



Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 12th November 2015

Subject: Update report in respect 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.

APPLICANT

Mr I Gordon

DATE VALID

N/A

TARGET DATE

N/A

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:

Members are requested to note the content of this update report which supplements the one provided with the initial papers:

1.0 INTRODUCTION

1.1 This report updates Members in respect of the above development and should be read in conjunction with the covering report submitted with the initial papers issued for this special Panel meeting.

2.0 UPDATE FOLLOWING THE PREVIOUS PANEL RESOLUTION ON 29th OCTOBER 2015

2.1 As set out in section 2 of the covering report, the previous Panel resolution contained three main strands/outcomes and an update on each is therefore provided below. Members will also recall two of the Ward Councilors (Cllrs Gruen & Grahame)

also addressed the Panel. The applicant has been advised of the Panel resolution via his legal representatives.

a) Due to non-compliance with the applicant's unilateral undertaking in respect of not achieving practical completion (as defined) the Council is to proceed with arrangements to effect the demolition of the property.

2.2 The unilateral undertaking which allows for demolition also makes provision for the Council's reasonable costs in respect of this matter to be recovered. With this in mind it has been necessary for the Council's Contract Procurement Rules for "intermediate value" to be followed. Essentially this process seeks to invite at least three written tenders.

2.3 At the time of writing, two written tenders had been received. Officers are actively seeking a third quote and once it has been provided and reviewed, a preferred contractor will be identified and the applicant will be advised of the appointment. A notice period of 7 days will also be given prior to the intention to enter the land in accordance with previous correspondence on this issue as this has been deemed a reasonable period of time.

2.4 For Members information, the applicant's legal advisers have indicated that injunctive relief will be sought through the High Court at the point 7 days notice to enter the land is provided. It is also maintained by the applicant the requirements of the unilateral undertaking have been complied with. In the event injunctive relief is sought, any demolition action is very likely to be stayed until the matter is concluded by the High Court.

b) Council Building Control officers are to visit the property within 7 days of the Panel meeting due to safety concerns and report back to the special meeting on 12th November.

2.5 The Council's Building Control Enforcement Officer with responsibility for assessing dangerous structures and who is himself a Member of the Chartered Association of Building Engineers visited the site on Wednesday, 4th November in response to the safety concerns which had been raised. In his opinion he does not consider the building to represent a dangerous structure and this is based on a visual inspection of the building, the absence of public access into the site and noting a recent final certificate (albeit issued in part and relating to the shell only) had already been issued by an Approved Inspector.

2.6 With respect to Building Control issues more generally, Members have previously been advised the role of achieving compliance with Building Regulations falls to Building Control Bodies, which are either a Local Authority Building Control service or a private sector Approved Inspector. In this instance, the applicant has elected to utilise the services of the Building Control Partnership who is registered with CICAIR Ltd. CICAIR Ltd are a body designated by the Secretary of State in England, who maintains and operates the Construction Industry Council Approved Inspectors Register detailing those companies who are qualified to undertake building control work in accordance with Section 49 of the Building Act 1984 and Regulations 3 and 5 of the Building (Approved Inspectors, etc.) Regulations 2010.

2.7 In the light of the above, Council Building Control officers are not permitted to have any input into the compliance or otherwise with Building Regulations as this is the

responsibility of the Approved Inspector employed by the Building Control Partnership. The local residents association has already lodged a complaint with the Building Control Partnership about various aspects of the build undertaken to date and this is currently being dealt with under the company's own internal complaints procedure. Ordinarily a response within 21 days of receipt would be provided (i.e. by the 18th November) but officers understand it is likely to be longer as the applicant had been given the opportunity to respond to the issues which have been raised also. The applicant was contacted on 9th November and given 14 days to respond.

- 2.8 In view of the applicant's decision to utilise an Approved Inspector, the Building Control Partnership has been invited to attend the Panel meeting to provide clarification on any matters which may arise given the absence of a completion certificate. At the time of writing this invitation has not been taken up.
- 2.9 Should the outcome of the complaints process not be acceptable to the residents association, a further complaint can be sent to CICAIR for investigation.
- 2.10 For Members information, the applicant has requested a further final certificate from his Approved Inspector to be issued but this request has not been agreed pending the outcome of the residents association complaint. Correspondence received from the applicant's legal representatives this week also states a Structural Engineer is due to visit the property on 11th November. They have set out that the reason for this visit results from issues raised over the structural integrity of the building and that the appointed engineer is "...comment and report on the structural soundness of the property".

c) Action to be taken in respect of tidying up the site including consideration of serving a S215 notice being given.

- 2.11 In terms of tidying up the site, Section 215 of the Town and Country Planning Act 1990 does provide a Local Planning Authority with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. A further site visit has therefore been undertaken specifically in respect of this matter as the applicant would have a right of appeal (direct to the Magistrates Court) should such a notice be served. It's also important to point out that Section 217 of the Town and Country Planning Act allows appeals against Section 215 notices where it could be argued that the condition of the land to which the notice relates is attributable to the ordinary course of events associated with the carrying out of operations or a use of land which is not in contravention of Part III; i.e. the implementation of a planning permission. With this in mind, if a notice is to be served ahead of demolition, it would need to focus on the areas of land that need tidying up not linked to building operations.
- 2.12 The on-going nature of works at the site is such that an element of external materials storage, equipment and ground disturbance is to be expected. However, these are all the consequence of the building process which itself is linked to the implementation of a planning permission. Notwithstanding this, the combination of boundary treatments and landscaping, particularly along the site frontage is such that views into the site are limited which makes the scope to seek improvements in any event more limited. Whilst Officers will write to the applicant and encourage him to tidy up the site it is not considered that there are grounds to take formal action at this time.

3.0 OTHER MATTERS

- 3.1 For Members information, an application to undertake works to the two TPO London Planes situated within the applicant's land has been received under reference: 15/06143/TR. The description of works is crown lifting to a height of 5m over the highway to ensure safe passage of high sided vehicles. This application was validated on 2nd November and now awaits formal assessment.

Background Papers:

Application file 14/00575/FU