



Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 27th November 2014

Subject: 14/00927/UHD3 – Unauthorised alterations to dwelling at Reighton House, Moor Lane, East Keswick, Leeds, LS17 9ET

APPLICANT
N/A

DATE VALID
N/A

TARGET DATE
N/A

Electoral Wards Affected:

Harewood

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: To monitor the buildings works on the site and in the event that the resultant dwelling is of the same design and form as that shown on the plans approved under application 13/04348/CLP that no enforcement action be taken.

1.0 INTRODUCTION

- 1.1 This report concerns unauthorised works that are in the process of being carried out to a dwelling known as Reighton House in the village of East Keswick.
- 1.2 A report is presented to Panel as the site is located within the Green Belt and the house as proposed to be altered would be larger than would normally be permitted within the Green Belt.
- 1.3 In February of this year a Certificate of Proposed Lawful Development was granted for extensions to this house. The Certificate granted set out that the works proposed by the applicant to extend and alter the house constituted permitted development under the terms of the Town and Country Planning (General Permitted Development) Order (as amended) (GPDO). In determining such applications a local planning authority is not at liberty to consider the planning merits of the proposal but is limited to considering the facts of the case and whether what is

proposed constitutes permitted development. The consequence of the grant of Certificate is that no planning permission was required from the council.

- 1.4 Works to the property commenced but have gone beyond what was granted on the Certificate. The primary breach is the removal of the roof of the house.
- 1.5 The applicant contends that there is no breach of planning control and has set out their intention to continue to alter and extend the property in line with the drawings submitted as part of the approved Certificate.
- 1.6 Officers maintain that there is a breach of planning control. For enforcement action to be taken the council must decide whether there has been a breach and, if so, move on to consider whether it is expedient to take enforcement action. In other words, that the harm arising from the development is so significant that enforcement action should be taken to remedy the breach and to mitigate the harm caused. In reaching a decision on this, Members will have to have regard to the planning policies that seek to regulate development in the Green Belt and the planning history of the site.
- 1.7 Members will note that the officer recommendation is that it is not expedient to take enforcement action in the event that the works carried out result in a dwelling of the same form and design as that granted under the Certificate.

2.0 SITE & SURROUNDINGS

- 2.1 The application relates to a two storey detached dwelling set to the western edge of East Keswick on the southern side of Moor Lane. It is located within a ribbon of other residential development and is set within the Green Belt. The site is not located in a conservation area.
- 2.2 The property has an extensive residential curtilage which extends to the front, rear and both sides. Towards the rear is a lawned garden area, while towards the western side is a wall garden area. To the front is a driveway and a number of mature trees. To the eastern side of the curtilage are 3 domestic outbuildings which are physically accessible from the main house. These comprise a large garage and stables which accommodates the domestic parking of the house. On the front of this building is the electricity meter belonging to the house. The 2 storey stable block also contains the gas boiler to the dwelling. A redundant hay store/barn is located towards the south eastern part of the curtilage. The applicant also owns the adjoin field to the rear, but this is not regarded as domestic curtilage.

3.0 RELEVANT PLANNING HISTORY

- 3.1 12/05239/CLP – Certificate of proposed lawful development for two storey rear and single storey side extensions and detached outbuilding: Withdrawn
- 3.2 13/04348/CLP - Certificate of Proposed Lawful Use for part two storey, part single storey rear extension, single storey extension to both sides, porch to front, erection of ancillary outbuilding to rear, re-facing of existing front elevation of dwelling with natural coursed stone and natural stone roof tiles and alterations to existing stables. Approved – February 2014

- 3.3 As part of this application extensive plans and documents were submitted that showed and described the works. These described the extent of new build and demolition. It was clear from these documents that the front and side walls of the existing dwelling would largely be retained. The plans also showed much of the existing roof to be retained although a replacement roof covering was proposed. Sections of roof would be removed to facilitate the rear extensions and alterations to the roof. Much of the internal structure and walls were also shown to be removed although small sections of internal walls were shown as retained.
- 3.4 14/00927/UHD3 – Unauthorised alterations to dwelling. In carrying out the works permitted under 13/04348/CLP the applicant removed some sections of internal walls that were shown to be retained and removed the roof of the house. The applicant has been advised that if they continue with the build those works are done so at their own risk and may be liable to enforcement action.

4.0 BACKGROUND TO COMPLIANCE CASE

- 4.1 In the following paragraphs a summary of the main events in the consideration of this compliance case are set out.
- 4.2 On 21st August 2014 the council received a complaint that unauthorised works were being undertaken at this site.
- 4.3 On 28th August the site was visited and at that time the rear wall of the house, internal walls and the roof had been removed.
- 4.4 On 8th September the house owner was advised that there was no breach of planning control as the partial demolition of a dwelling does not require planning permission. In addition it was set out that it is likely that planning permission would be required to carry out the building works to realise the build envisaged as shown on the plans submitted as part of the application for the Certificate.
- 4.5 An exchange of correspondence took place with the house owner which culminated on 12th September with officers confirming their view that the amount of demolition went beyond the terms of the Certificate and that planning permission would be required for further building works. A planning application was invited. The house owner voluntarily agreed to stop all but essential building works.
- 4.6 On 19th September the house owner informed the council that he was taking his own legal advice.
- 4.7 On 23rd October the house owner emailed the council with a copy of his legal advice. This contested the conclusion reached by officers for the following reasons:
- Extensive demolition was permitted by the approved certificate;
 - An approved plan was annotated that the roof was to be removed.
 - In light of the extent of demolition approved under the Certificate it is difficult to envisage how the roof could have been retained in situ.
 - The correct approach is to consider whether what has happened materially departs from the Certificate.
 - Any planning application would be in exactly the same terms as those already certified by the council.

- In this context it would not be expedient for the council to take enforcement action and it would be unreasonable for it to do so.

4.8 Having considered the above officers replied on 6th November that it is considered that the works fall beyond the terms of the Certificate for the following reasons:

- The works applied for on the application form refers to "... refacing of existing front façade with coursed natural stone + natural stone roofing tiles". The works described on the application form make no mention of a replacement roof. No other reference within the submitted application documents describe or refer to the replacement of the roof structure.
- The annotation on drawing 007L "Existing clay pantile roof is to be replaced with stone roofing tiles". The note on drawing 007L does not say that the roof structure is to be removed and a new roof structure installed. It is not a reasonable interpretation of the annotation to say that this means the whole roof structure is to be replaced.
- In support of the application a document entitled 'Summary of Works' was submitted. This refers to additions to the existing roof. The clear implication of this is that the existing roof would, to a large part, remain. No mention is made in this document of a replacement roof.
- In a similar vein the submitted 'Footprint and Volume Calculations' again makes no reference to a new roof. It does refer to the volume of a new dormer.
- Drawing 009J entitled 'Permitted Development Massing' refers to 'Existing Roof Alterations' and tells us the volume of these is circa 49m³. This drawing also identifies the existing building and alterations to it on a roof plan. The key identifies the works to be undertaken under the various classes of the GPDO. These are all colour coded. The majority of the roof of the main dwelling is shown as (and colour coded) as existing building and the various extensions, including a dormer window, are shown in different colours as proposed works. The basic point being that an existing roof cannot be altered if it is removed.
- The decision issued makes no reference to a replacement roof structure. The Certificate issued in the first schedule states:
- "The development of a part two storey, part single storey rear extension, single storey extension to both sides, porch to front, erection of ancillary outbuilding to rear, re-facing of existing front elevation of dwelling with natural coursed stone and natural stone roof tiles and alterations to existing stables as shown on plan references 004 J, 005 K, 006 H, 007 L, 008 J, 009 J, 010 G and 011 E submitted on 13.09.2013 and 31.01.2014 at land at Reighton House, Moor Lane, East Keswick, Leeds, LS17 9ET and outlined in red on Ordnance Survey extract plan submitted on 13.09.2013."
- Whilst the point raised about the amount of demolition to the main dwelling was always likely to result in the roof being removed is noted that is not what was applied for or what was granted. However, the front and two side walls were shown to be retained and ultimately it was for the applicant and his professional advisers to work out how you were going to implement the works granted under the Certificate.

4.9 The email of 6th November concluded that in light of these points it was not a reasonable interpretation of the facts to conclude that the Certificate applied for and granted allowed for the removal and replacement of the whole of the existing roof structure. If those works had formed part of the application then the Certificate would have been refused - as such the works do not constitute permitted development.

- 4.10 The house owner was advised that in these circumstances it falls with us, as the Local Planning Authority, to consider and reach a decision as to whether it is expedient to take enforcement action. In light of the site's location within the Green Belt and the nature of the local interest the intention is to report the matter to the North and East Plans Panel of 27th November for a decision by Members. To assist with the report to Members and recommendation it would help if the house owner could confirm the following and the house owner be prepared to submit a unilateral undertaking to the effect that;
1. That he will only build out exactly what is shown on the drawings for the certificate.
 2. That he is prepared to agree external materials with the LPA for the walls and roof.
 3. That the works being done are to the existing building and that a new dwelling is not being created - if it is a new building rather than an existing building extended then it would benefit from being an original dwelling under policy and possibly be permitted more extensions.
 4. The timescale for the implementation of the outstanding works.
- 4.11 At the time of drafting the report the applicant had confirmed that, whilst they do not accept the officer view in respect of the implementation of the Certificate, they are willing to produce a unilateral undertaking to cover points 1 to 4 above and their solicitor will be instructed accordingly.

5.0 PLANNING POLICIES

Development Plan

- 5.1 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 within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013).
- 5.2 The Core Strategy is the development plan for the whole of the Leeds district. The following core strategy policies are relevant:
- P10: Seeks to ensure that new development is well designed and respect its context.
 - P12: Protection of significant landscape characteristics.
- 5.3 The following saved UDP policies are also relevant:
- GP5: Regard to all relevant planning considerations
 - N33: Inappropriate development in the Green Belt will be resisted unless there are very special circumstances.
 - BD6: The Extension and alterations should reflect the form, detailing and scale of the original building.
 - LD1: Relates to detailed guidance on landscape schemes

Relevant Supplementary Planning Guidance

5.4 Householder Design Guide (HDG):
Leeds City Council Householder Design Guide was adopted on 1st April and carries significant weight. This guide provides help for people who wish to extend or alter their property. It aims to give advice on how to design sympathetic, high quality extensions which respect their surroundings. This guide helps to put into practice the policies from the Leeds Unitary Development Plan which seeks to protect and enhance the residential environment throughout the city.

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, over dominance or overlooking will be strongly resisted.

HDG3 All extensions, additions and alterations within the Green Belt should represent limited development and should not harm the character, appearance and openness of the Green Belt. In order to be considered as limited development all existing and proposed extensions should not exceed a thirty percent increase over and above the original house volume. Development proposals which exceed thirty percent or which harm the character, appearance or openness of the Green Belt are considered to be inappropriate development. Inappropriate development is, by definition, harmful to the Green Belt and will be resisted unless very special circumstances are demonstrated.

National Planning Guidance

5.5 The National Planning Policy Framework (NPPF) came into force on 27th March 2012. The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 6 states that the purpose of the planning system is to contribute to the achievement of sustainable development. The following paragraphs are relevant:

- Paragraph 49: Presumption in favour of sustainable residential development.
- Paragraph 56: Government attaches great importance to design of the built environment.
- Paragraph 64: states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- Paragraph 89: notes that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this include the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. The NPPF also states that local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.

- Paragraph 207: Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

6.0 MAIN ISSUES

- Breach of Planning Control
- Green Belt

7.0 APPRAISAL

Breach of Planning Control

- 7.1 At the present time there is no breach of planning control. Whilst demolition constitutes development the partial demolition of a house does not require planning permission. The issue of a breach arises when any works commence to extend the dwelling. The house owner has been clear that the intention is to construct the dwelling as shown on the plans as part of the Certificate.
- 7.2 However, it is the officer's view that in removing the roof the applicant has gone beyond what has been granted by the Certificate. Therefore, the carrying out buildings works to bring about that scheme would not be authorised and would not constitute permitted development (permitted development rights only exist for alterations and extensions to an existing roof and not for the replacement of a roof). The house owner has also been clear that they do not intend to submit a planning application for the development. Therefore, no planning permission exists for the proposed works.
- 7.3 The issue then becomes if the house owner carries out construction works to bring about the scheme shown on the approved drawings that formed part of the Certificate then they will be in breach of planning control.
- 7.4 The power for a local planning authority to take enforcement action is discretionary. The test is twofold. First, as in this case, there has to be a breach. Secondly, it has to be expedient to take enforcement action. In reaching that decision regard has to be had to the planning policies that operate in the area and any other material planning considerations. This can include consideration of the likely outcome of any enforcement action taken and the implications of following such a course would have on the resources of the council.
- 7.5 In this instance the primary planning consideration is the impact of the development on the Green Belt. The site is not within a conservation area and in any event the plans approved as part of the Certificate show a house that is well designed and fits with the character of the locality. The house also enjoys good separation to its neighbours and therefore there are no significant concerns in respect of its impact on residential amenity.

Green Belt

- 7.6 Paragraph 89 of the NPPF notes that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this include the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. The

NPPF also states that local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.

- 7.7 This advice is replicated in Policy N33 of the UDPR which notes that approval will only be given for limited extension, alteration or replacement of existing dwellings. The NPPF and UDP provide no guidance on how to interpret what constitutes disproportionate or limited extensions, however the adopted Householder Design Guide notes that approximately a thirty percent increase over and above the volume of the original building is considered to be a reasonable interpretation of limited extension (HDG3). In order to be considered acceptable development within the Green Belt, extensions should not only be limited but should not harm the openness of the Green Belt. Development proposals which are disproportionate or which harm the openness of the Green Belt is considered to be inappropriate development. Inappropriate development is, by definition, harmful to the Green Belt and will be resisted unless very special circumstances are demonstrated. The main issues in relation to this case are therefore;
- (i) Whether the proposal constitutes inappropriate development in the Green Belt as set out in the Development Plan and having regard to national policy framework set out in the NPPF. This document advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, and;
 - (ii) If it is inappropriate development, whether the harm, by reason of inappropriateness is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.
- 7.8 Photographs of the house prior to demolition works indicate that the house at some time in the past had been extended. However, there is no record of a planning permission or building regulation approval for those works. In any event the extensions shown on the plans that form part of the Certificate are extensive and in excess of the 30% increase guide set out in the HDG.
- 7.9 With a material increase in the size of the dwelling and spread of its footprint the proposal will impact upon the open character of the Green Belt.
- 7.10 The issue then becomes one of whether any very special circumstances exist that are of such weight to justify the setting aside of the presumption against the development. The house owner has not made such a case but in considering the issue of expediency it falls with the local planning authority to have regard to such matters and any other factors that are relevant to a decision to take enforcement action. The issue of very special circumstances and other factors are examined in the following paragraphs:
- (i) The Certificate:
- 7.11 It is the stated intention of the house owner to carry out a development that is of the same form as that approved under the Certificate. Therefore, the development will have the same impact on the Green Belt as if they had carried out the scheme approved under the Certificate. It would appear that the roof was removed for practical construction reasons and there is other particular gain to the house owner (i.e. it does not result in a larger dwelling).
- (ii) Enforcement Action:

7.12 If the development were to go ahead and the council took enforcement action regard should be had to the likely outcome of that action. Any enforcement notice would have to identify the breach of control, the steps required to remedy the breach and a time period for the carrying out of the remedial works. Any enforcement action must be reasonable and proportionate to the breach. The logical remedy to the breach would be to require the dwelling to be returned to its form prior to the carrying out of the breach of planning control. However, this in itself may prove difficult if the house owner chose to stop all building works and decided to leave the site as it currently stands. The existing form is known as existing plans of the house were provided as part of the Certificate. In taking enforcement action the local planning authority would not have the scope to remove permitted development rights for the dwelling. Therefore, if the current house owner, or a future owner for that matter, had the inclination and resources then they could extend the 'new' house in accordance with the permitted development rights that exist at the time. It is arguable then there may be little actual benefit to the Green Belt in taking enforcement action.

(iii) Impact on the council's resources:

7.13 It is clearly important that the council resources are utilised in an effective and efficient way. It is right and proper that resources are dedicated to taking enforcement action where there are breaches of planning control that have a significant adverse effect on matters of public interest. This can include the impact of the development on the open character of the Green Belt. In all likelihood the house owner would challenge any enforcement action taken by the council. As it is the house owner's future family home again it would appear likely that they would dedicate significant resources to fighting the council's decisions. In the past such planning disputes have proved to be resource hungry. This is not in itself a reason not to take appropriate action where the breach causes significant harm and where remedial action results in meaningful public benefit. As discussed under (ii) above it is arguable whether there would be any significant public benefit in the longer term.

(iv) Unilateral undertaking

7.14 The applicant has confirmed that he will produce a unilateral undertaking that covers the following four points:

1. That he will only build out exactly what is shown on the drawings for the Certificate.
2. That he is prepared to agree external materials with the LPA for the walls and roof.
3. That the works being done are to the existing building and that a new dwelling is not being created - if it is a new building rather than an existing building extended then it would benefit from being an original dwelling under policy and possibly be permitted more extensions.
4. The timescale for the implementation of the outstanding works.

7.15 Such an undertaking gives certainty in respect of the form of the resultant dwelling (including its eaves and ridge height relative to the original dwelling), affords control to ensure that high quality natural materials are used for its external faces and prevents the further extension of the building under permitted development rights thereby offering protection to the openness of the Green Belt. With regard to this last point planning Inspectors at appeal have, on occasion, interpreted Green Belt policy to allow replacement dwellings to benefit from full permitted development rights (e.g. this interpretation allows a dwelling that has been significantly extended to be replaced by a new dwelling that is slightly larger which in turn be extended again under permitted development rights). The undertaking also would give some certainty to local residents as to when the build will be finished.

8.0 CONCLUSION

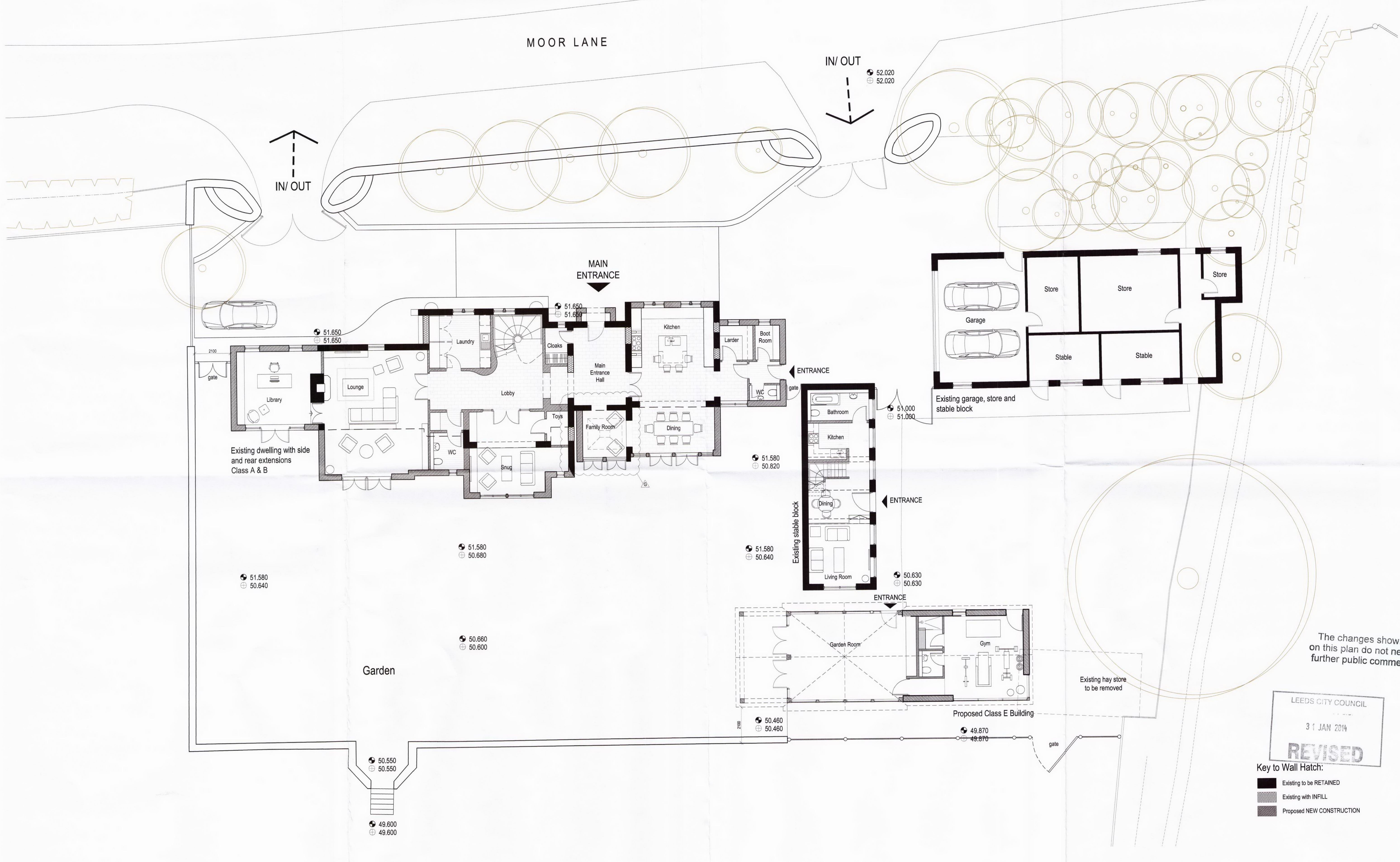
- 8.1 It is officer's view that if building works continue on site this will result in a breach of planning control. The resultant dwelling would be of size that is contrary to the councils policies on extensions to dwellings within the Green Belt. It is for Members to decide whether it is appropriate and expedient, given the circumstances of this particular case, to take enforcement action at the point in time when a breach occurs. Whilst there is potential harm to be caused to the Green Belt it is recommended that in this particular case that it would not be expedient to take enforcement action. The reasons are set out in Section 7.0 above. However, it is recommended that building works on the site are closely monitored and if the development is not carried out to deliver the form of dwelling approved under the Certificate then the need for enforcement action will need to be reconsidered.

Background Papers:

Application file: 13/04348/CLP

Site owned by Mr P Fox

MOOR LANE

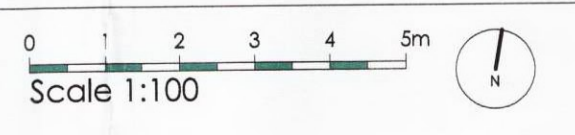


The changes shown on this plan do not need further public comment

LEEDS CITY COUNCIL
 31 JAN 2014
REVISED

Key to Wall Hatch:
 Existing to be RETAINED
 Existing with INFILL
 Proposed NEW CONSTRUCTION

Notes:
 Contractor must verify all dimensions on site before commencing any work or shop drawings. If this drawing exceeds the quantities taken in any way the Architects are to be informed before the work is initiated. Only figured dimensions to be taken from this drawing. Do not scale off this drawing. Drawings based on Ordnance Survey and / or existing record drawings - design and drawing content subject to Site Survey, Structural Survey, Site Investigations, Planning and Statutory Requirements and Approvals. Authorised reproduction from Ordnance Survey Map with permission of the Controller of Her Majesty's Stationary Office. Crown Copyright reserved. Enjoy Design Ltd.

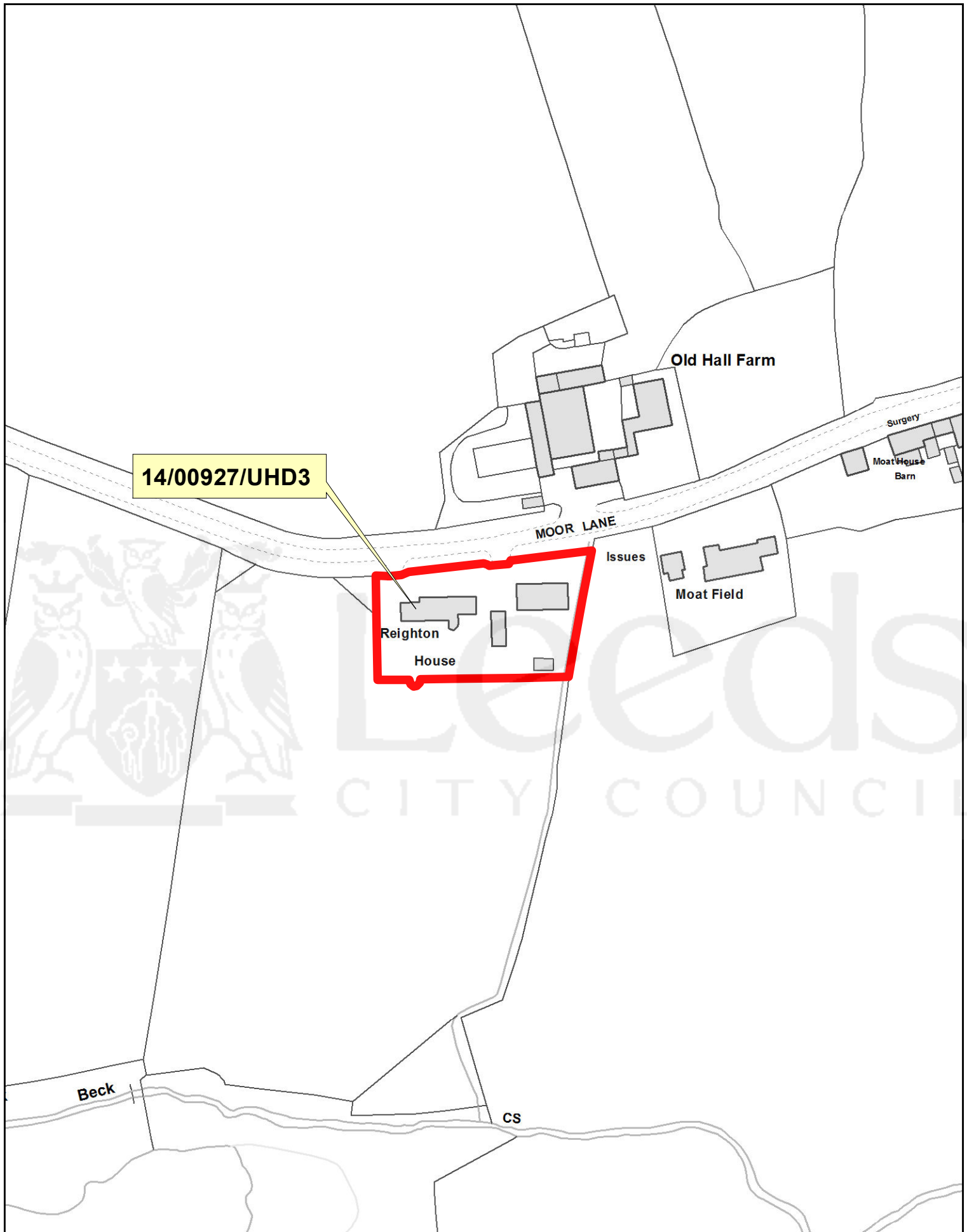


F	CLASS E BUILDING RELOCATED EASTWARDS, INTERNAL ROOMS RELABELLED.	R/JG	12/08/13	GM
E	CLASS E BUILDING RELOCATED AND SIGNIFICANTLY REDUCED IN SIZE, WEST SIDE EXTENSION REDUCED SWIMMING POOL AND GYM REMOVED FROM CLASS E BUILDING, SIZE SIGNIFICANTLY REDUCED	R/JG	19/11/12	GM
D	REAR EXTENSION REDUCED TO 3M OVER 2 STOREYS, STABLE BLOCK ROOF ALTERATIONS REVISED BACK TO EXISTING ARRANGEMENT, SIDE EXTENSION REDUCED EXTENSION OMITTED FROM STABLE BLOCK, EAST SIDE EXTENSION SEPARATED FROM STABLE, WEST SIDE EXTENSION WIDTH REDUCED, BEDROOM BALCONY REMOVED, AREAS UPGRAD	R/JG	18/07/12	GM
C	LEVELS & LSCAPE ADJACENT TO CLASS E SINGLE STOREY BUILDING	R/JG	23/03/12	GM
B		R/JG	18/04/12	GM
A		R/JG	23/03/12	GM
Rev.	DBS	By	Date	Ch.

Client: MR & MRS FOX
 Job No. 11,035
 Project: REIGHTON HOUSE EAST KESWICK, LEEDS
 Title: GENERAL ARRANGEMENT SITE PLAN
 Date: 27.02.12
 Scale: 1:100@A1
 Checked By: GM
 Drawing No: (00)010
 Drawn By: R/JG
 Revision: G
 Status:

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 21 Blayds Yard
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 LS1 4AD
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NORTH AND EAST PLANS PANEL

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SCALE : 1/1500

