



Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 8th January 2015

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:

(1) Members to note this report.

(2) In light of the advice from Counsel contained within the exempt report Members are request to determine whether it is expedient to take enforcement action.

1.0 INTRODUCTION

1.1 Members will recall that a report was considered at the Plans Panel of 27th November 2014 concerning unauthorised works to a dwelling known as Reighton House in East Keswick. A Certificate of Proposed Lawful Development was granted for extensions to this house (i.e. the proposed works constituted permitted development and no planning permission was therefore required from the council) and in the carrying out works to implement that approval the developer demolished more of the house than was shown on the approved drawings. The site is located within the Green Belt and Members were informed that extensions that could be carried out as permitted development were often of a size that exceeded that which would be allowed under the terms of the council's planning policies for extensions to houses in the Green Belt. Members raised significant concerns in that there appeared to be a breach of planning control, that the works constituted an abuse of the planning system and that if the development was allowed to continue as planned the resultant dwelling would

be significantly larger than would normally be allowed by green belt planning policy. The Panel resolved to obtain Counsel's opinion in respect of:

- Whether there was a breach of planning control at this point in time;
- If not when would a breach occur; and,
- What remedial actions were available to council.

1.2 Members should be aware that this report is accompanied by a separate report relating to the legal advice received. The information contained within the separate report is confidential as it relates to privileged legal advice. It is considered that it is not in the public interest to disclose this information as it would be likely to prejudice the council's position in respect of any enforcement action it may take in the future. It is therefore considered that the report, when issued, should be treated as exempt under Schedule 12A Local Government Act 1972 and Access to Information Procedure Rule 10.4 (3).

1.3 In addition to the matter dealt with in the exempt report it is clear that Panel had significant concerns concerning a number of matters related to this case:

1. That a Certificate of Proposed Lawful Development can be granted for extensions to a dwelling that are in excess of the council's planning policies that operate within the green belt.
2. That the affected locally community have no or limited input into applications for Certificates of Lawful Development.
3. That a developer can be in breach of planning control and that officers put a report recommending that it is not expedient to take enforcement action.

1.4 Section 2.0 below addresses points 1 and 2. Point 3 is dealt with in section 3.0 save for the issue whether it is expedient to take enforcement action. This is addressed in the exempt report.

1.6 Members should also note that since the November Panel the applicant has been written to asking him to clarify his intends to proceed and asking him to submit a planning application for the development of the site. At the time of drafting this report no reply had been received that addressed these issues.

1.5 Members are asked to note the content of this report and secondly to reach a view whether it is expedient to take enforcement action against this breach of planning control. In reaching a view on this second issue Members will need to have regard to the legal advice set out in the exempt report.

2.0 CERTIFICATES OF LAWFUL DEVELOPMENT

2.1 These provide a formal procedure for seeking a legal determination on the need for planning permission. In general terms there are two types of certificate, one for existing and one for proposed uses or developments.

2.2 An application for a Lawful Development Certificate is used to establish whether:

- an existing use of land, or some operational development, or some activity in breach of a planning condition, is lawful
- a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over, or under land, would be lawful

2.3 A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future development. If granted by the local planning authority, the

certificate means that enforcement action cannot be carried out to the development referred to in the certificate. The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

- 2.4 There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. This may be appropriate when an applicant is seeking to establish that a particular use of land or a building is lawful (i.e. it has been ongoing for 10 years or more). Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application. If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate.
- 2.5 In this case the applicant sought confirmation from the council that the alterations and extensions that they proposed to carry out to the dwelling constituted permitted development. Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application to a local planning authority. Permitted development rights are set out in a government statute, The Town and Country Planning (General Permitted Development) Order 1995, as amended. With regard to extensions this document sets out criteria relating, in the main, to the height, extent of projection, siting and distance to boundaries for a development to constitute permitted development. Accordingly in such cases third parties will have little or nothing to add to a decision as to whether a proposed extension constitutes permitted development and therefore will not be consulted on such applications. For the same reasons this type of application are rarely reported to Plans Panels.

3.0 BREACHES OF PLANNING CONTROL

- 3.1 Guidance on breaches of planning control and effective enforcement action are set out in central government's Planning Practice Guide (PPG). A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:
- the carrying out of development without the required planning permission; or
 - failing to comply with any condition or limitation subject to which planning permission has been granted.
- 3.2 The works carried out at Reighton House fall within the first bullet point. The PPG sets out that local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest. There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.
- 3.3 Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. Accordingly a local planning authority has to first consider whether there has been a breach of planning control and then move on to consider whether the harm (the environmental effects) caused to matters of public interest are such that it warrants the taking of enforcement action to remedy that harm. The taking

of enforcement action is not justified by the fact that there has been a breach of planning control or an abuse of the planning process.

- 3.4 The PPG progresses to set out that in deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.
- 3.5 The sister report to this one addresses the issue as to whether it is expedient to take enforcement action in this case.

4.0 CONCLUSION

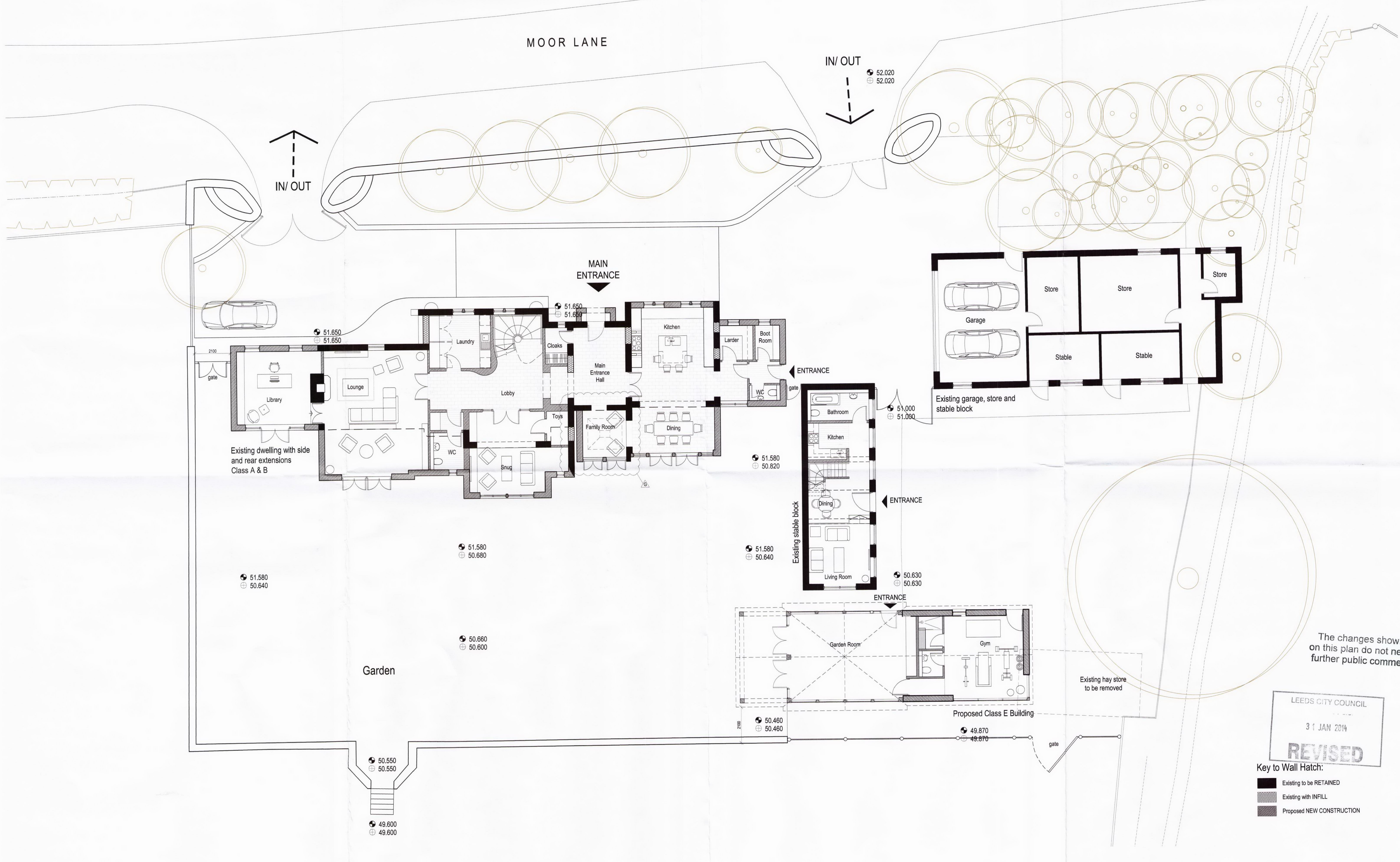
- 4.1 This report is presented for Members information and provides some context for the consideration of the legal advice received and the decision whether or not it is expedient to take enforcement action. These matters being dealt with in the exempt report. Members are requested to note this report and then to reach a view on the taking of enforcement action.

Background Papers:

Application file: 13/04348/CLP

Site owned by Mr P Fox

MOOR LANE

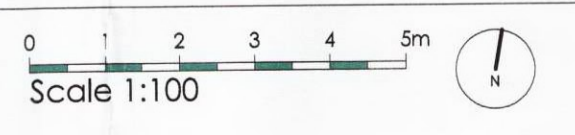


The changes shown on this plan do not need further public comment

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 Stationery Office. Crown Copyright reserved. Enjoy Design Ltd.

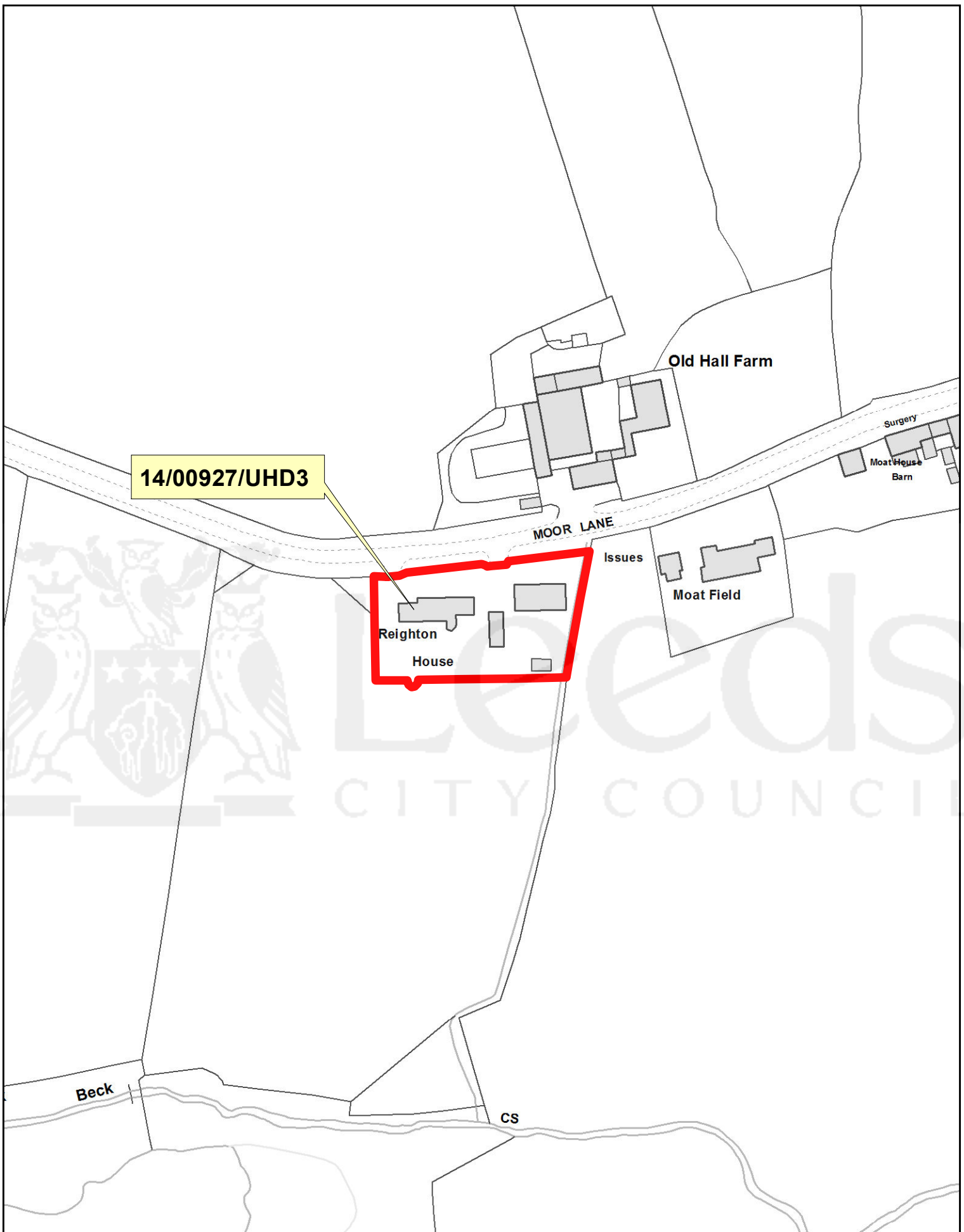


F	CLASS E BUILDING RELOCATED EASTWARDS. INTERNAL ROOMS RELABELLED.	R/JG	12/08/13	GM
E	CLASS E BUILDING RELOCATED AND SIGNIFICANTLY REDUCED IN SIZE. WEST SIDE EXTENSION REDUCED. SWIMMING POOL AND GYM REMOVED FROM CLASS E BUILDING. SIZE SIGNIFICANTLY REDUCED.	R/JG	19/11/12	GM
D	REAR EXTENSION REDUCED TO 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:

enjoy
 ARCHITECTURE | DESIGN | INTERIORS

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NORTH AND EAST PLANS PANEL

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SCALE : 1/1500

