹⁰ Email from Steve Secker to Martin Sellens 13 September 2014 10.39

¹¹ Planning Practice Guidance ID 10-015-20140306 06 03 2014

¹² Planning Practice Guidance ID 10-016-20140306 06 03 2014

- planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations¹³.
17. The appellant's expert witness, Mr Barefoot, advised that his December 2014 viability appraisal, submitted with the appellant's statement of case, supersedes earlier valuations, is more up to date and, given his extensive professional experience in appraising such schemes, is based on more appropriate assumptions. This appraisal, which assumes a freehold vacant possession, does not include figures for decanting tenants or release from the covenant. The Council's expert witness, from the District Valuers' Service (DVS), Mr Lee, also stated that these costs should be reflected in the site purchase price.
 18. The December 2014 appraisal assumes an agreed £95,966 green-space contribution and indicates that the proposal can afford £68,171 for affordable housing. Mr Barefoot presented a comparative assessment¹⁴ setting out the main differences between his December 2014 appraisal and an appraisal prepared by the DVS a year earlier in October 2013. These are discussed below.
 19. Mr Lee considered that the gross development value (GDV) shown for the DVS was inaccurate and too low. Using his own table Mr Lee pointed out that the DVS's GDV calculations were much closer to Mr Barefoot's. In any event, Mr Lee did not have any significant concerns with the revised sales values and sales curve in Mr Barefoot's December 2014 appraisal, and accepted Mr Barefoot's assessment of the GDV at £9,887,375.
 20. The December 2014 appraisal includes a total core build cost (TCBC) of £4,493,230 compared with £3,592,220 in the DVS's appraisal 22 October 2013¹⁵. Mr Barefoot acknowledged that in his comparison the DVS's TCBC includes an affordable housing build cost of £548,736, and that it should be deleted. In which case, the variance in the TCBC between the DVS's appraisal and the December 2014 appraisal would be £1,449,746¹⁶.
 21. The December 2014 appraisal includes an increase in build costs to £1080m² and an increase for general external works to 10%. Mr Barefoot advised that these latest build costs do not include an additional figure for Code for Sustainable Homes Level 3 as this is now built into the BCIS¹⁷ figures. They also include some assumptions below those used in the DVS's appraisal for arrangement fees, empty property costs, interest, stamp duty, S106 and tree work costs. Mr Lee accepted the increased BCIS rate, but questioned the external works budget, pointing out that the appellant's original appraisals had included 9% for general external works. There is nothing to say that either figure is right, it is matter of judgement and best estimate. Mr Barefoot's experience is based on similar schemes on brownfield sites. However, I note that 9% was used in earlier appraisals and there is no evidence of any changes to proposed external works. Therefore, I find that a 9% general external works budget remains reasonable for this particular proposal.

¹³ Planning Practice Guidance ID 10-019-20140306 06 03 2014

¹⁴ Devonshire Avenue Roundhay Leeds Hearing Note No 4 Viability Appraisal Issues (Areas of inconsistency and disagreement), PGJB/80176 9 December 2014

¹⁵ Column 3, Row 4.2 Comparative Analysis Sheet A, PJB/80176 11 December 2014

¹⁶ Column 5, Row 4.2 Comparative Analysis Sheet A, PJB/80176 11 December 2014

¹⁷ Building Cost Information Service of the Royal Institution of Chartered Surveyors

22. However, these changes alone do not account for a £1,449,746 increase in the TCBC. The December 2014 TCBC is based on a gross internal area of 3782.16m²¹⁸. Mr Barefoot argues that floor space figures used by the DVS are incorrect¹⁹. Be that as it may, the appellant clarified after the close of the Hearing that the total new gross internal floor space of 3198.9m² stated at section 18 of the planning application form is incorrect²⁰, and has submitted a measured drawing to confirm that the gross internal area would be 3782.16m². This, together with the increased build cost used by Mr Barefoot explains the significantly higher TCBC in the December 2014 appraisal.
23. Mr Lee advised that previously the appellant accepted a 5% contingency budget and a 9% professional fee budget, and this was so in their September 2014 appraisal. In Mr Lee's opinion 5% was standard and the fee budget was justified by considerations such as the provision of in-house design services and use of standardised designs. Mr Barefoot's evidence²¹ refers to a 5% contingency budget, but at the Hearing Mr Barefoot submitted that 6% contingency and 10% professional fees budgets reflect industry norms and recent costs on similar complex, brownfield site projects. Both arguments have some merit. However supporting documentation shows that preliminary site investigations have been carried out, and provision has been made in the December 2014 appraisal for specific factors arising from the brownfield nature of the site such as site clearance and decontamination costs. Therefore, I find that a 5% contingency budget and a 9% professional fee budget remain valid and reasonable provisions for this project.
24. Mr Barefoot submits that the finances and acquisition costs in the December 2014 appraisal reflect the current market. Mr Lee argues that in the HCA model²², credit and debit rates are equal. Therefore, a credit interest rate of 2.5% with a debit rate of 5% is not justified but I find no convincing evidence to dispute Mr Barefoot's finance rates.
25. The December 2014 appraisal provides for a 20% developer's profit. Mr Barefoot referred to several recent similar schemes where a 20% profit margin has been accepted and advised that in the present market banks required to see such returns. A letter from HSBC advises that in broad terms they would expect to see a margin significantly above 20% in the current market, but it was written in December 2010. Appeal decisions for sites at Shinfield, Reading and Gillingham, Dorset²³ support a 20% developer profit. In particular I note that in the Shinfield case, the Inspector's conclusion was made in the light of evidence about profit expectations from several national house builders which satisfied the Inspector that a developer profit of 20% was reasonable. However to apply 20% to the proposed scheme on this basis alone would be too rigid.
26. In this case the Council have consistently maintained that 20% is too high and Mr Lee verbally advised that 15% had been accepted for a similar scheme in Leeds in 2009, and 17% had been accepted for schemes in Malton and

¹⁸ Section 6, pp10, Alder King Financial Viability Assessment Appendix 17 The Planning Bureau Planning Appeal Statement

¹⁹ Hearing Note No.4 Viability Appraisal – Issues, PJB/80176 9 December 2014

²⁰ Chris Butt email 20 January 2015 13 49

²¹ Section 7.3.1, pp13 Alder King Financial Viability Assessment 10 October 2014 Ref PGJB/HJH/1403/80176, Appendix 17, The Planning Bureau Planning Appeal Statement

²² Homes and Communities Agency Development Appraisal Tool

²³ APP/X0360/A/12/2179141 and APP/N1215/A/09/2117195,

Scarborough in 2009 and 2011. In his opinion these more local schemes were more relevant. It is also notable that 18.5% was the developer profit used by the appellant when making offers between December 2013 and as recently as September 2014.

27. This scheme involves extra risk because the site is previously developed land, the requirement to build out the development in a single phase, with all facilities provided up-front before many apartments will be sold, and that it is a specialist market sector. But the December 2014 appraisal already includes construction costs that reflect the brownfield nature of this site and Mr Barefoot has used his considerable experience to build in appropriate assumptions for finance and revenue that all reflect the nature and phasing of the project.
28. The appellant's evidence to the Hearing was of an improving market and this is corroborated in the site valuation report. The site is located centrally within an area that appears vibrant and attractive. One of the appellant's witnesses advised the Hearing that there was a demand for this specialised type of housing in the locality and that only 3 flats at a similar neighbouring McCarthy & Stone scheme are presently on the market. He was confident that the proposed scheme would sell well. Sales values for the appeal scheme have been revised upwards from £189,280 for a 1 bed apartment and £260,260 for a 2 bed apartment²⁴ to £197,999 and £278,999 respectively²⁵.
29. Taking all of these matters in the round I am not persuaded that a profit of 20% has been justified. Equally there is no evidence to persuade me that rates of 15% or 17% are justified. In September 2014 the appellant was satisfied that the value generated by the proposed scheme would provide sufficient incentive for the land to come forward and the development to be undertaken with an 18.5% profit margin. I recognise that the offer was made for expediency, but it was also made in the knowledge of the size and risk profile of the development project that is before me now. Therefore, I find that 18.5% is a reasonable profit margin for the nature of this project, on this brownfield site.
30. Drawing all of the viability considerations together I conclude that the proposal does not include provision for an appropriate proportion of affordable housing and that, overall, the December 2014 viability appraisal does not satisfactorily demonstrate and verify that the viability of the development justifies a reduced contribution in lieu of on-site provision of £68,171. The proposal is therefore contrary to Policy H5 of the Core Strategy and guidance in the Affordable Housing Supplementary Planning Guidance No 3 Annex Update 2005; revision April 2012. It follows that the Affordable Housing Contribution in the Unilateral Undertaking would not make the proposed development acceptable and the proposal is contrary to Policy ID2 of the Core Strategy which requires Section 106 planning obligations to provide contributions that are necessary, directly related to the development and reasonably related in scale and kind.
31. Having so concluded, the appellant invites me to determine the required affordable housing contribution up to, and not exceeding £286,276²⁶. As suggested²⁷ I consider this offer against the circumstances and considerations

²⁴ Section 4.3 District Valuer Service letter to Leeds City Council 14 January 2014 ref 1477074

²⁵ Section 7.2, pp13 Alder King Financial Viability Assessment 10 October 2014 Ref PGJB/HJH/1403/80176, Appendix 17, The Planning Bureau Planning Appeal Statement

²⁶ Planning Obligation and Unilateral Undertaking 16 December 2014 "Enhanced Affordable Housing Contribution"

²⁷ Paragraph 8.32, pp33 The Planning Bureau Planning Appeal Statement

of the appellant's offer of £432,242 which was put before the Council's Plans Panel. The offer of £432,242 was based on an appraisal that included consideration of £110,000 for relocating tenants. Mr Barefoot also advised the hearing that the Enhanced Affordable Housing Contribution sum of £286,276 was arrived at by subtracting the agreed greenspace contribution of £95,966 and £50,000 for release from the covenant from £432,242. Mr Barefoot also advised the Hearing that his December 2014 appraisal assumes freehold vacant possession, and that this was the correct approach. Accordingly, the derivation of the Enhanced Affordable Housing Contribution figure is flawed and the proposal does not satisfactorily demonstrate and verify that the viability of the development justifies a reduced contribution of £286,276 in lieu of on-site provision. Therefore the Enhanced Affordable Housing Contribution figure in the Unilateral Undertaking would not make the proposed development acceptable and the proposal is contrary to Policy ID2 of the Core Strategy which requires Section 106 planning obligations to provide contributions that are necessary, directly related to the development and reasonably related in scale and kind.

32. Finally, I am invited to determine the sum for the contribution for affordable housing up to £286,276. If for consistency I am to do this on the appraisal underpinning the offer to the Plans Panel, then on the basis of my findings in the preceding paragraph, it follows that I am not persuaded that any lesser figure is justified. Alternatively, using the December 2014 appraisal but having regard to my findings that a 9% general external works budget, 5% contingency budget, 9% professional fee budget and 18.5% profit margin would be reasonable, I am also unable to conclude that any lesser figure would be justified.
33. In reaching these conclusions I am mindful of the requirements of paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations (2010).

Other considerations

34. Paragraph 50 of the Framework includes advice that authorities should plan for a mix of housing, including, amongst other groups, the needs of the elderly and the NPPG includes advice that the need to provide housing for older people is critical²⁸. The demand for sheltered housing for sale or shared equity in Leeds has been estimated at between 3,595 and 3,760 units²⁹. The NPPG also refers to a Core Planning Principle in the Framework that in decision taking, local planning authorities should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value³⁰. This advice is not limited to vacant or derelict sites. These factors, together with the overall need to boost significantly the supply of housing, add a significant degree of weight in favour of the proposal.
35. The Council has no objection in principle to the development of housing. An economic impact assessment summarises the key benefits to the local economy from an average McCarthy & Stone Retirement Living scheme³¹. The

²⁸ Planning Practice Guidance ID 2a-021-2014036 06 03 2014

²⁹ Evidence of Housing Demand and Supply prepared by Three Dragons and Celandine Strategic Housing (October 2014) Appendix 7, The Planning Bureau Planning Appeal Statement

³⁰ Planning Practice Guidance ID 10-026-20140306 06 03 2014

³¹ McCarthy & Stone Local area economic impact assessment, Executive Summary, March 2014, Appendix 5, The Planning Bureau Planning Appeal Statement

- development of the scheme would contribute towards revitalising the housing market and generate jobs and work, bringing economic benefits during the construction phase. It would effectively and efficiently re-use a brownfield site. It would create additional new safe and secure housing for the elderly built to contemporary building standards, and make a contribution to helping care for the elderly in their own homes. Additionally, there may be wider benefits through the release of under occupied family housing, the release of capital into the economy, and the tendency of older people to support local shops and services.
36. A core planning principle in the Framework of proactively driving and supporting sustainable economic development includes supporting business uses. Other core planning principles include considering the different roles and character of different areas and promoting the vitality of our main urban areas.
37. The site is in a sustainable location and within a Local Centre, but outside of the shopping frontage areas. The site has an existing employment use which amounts to 90% of B1a floor space in the Local Centre. Core Strategy Policy P3 supports, but does not afford protection to, existing B1a uses within Local Centres. It also states that housing is encouraged within local centres above ground floor or outside of the shopping frontages, providing it maintains the vitality and viability of the retail area. But there is no requirement for housing proposals to demonstrate that their benefits would outweigh the loss of an existing B1a use.
38. However, the Council's Policy Officer found no objection in relation to the provisions of Policy P3, noting that the site is not needed for employment uses as there is an adequate supply, and the position posited in the Council's statement of case is predicated on an assumption that there is no evidence that the present viability of the site is in serious doubt and decline. At the Hearing, the present occupier of the building, Mr May, explained that he has empty space in the building and it has been marketed, but he has been unable to let it. In his opinion the property is old and does not have the attraction of a modern large open plan office. On my visit I observed that there were several unoccupied areas. The layout of the building with three separate projecting wings and narrow corridors make the offices feel disjointed and quite separate. I have no doubt that a single user might find this layout unattractive. Mr May also stated that when his lease expires his business will vacate.
39. Against this, a local surveyor, Mr Nabarro, gave evidence at the Hearing that there is a market for offices in the Street Lane area which is popular as an out of town location and close to the ring road. He referred to suites being let at Devonshire House and this is corroborated in the site valuation report³² but that report also notes that the City has had significant inward investment over 10 -20 years and this has led to a large increase in the availability of good quality commercial property throughout the city. It advises that "*within the out of town office market there continues to be a general over supply of good quality new and second-hand buildings, all providing similar accommodation. Demand is relatively weak and as a consequence it is a tenant's market*".
40. The loss of the existing sustainably located B1a use with employees and visitors would impact on the vitality and viability of the centre, as well as reduce the mix of uses. This tempers the weight to be given to the positive

³² Appendix 1 Alder King Financial Viability Assessment, The Planning Bureau Planning Appeal Statement

benefits of the appellant's scheme, but I find no evidence that there would be an adverse effect of such magnitude to outweigh the benefits of the scheme.

41. The existing large building on the site would be demolished. It is a large building built in an Arts and Crafts Style. It is not statutorily or locally listed, or within a conservation area, and it has been altered and modified over the years. Demolition would result in some loss of local character in the street scene, but it would not be significant.
42. Surface water drainage issues in the locality give rise to concerns about drainage and there are concerns about construction traffic and site management. There are no objections from drainage or highway authorities and I consider these matters could be managed by attaching appropriate planning conditions.
43. Devonshire Lodge is to the north of the existing building. The replacement would be taller and it will cast more shadows. However, given the existing situation, the proposal would not significantly change the amount of sunlight reaching Devonshire Lodge. The Third Church of Christ Scientist Leeds occupies Devonshire Croft to the southwest of the existing, and proposed, buildings and it has no main windows on its north elevation. Therefore the proposal would not significantly change the amount of light reaching Devonshire Lodge.

Conclusions

44. The benefits of providing additional critically needed housing for the elderly are substantial. However, by failing to make appropriate provision for affordable housing then, taken as whole, the proposal fails to meet the requirements of advice at paragraph 50 of the Framework which seeks, amongst other things, to deliver a wide choice of high quality homes and create mixed and balanced communities. Nor does the proposal satisfactorily contribute to providing for housing needs, or improving the conditions in which people live. The proposal does not amount to sustainable development.
45. The target of 15% on site affordable housing provision for a site in this location and a development of this scale is clearly set out in Policy H5. The provision to submit viability appraisals to verify that the affordable housing target cannot be met does not remove the target. The plan is not silent and for the reasons given I conclude that the proposal is contrary to Policies H5 and ID2 of the Core Strategy, and guidance in the Affordable Housing Supplementary Planning Guidance No 3 Annex Update 2005; revision April 2012. Therefore paragraph 14 is not engaged.
46. Having regard to all other matters and for the reasons set out above, the appeal is dismissed

Helen Heward

PLANNING INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Giles Cannock	Counsel, Kings Chambers, Manchester
Chris Butt	The Planning Bureau Ltd
Peter Barefoot	Chartered Surveyor, Alder King
Peter Graham	The Planning Bureau Ltd
Taffi Sikoki	The Planning Bureau Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Tom Graham	Locum Principal Legal Officer, Leeds City Council
Glen Allen	Principal Planning Officer, North East Leeds, Leeds City Council
Philip Lee	Chartered Surveyor, The District Valuers' Service

INTERESTED PERSONS:

Mr B May	Principles Communications, Devonshire Hall Devonshire Avenue Leeds
Simon Nabarro	Nabarro McAllister, Devonshire Lodge, Devonshire Avenue, Leeds
Ms N Yumis	Affordable Housing Principal Officer, Leeds City Council
Aaron Casey	Senior planner, Leeds City Council
Mary Bradshaw	Leeds City Council
Tom Graham	Leeds City Council
Lora Hughes	Principal Planning Officer, Leeds City Council
Rebecca Sumerling	Leeds City Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Copies of five representations submitted during the application.
- 2 Copy of the District Valuers' Service Valuation prepared by Alison Mobbs and dated 10 October 2013.
- 3 Copy of the District Valuers' Service letter to Leeds City Council, ref 1477074, dated 14 January 2014.
- 4 Leeds -Devonshire Avenue – McCarthy & Stone Tabulated Appraisal Comparison prepared by Philip R Lee 16 December 2014.
- 5 Devonshire Avenue Roundhay Leeds Hearing Note No 4 Viability Appraisal Issues (Areas of inconsistency and disagreement), reference PGJB/80176 dated 9 December 2014 together with Comparative Analysis Sheet A dated 11 December 2014.
- 6 Copy of previously submitted Chris C Butt email 28 November 2013 and attachments.
- 7 Final Cost Application of the Appellant dated 12 December 2014.
- 8 Signed Unilateral Undertaking dated 16th December 2014.

PLANS SUBMITTED AT THE HEARING

- 1 Tree Constraints plan 767/01.

Costs Decision

Hearing held on 12 December 2014

Site visit made on 21 January 2015

by Helen Heward BSc Hons MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 February 2015

Costs application in relation to Appeal Ref: APP/N4720/A/14/2227584 Land at Devonshire Lodge, Devonshire Avenue, Roundhay, Leeds

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by McCarthy & Stone Retirement Lifestyles Ltd for a full award of costs against Leeds City Council.
 - The Hearing was in connection with an appeal against the refusal of the Council to grant, subject to conditions, planning permission for the "Erection of Later Living retirement housing (category II type accommodation), communal facilities, landscaping and car parking".
-

Decision

1. The application for a full award of costs is allowed in the terms set out below.

The submissions for McCarthy & Stone Retirement Lifestyles Ltd

2. A draft application for costs was made in writing prior to the Hearing and a written update was provided at the Hearing.
3. The Council acted unlawfully and unreasonably by failing to produce on appeal evidence which provides a respectable basis for the authority's refusal.
4. The Council raised the principle of development and impact upon the local centre, when only one reason for refusal was given on the decision notice which relates to the viability of the development and Core Strategy Policies H5 and ID2.
5. The Council accepted that the full affordable housing contribution could not be delivered and that policy provides for a lower contribution. A contribution had been offered and agreed by the Council's expert advisers. The Council did not assert that the development could viably deliver any greater contribution than that offered and they failed to critique the applicant's viability evidence.
6. Refusing a proposal for specialist accommodation for the elderly for which there is a critical need because it cannot viably deliver another form of development for which there is a lesser need and does not derive from the applicant's proposal is absurd and unreasonable.

The response by Leeds City Council

7. The response was made verbally at the Hearing.

8. The advice of the District Valuers' Service (DVS) was consistently that the scheme could afford to contribute £507,000 to affordable housing. Although £432,242 was put before the Plans Panels, so too was £507,000. The Panel had ample evidence before them. The applicant's appraisals based on 18.5% profit were perfectly proper and confident that they would make a profit. At the Hearing decanting tenants was accepted as not being an abnormal cost and the applicant failed to explain how the available sum suddenly dropped to £164,137. Critiquing the applicant's viability assessment put forward at appeal goes nowhere.
9. There are two separate concerns, viability, and the scheme's wider effects overall having regard to paragraph 14 of the National Planning Policy Framework and the three dimensions of sustainable development. The Council did not seek to add a new reason for refusal or invent a new test, the Plans Panel decision included consideration of both the viability and the planning merits. Members of the Plans Panel had to exercise judgement, not mechanically implement rules and the applicant's assessment failed to consider the dis-benefits and present a balanced case.

Reasons

10. The National Planning Policy Guidance (NPPG) provides guidance on the award of costs and is designed to improve the efficiency and effectiveness of the planning appeals system¹. Costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
11. The NPPG states that local planning authorities are at risk of an award of costs if, amongst other things, they fail to produce evidence to substantiate each reason for refusal, if they rely on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis or if they fail to review the case promptly following the lodging of an appeal, as part of sensible on-going case management. The NPPG also advises that where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations².
12. The NPPG refers to a critical need for housing for the elderly but this does not override the need to provide affordable housing and the applicant accepted that Core Strategy Policy H5 was relevant to the proposed development. There is no provision within Policy H5 for a comparative assessment and the Council were clear that they had no objection to the principle of residential development on the site. Their argument was partly about viability and partly about the wider impacts and the overall planning merits of the scheme having regard to paragraph 14 of the National Planning Policy Framework and the three dimensions of sustainable development.
13. However, in this regard the cases were not that far apart; both arguing that as well as the viability of the proposal, other considerations had to be taken into account in the balancing exercise. For the Council this concern was about an adverse effect on the local centre, for the applicant it was the benefits of the

¹ paragraph 028 Ref ID: 16-029-20140306

² Planning Practice Guidance ID 10-019-20140306 06 03 2014

- provision of a sheltered housing scheme for older people. This was a matter for my judgement, and although the Council's reason for refusal could have been clearer, and their argument was less substantive and I was not persuaded by it, I found it to be concisely and reasonably made. Moreover, the applicant was clear that the reason for refusal was viability and prepared their case on this basis. Their planning application and supporting documentation provided most of their evidence in relation to the effect upon the local centre.
14. The Council accepted that the full contribution required by Policy H5 could not be delivered and that Policy H5 provides for a lower contribution, but there is no automatic assumption in Policy H5 that the requirement for affordable housing will be waived or reduced for elderly persons sheltered housing. It requires such a submission to be verified. There was a difference of opinion between the parties as to whether or not the applicant's offer had been agreed by both the DVS and the planning officers, or just by planning officers. However, the evidence indicates that the Plans Panel had both the applicant's offer and the DVS's valuation before them. Some of this information was conflicting, a judgement had to be made, and Councils are not bound to accept the recommendations of their officers.
15. The Council's statement of case does not provide viability evidence or critique the applicant's latest evidence. The Council had an opportunity of responding to this in writing and in advance of the Hearing. They could not ignore it because they preferred another appraisal. A representative of the DVS attended the Hearing on behalf of the Council and submitted a summarised Table critiquing the applicant's viability evidence. This assisted the Hearing in understanding how the latest appraisal arrived at a lower figure of £164,137 for all contributions. However, these factors do not absolve the Council of the responsibility to articulate and substantiate with evidence, how and why, they had arrived at their decision, and the Council failed to submit, in advance, evidence to this effect.
16. I found against the applicant's planning appeal and in some instances concurred with the view of the DVS's representative at the Hearing. However, this does not justify the Council's behaviour. On the contrary my findings strengthen my conclusion that the behaviour of the Council was unreasonable. For had they behaved reasonably, producing their own viability evidence and responding to the applicant's in advance of the Hearing, there would have been opportunities for clarifying issues in advance, areas of conflict could have been summarised, the consequences of differences set out, and an opportunity for resolving concerns between the parties either before or at the Hearing.
17. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense has been demonstrated and, as viability was the main issue and the only consideration under Policy H5, a full award of costs is justified.

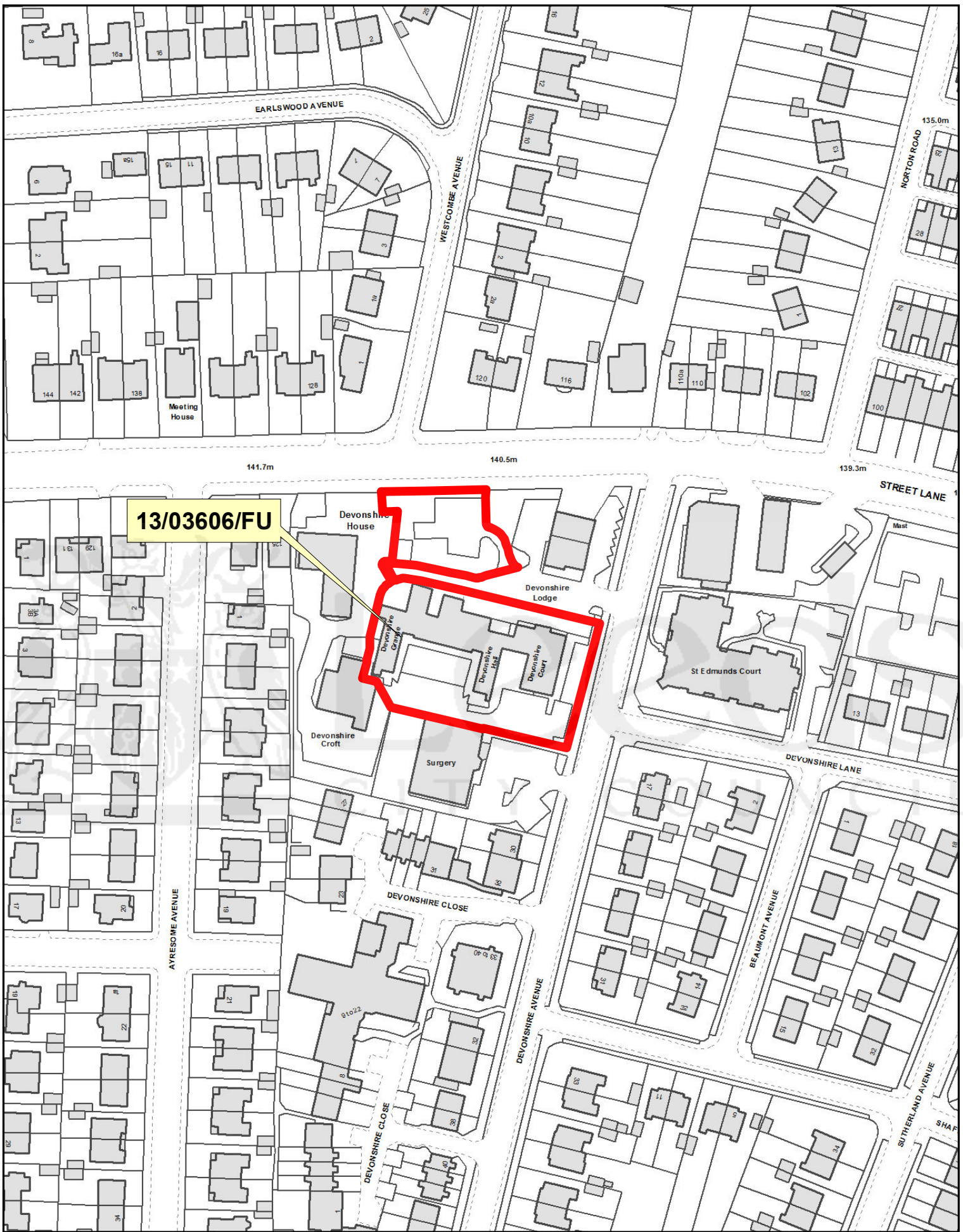
Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Leeds City Council shall pay to McCarthy & Stone Retirement Lifestyles Ltd the costs of the appeal proceedings described in the heading of this decision.

19. The applicant is now invited to submit to Leeds City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Helen Heward

INSPECTOR



NORTH AND EAST PLANS PANEL



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