



## Report of the Chief Planning Officer

### NORTH AND EAST PLANS PANEL

Date: 30<sup>th</sup> July 2015

**Subject:** Update in respect of the progress of the development granted by planning permission 14/00575/FU for a 4 bedroom detached house incorporating basement accommodation (part retrospective) at No. 56 The Drive, Cross Gates, Leeds and the failure of the applicant to comply with the terms of their Unilateral Undertaking.

**APPLICANT**  
Mr I Gordon

**DATE VALID**  
27<sup>th</sup> January 2014

**TARGET DATE**  
24<sup>th</sup> October 2014

**Electoral Wards Affected:**

**Crossgates & Whinmoor**

Yes Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

**RECOMMENDATION:** For officers to continue to monitor building works at the site and to defer and delegate the decision to enforce the terms of the unilateral undertaking and pursue the demolition of the house to the Chief Planning Officer in consultation with Ward Members and the Chair.

### 1.0 UPDATE & RECOMMENDATION

- 1.1 Members may recall that a verbal update was given to the North & East Plans Panel of 25<sup>th</sup> June 2015 where Members requested that a detailed report be presented to this Panel and that a Members site visit take place on the morning of the Panel.
- 1.2 This site has a long and complicated planning, compliance and legal history. As this has been set out in full in previous reports to this Panel it is not intended to set out the detail of this again in this report but to provide a brief general account of the history.

- 1.3 In short planning permission was granted in 2005 for the erection of a house and detached garage at the site. The garage was built in accordance with the planning permission but the house as constructed did not comply with that permission. Subsequently a number of planning applications have been submitted to regularize the development and to amend the form of development granted. These applications were resisted by the council. The council also instigated enforcement action in respect of the house built. Over the passage of time a number of appeals have been lodged and dismissed against the refusal of some planning applications and the service of an enforcement notice. The matter has also been considered by in the courts.
- 1.4 More recently, in October 2014, Plans Panel granted planning permission (ref: 14/00575/FU) for a four bedroom detached house incorporating basement accommodation. The applicant also completed a unilateral undertaking the key terms of which are as follows:
- To Commence the Development within 4 weeks of the grant of the Planning Permission.
  - To notify the Council in writing within no more than 7 days of the date of Commencement of Development.
  - To undertake the Development in accordance with the Planning Permission and in particular:-
    - to agree the position of the exterior rear wall of the building on site with the Council at the point of implementation of that part of the Planning Permission;
    - to agree the alterations to the roof structure on site with the Council to ensure a total ridge height which is in accordance with the approved street scene plan is achieved; and
    - Subject to force majeure and the Council in its reasonable discretion agreeing any extension, to Practically Complete the Development (defined as constructing the external shell and to a level to be certified by LCC Building Control) within 7 months of Commencement of Development.
  - In the event that the Development has not reached Practical Completion:-
    - to demolish the building to ground level within 2 months of a written request by the Council so to do and for the avoidance of doubt, in effecting such demolition the existing basement shall be rendered incapable of use: and
    - in the event that demolition is not achieved, to permit the Council to enter onto the Land and effect the demolition and pay to the Council all its reasonable costs incurred.

- 1.5 The unilateral undertaking defined force majeure in the following way:

“Force Majeure” an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent. This includes but is not limited to:

...

1.11.2. Earthquakes, flood, fire or other physical natural disaster, including severe weather conditions; ...”

- 1.6 The time period for the practical completion of the development has now passed as this expired 24<sup>th</sup> June 2015. At that point in time (22<sup>nd</sup> June) the following works had been undertaken to the external shell of the house:
- The rear wall had been removed.
  - A new rear wall had been constructed.
  - The roof structure had been substantially removed.
  - The foundations for the front bay window had been dug.
- 1.7 The council Legal Services section subsequently wrote to Mr Gordon's representative to put him on notice that the house should now be demolished within 2 months. The time period for this lapsing on 25<sup>th</sup> August 2015.
- 1.8 However, the build has continued on site and at the time of drafting this report (17<sup>th</sup> July 2015) work to the external shell of the house had progressed to:
- The front bay window had been constructed to sill level at ground floor.
- 1.9 It was appeared that works were ongoing at eaves level and within the building. On site it was clear that as at 17<sup>th</sup> July there were inconsistencies with the approved elevations. These included:
- Rear Elevation: The approved elevation shows two sets of openings. The first accommodates a triple window and a door. These serve the proposed kitchen. The second opening is of a size to accommodate patio doors and these serve the utility room. The rear elevation as built included two openings of a size to accommodate patio doors.
  - Front elevation: The approved plans show a ground floor window adjacent to the front door and a single window directly above the door at first floor. As built the opening for the ground floor window does not exist. The first floor window opening is of a size to accommodate a double window.
- 1.10 Since the June 2015 Panel further representations have been received from Councillor Peter Gruen as a ward Member and a letter from Mr Gordon's son requesting that the time for the practical completion of the build be extended.
- 1.11 The comments from Councillor Gruen may be summarized as follows:
- Developments at No 56 The Drive have been monitored on a very regular basis and Councillors have also been in frequent contact with local residents.
  - The Plans Panel will know that Mr Gordon voluntarily entered into yet another 'binding legal agreement' and that, on this basis, planning decisions were made.
  - It is clear that the works have not been completed within the agreed time frame.
  - Residents have continued to express serious concerns both about the extent of the works (not enough) being undertaken and the lack of proper progress to accord with the legal agreement. On this basis, residents are asking for immediate further enforcement action to be taken.
  - At the time of writing Councillor Gruen sets out that he is not aware that Mr Gordon has responded to the letters from LCC and therefore do not know if he is suggesting there are any mitigating circumstances. However Panel needs to be clear about the lengthy 8 year history of this case and not see this as an isolated incident.

- Councillor notes that he will be participating at the Panel meeting of 30<sup>th</sup> July and will reserve his personal position until then.

1.12 On 6<sup>th</sup> July 2015 Mr Gordon's son wrote to the council requesting that his father be granted an extension of time to practically complete the build. The letter sets out that the intention is to continue to build and that build time has been lost due to unforeseen circumstances and bad weather. It progresses to state that the intention is to complete their work as rapidly as they reasonably can. The causes of delay are presented as follows:

- Contractors backing out of the project.
- Shortage of matching external building materials.
- Bad weather.
- Error on the approved plans being missed by all parties concerned (the lift shaft position).

1.13 The letter progresses to detail weather reports during the time of the build and cross reference these against days when no building work took place. The letter concludes that 46 days have been lost to bad weather and requests that an additional 56 days be allowed to practically complete the build.

1.14 The council's Legal Services section has sent a written reply that declines to extend the time period. It is set out that the weather events described do not trigger the "force majeure" clause and therefore justify the grant of an extension of time to practically complete the build. The weather events relied upon are not severe and that the weather events are typical for that time of year. .

1.15 Members should also note that in April and May 2015 two applications were submitted for Non-Material Amendments to the 2014 planning permission. Each sought to alter the roof form to accommodate the lift shaft extending into the roof space and were refused. The approved plans showed the lift shaft extending up into this space but Mr Gordon's representatives have set out that these plans failed to show the actual position of the lift shaft and the reality is that the approved scheme did not allow sufficient roof clearance to accommodate the lift shaft.

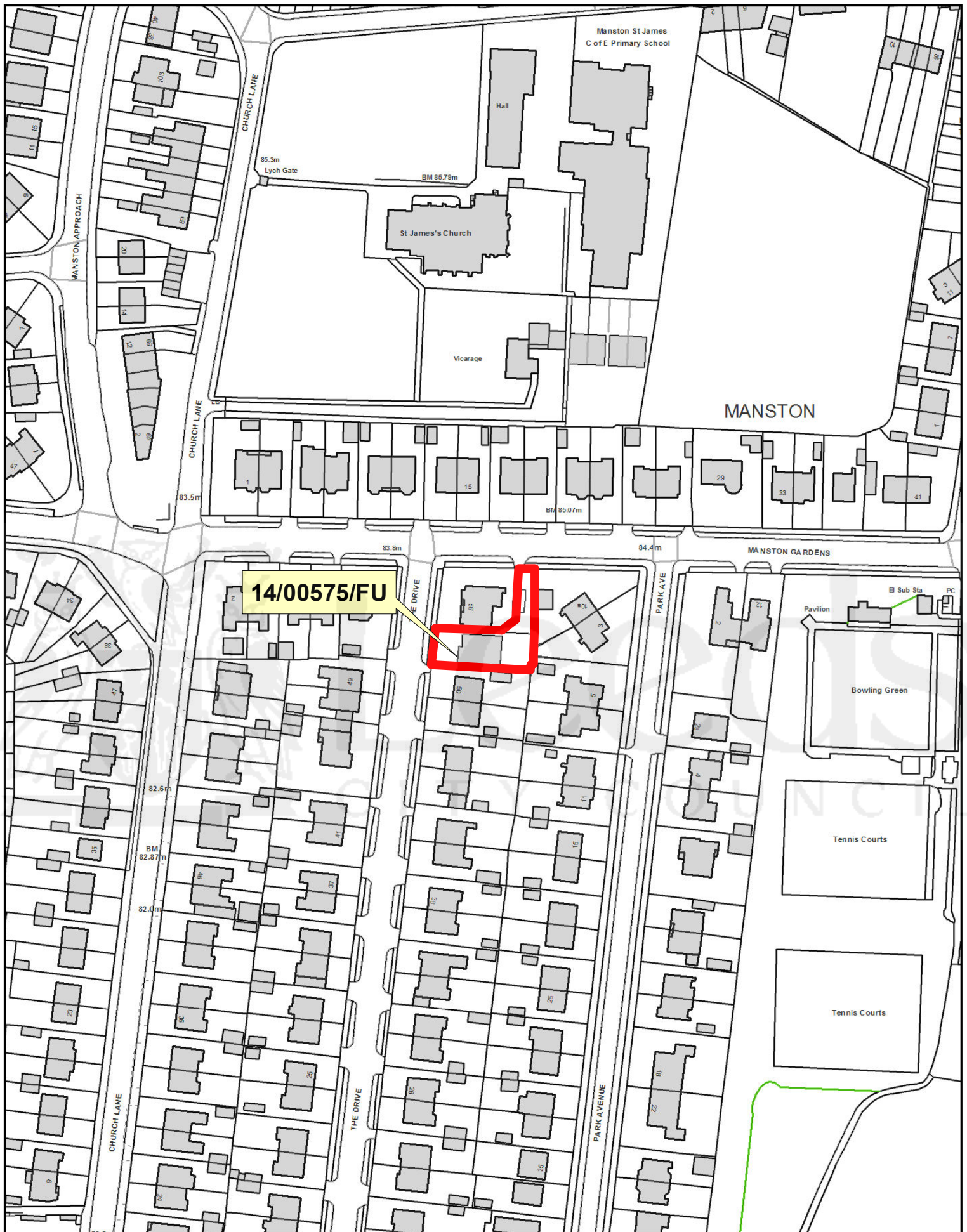
1.16 This report carries a recommendation for officers to continue to monitor building works at the site and for the Panel to defer and delegate the decision to enforce the terms of the unilateral undertaking and pursue the demolition of the house to the Chief Planning Officer in consultation with Ward Members and the Chair. In reaching a decision whether to seek to enforce the terms of the undertaking regard would be had to the following matters:

- Progress made on build as at 25<sup>th</sup> August 2015.
- Whether there is a reasonable prospect that the development will be completed in accordance with the terms of the permission and in what time period.
- The additional disruption and harm to amenities of neighbours that will result if the build were to continue.
- The consequences that that flow from the demolition of the build including disruption to neighbouring residents.
- The cost of any action to the public purse.

1.17 Accordingly Members are asked to agree the recommendation.

**Background Papers:**

Application file 14/00575/FU



# NORTH AND EAST PLANS PANEL

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