



Report of the Chief Planning Officer

NORTH & EAST PLANS PANEL

Date: 26th September 2024

Subject: 24/04058/FU – Variation of condition 2 (approved plans) of previous approval 23/01597/FU (One new detached dwelling with detached garage to front and garden shed to side/rear; landscaping and pond to rear) to allow for creation of basement and rooms in roof space (including two additional bedrooms) with external alterations including rooflights and new lower ground floor doors to rear and lightwell to side; alterations to rear terrace, steps and external landscaping; relocation of shed to other side/rear at Old Parsonage, Main Street, East Keswick, Leeds, LS17 9EU.

APPLICANT

Svoboda and Tiffin

DATE VALID

29.07.2024

TARGET DATE

23.09.2024, extension of time agreed to 04.10.2024.

Electoral Wards Affected:

Wetherby

Yes

Ward Members consulted (referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: GRANT planning permission subject to the conditions set out below (with amendments or addition to the same as deemed appropriate):

1. Time limit limited to 3 years from date of original consent (24/04058/FU)
2. The development hereby permitted shall be carried out in accordance with the approved plans
3. Samples of external walling and roofing materials
4. Details of hard and soft landscaping
5. Replacement tree/hedge/shrub planting
6. Tree protection measures
7. Electric Vehicle Charging Points to be provided
8. Visibility splays to be provided
9. Obscure glazing of first floor side windows

10. Drainage scheme to be agreed
11. Contaminated Land conditions
12. Delivery of off-site highway works
13. Statement of Construction Practice

INTRODUCTION

1. This application is presented to North and East Plans Panel at the request of Councillor Sam Firth, Harewood Ward Member, who has cited concerns relating to the principle and character of the development (including the impact on the Conservation Area), impacts on neighbouring amenity, road safety and parking pressures, and the impact on hedgerows. Councillor Firth has also raised matters relevant to questions of site ownership and the previous planning permission (LPA reference 23/01597/FU).
2. The matters raised by Councillor Firth in respect of the principle and character of the development and road safety and parking pressures constitute material planning considerations that give rise to concerns affecting more than neighbouring properties and as such, at least in part, the request meets the criteria outlined in the Officer Scheme of Delegation. As such it is appropriate to report the application to Panel for determination.
3. The proposal seeks permission to vary condition 2 (that required the development to be carried out in accordance with the approved plans) of previous approval 23/01597/FU (one new detached dwelling with detached garage to front and garden shed to side/rear; landscaping and pond to rear) to allow for the creation of a basement and rooms in the roof space (including two additional bedrooms) with external alterations including rooflights and new lower ground floor doors to rear and lightwell to side; alterations to rear terrace, steps and external landscaping; relocation of shed to other side/rear.
4. Subject to relevant conditions as stated above (and amendments to or addition of others as deemed appropriate), the proposal is recommended by officers for approval as it is considered to comply with the Council's planning policies and relevant guidance.

PROPOSAL

5. This application has been submitted under Section 73 of the Town and Country Planning Act 1990 (as amended), which allows for the determination of applications to develop land not in accordance with the conditions as attached to an original permission. In this case, this would relate to condition 2 of approved planning permission 23/01597/FU, which pertains to the schedule of permitted plans, and reads as follows:

The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans and Specifications above.

For the avoidance of doubt and in the interests of proper planning

6. The alterations include forming bedrooms within the roofspace of the permitted dwelling facilitated by the installation of rooflights to serve those rooms. This would allow for the four bedroom dwelling approved under planning permission 23/01597/FU to be altered to create a six bedroom dwelling.

7. Further habitable rooms are proposed in a newly formed basement, which will necessitate excavation works to the side and rear. The partially below ground level rooms will be served by internally high-level windows to the east (side) (served by a lightwell), and full floor to ceiling glass doors to the rear. There is a newly formed patio area to be situated adjacent to these rear glass doors, alongside a steep embankment to the west of this patio with planting, and a revised staircase arrangement to the east of the patio to accommodate these changes.
8. The location of the side/rear shed has been altered from the east side of the house to the west side.
9. The landscaping arrangement is also proposed to be amended in order to address wider concerns which have been raised in respect of land ownership matters. The original permission under 23/01597/FU proposed works to create new boundary treatments and for the erection of a shed on land to the east of the proposed house which a neighbour has contested is not within the ownership of the applicant. The revised proposal seeks to address this matter by excluding works from this contested piece of land.

SITE AND SURROUNDINGS

10. The application site is a private garden site known as 'The Paddock' off the garden of the Old Parsonage. The Old Parsonage is a grade II listed building.
11. The site is a relatively narrow strip of greenfield/previously undeveloped land situated between residential properties located on The Grove (to the west) and Lumby Garth (to the east). The site slopes down from the north to the south.
12. The site is bounded by a mixture of mature hedgerows and trees. The site is located within East Keswick Conservation Area and a number of the trees along the boundary have added protection via Tree Preservation Orders (1970/2 and 1989/36).

RELEVANT PLANNING HISTORY

Planning applications

13. 23/06959/FU: Variation of condition 2 (approved plans list) to previously approved planning application 23/01597/FU (One new detached dwelling with detached garage to front and garden shed to side/rear; landscaping and pond to rear) to vary the layout and appearance of the house proposed including rooms in roofspace and new basement. Withdrawn 03.04.2024
14. 23/01597/FU: One new detached dwelling with detached garage to front and garden shed to side/rear; landscaping and pond to rear. Approved 10.03.2023
15. 22/04320/FU: Two new dwellings with associated access, parking and landscaping. Refused October 2022.
16. 31/426/04/FU: 4 bedroom detached house with detached double garage Refused November 2004. H31/186/90/: Laying out of access and erection of 2, four bedroom, detached houses 2, each with integral garage to vacant site. Refused December 1990

17. 22/01056/TR: T1, T2 and T3 Elm - To remove due to Dutch Elm disease T4
Sycamore - To remove as no real value and is growing underneath and into the canopy of the Pine tree. Works approved 04.04.2022

HISTORY OF NEGOTIATIONS

18. The current planning application is made under Section 73 of the Town and Country Planning Act 1990 (as amended) and seeks to amend the planning permission granted under 23/01597/FU. The planning permission granted under 23/01597/FU followed an earlier refusal of planning permission for a two dwelling scheme. Prior to the submission of the current application an earlier Section 73 application was withdrawn under 23/06959/FU.

Ownership certificate and land ownership disputes

19. At the time of considering planning permission 23/01597/FU, representations were made by the neighbour at the adjacent site at 4 Lumby Garth that part of the application site included within the red line site plan encroached onto land owned by that neighbour. This was put to the applicant's representative by officers, with the applicant's representative subsequently setting out in writing that the applicant owned all of the land within the red line site boundary. At that time, in the absence of any further evidence to dispute the applicant's position – and noting that in signing the relevant ownership certificate on the planning application form submitted with the application the applicant had made a legal declaration of ownership – it was considered that this was not a matter that could prevent determination of the application. Planning application 23/01597/FU was subsequently granted planning permission on 10.10.2023 with the proposal being considered acceptable in relevant respects.
20. The applicant subsequently submitted an application to vary planning permission 23/01597/FU under Section 73 with planning application 23/06959/FU which was validated 12.01.2024. In doing so, the applicant again stated that they owned all of the land within the red line plan submitted under planning permission 23/01597/FU. At that time the neighbour at 4 Lumby Garth again contested the ownership of a piece of land within the red line site boundary. A title deed document was provided by the neighbour at 4 Lumby Garth in support of the assertion.

Officers presented the title deed document provided by the neighbour at 4 Lumby Garth to the applicant's representative and in response the applicant's representative presented their own Title Deed showing the land within their ownership. On review of the two sets of documents it was apparent that the question of land ownership was unclear and officers sought further advice from the Council's Legal Officers.

21. On review of the information available at that time from both parties, officers considered that the evidence put forward suggested that part of the land within the red line site plan was not owned by the applicant but rather was owned by the neighbour at 4 Lumby Garth. Subsequently, the applicant was advised to withdraw application 23/06959/FU and submit a fresh full application (rather than a Section 73 application) omitting the contested parcel of land in order to simplify matters, particularly noting that the contested piece of land was not necessary to deliver the development proposed.
22. Contrary to the advice of officers, the applicant has sought again to vary the condition for approved plans of the original permission 23/01597/FU under Section 73.

However, in doing so, the applicant has now submitted an ownership certificate stating that he does not own the contested piece of land and served notice on the neighbour at 4 Lumby Garth as is a requirement of the process where this is the case. In doing so the applicant has again contested ownership, stating that they have signed the ownership certificate 'without prejudice' with the applicant still believing they own all of the land in question.

23. It is important to note two factors here. The first is that it is not for the LPA to ultimately resolve a land ownership dispute and this is a civil matter between the parties in question. Rather, the LPA's role here is to consider whether the correct ownership certificate has been signed in support of the planning application has been submitted. Given that the applicant has now signed an ownership certificate setting out that they do not own all the land included within the red line site plan under the umbrella of the current application, and the LPA is satisfied that the neighbour at 4 Lumby Garth has been served notice of this through the correct process, there is no reason why the planning application should not now be determined.
24. The second is that the matter of land ownership here is a procedural matter rather than a matter which can be afforded any weight in the consideration of the planning merits of the proposal. That the applicant has signed an ownership certificate stating he does not own the land is not reason to refuse the application. Indeed, as noted earlier the contested land was not necessary to deliver the development in any case, but even if this were not the case this would not be reason to refuse the application given it is accepted practice that planning permission should not be refused just because an applicant does not own an application site.
25. Finally, it is helpful to address a further matter relating to the nature of the current application being submitted under Section 73. Concerns have been raised, including from Councillor Firth, in representations that the signing of a different ownership certificate under the current application to that under the original application (23/01597/FU) is problematic. However, whilst it is true that the ownership certificate signed under the original permission stated that the applicant owned all the land and that signed under the current application to vary that permission states that the applicant does not own all the land, this does not mean that the original permission is unlawful and cannot be varied under Section 73. Indeed, the original permission has not been subject to legal challenge and has not been quashed. As such it stands as a valid and extant planning permission. Given this is the case, and officers are now satisfied that the appropriate procedure has been followed and the current application can proceed to a determination, this would not be reason to invalidate the current application or refuse to proceed to a determination.

Amendment of plans under the current application

26. The original submission of the current application sought to omit the shed from the rear garden, as it was located within the contentious parcel of land as discussed above. However, as the shed is named within the original description of development for application 23/01597/FU (the relevance of this is discussed in greater detail below), the applicant was invited to submit amended plans showing the placement of a shed to 'the side/rear' of the main dwelling. Amended plans (PL)40 rev H and (PL)43 rev H were submitted 24.09.2024 that show a shed to the side/rear of the main dwelling, albeit to the other side of the property.

CONSULTATION RESPONSES

Highways

27. The Council's internal Highways team made comment on the application.
28. The officer commented that the site is located within an established residential area, and Lumby Lane has a 20mph speed limit with a footway on the northern side and is not lit with street lighting.
29. The officer made comments on the car parking provision at the site; *"The previous car parking demand for the site was 2no car parking spaces. As the number of bedrooms has increased to 6no bedrooms, the car parking demand has increased to 3no spaces. This can be accommodated at the site, however, an additional 32 amp Electric Vehicle Charging Point is required as a result of the 2no additional bedrooms within the roofspace."*
30. The officer also stated that the removal of the proposed shed (as was the proposal at the time of the consultation) was acceptable, as there was ample cycle parking provision within the approved garage.
31. Highways made no objection, subject to either amended plans showing the additional EV charging point, or a condition that this information be provided. A further condition is recommended that the development not be occupied until cycle parking facilities have been provided.

Flood Risk Management

32. Leeds City Council as Lead Local Flood Authority (LLFA) were also consulted.
33. As the application relates to variations to plans of previously approved planning application 23/01597/FU, the Flood Risk Management (FRM) team consider the proposed variations do not significantly alter the drainage strategy outlined in the original application. Subsequently, FRM hold no objections to the proposed development.

Contaminated Land

34. The original submission 23/01597/FU included a Phase 1 Desk Study Report (ref: C0516). The Contaminated Land Team did not reconsider this information, as the report demonstrated that the proposed development would be safe and suitable for its intended use with respect to land contamination and that no further works were required.
35. Contaminated Land have no objection to planning permission being granted, subject to the conditions being attached in relation to unexpected contamination and soil imports.

Environmental Studies

36. The Environmental Studies officer had no objection to the proposed variation of Condition 2.

Landscape

37. The landscape officer made comments stating that the proposed plans do not appear to increase harm to trees/hedges. The officer stated that the scheme preserves the existing ground levels +/- 100mm and avoidance of construction impacts within the root protection area of adjacent hedges/trees. The application can be supported in Landscape terms with this confirmation.

PUBLIC/LOCAL RESPONSE

38. The application was advertised by neighbourhood notification letters posted 21.05.2024 and by Site Notice on 31.07.2024. The publicity period expired on 02.09.2024.
39. Councillor Sam Firth (Harewood Ward Councillor) has referred the application for determination at Plans Panel, citing the following reasons:
- Principle of the development
 - Road safety and parking pressure, including that the increase in bedrooms would increase parking demand
 - Impact on character and that of the Conservation Area – design changes and alteration to hedgerow would impact the Conservation Area
 - Impacts to neighbouring amenity in terms of overlooking and overbearance
 - Land ownership disputes – the granting of permission where the applicant does not own the land may have further legal implications.
40. Given that the reasons set out at bullet points 1, 2 and 3 above are reasons for referral which give rise to concerns affecting more than neighbouring properties, the Plans Panel request from Councillor Firth satisfies the relevant qualifying criteria at Part 3, Section 2C of the Council's Officer Delegation Scheme for a determination at Plans Panel.
41. There have been five representations received from local residents, all objecting to the proposal. Their reasons for doing so are summarised below:
- The additional habitable stories would form an imposing presence
 - Residents would be overlooked by the upper stories windows, including the rooflights
 - The scale of development would alter the nature of the local environment
 - The scale is out of keeping with surrounding properties
 - The increase in bedrooms and occupancy would increase the number of cars at the dwelling, exacerbating issues of road safety
 - Previous reasons for refusal (31/426/04/FU) included impact on the safe flow of traffic
 - The groundworks would increase noise and disturbance during the construction period
 - The groundworks would threaten established root systems
 - The raising of land would have a greater overbearing impact
 - Overspill on-street parking on Lumby Lane would be a traffic risk
 - There are restricted sightlines at the vehicle access point
 - The footpath does not reach from the application site to Main Street junction
 - Highways incorrectly suggest Lumby Lane is a 20mph area. Changing from 30mph to 20mph would not mean drivers would move that slowly.
 - The previous submission had highways comments stating a lack of visibility splay
 - The removal of the existing hedgerow is cause for environmental, ecological and wildlife issues. The hedgerow is protected by virtue of being '20m long with gaps of 20m or less in its length' (leeds.gov.uk)
 - The site is a valuable asset for a wildlife corridor between the two designated East Keswick areas of Leeds Wildlife Habitat Network.

- New pond/wetland would not compensate for the loss of well-established hedgerow, trees and grassland.
- A poor maintained pond will result in stagnant water and biting insects, causing nuisance to surrounding households
- The applicant is also proposing alterations to the boundary treatments
- The land is not wholly within the applicant's ownership – part of the trees and planting to be removed is not within the ownership of the applicant
- The original planning permission stated that land levels cannot be altered
- The owner/applicant did not comply with a previous condition to replant trees

PLANNING POLICIES

LOCAL PLANNING POLICY and GUIDANCE

The Development Plan

42. As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 this application has to be determined in accordance with the Development Plan unless material considerations indicate otherwise. For the purposes of decision-making in relation to this application, the Development Plan for Leeds currently comprises the adopted Local Development Framework Core Strategy (2014, as amended by the Core Strategy Selective Review 2019), those policies saved from the Leeds Unitary Development Plan (Review 2006), the Site Allocations Plan (2019), and the Natural Resources and Waste Development Plan Document (2013 and 2015).
43. 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. The following policies from the Core Strategy are considered to be of most relevance to this development proposal:
- General Policy – Sustainable Development and the NPPF
 - SP1 – Location of development
 - SP6 - Housing requirement and allocation of housing land
 - H2 – New housing development on non-allocated sites
 - H3 – Housing Density
 - H9 - Minimum Space Standards
 - H10 – Accessible Housing Standards
 - P10 – Design
 - P11 – Conservation historic environment
 - P12 – Landscapes
 - T2 – Highway safety
 - G8 – Seeks to protect important species and habitats.
 - G9 – Biodiversity net gain
 - EN5 – Managing flood risk
 - EN8 – Electric vehicle charging infrastructure
44. The following saved policies from the Unitary Development Plan are considered to be of most relevance to this development proposal:
- GP5 - Seeks to ensure that development proposals resolve detailed planning considerations, including amenity.
 - BD2 – Design and siting of new buildings

- BD5 – Amenity and new buildings
- BC7 – Development within Conservation Areas will normally be required to be in traditional local materials.
- N14 – Preservation of Listed Buildings
- N19 – Conservation Area new extensions and buildings
- N25 – Boundary treatments
- LD1 – Landscape schemes
- LD2 – New and altered roads

45. The following policies form the Natural Resources and Waste Local DPD are considered to be of most relevance to this development proposal:

- General Policy 1
- Water 1 – water efficiency of new development
- Water 6 – Flood Risk Assessments
- Water 7 – surface water run-off
- Land 1 – Contaminated land
- Land 2 – Development and trees

Relevant Local Supplementary Planning Guidance/Documents

46. The most relevant local supplementary planning guidance (SPG), supplementary planning documents (SPD) are outlined below:

- Accessible Leeds SPD November 2016
- Building for Tomorrow Today: Sustainable Design and Construction SPD August 2011 & update June 2020
- Neighbourhoods for Living SPG December 2003
- Neighbourhoods for Living SPG Memorandum to 3rd Edition August 2015
- Neighbourhoods for Living SPG Update Note June 2020
- Street Design Guide SPD 2009
- Transport SPD 2023
- East Keswick Village Design Statement 2002
 - B2: Development within the Conservation Area

Other Relevant Documents

47. Guideline Distances from Development to Trees March 2011, revised February 2021
48. The Pre-submission consultation draft of the East Keswick Neighbourhood Plan was published in March 2020. As the Neighbourhood Plan has not been adopted it carries only very limited weight.

NATIONAL PLANNING POLICY and GUIDANCE

National Planning Policy Framework

49. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The NPPF must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions.

50. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004). The NPPF is an important material consideration in planning decisions.
51. The following sections of the NPPF are most relevant for the purposes of determining this application:
- Paragraph 11 – presumption in favour of sustainable development.
 - Paragraph 96 – planning decisions should aim to achieve healthy, inclusive, and safe places.
 - Paragraph 135 – need for good design which is sympathetic to local character and history.
 - Paragraph 139 – planning permission should be refused for poor design.

National Planning Practice Guidance

52. The Planning Practice Guidance (PPG) provides commentary on the application of policies within the NPPF. The PPG also provides guidance in relation to the imposition of planning conditions. It sets out that conditions should only be imposed where they are necessary; relevant to planning and to the development to be permitted; enforceable; precise and reasonable in all other respects.

CLIMATE EMERGENCY

53. The Council declared a climate emergency on the 27th March 2019 in response to the UN's report on Climate Change.
54. The Planning Act 2008, alongside the Climate Change Act 2008, sets out that climate mitigation and adaptation are central principles of plan-making. The NPPF makes clear that the planning system should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions in line with the objectives of the Climate Change Act 2008.
55. As part of the Council's Best Council Plan 2019/20 to 2020/21, the Council seeks to promote a less wasteful, low carbon economy. The Council's Development Plan includes a number of planning policies which seek to meet this aim, as does the NPPF. These are material planning considerations in determining planning applications.

PUBLIC SECTOR EQUALITY DUTY

56. The Equality Act 2010 requires local authorities to comply with the Public Sector Equality Duty. The requirement to consider, and have due regard to, the needs of diverse groups to eliminate discrimination, advance equality of opportunity and access, and foster good relations between different groups in the community has been fully taken into account in the consideration of the planning application to date and at the time of making the recommendation in this report.
57. In this instance it is considered that the proposals do not raise any specific implications in these respects and therefore it is not considered that a full Equality, Diversity, Cohesion and Integration Impact Assessment (EDCI) is required.

RELEVANT LEGISLATION AND LEGAL BACKGROUND

58. Section 73 of the Town and Country Planning Act 1990 (as amended) provides for the determination of applications to develop land without compliance with conditions previously attached to an original permission. Section 73 subsection 2 requires that Local Planning Authorities, upon receipt of an application made under Section 73, shall only consider the question of the conditions which are the subject of the application.
59. In the High Court case of R v Coventry City Council, ex p Arrowcroft Group plc (2001) the Judge stated:

“It is true that the outcome of a successful application under s73 is a fresh planning permission, but in deciding whether or not to grant that fresh planning permission the local authority ‘... shall consider only the question of the conditions subject to which planning permission should be granted’... Thus the Council is able to impose different conditions upon a new planning permission, but only if they are conditions which the Council could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration [Council’s emphasis] of the proposal put forward in the original application.”

60. The guiding principle established in this case is that a Local Planning Authority does not have powers to grant approval for section 73 application where this represents a fundamental alteration to the proposal put forward under the original planning permission granted.
61. In the Court of Appeal case of Finney v Welsh Ministers and ORS (2019) EWCA Civ 1868 relevant matters were further clarified. The judge held the distinction between the operative part of the grant of a planning permission in the relevant decision notice on one hand, and conditions attached to that planning permission on the other. At paragraph 29 of his decision the Judge states:

“It is clear that what Sullivan J meant by the “operative” part of the planning permission was the description of the development”, rather than the conditions”.

62. The Judge goes on to state:

“On receipt of [a section 73 application] section 73 (2) says that the planning authority must “consider only the question of conditions”. It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development.”

63. On 19th May 2020 the Supreme Court refused an application to appeal against the judgement, reaffirming the position of the Court of Appeal.
64. What the Finney case clarifies therefore is that it is outside of a Local Planning Authority’s powers to grant approval for a section 73 application which would lead to a change in the description of the development – i.e. the amendment must only relate to

conditions. Beyond this, there is no statutory limit on the degree of change permissible to conditions under the Section 73 application process, other than planning permission cannot be granted under Section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made.

65. Permission granted under Section 73 takes effect as a new, independent permission, sitting alongside the original permission, which remains intact and unamended. The time limit for implementation for a Section 73 permission must remain the same as the original permission.
66. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area when granting planning permission.
67. In considering such an application, a LPA is required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine, in accordance with the Development Plan unless other material considerations indicate otherwise. In practice, a LPA must give weight to any changes in planning policy, guidance, site circumstances or any other relevant factors since the original grant of planning permission, alongside affording weight to the fallback position created from the original permission itself.

MAIN ISSUES

68. The following main issues have been identified:
 - (1) Can the proposal be considered under a Section 73 application?
 - (2) Principle of the development including the relevant fallback position
 - (3) Housing Matters
 - (4) Landscape Impact
 - (5) Biodiversity
 - (6) Design and impact on character and appearance of Conservation Area
 - (7) Impact on residential amenity
 - (8) Flood Risk
 - (9) Impact on parking/highway safety
 - (10) Representations

APPRAISAL

(1) Can the proposal be considered under a Section 73 application?

69. The proposal put forward seeks to vary a previously approved application, 23/01597/FU. The application description for 23/01597/FU is as follows:

One new detached dwelling with detached garage to front and garden shed to side/rear; landscaping and pond to rear

70. The current proposal seeks to vary condition 2, in relation to the approved plans.
71. Following the submission of amended plans to show a shed to the side/rear, which was omitted on the initial suite of documents submitted in support of the application,

the proposal considered to fall within the scope of the original description. As such, it is considered the proposed works can be considered as part of a Section 73 application.

(2) Principle of the development including the relevant fallback position

72. The principle of the development of the site for the development of one dwelling was established under the previously approved application 23/01597/FU. This permission is still extant. There have been no significant changes in relation to relevant planning policy, guidance, site circumstances or any other relevant factors since the original grant of planning permission. As such the previous approval represents a viable fallback position for the applicant and should be afforded significant weight.
73. What this means in practice is that whilst the current proposal would, if granted planning permission, represent a separate planning permission in its own right, it is appropriate to focus the considerations of this appraisal on the proposed amendments to the original permission. This is because the previous permission could be lawfully implemented regardless of the success of the current proposal and so it is appropriate to focus on the additional impacts that would occur as a result of the current proposal over and above those of the fallback position.
74. The proposed amendments would serve to increase the floorspace within the dwelling significantly through the addition of a basement and rooms in the roofspace. The changes would result in the creation of a six bedroom dwelling over and above the four bedroom dwelling granted planning permission under 23/01597/FU. However, this is not unacceptable in principle subject to detailed material planning considerations being resolved.
75. As with the original proposal, the current proposal will make a very modest contribution to housing land supply locally and this is a benefit of the proposal, albeit the weight to be afforded to such a benefit within the context of the wider housing land supply picture is negligible, particularly noting that the Council is currently able to demonstrate housing land supply in excess of the five year requirement.
76. As with the original proposal, the site is unallocated in the Development Plan. Policy H2 of the Core Strategy sets out criteria for the development of non-allocated land and this notes that housing on non-allocated sites will be acceptable in principle provided that the number of dwellings does not exceed the capacity of transport, educational and health infrastructure. As with the original proposal, it is not considered that it could be reasonably argued that the proposal for one dwelling would lead to harmful impacts in these respects.
77. The latter part of Policy H2 states that greenfield sites should not be developed if they have intrinsic value as amenity space or for recreation or for nature conservation, or makes a valuable contribution to the visual, historic and/or spatial character of an area. As was noted at the time of the original proposal, the site has not been identified as contributing to the character of the area within the East Keswick Village Design Statement, nor is it listed on the council's "Natural environment map". No conservation area appraisal and management plan exists that designates the site as having a contribution to historic character.
78. It is also accepted that the previous historic link with the grade II listed Old Parsonage has been eroded over time via the physical separation of the application site from the main house and gardens. However, whilst the garden is not specifically identified in the East Keswick Village Design Statement, nor listed on the natural environment

map, it does still have intrinsic visual amenity value and value as habitat for nature conservation. The land has remained an undisturbed green field for several years, that has been physically separated from the main garden of the Old Parsonage by the hedgerow to the south of the site. This has enabled it to provide value as grassland bordered by trees and hedgerows, and a habitat for wildlife including birds and bats. The strip of grassed land also contributes to the spatial and visual amenity of the area by acting as visual break between residential plots in the Conservation Area (CA) and the twentieth century housing on The Grove (outside of the CA). It contributes to the leafy and verdant quality of the Conservation Area, providing important 'green relief'. Given this is the case, as was considered previously, it is considered that the plot represents a valuable green space which contributes both to the visual, spatial and historic character of the area and also provides a valuable habitat for nature conservation.

79. Nevertheless, as was previously the case, the impact of the addition of a single dwelling to the site is considered to be offset by the introduction of further planting throughout the site, and the addition of significant hedgerow provision along the southern boundary, replacement hedgerow to the northern boundary, and further trees and shrubbery planting to the frontage. It is considered that the additional planting maintains the visual amenity value of the site, would preserve the special character and appearance of the Conservation Area, and would result in a biodiversity net gain.
80. As a result of the above, the proposal remains acceptable in principle.
81. Furthermore, the external changes to the dwelling would be relatively minor and relate to details of the elevations, boundary treatments and landscaping works, and location of the shed. The revisions do not increase the footprint of the building or the overall height of the development above that already approved when viewed from the front of the site, nor does it alter the location of the proposed dwelling within the site. Whilst these matters will be discussed in greater detail below there are no significant additional concerns raised as a result in relation to the principle of the development.

(3) Housing Matters

82. As was previously the case, the proposal represents a modest form of development in terms of the housing numbers proposed and the site includes a number of constraints which need to be given consideration in respect of housing layout matters. As a result, the proposal raises no significant concerns in respect of housing policies.

(4) Landscape Impacts

83. The existing site is a green and verdant grassed area surrounded by native holly and hawthorn hedgerows. There are a number of mature trees and groupings of trees which are protected by Conservation Area status or Tree Protection Orders (TPOs).

Trees

84. As was previously the case, the application shows the inclusion of an additional 16no trees within the site. This is considered to be a positive element, and is encouraged. Following discussion with the agent prior to determination of the previous application 23/01597/FU, it was recommended that the full details of planting be submitted with a hard and soft landscaping plan, which was attached as a condition to that permission. This will include details of species, and a planting plan and is appropriate to control by way of planning condition. It is recommended that a condition for hard and soft

landscaping details is also attached to this Section 73 permission for the same reason.

85. The application site is home to a number of trees with a Tree Protection Order (TPO), including a large section of hedgerow along the eastern boundary.
86. With regards to the existing trees at the site, British Standard BS5837:2012 -Trees in Relation to Design, Demolition and Construction, which should form the starting point for such considerations, advises that structures should be located outside of the root protection areas (RPAs) of trees to be retained.
87. The scheme does not involve the removal of any trees at the site. The Arboricultural Impact Assessment (AIA) as submitted for the 23/01597/FU application shows the development falls outside of the root protection areas of all trees with a TPO. The AIA also indicates the locations proposed for tree protection fencing, which is considered appropriate such that the protected trees will not be unduly harmed by the development or construction period through appropriate protection measures which is appropriate to control via condition.
88. There are also a number of non-TPO trees within the site and outside the site boundary. These have also been shown to be protected within the AIA by tree protection fencing. The Council's internal landscape team raised concerns under the previous proposal regarding the proximity of the 2no trees to the east of the site (T1 and T2). The Council's Guideline Distances from development shows that trees to the side of a dwelling should be positioned at least 6m from the development. Tree T1 is shown at a distance of 6.3m, and T2 is shown at a distance of 4m. However, this tree will be duly protected by tree protection measures outlined within the AIA and as a result of the orientation of the proposed dwelling will not be likely to face pressures for its removal which the relevant guidance seeks to protect. It is noted that the Landscape Team has not objected on these grounds in relation to the current proposal.
89. Overall, it is considered that the dwelling is appropriately located a sufficient distance from trees. The proposed tree protection measures are appropriate and will preserve the existing trees at the site as far as reasonable.
90. It should be noted that tree works were permitted to remove a non-TPO tree at the site in April 2022 (22/01058/TR). The officer report shows that this tree was clearly decayed at the base and for some way up the stem, and that there was no alternative to removal. It was stated in the report that a replacement was not required. As such, the removal of the tree was done so lawfully, and does not carry weight when considering this planning application.

Loss of hedgerow and landscaping

91. It is proposed to remove approximately 30m of a hawthorn/holly hedgerow. The Council's internal landscape team made comments on the previous 23/01597/FU application that this does not accord with the aims and intentions of the Core Strategy, and results in loss of habitat. The scheme at that time showed a replacement hedge, albeit narrower in width. The landscape team stated that a narrower hedge limits the visual impacts, reduces screening potential, and limits habitat value. The proposed replacement hedge under this Section 73 application is of a similar width and in a similar location to what was originally proposed under application 23/01597/FU, albeit it is marginally shorter where it omits the previously mentioned contentious parcel of land to the east. Whilst it is not contested that the replacement hedge would not enhance visual amenity/screening/habitat provision, as was previously the case under

23/01597/FU, the wider scheme includes the provision of further hedgerows along the western boundary. The resultant hedge provision is one that is more substantial than existing and will be provided alongside other habitat features as part of the wider development. As such, it is considered that the removal and subsequent compensatory planting of hedgerows, grassland and trees is sufficient to provide an increase in habitat at the site. A biodiversity net gain metric was submitted under the previous application that evidenced a significant increase in hedgerow units and whilst the hedgerow is marginally shorter under this Section 73 application, the difference is considered to be negligible such that the increase in hedgerow units remains similar to that evidenced through the previous application. It should also be noted that the details of the proposed hedges will be included in the previously mentioned hard and soft landscaping condition which will ensure compliance in this respect. It is noted again that the Council's landscape team do not raise any objections in this respect in relation to the current proposal.

92. In addition, to achieve the required visibility splays for both access points onto Lumby Lane, it is proposed that the existing shrubs and vegetation to the frontage of the site be reduced to a height of 0.6m, in order to meet the required visibility splays. This is considered to be appropriate, and the replacement hedgerow is to be sited adjacent to this reduced shrubbery. As such, it is not considered that there would be an undue reduction in habitat or biodiversity by maintaining the height of the shrubbery at 0.6m.
93. For these reasons, with regard to impact to trees and landscape, the proposal complies with policies P10 and P12 of the Core Strategy, Saved policies GP5 and LD1 of the UDPR, policy LAND2 of the Natural Resources and Waste DPD, and the NPPF.

(5) Biodiversity

94. Policy G9 of the Core Strategy requires that development demonstrates an overall net gain for biodiversity commensurate with the scale of the development, including a positive contribution to the habitat network through habitat protection, creation and enhancement. Section 4.1 goes on to state that biodiversity in Leeds is not constrained to designated nature conservation sites or merely concerned with rare or threatened species or habitats, it is equally about ensuring that widespread and common species remain an integral part of a sustainable natural environment.
95. A biodiversity assessment was submitted with the 23/01597/FU application showing 10.1% increase in habitat creation, and 243.45% increase in hedgerow creation. These numbers, as above, will differ slightly but not significantly where the hedgerow length is reduced. It is also acknowledged that the proposed patio is to extend further into what was otherwise lawn under 23/01597/FU. However, the plans also show the inclusion of planting on the steep bank to the east of the proposed patio. Whilst full details of this provision have not been provided, and there are further considerations in respect of biodiversity beyond a 'numbers game', and it is considered that the proposal is capable of achieving an appropriate balance in relevant respects and this matter can be appropriately controlled by condition.
96. Although this application was validated 29.07.2024, after the date which would require a mandatory 10% Biodiversity Net Gain as per the Environment Act 2021, the national guidance for Biodiversity Net Gain is clear that biodiversity net gain does not apply to section 73 permissions where the original permission to which the Section 73 relates was either granted before 12.01.2024 or the application for the original permission was made before 12.02.2024. As the original 23/01597/FU was granted 10.10.2023, it is not a statutory requirement that this scheme provide a mandatory 10% biodiversity

net gain. It is noted however, that the scheme will likely achieve a net gain in excess of 10% regardless.

97. Beyond achieving a net gain, the proposal will lead to new habitat creation for wildlife through the landscaping scheme proposed and does not raise any concerns in respect of birds, bats or any other species. Indeed, the provision of a new wildlife pond in particular will be beneficial for wildlife at the site.
98. The proposal is acceptable in respect of biodiversity therefore complies with the aims and intentions of Core Strategy policy G9 and section 15 of the NPPF.

(6) Design and impact on character and appearance of Conservation Area

99. Core Strategy policy P10 outlines a number of key principles which fall under the wider objective of ensuring new development delivers high quality inclusive design. Core Strategy policy P12 seeks to conserve and enhance the character and quality of Leeds' townscapes and landscapes. Saved Unitary Development Plan (UDP) policies GP5 and BD6 are also relevant, in that they seek to protect amenity and highway safety and to encourage good design.
100. The principle of development and the wider design principles have already been established with the granting of 23/01597/FU. As is noted earlier in this appraisal the proposed amendments to the original permission do not increase the footprint of the building or the overall height of the development above that already approved when viewed from the front of the site, nor does it alter the location of the proposed dwelling within the site. This Section 73 application seeks to make relatively minor amendments to the design, with the changes amounting to the following:
 - Installation of 4no conservation rooflights in the rear (south) roof plane
 - Excavation to the rear (south) and side (east) to allow openings to the basement level
 - Installation of floor to ceiling glass doors to the rear (south) elevation at lower ground level
 - Installation of windows to the side (east) elevation at lower ground level
 - Revised patio and staircase arrangement to the rear (south)
 - Alterations to boundary treatments to the side (east)
 - Relocation of the proposed shed
101. The wider site is home to a number of mature trees which are an important feature of the local context of the site. The existing trees are to be retained on the site, and as dictated already in this report, a condition has been attached that the trees be duly protected with appropriate measures.
102. The proposed design of the property, being two storey when viewed within the streetscene, with detached with gable ends and constructed of stone is considered appropriate in its context. Although the immediate context features dwellings of brick, and render, the wider Conservation Area utilises stone walling and slate rooftiles with gable ends. Two storey dwellings are the predominate typology within the area, and the overall height of the development is therefore appropriate. Although this application seeks to form accommodation over four floors, this will not be perceptible from public areas. It is also important to again note that a dwelling of the same height has been permitted under 23/01597/FU, and the applicant could therefore construct a dwelling of the proposed height of a very similar appearance without the benefit of this Section 73 permission.

103. The proposed excavation to the side and rear of the property would result in moderate land level differences from the already approved scheme under 23/01597/FU. The land is to be levelled to accommodate a patio extending approximately 5.5m to the rear to meet the existing gradient of the site, which slopes downwards away from the rear of the property. This excavation facilitates the installation of floor to ceiling glass doors to the rear of the property, forming habitable rooms at lower ground level. The resultant appearance is of a part-three storey dwelling when viewed from the rear, however this would not be prominent in views from outside the site and would not harm the special character and appearance of the Conservation Area by virtue of scale alone.
104. The proposed materials are natural coursed stone, slate tiles, stone copings and aluminium framed windows and doors, which is considered to again respect the special character and appearance of East Keswick Conservation Area. These materials have previously been approved under the permitted 23/01597/FU application, and their further use is acceptable for the proposed below ground elevations and window/door installations.
105. The proposed garage is to be sited to the front of the dwelling, which again is a characteristic of the wider area, with a number of properties in the Conservation Area, including the nearby Whitegate, featuring driveways forward of the main frontage of the dwellinghouse. As such, this feature is considered appropriate for this context.
106. As the site makes up a positive transitional space between housing development within the Conservation Area and housing development outside the Conservation Area, it is important that the character be preserved. Infill or backland development is not uncommon in the immediate locality, and the scheme as submitted shows a single dwelling on an ample plot, with additional planting to both the frontage and the wider site. In this regard, it is considered that the proposed development would adequately maintain the transitional space when considered as a whole, and preserve the special character and appearance of the area with appropriate planting and vegetation throughout the site. It is noted that an earlier proposal for two dwellings submitted under 22/04320/FU was refused because it could not achieve such an outcome.
107. It is not considered that the proposals would impact on the setting of the nearby listed building The Old Parsonage as a result of the historical separation of the sites and the physical separation which exists – noting that the impacts would not be significantly different from those properties in Lumby Garth in this respect.
108. As such it is considered that the proposal complies with Policies P10, P11, and P12 of the Core Strategy, saved UDPR Policies GP5, LD1, BD2, BD5, and N19, and guidance contained within the East Keswick Village Design Statement (policy B2) and the NPPF.
109. It is noted that several points raised within comments made by surrounding residents were in relation to the height of the property, or that the development would be out of keeping with surrounding residents. As has been stated above however, the proposal is not changed in these respects from the previous permission and as such it is not considered that this would be reason to resist the current proposal.

(7) Impact on residential amenity

110. The dwelling is considered to fully accord with the internal space standards outlined in policy H9 of the Core Strategy and will provide for a good level of amenity for future residents in this respect.
111. The Neighbourhoods for Living SPD requires that usable garden space is to be provided which is equivalent to 2/3 of the internal floorspace of a house. The proposed internal gross floorspace is approximately 440m², and the usable outdoor amenity space is approximately 300m². As such, it is also considered there is an appropriate amount of usable outdoor amenity space for the future occupiers.
112. As was previously the case, the proposed dwelling is positioned approximately 3m from the rear boundaries of dwellings on The Grove at the narrowest point, and over 5m at the widest point. This is considered an appropriate distance for a dwelling of two storey height to the east of these properties so as not to be cause for undue overdominance or overshadowing.
113. As was also previously the case, the houses on Lumby Garth are a substantial distance from the proposed dwelling such that they would not be impacted with regards to overdominance or overshadowing. There are 2no proposed windows on the west elevation, obscure glazed, serving a utility at ground floor level and a dressing room at first floor level. This is appropriate so as not to be cause for undue overlooking. To the east elevation, there is to be one window at first floor level serving an ensuite bathroom, and 2no lightwell windows serving the lower ground cinema room and below the ground level as existing. These are also considered not to be cause for any undue overlooking. All other windows are to be positioned in the front and rear elevations, and would predominantly look over the front and rear gardens of the property. Similarly, there are a number of rooflights proposed on each roof plane that are angled upwards and would not be cause for undue overlooking.
114. There is to be significant planting along the boundaries in the form of hedgerows which will also assist in respect of privacy of neighbouring sites. It should be noted that the land levels are such that the ground floor is somewhat elevated with a further below ground level to the rear. However, given the proposed screening in the form of hedgerows and tree planting, this land level difference is not sufficient to be cause for a refusal of the application. Full details of levels are to be recommended to be submitted through the inclusion of a hard and soft landscaping condition.
115. The proposed development therefore complies with Policy P10 of the Core Strategy, saved UDPR Policies GP5 and BD5 and guidance contained within the Neighbourhoods for Living SPG and the NPPF

(8) Flood risk

116. A flood risk assessment and drainage strategy were submitted with the application 23/01597/FU. The application site is within flood risk zone 1. Flood Risk Management were consulted internally during the course of that application, and had stated that insufficient drainage details have been submitted. However, as was previously the case, this is a matter which can reasonably be resolved via condition, and as such this would not be reason to resist the development

(9) Impact on parking/highway safety

117. As guided by paragraph 111 of the NPPF, development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

118. As was previously the case, the proposed development is to ensure the existing planting at the proposed access point does not exceed a height of 600mm to address concerns regarding visibility relating to the vehicular access to the site.
119. The highways officer has set out that the proposed 2no additional bedrooms would increase the parking demand at the site. The demand would be for 3no parking spaces for a 6no bedroom dwelling, rather than the 2no required for the previously permitted 4no bedroom dwelling. It is clear however there is ample parking provision to the front of the property that would exceed the 3no space requirement.
120. The Highways officer further commented that a third electric vehicle charging point would be required following this increased parking demand. There is ample space to provide such provision and as such a condition is subsequently recommended that the details of the EVCP be submitted.
121. A number of local residents stated that the additional number of vehicles accessing Lumby Lane would be a traffic hazard. However, as the Highways officer has stated, the increased demand from the additional bedrooms is estimated to be 1no vehicle. The addition of 1no vehicle would not materially increase the number of trips at the site and would not be sufficient to be cause for refusal on highways grounds and, as was previously the case, the addition of the new dwelling and access at the site would not lead to highway safety concerns.
122. As such, the proposal is acceptable in terms of highway safety and parking provision. The proposal will meet the wider aims of Core Strategy policies P10 and T2, saved UDP policy GP5, the guidance contained within the Transport SPD and paragraph 110 of the NPPF.

(10) Representations

123. This section of the appraisal addresses representations received that have not already been addressed within this report, with the officer commentary/response following.
 - The additional habitable storeys would form an imposing presence
124. Whilst the proposed alterations would result in further habitable rooms in the roof space and basement areas, the overall height of the development would not be altered. The proposed alterations would be cause for no greater imposing presence than what is already permitted under 23/01597/FU.
 - The scale of development would alter the nature of the local environment; and
 - The scale is out of keeping with surrounding properties
125. The relative scale of development beyond what has already been permitted under 23/01597/FU is considered to be minor. There would be no undue impact on the local environment, and no undue impact on the surrounding character.
 - Previous reasons for refusal (31/426/04/FU) included impact on the safe flow of traffic
126. The referenced application was determined 04.11.2004, and relates to an application for a single dwelling accessed via Moor Lane. The application was determined in a different policy context and relates to a different part of the wider Old Parsonage site, not to mention being for a different proposal. As such, only very limited weight can be afforded to this decision.

- The groundworks would increase noise and disturbance during the construction period; and
 - The groundworks would threaten established root systems
127. Whilst it is acknowledged that the partial excavation to the rear would constitute more significant groundworks than what was previously granted permission, they would not be cause for such disruption that would warrant a refusal. It should be noted that the implications of the construction period would be controlled through the attached Statement of Construction Management condition that is recommended to be attached to any permission granted. The proposed excavation is not proposed to be within the root protection area of any retained trees.
- The raising of land would have a greater overbearing impact
128. The proposal does not involve the raising of land, nor the raising of the height of the proposed dwelling.
- The applicant is also proposing alterations to the boundary treatments
129. The boundary treatments are not proposed to be altered over and above the previously approved scheme, with the exception of the hedgerow on the eastern boundary, in order to omit the contentious parcel of land.
- Highways incorrectly suggest Lumby Lane is a 20mph area. Changing from 30mph to 20mph would not mean drivers would move that slowly.
130. Lumby Lane is a 30mph limit road. The Highways officer has confirmed they were mistaken in their response. However, they have stated that this would not alter the advice given.
- The original planning permission stated that land levels cannot be altered
131. The original planning permission (23/01579/FU) included a condition which required the applicant to provide details of any land level changes that may be required. However, this did not amount to preventing land levels from being altered, merely that any such changes would need to be agreed by the LPA.
- The land is not wholly within the applicant's ownership – part of the trees and planting to be removed is not within the ownership of the applicant
132. Full consideration of the land ownership concerns are given above in the 'History of Negotiation' section of this report. No trees are proposed to be felled, with only the hedgerow shown to be removed. The location of this hedgerow is shown through the submission of the applicant's title deed to be wholly within the ownership of the applicant.

CONCLUSION

133. The proposal would provide a single dwelling that would not be cause for undue overlooking, overshadowing or overdominance on neighbouring properties. The works would result in an overall biodiversity net gain, new opportunities for wildlife and would preserve planting to the frontage, maintaining visual amenity. The overall design is positive, and the works preserve the special character and appearance of the conservation area.
134. The proposed amendments will provide for additional habitable rooms within the dwelling. The proposed excavation, alteration of proposed boundary treatments and landscaping, additional windows and relocation of the shed would not be cause for

concern and are appropriate additions/alterations on the property in terms of design and in respect of the Conservation Area context.

135. The proposed additional 2no bedrooms would generate demand for an additional parking space within the curtilage of the dwelling over and above the previously approved scheme. The site however has ample parking provision to the frontage such that it could accommodate this additional parking demand. The Highways officer requested a further electric vehicle charging point be included, and a condition has been attached that these details be provided.
136. It is noted that part of the application site is subject to a land ownership dispute. However, the applicant has moved to address these concerns by relocating the proposed shed away from this land and amending the landscaping proposals such that the contested part of the site would not be impacted by the proposed development. The applicant has also signed an ownership certificate confirming that they have served the correct notice on the affected neighbour. Notwithstanding this, matters of ownership do not form a material planning consideration which weighs against the development and cannot form a reason to resist the proposal.
137. The proposal will meet the wider aims and objectives of Core Strategy (Selective Review 2019) policies P10, P12, and T2, saved UDP (2006 Review) policies GP5, BD6, and the guidance contained within the NPPF (2023). The proposal is also similar in significant respects to the previously granted planning permission under 23/01579/FU which represents a viable fallback position for the applicant and which should be afforded significant weight.
138. All comments raised through representations have been taken into consideration and addressed in this report, along with all other relevant material planning considerations.
139. In conclusion, and in accordance with the Section 38(6) framework for decision making, and the Section 73 subsection 2 requirement that the Local Planning Authority only consider the question of the conditions which are the subject of the application, it is considered, taking the above and all other relevant material planning considerations into account, that the application should be recommended for an approval of planning permission subject to the conditions set outlined at the start of this report (with amendments or addition to the same as deemed appropriate).

BACKGROUND PAPERS:

Application file reference 24/04058/FU

Certificate of ownership: Cert B signed without prejudice.