



Report of the Chief Planning Officer

PLANS PANEL EAST

Date: 19th April 2012

Subject: Application 10/05670/FU – 3 bedroom detached house incorporating second floor ancillary granny annexe to garden plot (part retrospective) at No. 56 The Drive, Cross Gates, Leeds

APPLICANT

Mr I Gordon

DATE VALID

18.01.11

TARGET DATE

15.03.11

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: REFUSE for the following reason:

1. The proposed retention and modification of the dwelling house would by reason of its excessive height and resulting scale, mass and bulk relative to its immediate neighbours, in conjunction with the uncharacteristic vertical emphasis of the overall design appear obtrusive and represent a discordant feature in the street scene to the detriment of the character and appearance of the area. As such, the development would be contrary to Policies GP5, N12 and N13 of the Leeds Unitary Development Plan (Review), residential design guide for Leeds 'Neighbourhoods for living' and the design advice contained within the National Planning Policy Framework.

1.0 INTRODUCTION:

1.1 This application is brought to Plans Panel as it seeks to amend a scheme which Members have previously found to be unacceptable. The application has also generated significant representations from local residents and has a long and complex planning history.

- 1.2 Most recently the planning application was reported to the Panel of 11th August 2011 and the Panel resolved:
- i) To defer and delegate refusal of the application as set out in the submitted report, pending the outcome of the High Court decision and that if further issues were raised in these proceedings that the Chief Planning Officer submit a further report to Panel minutes approved at the meeting held on Thursday, 8th September, 2011
 - ii) That representations be made to the High Court requesting an early hearing date
- 1.3 The matter was heard in the High Court on 12th January as the applicant considered the Council was estopped from considering the issue of height. The judgment was published on 27th January and in essence the Judge confirmed the Council was not estopped from considering height but also set out that: (i) the 2005 planning permission was for a house of 10.4m high (which we don't dispute) and, (ii) that the defendant was discharged from the undertaking that required him to demolish the house within 4 months of the dismissal of any appeal against a refusal of planning permission. However, significantly, in reaching this judgment the Judge came to view that reliance could not be placed on the relative heights of dwellings as shown on the street scene plan that formed part of the 2005 planning application.
- 1.4 It is this last point which is particularly important to the consideration of the current planning application. When this application was presented to Panel in August 2011 consideration was given to, and weight was placed upon, the relative height of the house to neighbouring dwellings, and the difference between that and what was shown in the approved street scene plan. In light of the Court judgment it is considered that it would not be safe to simply issue a refusal under delegated authority and the application is reported back for Members to consider the application in the context of the High Court decision. The 2005 planning permission was for a house of very similar dimensions to that now proposed with a similar siting. The width and depth of the property are proposed to be consistent with that authorised by the 2005 planning permission. The dimensions and how they have been established are described in section 2.0 of the report. It is nevertheless considered that the proposed building is taller than the 10.4m permitted. There are also differences in the design of the two houses. The main ones being that the roof has a greater bulk (particularly adjacent to the boundary with No.56), there is a greater degree of separation between the top of the first windows on part of the front elevation and the eaves of the roof immediately above and as a result there is a greater vertical emphasis in its appearance.
- 1.5 Members will note that the recommendation is that planning permission be refused and this recommendation is made purely on the basis that it is considered that the proposal represents an overdevelopment of the site and that this is not a form of development that respects the established residential character of the area. However, in reaching a decision on this particular planning application Members clearly have to have regard to the fallback position in the 2005 planning permission. The recommendation before Members reflects the view that although a fallback position exists planning permission would not be granted for this form of development now in this location. For a proposed development to receive a recommendation for permission it would have to represent a significant improvement (in terms of its relationship to the spatial characteristics of the area, its scale in relation to neighbouring buildings and its impact on neighbours) over the fallback position.

1.6 Below a brief summary of the history of the site is set out for ease of reference. Permission was first granted in 2005 to construct a detached dwelling within the side garden of No. 56 The Drive. Work commenced on site in 2007 but was not in accordance with the approved plans. A revised application was therefore submitted to retain what had already been constructed but Members resolved that permission should be refused. Before a formal decision could be issued, an appeal against non determination was lodged but was subsequently dismissed in April 2008. An enforcement notice requiring demolition was served shortly afterwards which itself was appealed. This appeal was also dismissed. The enforcement notice required demolition of the dwelling by late March 2009. The applicant's failure to comply with the enforcement notice resulted in a successful prosecution within the Magistrates Court. Injunction proceedings were then brought to require the applicant to comply with the enforcement notice and were considered in the High Court. The injunction was not granted but as part of the proceedings the applicant gave an undertaking to the court that a fresh planning application would be submitted. A further hearing took place in the High Court in January of this year and this is described at 1.3 above.

2.0 PROPOSAL:

Current Application:

- 2.1 The application seeks to retain and make physical alterations to a substantially completed detached dwelling house situated within the side garden of No. 56 The Drive.
- 2.2 The proposed dwelling house would be three storeys in height and includes a basement area (which is shown to be made incapable of use by capping off the stairway opening with a pot and beam structure and covering it with a concrete screed). The dwelling is shown to be retained at a width of 9.30m although the existing depth (circ 13.30m) would be reduced by removing the front and rear elevations and setting them in by 900mm and 800mm respectively - thereby giving a total depth of 11.60m reducing to 10.60m where the dwelling steps in at the front.
- 2.3 The total height of the dwelling house is not proposed to be altered from existing and the submitted elevation plans indicate it would measure 10.40m from ground level to the ridge. The existing roof structure would be altered to suit the dwelling's reduced depth through the removal of gabled sections and by changing the roof pitch.
- 2.4 A revised street scene plan has been provided as part of the application to show the correct relationship between the proposed dwelling house and the neighbouring properties either side. The plan however also includes the front boundary wall so it is not possible to establish the total height of the dwelling above ground level. The street scene plan is however based on a separate survey undertaken on behalf of the applicant. The survey plan shows the existing building is clearly higher than 10.40m. These plans are therefore inconsistent with the elevations although it is noted the applicant has more recently amended the ground level immediately adjacent to the dwelling to achieve a total building height of 10.40m.
- 2.5 Internally, the dwelling would include the following separate rooms:

Ground floor - Entrance hall, dining room, living room, breakfast kitchen and cloak room.

First floor – 2 bedrooms with en-suite and dressing areas, laundry room and linen cupboard.

Second floor (i.e. the granny annex) – living room, kitchen, bathroom, bedroom and store room.

- 2.6 A lift space is shown (in addition to a staircase) to serve all three floors with final details subject to the contractor's specification. All main rooms have windows facing out either forwards or backwards and all the side windows are shown to be obscure glazed and fixed (i.e. non opening).
- 2.7 With respect to the dwelling's siting within the plot relative to its immediate neighbours, at its reduced depth the building would sit 8.50m into the site from the back edge of the footpath (when measured from its closest point and based on the site plan which is at a scale of 1:100). The same plan also shows a distance to neighbouring properties to be approximately 4.15m to No. 50 The Drive (at its closest and increasing to 4.65m) and 2.20m to No. 56 The Drive.

Approved Application (32/306/05/FU):

- 2.8 Erection of three storey, 3 bedroom detached dwelling house (with ancillary granny annex in the second floor) and detached garage. Basic external measurements for the dwelling as shown on the approved plans (hand drawn) are as follows and have been used for comparison purposes:

Height: 10.4m (measured between roof ridge to ground level)
Width: 9.3m (in accordance with the declaration of the High Court)
Depth: 11.6m reducing to 10.6m where it steps in at the front (in accordance with the undertaking given to the High Court)

3.0 SITE AND SURROUNDINGS:

- 3.1 The application site comprises of a section of land originally used as the side and rear garden of No. 56 The Drive, a large, period, brick built detached dwellinghouse, with first floor balcony and attractive stone detailing.
- 3.2 The front and side boundaries to No. 56 The Drive comprise of 0.3m high dwarf walls constructed in red brick with approximately 1.3m high piers. In between these piers are metal railings. Behind this boundary treatment is densely packed mature trees and hedges. One of these trees to the southwest corner of the site (in front of the application site) is a large London Plane that is now protected by a Tree Preservation order (Ref: 2005/60). There is a similarly protected tree in the northwest corner of the site at the junction of The Drive and Manston Gardens. The side boundary treatment with No. 50 consists of a 1.6m high brick wall with decorative railings on top increasing the total height by approximately a further 0.5m. The rear boundary (separating the site from the private gardens associated with Park Avenue properties) comprises of a relatively low level close boarded fence with trellis above.
- 3.3 The surrounding area is entirely residential and a number of differing styles and sizes of properties can be found. The general character of the area is relatively spacious in terms of dwellings sitting comfortably within curtilages. The street is also noted to slope down from the north (No. 56) to the south (towards No. 50) and an approximate ratio of 1 in 48 is recorded relative to the application site. The site does

however step down at the common boundary with No. 50 and is retained by the boundary wall.

4.0 RELEVANT PLANNING AND LEGAL HISTORY:

4.1 The application site has been the subject of multiple planning applications, appeals, enforcement action and legal proceedings since work started on site constructing a dwelling house which was substantially different to the one which was approved under the original planning permission issued in September 2005 reference No. 32/306/05/FU.

4.2 A brief summary of the site's history is set out in the following paragraphs. This most recently culminated in the High Court hearing of January 2012. This action was brought by the applicant as he considered that the Council in determining this current planning application was prohibited from considering the issue of the height of the house as this had not previously been an issue between the parties. The Court ruled that the Council could consider the issue of height and that the 2005 planning permission approved a dwelling of 10.4m high. The High Court also released the applicant from the obligation he had undertaken to demolish the building in the event of any eventual planning appeal being refused. The text of the main part of the order is set out below for Members information:

IT IS DECLARED that a building constructed pursuant to planning permission 32/306/05/FU in such a manner that no part of the ridge thereof was more than 10.4m metres higher than the ground level adjacent to the footprint of the building at the time of the grant of the said planning permission would accord with the said planning permission in respect of its absolute height and its height relative to Nos.50 and 56 The Drive.

1. The Defendant be and is hereby discharged from paragraph (4) of the undertaking given to the Court on 25th November 2010, namely that in the event that planning permission was initially refused by the Claimant and then the appeal to the Secretary of State was unsuccessful he would demolish the existing building on site within four months of such dismissal.

4.3 The development of the site was previously considered in the High Court of Justice on 25th November 2010 by Judge Cockcroft. The High Court proceedings were brought by the Council to enforce compliance with the enforcement notice requiring demolition of the unauthorised dwelling.

4.4 As part of the proceedings, the applicant put forward a case to show that there was an alternative to complete demolition and that alterations could be made to the as built structure to bring it largely into conformity with the 2005 planning permission. The interpretation of the existing permission therefore became an important issue. It soon became apparent that there were a number of discrepancies between the 3 approved plans for the 2005 planning permission, primarily in respect of the width and depth of the property. Agreement was reached between the Council and the applicant on the depth of the property (see para. 2.7) but not on width. The Judge heard arguments on the interpretation of the width of the approved dwelling and concluded that the 2005 planning permission granted approval for a dwelling of a width of 9.30m. Judge Cockcroft therefore formally declared that the 2005 permission authorised a building which was 9.3m wide and on this basis the applicant has not sought to alter the width of the existing building.

4.5 At that time, it was agreed between the Council and the applicant that no issue arose in respect of the height of the dwelling. The issue of height was therefore not argued before Judge Cockcroft and as a consequence, this matter was not adjudicated upon by the judge. In reaching this view, the Council had relied on the 2005 permission and its approved plans which consistently show the dwelling at a height of 10.40m (when measured between the roof ridge and ground level). In addition, a previous officer report (in respect of planning application 07/03979/FU) refers wrongly to the 'as built' height as being 10.35m as it had been checked by the Council's Chief Surveyor. On this basis, the Council's position was that the height of the dwelling as constructed was considered acceptable by virtue of it not exceeding the height authorised by the 2005 permission.

4.6 However, as referred to in section 2 of this report, as part of the current planning application process, the revised street scene plan and survey plan submitted by the applicant show the building to be higher than 10.40m. The Council has also carried out its own survey which confirms that to be the case. It would therefore appear that the 2005 street scene plan was inaccurate (in particular in respect of the fact that it depicts the street as level whereas it in fact slopes downwards to number 50 The Drive), and does not provide a true representation of how the house would appear in the street scene. The Council's earlier position was therefore based on an error. In the light of the more recent and accurate information, officers now consider that the height of the dwelling is an issue and is a material consideration to be considered as part of the assessment into the current application. This is considered as part of the appraisal at section 10.0 of this report.

4.7 Judge Cockcroft was not persuaded to grant an injunction requiring complete demolition and part of his reasoning for this was because the applicant gave an undertaking to the High Court that a revised planning application would be submitted in an attempt to regularise the situation. The undertaking comprised of the following:

1. to apply for planning permission within 21 days seeking permission to undertake such works as are necessary to:
 - i) render the basement of the premises incapable of use
 - ii) obscure glaze such existing windows as are considered necessary so as to protect the privacy of adjacent occupiers
 - iii) reduce the depth of the building to coincide with the approved permission (900mm to the front and 800mm to the rear)
 - iv) carry out such works to the roof as are considered reasonably necessary to facilitate the matters detailed in section iii above.
2. upon the grant of permission (either by the Council or through the appeal process), to complete such works as are authorised within 4 months of the date of any approval.
3. in the event permission is refused by the Council, to appeal the decision within 14 days.

in the event the application is initially refused by the Council and the appeal is unsuccessful, to demolish the existing building on site within 4 months of the appeal decision (the applicant is now released from this particular element as a result of the January 2012 High Court proceedings)

4.8 Below is a brief summary of the site's remaining planning history (provided chronologically) which is considered to be relevant:

32/306/05/FU - One 3 bedroom detached house incorporating a second floor ancillary granny annex with detached garage – Granted 08/09/05.

07/03979/FU – One 4 bedroom detached house incorporating basement level, second floor ancillary granny annex and detached garage – Committee resolution to refuse but non-determination appeal submitted – Appeal dismissed 17/04/08 on the grounds the dwelling would adversely affect residents living conditions in terms of overlooking, dominance and overshadowing issues and it would also adversely affect the character and appearance of the area due to its design, height, scale and massing. (The Inspector's decision letter is attached to this report for information)

07/00432/NCP2 – Enforcement Notice requiring demolition of existing building – Appeal dismissed and notice upheld on 27/11/08 (4 Month compliance period for demolition specified)

Prosecution proceedings (Magistrates Court) – brought for non compliance with the Enforcement Notice requiring demolition. Applicant pleaded guilty but advanced mitigating circumstances in his defence - Court decision dated 01/07/10 and resulted in a fine of £2,500 and the applicant was ordered to pay £10,000 towards the Council's costs.

Injunction proceedings (High Court) – brought to require compliance with the Enforcement Notice that required complete demolition. Judge's decision dated 25/11/10 - see para, 4.3 onwards for details

4.9 Application relating to No. 56 (for information only):

06/02972/FU - Change of use of a detached house to 2 one bedroom flats and 3 two bedroom flats including 2 second floor front extensions, 1 first floor rear extension and 1 two storey rear extension – Refused 07/07/06

5.0 HISTORY OF NEGOTIATIONS:

5.1 This application has been submitted pursuant to the undertaking given to the High Court in November 2010. The application is intended to address the Council's previous concerns so the existing building can be modified rather than being completely demolished as originally required.

5.2 Following the receipt of the application, officers contacted the applicant via his agent to highlight inaccuracies with the initial street scene plan provided. In addition, the following issues were raised:

1. The total height of the building queried as plans suggest the ridge would be no higher than 10.4m above from ground level yet the existing building (which is not to be altered in terms of its current height) is higher.
2. Further information required regarding the intended method of rendering the basement area as being 'incapable of use'.
3. Request for a section through the building to show the relative floor levels and any requirement for lift equipment.
4. Confirmation that all side windows would be fixed (i.e. non opening) as well as obscure glazed.

5.3 The applicant responded to the above by re-surveying the site and providing a

revised street scene plan. A full set of revised plans have also been provided and pick up on points 1 to 4 (above) as follows.

1. Line of the approved permission now highlighted and identified as representing the fallback position. Confirms no alteration to the overall ridge height is proposed
(it should be noted officers are of the opinion the 'approved' line as now shown on the revised plans is wrong)
2. Note added to the floor plan to confirm the basement area would be capped off with a pot and beam structure covered with a concrete screed.
3. Internal floor levels now identified on the street scene plan but lift details to be agreed only when contractor's specifications have been received.
4. Confirm all windows in the side elevations to be obscure glazed and non opening (revised plans annotated to show this).

5.4 Subsequent to this, a discussion has taken place with the applicant's representative following the January 2012 High Court proceedings indicating that an amended streetscene plan that shows accurate ground levels would be helpful. Consideration to altering the appearance of the dwelling with particular regard to the roof form was also discussed. The applicant's representative requested this be put in writing for consideration but this has not happened as officers have not sought further revisions to the scheme.

6.0 PUBLIC/LOCAL RESPONSE:

6.1 The application was first advertised by individual neighbour notification letters (sent to immediate neighbours or those who had commented on previous applications) dated 18/01/11. Site notices dated 28/01/11 were also displayed around the site.

6.2 In response to the initial consultation, the following objections have been received:

Councillor Pauleen Grahame:

- Concerned the building is too big and dominates the view of next door
- That it is a complete eye sore and a loss of privacy occurs to the gardens which back onto the site.
- Questions what extra provision for parking and access is made
- Generally concerned about the applicant's actions.

Cross Gates Watch Residents Association:

- Application form contains numerous errors and inaccuracies
- Building will remain incongruous and dominating
- Scheme still conflicts with City policy as highlighted by previous Inspectors
- Development may be short on amenity space criteria
- Court decision on making the basement 'incapable of use' is ambiguous but scheme still doesn't show how this will be done
- Lift details missing which could have implications for the roof and basement
- Additional side windows proposed – although obscure glazed should also be fixed to avoid overlooking. Level of obscure glazing not identified
- The Court decision regarding width was based on inaccurate information and goes against industry standard. The width is more than allowed by the Court in any event
- The Court determined that the building was not too high but it clearly is. Evidence provided to support this and includes the preparation of a new survey, photographs (current and historic). The ridge height to DPC should be provided.

- Consider the application should be refused and the 2005 permission revoked in view of errors with the plans.
- The 2005 and 2011 plans do not show the slope of the street so distorts the dwelling's real height - supported by photographic evidence

11 Individual letters from difference households and a further 111 standard letters have been received. The main comments made are as follows:

- The application seeks to make the building consistent with the 2005 permission but does not go far enough.
- Building would be massive and dominant and does not compare to the original permission.
- The plans contain major errors and do not represent what is on the ground including the height of the building which is approx. 1m higher than shown in relation to No. 50.
- The claim the building will be sympathetic to the character and appearance of the area is ridiculous.
- No mention how the basement will be dealt with or how the lift will operate if the basement is not accessible.
- Didn't object to the original application as it's showed a much small house to what has been built or is now proposed.
- Concerned about safety due to the close proximity of the basement to the common boundary.
- RSS policy YH2 seeks to reduce greenhouse gas emissions through increasing urban densities. The lack of gardens and trees is also a problem.
- The previous Inspectors report comments on the loss of privacy and light. Visual dominance, greater vertical emphasis and its overall greater scale, mass and bulk relative to other properties is also noted creating a significantly obtrusive feature. The new application does nothing to remedy these matters.
- The distance between the building and No. 50 should be 6m in accordance with a restrictive covenant. The application does not achieve this which is a character of the area.
- Trees and shrubs have been removed and no space exists to the side to replace them.
- Even at its reduced depth the building will have a dominant and overbearing appearance and cause overshadowing.
- The roof height and proportions of the eaves are of great consequence in relation to the building's massing and resulting over-dominance.
- Window positions reduce privacy and are made worse by the removal of trees and vegetation.
- Concerned that height was not raised during the court hearing as it is clearly too high.
- The building has de-valued house prices and the problems with the application will have to be declared if wishing to sell.
- Rubbish in the application site is piled up and the retained trees are out of control.
- The site is untidy, old cars are everywhere and the garage is half complete.
- A further garage is proposed so the original house can be converted into two properties.
- The applicant is abusing the planning system and has not done what previous Inspectors have told him to do. The roof cannot be altered to match the 2005 permission in terms of the eaves height but this is not mentioned.
- Not clear what all the side windows serve but they need to be fixed as well as obscure glazed.
- The application form, plans and design and access statement are incorrect and misleading in many respects.

6.3 Following the receipt of revised plans including the accurate street scene plan, the application was re-advertised by neighbour notification letters and site notices dated 28/04/11. The following main comments were made in response to the revised plans:

Cross Gates Watch Residents Association:

Original comments still apply but the following additional comments are made:

- The revised plans confirm errors and that much of the information submitted to the Court was inaccurate.
- The height is not 10.4m and is at least 0.7m higher, and depending on where the measurement is taken may be up to 1m.
- The court was misadvised on width and accepted evidence which conflicted with standard industry practice. Whilst the plans were poorly drawn and contained several different widths, the widest which would normally be accepted was 9.18m. The porch overhang should not have been accepted. The width has also been measured at 9.35m and slicing off the front wall will only reduce this by 0.75cm.
- The court requires the basement to be incapable of use. The method proposed will not do this and could be removed in two days. Only filling the basement with concrete or earth will serve this purpose.
- The method of dealing with the lift is unclear, and raises the possibility of a subsequent planning application.
- Public safety has been seriously compromised due to the construction of the basement at such close proximity to the side wall which is a retaining structure
- The current application proposes nearly a 64% increase over the 2005 permission. Even if the basement is excluded, the volume increase would still be 10%.
- The planning process has been undermined, citizens rights usurped and the judicial process frustrated. The application should be refused.

11 individual letters from different households and 91 standard letters have been received making the following main comments:

- The application seeks to alter an unlawful dwelling and due to serious errors and omissions in the January 2011 scheme, a revised application is required.
- The site survey confirms objectors' view that the building is much higher than claimed. Had the height and relationship been presented accurately would have objected.
- The revised application does not address the over-dominance and intrusion issues for residents.
- The applicant has played delaying tactics for 5 years. The house remains too high, too wide, too large, measurements incorrect, intrusion, privacy gone, an eyesore. How much longer will this go on?
- The height of the building needs to be reduced by approx 1m to accord with the approved plans and reduce its impact.
- The minor roof alterations serve no practical purpose and do not enhance its appearance
- It is out of place and character with all the other properties in the area and looks more like a block of flats.
- Surrounding properties have not sold for 2 years so is therefore severely affecting the vale and saleability of the properties.
- Suspect the developer will convert the building into flats as it is not an attractive single residence.
- The previous comments made by the Inspector are still relevant and the building should be demolished.

- The information given to the High Court was wrong and accordingly its decision was an error in a number of respects
- The details relating to not using the basement are unacceptable as it could easily be altered.

6.4 Previously in recognition of the significant amount of information and detail contained within documents prepared by Cross Gates Watch Residents Association, an A4 summary sheet was prepared and attached to the rear of the report presented as part of the August 2011 Panel. In the light of the January 2012 High Court decision the sheet will now be included within the main officer presentation.

6.5 At the time of writing, the Cross Gates Watch Residents Association had a number of queries regarding the January 2012 High Court decision and the implications for the consideration of the current application. A verbal update will therefore be provided to the Panel should the Association (and other third parties) formally add to the representations already made.

7.0 CONSULTATIONS RESPONSES:

7.1 Non-statutory:

Highways: No objection subject to conditions

Flood Risk Management: No objections.

Access officer: No objection

8.0 PLANNING POLICIES:

Development Plan

8.1 The development plan comprises the Regional Spatial Strategy to 2026 (RSS) and the adopted Leeds Unitary Development Plan -Review 2006 (UDPR). The RSS was issued in May 2008 and includes a broad development strategy for the region setting out regional priorities in terms of location and scale of development. No RSS policies have a specific relevance to the application site or scheme proposed.

8.2 The site is unallocated on the UDPR proposals map but the following policies are nevertheless considered to be of relevance:

GP5: Seeks to resolve detailed planning considerations including highway safety and loss of amenity.

BD5: All new buildings should be designed with consideration given to both their own amenity and that of their surroundings.

N12: Urban design principles

N13: Principles of good building design.

Adopted Supplementary Planning Guidance: A guide for residential design in Leeds 'Neighbourhood for Living' (Dec 2003)

8.3 National Planning Policy Framework:

9.0 MAIN ISSUES

9.1 The main issues for consideration as part of this application are:

1. The scheme's visual impact on the character and appearance of the street scene
2. The scheme's impact on surrounding residents living conditions
3. Third Party comments

10.0 APPRAISAL

10.1 The site's planning history is complex however the starting point is the scheme's compliance with the statutory development plan. The relevant policies as contained within the UDPR are detailed in section 8 of this report and seek to ensure the appearance of the dwelling is acceptable bearing in mind the character and appearance of the surrounding area and also that residents living conditions (both existing and proposed) are not adversely affected. The fallback position as provided by the 2005 permission (including the decisions reached by both High Court Judges) and the Inspectors appeal decisions are also material considerations.

1. Impact on character and appearance:

- 10.2 The key issue to consider in respect of the current application's visual impact is the extent to which it would be different to the 2005 permission (i.e. the fallback) and importantly if any difference amounts to having a material impact on the character and appearance of the area. The Inspector's decision on the planning appeal is also relevant although it was based on a different scheme to the one now proposed and this fact needs to be recognised.
- 10.3 Within the above context, the dwelling is noted to be highly visible from a number of vantage points including The Drive itself (despite the presence of the TPO tree in the front garden), Manston Gardens to the north and Park Avenue to the east – through the gap between the semi-detached properties opposite. UDPR policies GP5, N12, N13 and design advice provided by 'Neighbourhoods for Living' are considered to be relevant and require residential developments to have a high standard of design and to respect the character and appearance of the surrounding area.
- 10.4 Starting first with the siting within the plot, in its amended form (i.e. the front and rear elevations set in from their current position) the dwelling's footprint would be nearly identical to the 2005 approval. The only areas where differences occur relate to the 100mm projection to the front of the dwelling (but only to the gable) and at the sides since it is wider than originally anticipated. However, as the first High Court Judge has ruled the 2005 permission allows a 9.30m wide building and the front projection is comparatively small these differences can be accepted.
- 10.5 In terms of height, the receipt of an accurate survey plan identifies that not only is the existing dwelling higher than 10.40m, the street itself is not on a level as has always previously been shown. This information (which is confirmed by the applicant's own consultant through the submission of the revised survey plan) is fundamental to the determination of the current application. The applicant did not accept that height could be considered as part of the current application as it was not previously challenged in the High Court. However, the most recent High Court proceedings have confirmed that it is material and that the approved height is 10.4m.
- 10.6 In terms of the revised plans submitted for the current application, the actual height of the dwelling is not annotated on either the survey plan or architect's street scene

plan and excavations undertaken in connection with the basement mean the original ground level has been disturbed. The sloping nature of the street also makes it difficult to confirm the dwelling's total height as the southern side (towards No. 50) projects further than the northern end in order to provide a level floor. In view of the lack of clarity provided by the plans on this particular matter, the Council indicated that a minimum building height could be obtained by physically measuring from the roof ridge to the Damp Proof Course (DPC). The Council's Chief Surveyor recorded a measurement of just over 10.50m. As it is a standard requirement under Building Regulations to provide a minimum separation of 150mm between the DPC and ground level, the Council's position is that even when the surrounding ground is finally restored the dwelling would have a minimum height of 10.65m.

- 10.7 The applicant disputes the above and indicates the DPC has been installed too low and will be amended. Ground levels have therefore recently been adjusted adjacent to the dwelling to achieve a total building height of 10.4m. (For the avoidance of doubt, officers (as do local residents) consider the ground level as it now exists to be higher than its original position).
- 10.8 The increase in height is noted to add additional scale, massing and bulk to the dwelling as its impact must be assessed three dimensionally. However, it is equally important to assess the relative height of the dwelling in comparison to the neighbouring properties as this impacts considerably on its overall appearance within the street scene.
- 10.9 In assessing the 2005 application, officers (as did local residents) relied on the original street scene plan submitted which showed the street as being level. The plan indicated the new dwelling would have a ridge height slightly higher than No. 56 The Drive and would be some 900mm higher than No. 50 The Drive. Eaves levels between buildings were also an important consideration as was the dwelling's overall design.
- 10.10 Previously part of the officer assessment was to compare the 2005 street scene plan with its amended counterpart submitted under the current application as the difference between what was originally depicted and what has actually been constructed on site is considerable. However, the High Court's most recent decision is such that consideration of the current application should focus on the acceptability of the new plans – albeit the dwelling's approved dimensions as established by the 2005 permission are still important. In doing this, officers are nevertheless mindful both appeal decisions included a site visit and accordingly these decisions are still considered to be relevant.
- 10.11 A full examination of the most recent survey and street scene plans show No. 56 The Drive was drawn wrong on the 2005 plan. However, the most notable difference relates to the new dwelling itself and how high it actually sits within the street scene, particularly in relation to No. 50 The Drive.
- 10.12 The accurate street scene plan shows the ridge of the proposed building would be approximately 1.50m higher than No 50 The Drive with the gap between the relative eaves heights increasing to approximately 2.70m. These distances are considered to be excessive and results in a relationship which is considered to be unacceptable. The total ridge height of the proposed dwelling is also noted to be well above that of No.56 which as the last property within the street and situated on the high ground would normally be the highest building from an urban design perspective. Whilst the difference is not as great as it is with No. 50, the distance between the two roofs is much closer and the additional bulk associated with the reduced hip is such that this

relationship is also considered to be unacceptable, particularly when viewed from Manston Gardens and Park Avenue. Officers note the Inspector for the planning appeal was also concerned about these same issues and whilst the dwelling currently proposed would not be as deep as the one considered at appeal, these problems are still considered to apply to the current application.

10.13 All of the above differences when considered within the context of what is already a very tight development site in terms of its relationship with adjacent properties have a serious impact on the general character and appearance of the street scene. This is particularly so with regards to the dwelling appearing obtrusive relative to its immediate neighbours due to its increased height and the resulting additional scale, massing and bulk.

10.14 In addition to the above, the design alterations to the dwelling itself also add to the development's unacceptability and compound the vertical emphasis which has been highlighted as being unacceptable by the planning appeal Inspector. These alterations are considered to further reduce the design quality of the dwelling and make it a more discordant feature within the street scene. The design alterations are identified as follows:

- Widening the front gable element therefore making the tallest part of the dwelling more dominant
- Higher floor levels (and subsequently windows) within the street scene relative to neighbouring properties
- Increasing the height of the dwelling's eaves therefore altering the windows to wall ratio and making it more dominant
- A reduced hip to the roof area to accommodate the lift therefore increasing the overall massing of the roof.
- The removal of the chimney stack which is a positive characteristic of the area.

10.15 For the above reasons, it is considered that the amended dwelling would still have a demonstrable adverse impact on the character and appearance of the area and fail to address the requirements of UDPR policies GP5, N12, N13 and the design advice contained in 'Neighbourhoods for Living' to the extent that warrants refusal of the application.

2. Impact on living conditions:

10.16 In recognising that a fallback position exists, the main method of assessment in respect to residential amenity has been to undertake a comparison between the 2005 approval and the current proposal (albeit acknowledging the Inspector's comments). The relevant UDPR policies to be addressed under this heading are GP5 and BD6 which both seek to ensure the development does not adversely affect the living conditions of existing or proposed residents. Guidance contained within the Council's residential design guide 'Neighbourhoods for Living' is also relevant.

Overlooking/Loss of Privacy:

10.17 As part of the previous planning appeal, the Inspector confirmed unacceptable overlooking of the Park Avenue properties and their gardens would occur due to a relatively short separation distance that would be provided. Nos. 3 and 5 Park Avenue share a common boundary with the application site although both these properties are semi-detached so their adjoining neighbours (Nos. 10a Manston Lane and 7 Park Avenue respectively) would also be affected. The planning appeal Inspector's decision regarding overlooking is clearly important but it also needs to be recognised this conclusion was reached in respect of the dwelling as already

constructed on site whereas the current application seeks to amend it by removing the entire rear wall and setting it in by 800mm so as to create the same general relationship as already approved.

- 10.18 In considering the acceptability of the relationship now proposed, the overall separation distance to the Park Avenue common boundary would be the same. On this basis, the development's impact on the occupiers of the Park Avenue properties from an overlooking perspective would be very similar to the fallback position and accordingly no reason for refusal on this particular relationship is advanced.
- 10.19 A second area of overlooking was also highlighted by the planning appeal Inspector and related to a ground floor dining room window that faced No. 50 The Drive. A side window is still proposed in the same location as part of the current application but would now be secondary in nature and is shown to be obscure glazed and fixed. On this basis, the potential for overlooking to occur has been removed and accordingly the problem no longer exists.
- 10.20 Overlooking from other side windows (acknowledging the current application proposes more than originally approved) would not occur as the revised plans confirm all would be obscure glazed and fixed.

Visual Dominance:

- 10.21 The appeal Inspector in his decision letter confirmed the increased size of the dwelling over and above that already approved resulted in significant visual dominance when viewed by the occupiers of the Park Avenue properties and from the garden areas of Nos. 56 and 50 The Drive.
- 10.22 As a consequence of addressing the overlooking issue with Park Avenue properties by setting the existing rear wall back to its approved location, the dwelling's overall visual dominance would be somewhat reduced and a minimum separation distance of approximately 11.5m would be provided to the common boundary.
- 10.23 In considering the acceptability of the current application from a dominance perspective, the additional height associated with the proposed dwelling is such that the relationship can never be directly comparable to that of the fallback. The Judge's verdict on the total width allowed under the 2005 application is also important in this respect and after considering these factors in the round and noting only part of the dwelling includes a full 3 storey gable feature thereby reducing some of the additional height's impact from a residents perspective, on balance officers have not recommended a dominance reason for refusal.

Overshadowing/Loss of Light:

- 10.24 As with both the overlooking and dominance issues, the appeal Inspector agreed with the Council and found fault with the existing dwelling's impact on No. 56 and 50 The Drive in respect of overshadowing and loss of light. The dwelling's close proximity to the common boundaries combined with its orientation, height and bulk were identified as being the cause of these problems.
- 10.25 The current application would improve the existing situation for the neighbouring occupiers by removing the rear wall and rebuilding it in its fallback position. However, the Judge's ruling on the width is such that the proximity to the side boundaries does not need to be amended. This only leaves consideration of the additional height associated with the dwelling as clearly the orientation would not alter. Having considered the matter carefully, again on balance officers have not advanced an

amenity reason for refusal concerning overshadowing or loss of light as it would be very difficult to apportion harm to just the impact of the extra height.

3. Third party comments

10.26 The majority of the comments and concerns expressed in the letters of representation have either been addressed in sections 1 and 2 of the appraisal or are covered by the officer recommendation to refuse permission. Further comment is nevertheless provided on the following matters:

- Making the basement area incapable of use: The proposed method for restricting access to the basement is considered to satisfy the requirement of the undertaking.
- Restrictive covenant: The existence of a restrictive covenant on the site does impact on the Council's determination of the current planning application.
- Safety/stability issues related to construction of the basement: The applicant has utilised the services of an approved inspector for building control purposes although the issue is ultimately a civic matter between the two relevant parties.
- The property will be converted into flats: The current application is for a single dwelling incorporating a second floor granny annexe. Any application to convert the building should it be allowed to remain would therefore require a separate change of use application and would be considered on its own merits.

11.0 CONCLUSION

11.1 Section 38(6) of the Planning and Compensation Act 2004 requires that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The relevant policies in this particular case are considered to be GP5, N12, N13 and supplementary guidance 'Neighbourhoods for living' which seek to ensure dwellings are appropriately designed and pay due regard to residents living conditions. The fallback position as established by the 2005 permission and the previous appeal decisions are also material considerations.

11.2 Having carefully considered the current application against the 2005 permission and the findings of the appeal Inspectors, in recognition of the current proposal's reduced depth and proposed treatment to all the side windows (i.e. obscure glazed and fixed) it is not considered to adversely affect residents living conditions beyond what could already take place under the fallback position.

11.3 With respect to visual amenity considerations, even in its revised form the excessive height and resulting scale, mass and bulk of the dwelling relative to its immediate neighbouring properties in conjunction with its uncharacteristic vertical design would cause significant harm to the character and appearance of the area contrary to UDPR policies GP5, N12 and N13 and the design advice contained within 'Neighbourhoods for Living' and the National Planning Policy Framework.

11.4 Members are therefore recommended to refuse the application for the reason specified.

Background Papers:

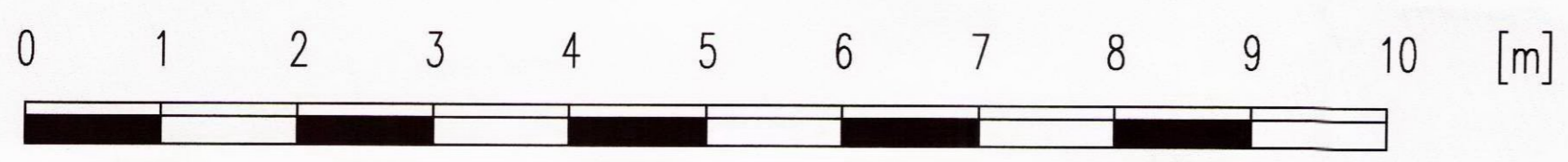
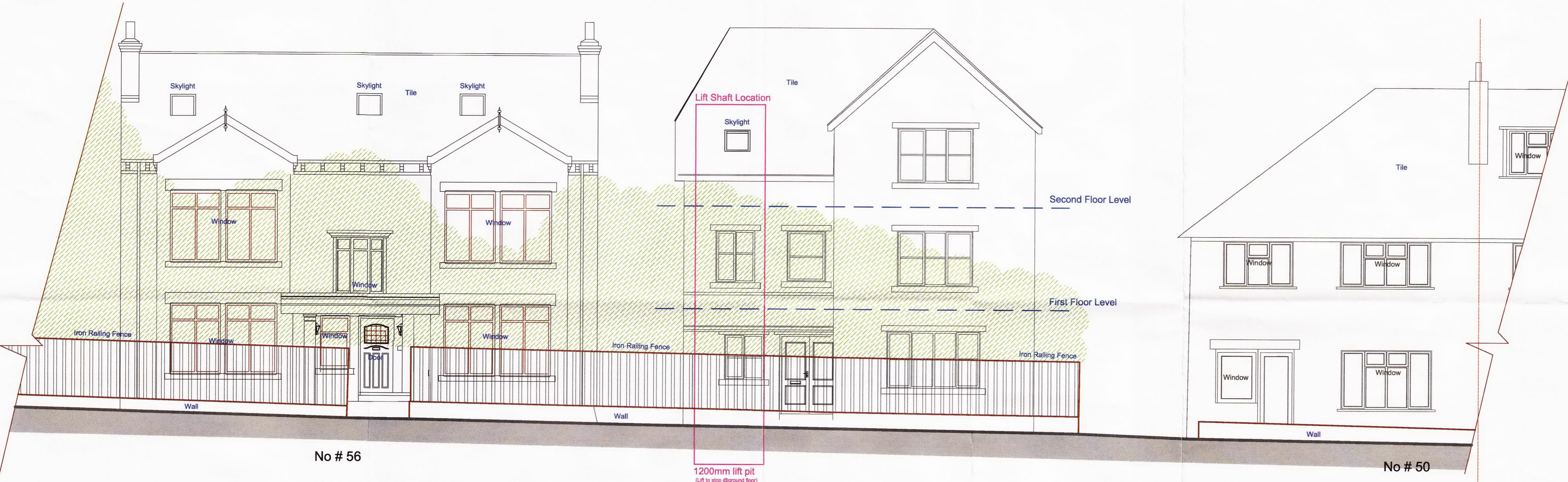
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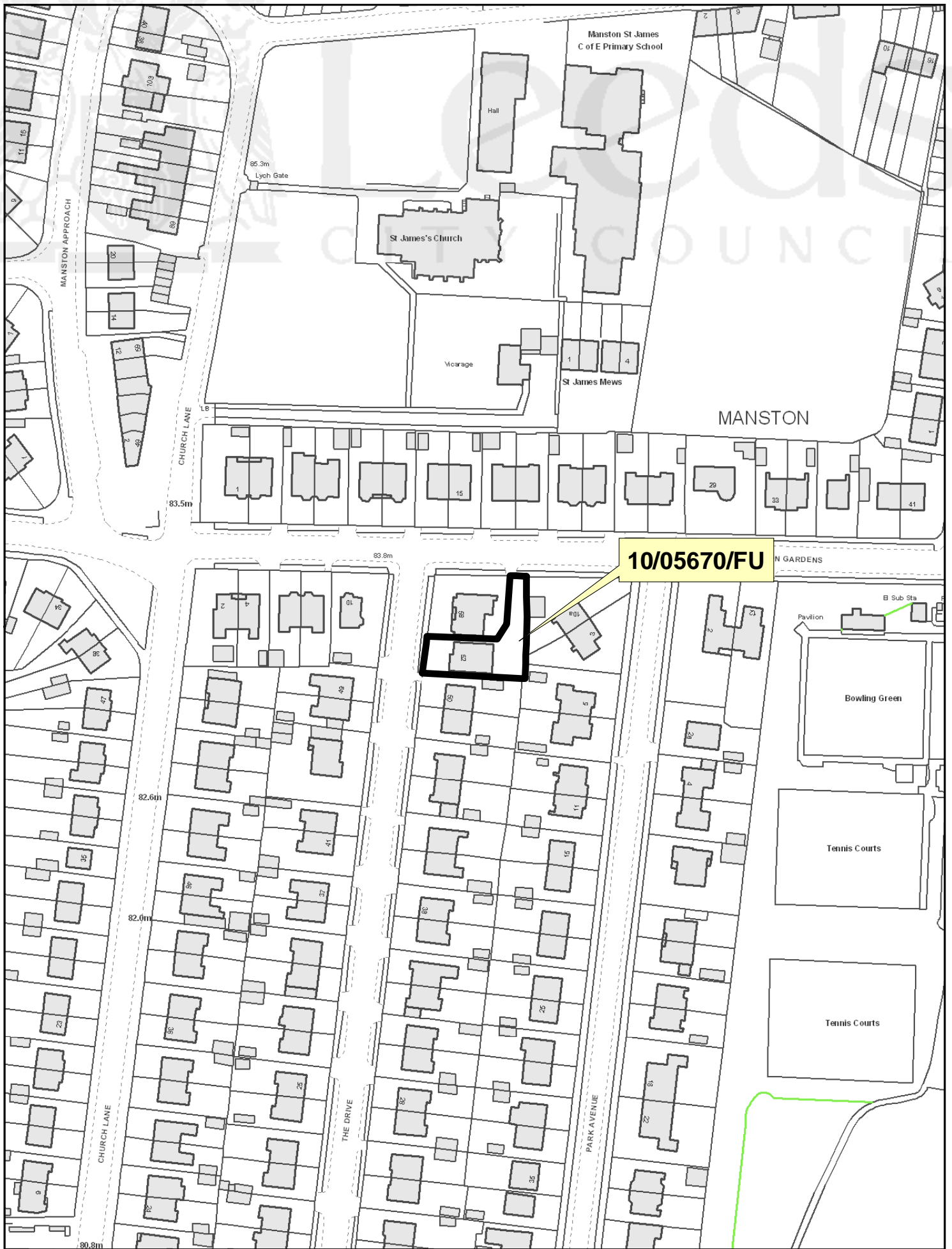
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