



Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 27th August 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
27th January 2014

TARGET DATE
24th 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:

- (1) Members to note this report
- (2) Members to consider the appropriate course of action in light of the further works undertaken in implementing planning permission 14/00575/FU together with the information provided in this report including legal advice

1.0 INTRODUCTION

- 1.1 This report is presented to North & East Plans Panel as a late item as it relates to a very long standing development proposal which because of its history, timing issues and the Panel resolution from the previous meeting necessitates an urgent update to Members.
- 1.2 This report is also accompanied by an exempt appendix relating to the legal advice received. The information contained within the appendix is exempt from disclosure 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 future legal action. It is therefore considered that the appendix be treated as exempt under Schedule 12A(3) Local Government Act 1972 and Access to Information Procedure Rule 10.4 (5).

2.0 CONFIRMATION OF THE PREVIOUS PANEL RESOLUTION ON 30th July 2015

2.1 Members will recall considering an update report at the previous North & East Plans Panel on 30th July 2015 which highlighted the following:

- The 2014 approved application had not been 'practically completed' within the agreed 7 month time period specified in the applicant's legal undertaking (i.e. by no later than 24th June 2015).
- Uncertainty existed about the applicant's intentions/ability to complete the roof structure in accordance with the approved plans because of the position of the existing lift shaft and his strong desire to retain this feature due to disability requirements
- Elements of the build were not fully in accordance with the approved plans although the applicant was intending to correct some of the non-compliant/missing elements of the building (e.g. window openings).

2.2 Having visited the site in the morning and considered the above, the general circumstances surrounding this development and that a written request to demolish the building within a 2 month period had been served on the applicant on 25th June 2015, Members resolved the following:

- To enforce the terms of the legal undertaking which as from the 25th August would allow the Council to carry out the demolition should this not have taken place.
- To progress legal proceedings against the applicant in respect of his failure to comply with the terms of the separate undertaking given to the High Court
- That officers investigate what can be done to help address the overhanging tree issue for the neighbour.

2.3 A full copy of the minutes and Panel resolution in respect of this item are already included within the main agenda papers.

3.0 UPDATE SINCE THE JULY MEETING

3.1 Following the July Panel meeting, officers wrote to the applicant's solicitor and confirmed the Panel resolution and the intention to enforce the terms of the legal undertaking by carrying out the demolition of the building at a date after 25th August 2015 should the applicant not have carried out the demolition by that date. Officers have also commenced the process of acquiring costings and timescales for the demolition works and notified the applicant that 7 days notice of entry to the site for demolition would be provided.

3.2 In response, the applicant, through his solicitor confirmed it was his intention to continue building and to complete the property in accordance with the 2014 approved plans, and that he anticipated that a practical completion certificate would also be obtained from the approved Building Inspector on or before the 24th August. Accordingly to pursue demolition thereafter would be unreasonable, and that they intended to apply for an injunction to prevent demolition if the Council continued with this course of action.

- 3.3 In the light of this, further legal advice was sought from Counsel and this is contained within the exempt appendix to this report.
- 3.4 Concurrent with the above, work on site has indeed continued and on 24th August 2015 the Council received a copy of a final certificate (part) from the applicant's appointed Building Inspector (also dated 24th August 2015) which is described as relating to the 'Shell only'. A copy of this certificate is appended to this report.
- 3.5 In addition to the above, officers arranged for a site survey to be undertaken so as to verify what has actually been constructed on site and to check its compliance with the 2014 permission. This survey took place on the morning of 25th August and involved physically measuring various points of the building. The key measurements taken are provided in the following table:

	Approved	Actual
Width (Main House)	9.30m	Not altered
Depth (Main House)	11.60m	11.60m
Ridge height (to DPC/FFL)	9.30m	9.24m
Eaves height (to DPC/FFL)	5.30m	5.75m*
Front Bay (Projection)	0.75m	0.92m
Front Bay (Width)	3.10m	3.20m

**Please note, the roof timbers of the roof had not been cut back to the finished position and accordingly only an estimate of the anticipated eaves height could be made on site.*

It was also not possible to obtain access to measure the rear dormer.

4.0 APPRAISAL OF THE CURRENT POSITION

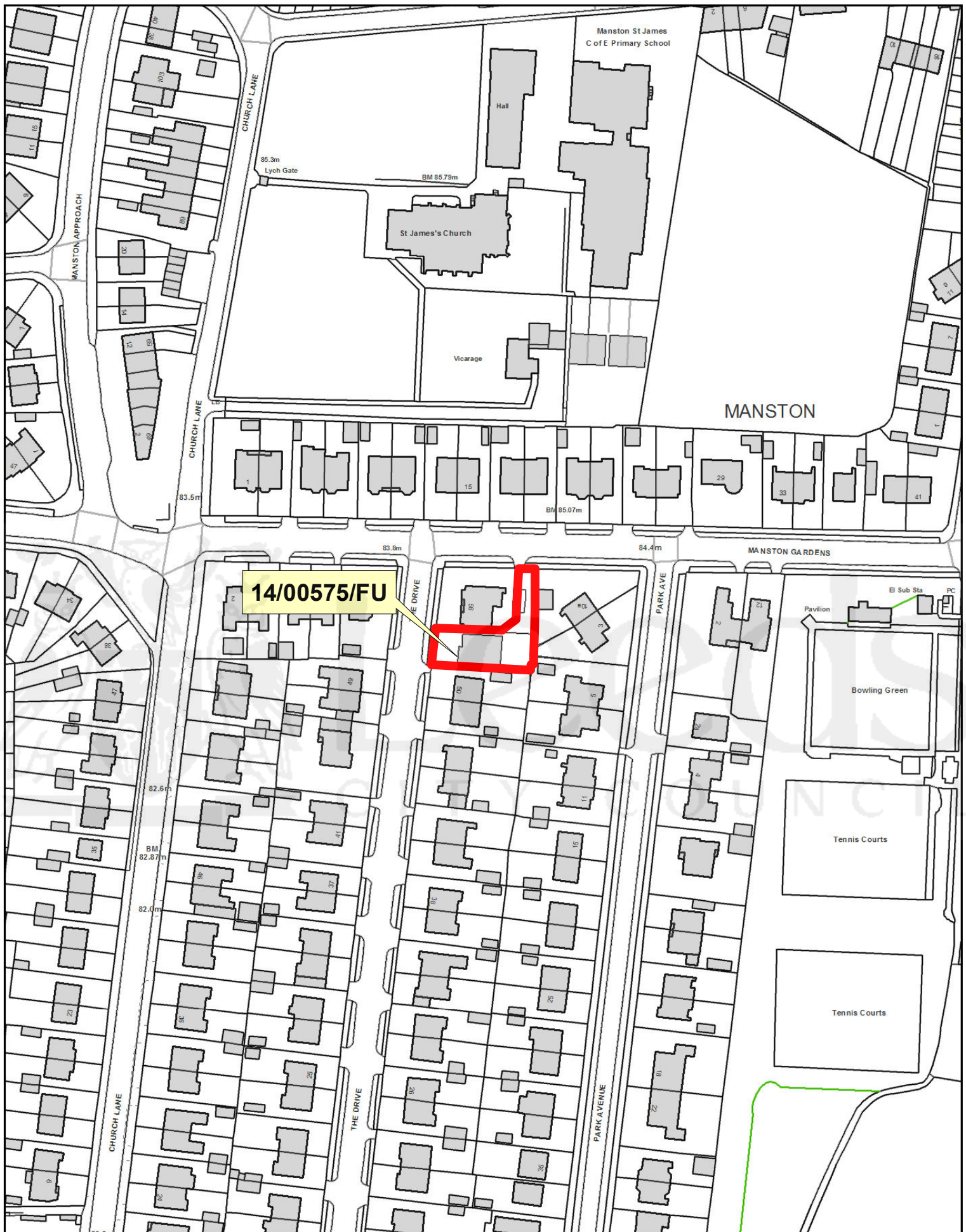
- 4.1 Members will recall from the previous meeting the uncertainty surrounding the lift shaft and how this would impact on the approved roof form was one of the main reasons why the building hadn't been completed in time. This uncertainty no longer exists as the applicant has reverted to the approved roof form.
- 4.2 By virtue of the above, further progress has been made on site to the extent the finished structure of the entire property is now apparent. In particular, the roof and its ridge is in place, a dormer has been constructed in the rear elevation and the front bay feature is built. The missing window opening in the front elevation is in the process of being formed and others are also to be amended to match those on the approved plans.
- 4.3 Elements of the external shell which aren't yet complete include forming the chimneys, completing the facing brickwork for the top sections of the side gables, roof tiles to the entire roof (only the rear slope is fully tiled with the dormer, ridge and front yet to be completed). Windows/doors are missing from most of the openings and some are yet to be fully finished and/or modified.
- 4.4 In considering the above, the approved Building Inspector has issued a final certificate (in Part) for what described as '**Continuation by Alterations of New Dwelling (as per Planning), 56 The Drive Crossgates Lees LS15 8EP (Shell only)**'. The issuing of this certificate therefore indicates that as far as that particular

Inspector is concerned the work undertaken to date is considered to be acceptable and satisfies building regulations.

- 4.5 As an approved Inspector has been employed by the applicant, it is not the Local Authority's role to question the issuing of the certificate but the wording used in the description is in this particular case of relevance as it is clearly being used by the applicant to evidence the progression of the build to a certain stage. It is the view of officers that the Final (Part) Certificate does not fully meet the requirement of the undertaking to demonstrate "Practical Completion" as that is defined as meaning that the Development has been substantially finished so that the building appears as shown on the approved elevations detailed on drawing No. 828.PL.02 and a Completion Certificate has been issued.
- 4.6 Notwithstanding the above, it is clear from the site inspection the external shell is largely complete and could be completed in a reasonably short period of time if the desire to do this exists.
- 4.7 With respect to the discrepancies between the 'as built' structure and the approved scheme, it is reasonable to conclude the building now has the same basic appearance and certainly would do if it were to be fully completed in accordance with the approved plans. The height of the building and the resulting relationship with the neighbouring properties has always been a key issue and confirmation the ridge now comes in slightly lower than the approved scheme is positive. The implementation of the approved roof form has also resulted in a considerable improvement over both the previous building and also the fallback associated with the 2005 permission. The depth reduction achieved by moving the entire rear wall has also achieved a much better relationship for the residents who back onto the site.
- 4.8 The parts of the building which are not fully in accordance with the approved plans are considered to be minor and not to have a material impact on the overall acceptability of the development. The slightly enlarged bay window feature raises no visual or residential amenity concerns with the depth now corresponding with the bays found on No. 56 itself. Similarly, the increased eaves height which is the most significant discrepancy (but may not be completely accurate due to the roof timbers not having been fully cut back) is not considered to cause harm as the total ridge height has always been the main concern and the change does not readily alter the overall appearance or proportions of the dwelling. The higher eaves found again on No. 56 adds weight to this view and ensures this change still reads as being acceptable within the streetscene.
- 4.9 In conclusion, officers are of the opinion the building has not been fully completed to the practical completion stage as required by the legal undertaking. The formal sign-off of the works to date by the approved Building Inspector is nevertheless recognised. The works undertaken to date are generally in accordance with the 2014 approved plans and in particular the ridge height is slightly lower than permitted which was a key requirement in terms of accepting the 2014 application. Those elements which do deviate from the approved are considered to be very minor and not to have a material impact on the overall acceptability of the development. Notwithstanding the above, the need to achieve practical completion of the external shell to the standard required by the legal undertaking still exists in order to address the identified harm.

Background Papers:

Application file 14/00575/FU



NORTH AND EAST PLANS PANEL

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PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

SCALE : 1/1500



FINAL CERTIFICATE : PART

BCP/14/14330

The Final Certificate is issued pursuant to Section 51A of the Building Act 1984 ('the Act') and the Building (Approved Inspectors etc.) Regulations 2010 ('the 2010 Regulations').

To: Leeds City Council
Building Control
The Leonardo Building
Rossington Street
Leeds
LS2 8HD

- 1) This certificate relates to the following work, Continuation by Alterations of New Dwelling (as per Planning), 56 The Drive Crossgates Leeds LS15 8EP (Shell only)
- 2) We are corporate approved inspectors and the work described above was part of the work described in an initial notice given by us and dated the 29 October 2014.
- 3) Subject to what is said, the work described has been completed and we have performed the functions assigned to us by regulation 8 of the 2010 regulations.
- 4) With this certificate is the declaration, signed by the insurer that a named scheme of insurance approved by the Secretary of State applies in relation to the work to which the certificate relates.
- 5) The work is not minor work.
- 6) We have had no professional or financial interest in the work described above since giving the initial notice described in item 2.

Signed:



S P Frost MBE, MIA
Managing Director

For and on behalf of Building Control Partnership Ltd

Date: 24 August 2015

Notes and conditions

The final certificate is issued subject to any conditions or certificates of compliance required to be provided to the approved inspector before the expiry of the time periods referred to in the regulations or notice issued by the approved inspector.

The final certificate is served on the relevant local authority an original is also provided to the person named on the Initial Notice referred to above and or their agent, this and any supplementary certificates, plans and documents, should be maintained with the properties, provision of copies will incur an administration fee.

The final certificate relates to the specific work contained in the description of work in item (1) or if the project was a part or phased project to that part or phased described. If a local authority has reason to believe work not relevant to that described has been carried out without a further or alternative permission, they may instigate enforcement procedures against persons undertaking such unauthorised work. We will provide, if requested to do so and are reasonably persuaded by the local authority's arguments, such information as we deem necessary for compliance with the law.

The final certificate is issued for the purposes of the building regulations only, and does not infer or give any approval of any additional civil or statutory requirement, such as planning permission, party wall agreements, easements, trespass or the like.





"Insurers' Declaration for the Purposes of the Building (Approved Inspectors etc) Regulations 2010"

Name of Approved Inspector: **Building Control Partnership Limited**

Registration Number: **133**

Address: **118A Boothferry Road
Goole
East Riding of Yorkshire
DN14 6AG**

Policy No's: **Professional Indemnity Insurance - 14/1/01092
and
Public Liability Insurance - PL/0005993**

Insurance Period: **27 July 2015 to 26 January 2017**

We certify that the above is insured under a Scheme ("The Griffiths & Armour Scheme") approved in respect of supervision of building work.

The Scheme provides cover to the Approved Inspector, who has been approved by the Construction Industry Council as an approved inspector to act for all purposes, subject to the limitations set out in the Construction Industry Council approval.

The Scheme is subject to insuring agreements, exclusions, conditions and declarations contained therein. The above is accurate at the date of signature. No obligation is imposed herein on the signatory to advise of any alterations.

Signed:

**Steve Abrahams
Professional Indemnity Portfolio Manager
UK Underwriting, RSA Insurance**

Dated: 21 July 2015

For and on behalf of:

**Royal & Sun Alliance Insurance plc
Registered in England & Wales No. 93792
Registered Office: St Mark's Court
Chart Way, Horsham, West Sussex
RH12 1XL**

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.



Construction Industry Council

**Building Act 1984
The Building (Approved Inspectors etc.)
Regulations 2010**

The Construction Industry Council hereby gives notice that, in accordance with section 49(1) of the above Act and regulation 4(1) of the above Regulations, it has approved

Building Control Partnership Ltd
as an approved inspector for the purposes of Part II of the above Act.

This approval takes effect on the

22 February 2013

and, by virtue of regulation 5(1) of the above Regulations, it will continue in force for five years from the date of this notice unless it is withdrawn by virtue of any of the other provisions of regulation 5.

This approval is for all types of building work including all classes of dwelling as set out in Annex B of the COPM circular letter dated 31 October 2005.

Chief Executive
Registrar

The Secretary of State has, with effect from 9 July 1998 and 1 March 1999, designated the Construction Industry Council, with its consent, under section 49 of the Building Act 1984 and regulation 4 of the Building (Approved Inspectors etc.) Regulations 1985, for the purpose of approving individuals and bodies corporate as inspectors for the purposes of Part II of that Act.

SERIAL NUMBER: 133