



Report of the Chief Planning Officer

PLANS PANEL EAST

Date: 30th September 2010

Subject: Application 09/03138/FU – Appeal by Mr Steven Green against the non-determination of an application for planning permission for the erection of 3 new dwellings and double garage to rear garden of 10 Elmete Avenue, Scholes.

The appeal was allowed and costs awarded against the Council.

Electoral Wards Affected:

Harewood

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

Members are asked to note the following appeal and costs decisions.

1.0 THE APPEAL WAS DEALT WITH BY WRITTEN REPRESENTATIONS

- 1.1 This application was recommended for approval by Officers, however Members of Plans Panel East resolved to defer the application of the Panel meeting on 11th February in order to carry out a site visit. Following this, the applicant lodged an appeal against the non-determination of the application. At the subsequent Panel meeting on 11th March 2010 and following an earlier site visit, Members indicated that had they been in a position to formally determine the application, then planning permission would have been refused due the impact on the spatial character of the area and upon the living conditions of adjacent occupants.
- 1.2 An application for a full award of costs against the Council on this application was made by the appellants.
- 1.3 This appeal decision was also briefly discussed at the Plans Panel meeting on 2nd September 2010 and Members resolved that a further report be brought back to the Panel.

2.0 ISSUES IDENTIFIED BY THE INSPECTOR

- 2.1 The main issues identified by the Inspector, and having regard to the changes to PPS3, were the effect of the proposed development on the character and appearance of the area; the living conditions of the occupiers of neighbouring dwellings in terms of noise and privacy; and on revised national policy with regard to the development of private residential gardens.

3.0 SUMMARY OF COMMENTS

Character and Appearance

- 3.1 The Inspector commented that in terms of plot sizes, the 3 dwellings would not be out of character with the general pattern of development in the locality at a density of 14 dwellings per hectare. In addition, he noted that they would not be dissimilar to the linear form of housing on Elmete Croft to the east, which was also built on rear garden land. The Inspector noted that in a previous appeal decision the Inspector found the building of 2 blocks of flats at a higher density would not harm the character and appearance of the area. As such, the Inspector considered that 3 dwellings, both in terms of their design and density would more reflect and complement the type of property in the area than would the apartment blocks.
- 3.2 The Inspector was also satisfied that the proposal would not create a precedent for the development of other rear gardens to the west.

Living Conditions

- 3.3 The Inspector visited numerous properties within Elmete Croft during the accompanied site visit to assess and consider any potential impact. With regard to the Council's suggested second reason for refusal the Inspector noted that the proposed acoustic fence adjacent to the turning head, due to its height, would be overbearing due to the size of adjacent rear gardens. However, he noted that even without the fence, given the number of vehicle movements likely to be generated by the development and the existing and proposed planting along the boundary, there would be no undue levels of noise and disturbance to existing residents.
- 3.4 The Inspector also concluded that there would be no significant loss of privacy to nearby residents do the oblique angle of the dwellings and proposed separation distances. It was also highlighted that the properties on Plots 1 and 2 would be located sufficiently far from Elmete Croft so as to avoid any material overbearing effect, while no harm would occur to the occupiers of No. 8 Elmete Avenue given the separation distance and the fact that their mass would be broken up by the presence of the single storey garages. In terms of loss of light, the Inspector did not consider that the limited overshadowing of the gardens of 4 and 4 Elmete Croft to be sufficient to warrant dismissing the appeal.
- 3.5 With regard to bin storage, the Inspector accepted that the collection point would require the occupiers of the dwellings to move their bins some distance but concluded that this is not sufficient to warrant dismissing the appeal could have been dealt with by the use of an appropriate planning condition.

Housing Policy

- 3.6 The Inspector accepted that the site can no longer be regarded as brownfield land. He noted that the Council did not provide any evidence to show how the changes to PPS3 would be contrary to UDP policies and whether or not it can meet its UDP

housing targets on brownfield land. The Inspector concluded that the proposal is not inconsistent with the amendment of PPS3 to omit reference to garden land as brownfield land.

4.0 DECISION

4.1 The appeal was allowed subject to conditions by letter dated 17th August 2010.

5.0 COSTS

5.1 The Inspector considered the appellant's application for an award of costs, firstly, addressing the matter of the time delay. In his view, the Inspector was not convinced that the delay caused the appellant any significant unnecessary expense. However, with regard to the first reason for refusal on character, the Inspector considered that the Council failed to have regard to a previous appeal decision in framing its reason for refusal. This related to a proposal for two blocks of flats and the Inspector concluded that the apartments would not adversely affect local character. Subsequent to this the Council had refused planning permission for a further application for 3 houses and this was for a scheme similar to the current appeal. The Council did not refuse that application on grounds relating to its impact upon the character of the area. The Inspector commented that the Council had not determined the case on a like for like manner and has introduced an additional unsubstantiated reason for refusal.

5.2 In terms of the second reason for refusal (overdevelopment), the Inspector considered that the Council had included an unsubstantiated additional reason for refusal. He noted that the density would be very similar to existing development in the area; did not affect privacy; and in terms of noise, that the Council chose to disregard clear technical advice, and consequently that the Council had acted unreasonably. The Inspector also noted that the Council also failed to produce any detailed evidence regarding the impact of the changes to PPS3 on its UDP, resulting in unreasonable behaviour.

5.3 In light of the above, the Inspector concluded that a partial award of costs is justified.

6.0 IMPLICATIONS

6.1 Members are asked to note the comments of the Inspector in this case and in particular her reference to Circular 03/2009 in terms of the need to provide evidence to substantiate reasons for refusal in relation to costs awards, and for the planning history, including the comments of previous Inspectors and comparisons of similar schemes to appeal proposals, to be taken into account.

6.2 There are also implications for the consideration of the development of garden sites as the Inspector makes a clear statement that the change in the status of garden land to Greenfield rather than previously developed land does not constitute an 'in principle' preclusion from development but in this instance lead him to conclude that a less intensive form of development would be appropriate.

6.3 It also worthy to note that a report on the implications of PPS3 changes regarding “garden developments” arising from recent appeal decisions is being reported to the Joint Plans Panel on 23rd September 2010.

6.4 Members will also be updated on the extent of the costs award on this particular appeal.

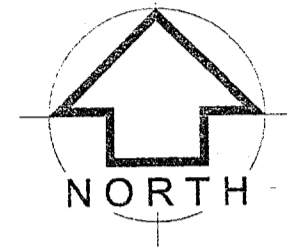
7.0 ADVICE OF COUNSEL

7.1 In terms of challenging the decision made by the Inspector, including the partial award of costs, the advice of Counsel has been sought. Whilst the advice provided by Counsel indicates that the Inspector’s decision is poorly expressed, it is advised that there are no reasonable prospects of successfully challenging the decision to make a costs award.

SCANNED

LEEDS CITY COUNCIL
Please refer to Decision Notice
13 OCT 2009
REVISED

Proposed Residential Development at Elmete Avenue, Scholes



Key

- Existing Tree
- Existing trees removed.
- Existing hedge removed.
- Proposed Tree.

For further details of existing trees refer to Arboricultural Survey August 2007 by JCA

Proposed new surface water drainage to be taken to soakaways in accordance with Fennel Green and Bates FRA July 2007.

Proposed new Foul water drainage to be taken to existing main drain in Elmete Avenue

Schedule Of Accommodation

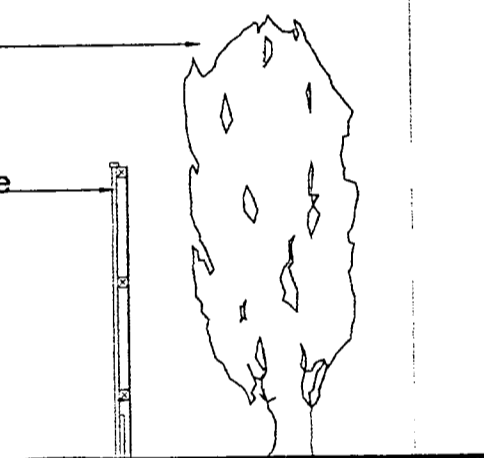
Houses		
A	4 Bed 2 Storey	2
B	4 Bed 2 Storey	1
Total		3

Semi-mature Leylandii (Up to 3m high)

2.0m high 'Beta Reflective Acoustic Barrier', or similar appd. Performance rating in accordance with BS EN 1793-1:1998 of 'DLR = 20dB-Category A4' (Refer to test summary submitted with application).

Drive surface to be smooth porous asphalt with graded 8/11 aggregate.

Section Through Eastern Boundary - Scale 1:50



- Car Noise at 5m distance circa 44dB (A)
- 2m high reflective acoustic barrier to give at least 10dB reduction
- Car noise circa 34dB (A)
- NB car noise is periodic, not continuous

Rev	By	Note	Date
E	PJR	Planning changes in response to LCC email 25.09.09 16.53	02.10.09
D	TP	Reflective Acoustic Barrier details & drive surface note added.	17/07/09
C	JD	Tree positions amended to JCA info.	29/04/09
B	PM	Further notes & drainage details added.	13/03/09
A	PM	Minor amendment	12/03/09



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PROJECT Elmete Avenue, Scholes

TITLE Proposed Site Plan

CLIENT Steven Green

DATE 03.03.09

SCALE 1:500@A2

DWG. NO Y81722/02

REVISION E

DRAWN PM

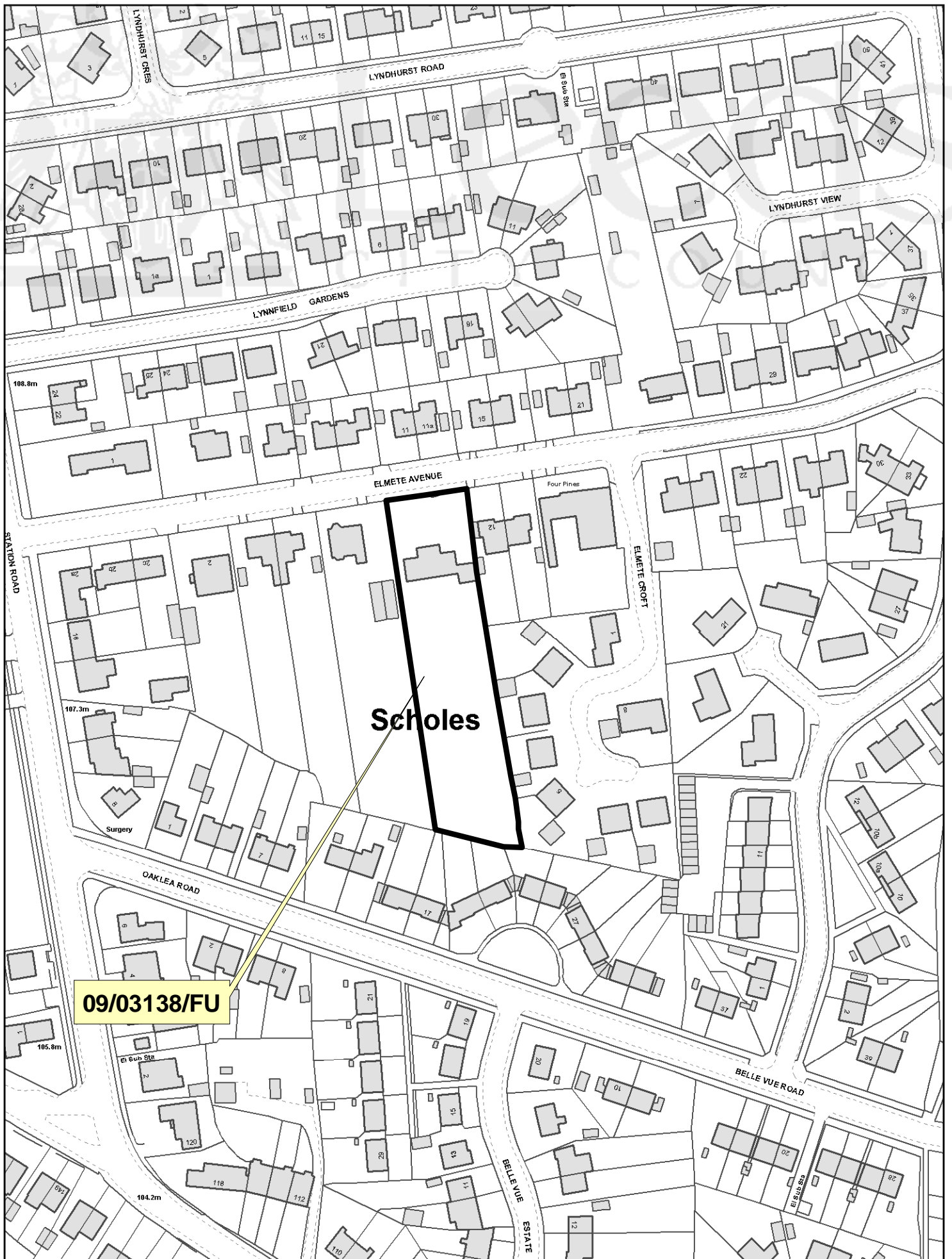
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1:500

Proposed Site Plan
(Subject to survey and planning)



EAST PLANS PANEL

Scale 1/1500

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