



Report of the Chief Planning Officer

NORTH AND EAST PLANS PANEL

Date: 11th July 2013

Subject: 13/02080/FU – 3 bedroom detached house incorporating second floor ancillary granny annexe and basement level at No. 56 The Drive, Cross Gates, Leeds

APPLICANT

Mr I Gordon

DATE VALID

13th May 2013

TARGET DATE

8th July 2013

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:

The proposed retention and modification of the dwelling house would by reason of its excessive height and resulting scale, mass and bulk and overall design relative to its immediate neighbours, 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 for determination as the site has a long and complicated planning history and it is similar to a scheme which Members have previously found to be unacceptable. The application like others before it has also generated significant representations from local residents.

- 1.2 Some Members will recall considering previous planning applications on this site for a very similar proposal at meetings held in April and September 2012. The April meeting was the second time that application (10/05670/FU) was considered and was necessary despite an earlier Panel resolution to refuse permission because the matter had been brought to the High Court to determine if the Council was entitled to consider the issue of height or not. A further report from officers was therefore provided which outlined the decision of the High Court on the matter. Members resolved that permission should still be refused in accordance with the officer recommendation and the decision notice confirming this was issued on 20th April 2012.
- 1.3 The decision to refuse the application was appealed within 14 days in accordance with a previous undertaking given by the applicant to the High Court. However, the applicant maintained that he was not required under the terms of the undertaking to pursue the appeal to conclusion. As such, the applicant withdrew his appeal and progressed a revised planning application as an alternative way of moving matters forward.
- 1.4 That application (12/02738/FU) was considered at Plans Panel on 6th September 2012. It proposed a form of development which was very similar to the scheme which Members considered in April 2012 and found to be unacceptable. Planning permission was refused on the basis it was considered the proposal represented an overdevelopment of the site and that it was not a form of development that adequately respects the established residential character of the area.
- 1.5 Following the withdrawal of the appeal the Council applied to the court for a further hearing and at the hearing on 28 September 2012, renewed the Council's application for an injunction to seek the demolition of the dwelling constructed on the site. At the hearing on 16 April 2013, the Applicant offered a further undertaking which was incorporated into a court order as follows (in summary):

The Applicant undertakes:

- Within 21 days to formulate and submit a planning application which seeks permission for such works as are necessary to:
 - Obscure glaze such existing windows as are considered to be necessary to be obscured glazed by the Council so as to protect the privacy of adjacent properties;
 - Reduce the depth of the building so as to coincide precisely with the approved permission in accordance with the determination of this Court. (the depth to be reduced by 900mm to the front and 800mm to the rear);
 - To carry out such works as are necessary to reduce the height of the building by at least 250mm. The height of the building to be calculated by reference to a notional ground level measured at 150mm below the existing damp proof course.
- Upon the grant of such an application(whether by the Council on or appeal) to complete such works within 4 months of such an approval;
- In the event that planning permission is refused by the Council to lodge an appeal with the Planning Inspectorate within 28 days of such refusal and shall pursue that appeal to final determination by the Secretary of State or an Inspector appointed by him;
- In the event that the appeal is dismissed to demolish the dwelling to ground level within 6 months of such a dismissal.

- 1.6 As before, in reaching a decision on the particular planning application before the Panel now, Members clearly should have regard to the fallback position as created by the 2005 planning permission. The officer 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. As such, for a development on this site to receive a favourable officer recommendation 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. This approach to developing the site was clearly stated within the previous officer report and is followed again in terms of consideration of this application.
- 1.7 For Members information, a brief summary of the history of the site is set out below for ease of reference and to provide context.
- Permission granted in 2005 to construct a detached dwelling (with granny annex) within the side garden of No. 56.
 - Work commenced on site in 2007 but not in accordance with approved plans.
 - Revised application submitted to retain what had already been constructed but Members resolved to refuse permission.
 - Appeal against non determination lodged before the refusal was issued - appeal dismissed in April 2008.
 - Enforcement notice requiring demolition served 2008.
 - Notice appealed but also dismissed (notice required demolition of the dwelling by late March 2009)
 - Applicant failed to comply with enforcement notice and was successfully prosecuted within the Magistrates Court.
 - Injunction proceedings brought to require compliance with the enforcement notice and considered in the High Court.
 - Injunction not granted - applicant gave undertaking that a fresh planning application would be submitted as an alternative to complete demolition. Declaration that permission authorises construction of a building which is 9.3m wide.
 - Planning application submitted January 2010 but recommended for refusal. Decision to refuse deferred pending consideration of the Applicant's application to the court within the legal proceedings arguing that the Council was estopped from considering height.
 - Further High Court hearing to consider applicant's application. Applicant unsuccessful on application for a declaration that the Council was estopped from considering the issue of height. Declaration given by the Court that a building constructed pursuant to planning permission 32/306/05/FU (the fall back) in such a manner that no part of the ridge thereof was more than 10.4m 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.
 - Planning application reconsidered by East Panel and formally refused in April 2012.
 - Appeal lodged shortly afterwards in accordance with original undertaking but subsequently withdrawn.
 - Planning application submitted in July 2012 and refused in September 2012.

- High Court of Justice Order of 16th April 2013 (details set out at para. 1.5).
- Current planning application validated on 13th May 2013.

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, Cross Gates.
- 2.2 The proposed dwelling house would be three storeys in height and includes ancillary accommodation in the form of a granny annex on the second floor. 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. The building as currently constructed includes a basement area with the structure that appears above the ground built off its foundations. The structure of the basement is to be retained and amended (in order to provide support for the amended front and back walls).
- 2.3 The submitted plans and supporting documents indicate the total height of the dwelling house would measure 10.4m from the ground level (set at 150mm below existing damp proof course level) to the top of 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. The ridge height is identified as being reduced by 250mm from its current, as built position.
- 2.4 A street scene plan (proposed) has been provided as part of the application to show the existing/proposed relationship between the dwelling house and the neighbouring properties either side.
- 2.5 Internally, the dwelling would include the following separate rooms:
- Basement – Gym, utility, sauna, stores.
 - Ground floor - Entrance hall, dining room, living room, breakfast kitchen, cloak room.
 - First floor – 2 bedrooms with en-suite and dressing areas, laundry room, linen cupboard.
 - Second floor (i.e. the granny annex) – living room, kitchen, bathroom, bedroom and store room.
- 2.6 A lift shaft is shown to provide access to all four floors (in addition to a main staircase) with final details understood to be subject to the contractor's specification. All main rooms have windows facing out either forwards or backwards and all the side windows are identified to be obscure glazed.
- 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) - The fallback:

- 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 (no part of the ridge is to be more than 10.4m higher than the ground level adjacent to the footprint of the building as it existed at the time of the grant of the original planning permission)
Width: 9.3m (in accordance with the High Court declaration)
Depth: 11.6m reducing to 10.6m where it steps in at the front (in accordance with the undertaking given to the High Court)

For the avoidance of doubt, both the height and width dimensions as stated above have been specified by the High Court itself through separate declarations.

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 brick wall with decorative railings on top. 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. Ground levels around the unfinished building now raise up towards its base when viewed from the side next to No. 56.
- 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 actual site still steps down at the common boundary with No. 50 and is retained by the boundary wall. The step down in terms of ground levels appears to be in the region of 1m.

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 (Application No. 32/306/05/FU).

4.2 A brief summary of the site's legal history is set out in the following paragraphs:

High Court (April 2013)

4.3 This action resulted from the Council taking out an injunction that sought the removal of the dwelling in light of an extant enforcement notice and the refusal of planning permission for a dwelling on the site in September 2012. A summary of the Court Order and the Defendant's undertaking is set out at 1.5 above.

High Court (January 2012)

4.4 This action was brought by the applicant as he considered that the Council in determining the 2010 planning application was prohibited from considering the issue of the height of the dwelling 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.

High Court (November 2010)

4.5 Proceedings were brought by the Council to enforce compliance with the enforcement notice requiring demolition of the unauthorised dwelling. As part of these 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. A number of discrepancies between the approved plans for the 2005 planning permission were noted, 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. 2.8) 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. A declaration was therefore given 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. Height was not considered by the Court.

4.5 The Court did not grant an injunction requiring complete demolition, and accepted the applicant's 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.
4. 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 was subsequently released from this particular element as a result of the January 2012 application)

4.6 Below is a brief summary of the site's 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.

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. 4.4 onwards for details.

10/05670/FU – 3 bedroom detached house incorporating second floor ancillary granny annex – Refused 20/04/12 – Decision initially appealed but withdrawn once revised application was validated.

High Court proceedings were brought prior to formal determination of the 2010 planning application in January 2012 (considered on 12th with the formal judgment published on 27th) – see para. 4.4

12/02738/FU - Three bedroom detached house incorporating second floor ancillary granny annexe to garden plot (part retrospective) – Refused 07/09/12

13/01649/FU - Alterations and revision of partially constructed dwelling to include revised elevation and roof details, retention of existing floor plans including basement – Submitted 10/04/13 - Application returned

13/02080/FU - Three bedroom detached house incorporating second floor ancillary granny annexe and basement level – To be determined.

4.7 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 None. Application reflects the terms of Court Order of 16th April 2013.

6.0 PUBLIC/LOCAL RESPONSE:

6.1 The application has been advertised by individual neighbour notification letters (sent to immediate neighbours or those who have previously commented) on 16/05/13. Site notices dated 24/05/13 have also been displayed around the site.

6.2 The following objections have been received:

Cross Gates Watch Residents Association:

The residents association has submitted a substantial document which contains detailed calculations, plans, photographs and analysis relating to - the original ground levels (including that original grounds levels have been increased and that the side garden/lawn sloped down towards No. 50), comments about the building as currently constructed and also the acceptability of the proposed alterations to the building. Concerns are also raised about the accuracy of the submitted plans. Notwithstanding these detailed matters, the main points are summarised in the covering letter which accompanies the association's submission and are outlined below:

- The proposed changes make virtually no difference to the impact it has on residents' amenity, and the discordant impact it has on the rest of the street. Despite the changes in the massing and the bulk of the roof, it is still a dominating and intrusive building.
- The reduction in height by the minimum of 250mm specified in the Court Order is only 29% of the different between the height of the new build and the 2005

plans. The applicant's claim the current form of development proposed is exactly the same as the 2005 permission is not the case and can be established by superimposing his own plans over one another. Even after the height reduction of 250mm the building will still be 610mm higher than the 2005 application.

- Retention of the basement area represents an over-intensification of the site and this area was to be made incapable of use by the earlier Court Order. Retaining the basement gives the building about 39% greater cubic capacity than the 2005 approval. The building would be more akin to a block of flats and the lift will make access easy. The basement could become a fourth flat or underground garage in future. Had the 2005 application included a basement objections would have been lodged.
- There is a lack of detail relating to the proposed lift which could have implications for the external appearance of the building if roof alterations are required.

13 letters have been received. The main comments made are as follows:

- The building even after being lowered would be too high and is not sympathetic to the character or appearance of the area. It would still dominate and be overbearing, towering over No. 50.
- The submitted plans do not seem to be an accurate representation of the position of windows, doors or of the relative height of the neighbouring properties. The plans fail to convey the over-bearing nature of the building.
- Still find it hard to believe a building containing a lift and a large basement is genuinely intended to be maintained as a single home and suspect the intent is to create a multi-occupancy building.
- Also find it very hard to comprehend why the process of ensuring the building which hasn't been constructed correctly takes so long to get it removed. Authorising this retrospective application would surely undermine the credibility and authority of our planning system.
- The building is a monstrosity and the proposed alterations will not change this or the impact it has on neighbouring residents. Reduced privacy and light will still occur.
- Retention of the basement is unacceptable and represents an over intensive use of the site.
- The submitted plans still contain inaccuracies and should not be accepted.
- The original builder inspector report cannot be accessed so it is not clear if the building has been constructed safely.
- Pigeons are now breeding in the building and are health hazard.
- Didn't object to the 2005 application because the plans showed it would be similar in height to the neighbouring properties and existing vegetation would be retained to help screen it. The new plans are still unacceptable and result in a building totally out of character.

80 copies of a standardised objection letter have also been received stating the building is still too high and the plans are distorted and misrepresented. Accordingly the house does not harmonize with the buildings in the surrounding streets and is the cause of a significant loss of amenity for residents.

7.0 CONSULTATIONS RESPONSES:

7.1 Non-statutory:

Highways: No objection subject to conditions

8.0 PLANNING POLICIES:

Development Plan

- 8.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 The Development Plan for the area consists of the adopted Unitary Development Plan Review (UDPR), along with relevant supplementary planning guidance and documents.
- 8.3 The Core Strategy sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district. On 26th April 2013 the Council submitted the Publication Draft Core Strategy to the Secretary of State for examination and an Inspector has been appointed. It is expected that the examination will commence in September 2013.
- 8.4 As the Council has submitted the Publication Draft Core Strategy for independent examination some weight can now be attached to the document and its contents recognising that the weight to be attached may be limited by outstanding representations which have been made which will be considered at the future examination.
- 8.5 The application site is not allocated within the UDPR proposals map. Nevertheless, the following policies are 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)

- 8.6 National Planning Policy Framework: (NPPF, March 2012) gives a presumption in favour of sustainable development and has a strong emphasis on high quality design.

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 Members are aware that the site's planning history is long and complex however as with all planning applications the starting point should be the scheme's compliance or otherwise with the statutory development plan. The pertinent policies as contained within the UDPR are detailed in section 8 of this report and in respect to the consideration of this application seek to ensure the appearance of the dwelling house 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 declarations 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 acceptability or not is its impact on the character and appearance of the area. As part of this, it is also necessary to consider what impact the approved 2005 application would have as this does represent a potential fallback position - albeit as already stated this scheme would not be considered acceptable if it were proposed today. The Inspector's consideration of the previous scheme is also relevant although it was based on a different scheme to the one now proposed and this fact is important.

10.3 In considering the above, the topography of the surrounding area is such that the dwelling house is highly visible from a number of public vantage points including The Drive itself (despite the presence of the protected tree and vegetation within the front garden), Manston Gardens to the north and Park Avenue to the east – through the gap between the semi-detached properties which the application site backs onto. UDPR policies GP5, N12, N13 and design advice provided by 'Neighbourhoods for Living' are therefore considered to be fully relevant and require all residential developments to have a high standard of design and appropriate regard to the character and appearance of the surrounding area. The NPPF also includes design advice which seeks to achieve the same basic aims as specified by the more detailed local plan policies and guidance.

10.4 In terms of siting, 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 in terms of positioning within the plot itself. The only real exception to this relates to the small, 100mm front projection but even this only applies to the part of the building. The side walls are also in a slightly different position to that originally anticipated (and are not proposed to be altered) but the first High Court declaration regarding the interpretation of the 2005 permission is the reason for this since it permits a 9.30m wide building. In the light of this and noting the difference between the front projection is comparatively small no concerns are raised regarding the building's final siting within the plot.

10.5 In terms of height, the second High Court declaration that the total height of the dwelling house permitted under the 2005 permission should not exceed 10.4m when measured from the ground level as it existed before building works commenced on site. The April 2013 High Court Order clarified this further by stating that *"for the purposes of this Undertaking, the height of the building shall be calculated by reference to a notional ground level measured at 150mm below the existing Damp Proof Course..."*. Noting this, retention of the basement area is not considered to be problematic from a visual perspective due to its mostly subterranean nature.

- 10.6 Acknowledging the above, it is important to assess the relative height of the dwelling in comparison to the neighbouring properties as this significantly impacts on its overall appearance within the street scene. The overall design of the building is also important due to its visual prominence.
- 10.7 As stated in previous panel reports, officers as well as local residents regrettably relied too much on the relationship shown on the street scene plan accompanying the 2005 application which not only showed the street as being level but also contained a number of drafting errors relating to how No. 56 in particular was portrayed. The plan indicated the new dwelling would have a ridge height only slightly higher than No. 56 and would be some 900mm higher than No. 50. Eaves levels between buildings were also an important consideration as was the dwelling's overall design.
- 10.8 Although the above is helpful as it provides some context about how the original application was assessed, the outcome of the January 2012 High Court proceedings confirmed the 2005 street scene plan contains so many discrepancies that it cannot be relied on. For this reason and again as highlighted in previous panel reports, the acceptability of the submitted plans for this application should be the focus and not what has gone before. The dwelling's approved dimensions as established by the fallback are nonetheless important and remain relevant. Officers have therefore concentrated on assessing the submitted plans but are still mindful about the decisions reached on previous applications and also the views expressed by both appeal inspectors since these decisions were made following site visits and accordingly are still of some relevance.
- 10.9 An examination of the plans approved in 2005 when compared to the now proposed elevations and street scene plan indicate the dwelling house would now appear very similar to the 2005 approval, as least as far as the front and rear elevations are concerned. This would be achieved by lowering the total height of the roof (including the eaves line) from its existing position by some 250mm and the width of the three storey element would also be slightly reduced. In terms of the windows and doors, the previous application showed these to be lowered in order to more closely match the 2005 approval but these are not shown to be altered as part of the rebuilding works so would remain at the same general height as existing – which are higher than approved.
- 10.10 Although the design alterations now proposed as part of this latest application are considered to have some merit, the building's overall impact both relative to its immediate neighbours and within the wider streetscene is still considered to be unacceptable. The unacceptable elements relate to the building's overall height and design relative to its surroundings with particular regard to the total ridge height to be provided, the substantial difference between eaves heights with No. 50, the three storey nature of the design and ultimately the overall scale, massing and bulk that results from all the above. The first appeal Inspector also raised similar concerns when considering the earlier scheme and whilst the current application is obviously different, officers do not consider these latest revisions to have adequately resolved these issues, particularly as the building is visible from more than just The Drive.
- 10.11 Although the position regarding the fallback is acknowledged, the application site is already very tight in terms of the separation distances which can be achieved and accordingly very slight amendments have a significant 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 overall height and the resulting scale, massing and bulk.

10.12 For the above reasons, it is considered the amended dwelling would still have a demonstrable adverse impact on the character and appearance of the area and fails to address the requirements of UDPR policies GP5, N12, N13, the design advice contained in 'Neighbourhoods for Living' and the guidance set out in the NPPF. The application is therefore recommended for refusal.

2. Impact on living conditions:

10.13 As with the consideration of previous applications, the existence of the fallback position created by the original approval is acknowledged and accordingly the main method of assessment in respect of residential amenity issues has been to undertake a comparison between the impact of the 2005 approval and that of the current proposal. As part of this assessment, the declarations from the High Court are clearly relevant (including the confirmed inaccuracy of the original streetscene plan) as are the previous appeal Inspectors comments. In terms of consideration against UDPR policies, those 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 adopted residential design guide 'Neighbourhoods for Living' also considers these same issues and is therefore relevant.

Overlooking/Loss of Privacy:

10.14 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 and the three storey nature of the property was no doubt an important factor in reaching this view. In particular, Nos. 3 and 5 Park Avenue share a common boundary with the application site although both of these properties are noted to be semi-detached themselves so their adjoining neighbours (Nos. 10a Manston Lane and 7 Park Avenue respectively) would also be affected – albeit not to the same extent. The appeal Inspector's conclusion regarding overlooking is clearly important but was reached in respect of the dwelling house as already built whereas the current application seeks to amend it by removing the entire rear elevation and setting it in by 800mm so as to create the same general relationship as already approved.

10.15 In considering the acceptability of the actual relationship now proposed, the overall separation distance to the Park Avenue common boundary would be the same as previously accepted under the 2005 application. 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.

10.16 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 a similar location (but now serving the living room) as part of the current application but would be secondary in nature and is annotated to be obscure glazed. On this basis, the opportunity for overlooking to occur has been substantially reduced and accordingly the problem is considered to have been adequately addressed.

10.17 Overlooking from the remaining side windows would also not occur as the submitted plans confirm they would all be obscure glazed and this could be secured by condition if the application were to be approved.

Visual Dominance:

- 10.18 The previous appeal Inspector considered that the increased size of the dwelling over and above that originally approved resulted in significant visual dominance when viewed by the occupiers of the Park Avenue properties to the rear and from the garden areas of Nos. 56 and 50 The Drive to either side.
- 10.19 The proposed removal of the existing rear elevation and its rebuilding on the same line as permitted under the 2005 application in order to address overlooking concerns also has the added benefit of offering improvements over the existing relationship from a visual dominance perspective. The separation distance to the common boundary is noted to be no less than 11.5m.
- 10.20 In terms of the acceptability of the dwelling house now proposed from a dominance perspective, the additional height which is considered to exist with the proposal due to the ground level alterations is such that the relationship can never be directly comparable to that of the fallback. The High Court declaration on the total width allowed under the 2005 application is also important. After weighing up all of the above factors and noting only part of the dwelling house would be the full three storeys so the additional height's impact from a residents perspective does not feature across the entire rear elevation, on balance officers have not advanced a separate dominance reason for refusal.

Overshadowing/Loss of Light:

- 10.21 The background to overshadowing and loss of light considerations is that the previous appeal Inspector supported the Council's position that problems would be experienced by the occupiers of Nos. 56 and 50 The Drive. The existing dwelling's close proximity to the common boundaries combined with its orientation, height and bulk were identified as being the cause of these problems.
- 10.22 The current application would offer improvements over the existing situation for the neighbouring occupiers by removing the rear elevation and rebuilding it in its fallback position. The declaration from the High Court regarding width is also important and accordingly the position of the side elevations does not need to be altered. As such, only consideration of the additional height associated with the dwelling house remains as the orientation would not alter. The potential impact of the additional height has been carefully considered and again on balance officers have not advanced an amenity reason for refusal concerning overshadowing or loss of light. The reason for this is because officers feel it would be particularly difficult to apportion harm to that associated with the extra height alone since in all other respects the impact would be the same as that already permitted.
- 10.23 In terms of retention of the basement area and its use for various leisure activities, whilst a number of residents and also the Residents Association consider this element of the application to be unacceptable, officers do not feel this part of the building generates any specific amenity issues providing it is only used for the domestic purposes. Accordingly it is not considered appropriate to refuse the application on the basis the basement area is shown to be retained as part of this latest application.
- 10.24 In addition to the above comments regarding individual considerations, it is important to acknowledge that from a purely residential amenity perspective, the current application (with the exception of the basement area which itself is considered acceptable) would have a very similar impact as the 2012 applications which have already been refused. Members resolved to only refuse these applications because

of concerns relating to their adverse visual impact and officers recommend the same approach is taken with this current application.

3. Third party comments

- 10.25 The main comments and concerns expressed in the letters of representation are considered to have been dealt with in the appraisal section of this report or through the officer recommendation to refuse the application. Officers do not however share residents concerns about the unacceptability of retaining the basement area.
- 10.26 With respect to the detailed concerns raised by the Residents Association in terms of the accuracy of the submitted plans and the positioning of the original ground level, the plans are considered to be of adequate quality to enable a formal decision to be taken and the current proposal is considered unacceptable in any event. Officers nevertheless share some of the Residents Association's concerns about where the original ground level should be taken from and have brought this to the applicant's attention a number of times during previous applications. The applicant has not however provided any evidence as part of the current application to counter the views expressed by officers or the Residents Association and has merely sought to offer the minimum reduction required by the latest undertaking incorporated into the most recent court order. As the applicant has had ample opportunity to further his case regarding the above and noting the considerable time which has already lapsed in terms of trying to resolve this long standing breach of planning control, officers consider it is appropriate to proceed to a decision without further delay.

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, BD6, N12, N13 and supplementary guidance 'Neighbourhoods for living' which all seek to ensure dwellings are appropriately designed and pay due regard to residents living conditions. The fallback position as established by the 2005 permission (including the High Court declarations which accompany it) and the previous appeal decisions are also material considerations.
- 11.2 Having carefully considered the current application, including 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 side windows (i.e. that they would obscure glazed) it is not considered to adversely affect residents living conditions beyond that which could already take place under the fallback position. Retention of the basement area is also considered to be acceptable.
- 11.3 With respect to visual amenity considerations, even in its revised form the excessive height and resulting scale, mass, bulk and overall design of the dwelling relative to its immediate neighbouring properties 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:

Application file 13/02080/FU

Certificate of Ownership: Signed by applicant

BM 85.

MANSTON GARDENS

83.8m

THE DRIVE



NOTES:
 DRAWING AND DESIGN ARE COPYRIGHT OF THE PRACTICE UNLESS SPECIFIC CONSENT IN WRITING HAS BEEN GIVEN
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 DO NOT SCALE OR TAKE DIMENSIONAL DATA FROM THIS DRAWING
 ALL CONSTRUCTIONAL DIMENSIONS CONTAINED IN THE DRAWINGS SHOULD BE CHECKED ON SITE
 ALL DISCREPANCIES ARE TO BE NOTIFIED TO THE PRACTICE WITHOUT DELAY

NOTE:
 All windows to the side elevations will be obscure glazed

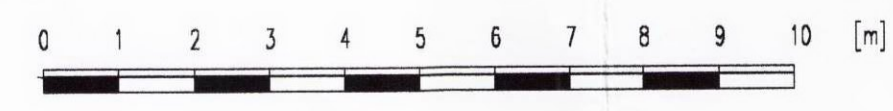
13/02080

50



DATE	REVISION DESCRIPTION

659A ROUNDHAY ROAD
 OAKWOOD
 LEEDS
 LS8 4BA
 TEL: 0113 2400012
 FAX: 0113 2492766



PROJECT ~ Proposed New Dwelling
 58 The Drive
 Crossgates
 Leeds

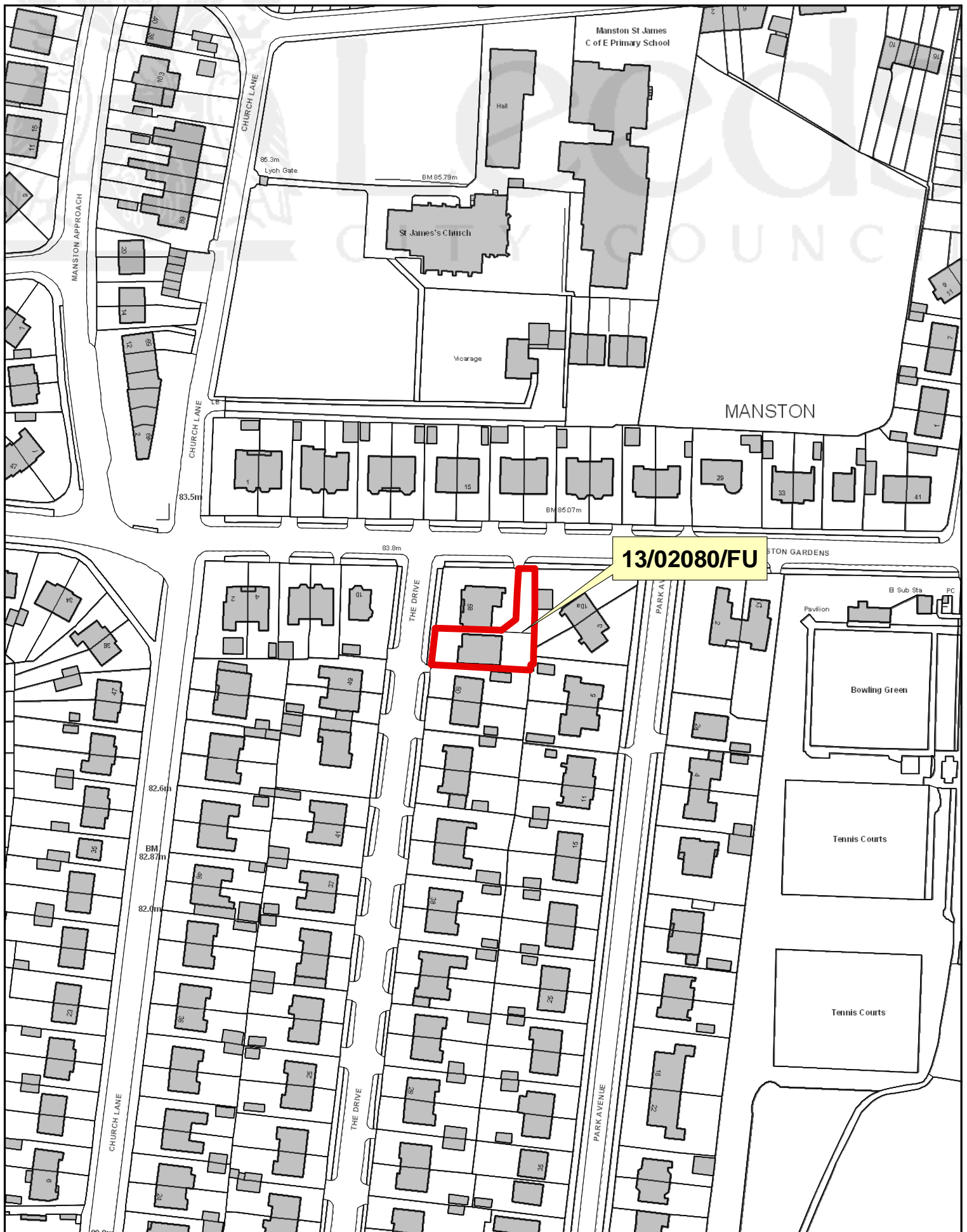
DRAWING DESCRIPTION: ~ Proposed Site Plan

CLIENT: ~ Mr & Mrs I. Gordon

SCALE: ~ 1:50 @ A1

DRAWN/CHECKED BY: ~ DJH/JSB

DRAWING NUMBER: ~ 798-103



13/02080/FU

NORTH AND EAST PLANS PANEL.