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## NORTH AND EAST PLANS PANEL

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Meeting to be held in Civic Hall, Leeds on  
Thursday, 5th July, 2018  
at 1.30 pm

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### MEMBERSHIP

#### Councillors

S Arif  
R Grahame  
D Jenkins  
E Nash  
K Ritchie  
N Walshaw  
(Chair)  
A Wenham

D Collins  
S Seary  
G Wilkinson

M Dobson

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**Agenda compiled by:**  
**Debbie Oldham**  
**Governance Services**  
**Civic Hall**  
**Tel: 0113 3788656**

# A G E N D A

Item No	Ward	Item Not Open		Page No
1			<p><b>SITE VISIT LETTER</b></p> <p><b>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</b></p> <p>To consider any appeals in accordance with Procedure Rule 15.2 of the Access to Information Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 15.2, written notice of an appeal must be received by the Head of Governance Services at least 24 hours before the meeting)</p>	
2			<p><b>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</b></p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p><b>RESOLVED</b> – That the press and public be excluded from the meeting during consideration of the following parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information, as follows:-</p>	

Item No	Ward	Item Not Open		Page No
3			<p><b>LATE ITEMS</b></p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p><b>DECLARATIONS OF DISCLOSABLE PECUNIARY INTERESTS</b></p> <p>To disclose or draw attention to any disclosable pecuniary interests for the purposes of Section 31 of the Localism Act 2011 and paragraphs 13-16 of the Members' Code of Conduct.</p>	
5			<p><b>APOLOGIES FOR ABSENCE</b></p>	
6			<p><b>MINUTES - 7TH JUNE 2018</b></p> <p>To approve the minutes of the meeting held on 7<sup>th</sup> June 2018 as a correct record.</p>	3 - 12
7	Garforth and Swillington		<p><b>18/01769/FU - RETROSPECTIVE AGRICULTURAL BUILDING FOR THE STORAGE OF STRAW, FODDER AND FEED AND THE HOUSING OF CATTLE AND SHEEP, SWILLINGTON ORGANIC FARM COACH ROAD WAKEFIELD ROAD SWILLINGTON LEEDS LS26 8QA</b></p> <p>To receive the report of the Chief Planning Officer for the retrospective agricultural building for the storage of straw, fodder and feed and the housing of cattle and sheep at Swillington Organic Farm Coach Road, Wakefield Road, Swillington, Leeds LS26 8QA.</p> <p>(Report attached)</p>	13 - 24

Item No	Ward	Item Not Open		Page No
8	Roundhay		<p><b>18/01883/FU - RAISING RIDGE HEIGHT, TWO STOREY AND SINGLE STOREY EXTENSIONS TO FRONT, SIDE AND REAR WITH JULIET BALCONY TO REAR, DORMER WINDOWS TO FRONT, ALTERATIONS TO BOUNDARY TREATMENT, 50 ROPER AVENUE, GLEDHOW, LEEDS, LS8 1LG</b></p> <p>To consider the report of the Chief Planning Officer for an application raising ridge height, two storey and single storey extensions to front, side and rear with Juliet balcony to rear, dormer windows to front, alterations to boundary treatment at 50 Roper Avenue, Gledhow, Leeds LS8 1LG.</p> <p>(Report attached)</p>	25 - 38
9	Wetherby		<p><b>18/00344/FU - DEMOLITION OF FORMER CARE HOME AND CONSTRUCTION OF NEW BUILD EXTRA CARE HOUSING SCHEME COMPRISING 44 APARTMENTS WITH ASSOCIATED COMMUNAL FACILITIES, PARKING AND EXTERNAL AMENITY SPACE, WESTWOOD WAY, BOSTON SPA, LS23 6DX</b></p> <p>To receive the report of the Chief Planning Officer for the demolition of former care home and construction of new build extra care housing scheme comprising 44 apartments with associated communal facilities, parking and external amenity space at Westwood Way, Boston Spa, LS23 6DX.</p> <p>(Report attached)</p>	39 - 50
10	Alwoodley		<p><b>17/04368/FU - RETROSPECTIVE APPLICATION FOR DWELLING WITH DETACHED OUTBUILDING TO REAR, WIGTON COURT, WIGTON LANE, ALWOODLEY</b></p> <p>To consider the report of the Chief Planning Officer for a retrospective application for dwelling with detached outbuilding to rear at Wigton Court Wigton Lane Alwoodley.</p> <p>(Report attached)</p>	51 - 66

Item No	Ward	Item Not Open		Page No
11	Garforth and Swillington		<p><b>16/06911/FU- APPEAL SUMMARY CHANGE OF USE OF LAND TO TRAVELLER PITCH WITH DETACHED UTILITY BLOCK AND ASSOCIATED WORKS, RETROSPECTIVE APPLICATION FOR LAYING OUT OF HARDSTANDING LAND OFF HOLLINHURST ALLERTON BYWATER WF10 2HY</b></p> <p>To receive the report of the Chief Planning Officer for the appeal summary for change of use of land to traveller pitch with detached utility block and associated works, retrospective application for laying out of hardstanding on land off Hollinhurst, Allerton Bywater, WF10 2HY.</p> <p>(Report attached)</p>	67 - 92
12			<p><b>DATE AND TIME OF NEXT MEETING</b></p> <p>The next meeting of North and East Plans Panel will be Thursday 9<sup>th</sup> August 2018 at 1:30pm.</p>	

#### **Third Party Recording**

Recording of this meeting is allowed to enable those not present to see or hear the proceedings either as they take place (or later) and to enable the reporting of those proceedings. A copy of the recording protocol is available from the contacts named on the front of this agenda.

Use of Recordings by Third Parties– code of practice

- a) Any published recording should be accompanied by a statement of when and where the recording was made, the context of the discussion that took place, and a clear identification of the main speakers and their role or title.
- b) Those making recordings must not edit the recording in a way that could lead to misinterpretation or misrepresentation of the proceedings or comments made by attendees. In particular there should be no internal editing of published extracts; recordings may start at any point and end at any point but the material between those points must be complete.

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To all Members of North and East  
Plans Panel

**Planning Services**

The Leonardo Building  
2 Rossington Street  
Leeds  
LS2 8HD

Contact: David Newbury  
Tel: 0113 37 87990  
david.m.newbury@leeds.gov.uk

Our reference: NE Site Visits  
Date: 26<sup>th</sup> June 2018

Dear Councillor

**SITE VISITS – NORTH AND EAST PLANS PANEL – THURSDAY 5<sup>th</sup> July 2018**

Prior to the meeting of the North and East Plans Panel on Thursday 5<sup>th</sup> July 2018 the following site visits will take place:

Time	Ward	
9.50am		Depart Civic Hall
10.15 - 10.35am	Garforth & Swillington	18/01769/FU – Swillington Organic Farm, Coach Road, Swillington, LS26 8QA
11.00 - 11.10am	Wetherby	18/00344/FU – Westwood Way, Boston Spa, LS23 6DX
11.35 – 11.45am	Roundhay	50 Roper Avenue, Roundhay, LS8 1LG
12.00 (noon)		Return to Civic Hall

For those Members requiring transport, a minibus will leave the Civic Hall at 9.50am. Please notify David Newbury (Tel: 37 87990) if you wish to take advantage of this and meet in the Ante Chamber at 9.45am. If you are making your own way to the site please let me know and we will arrange an appropriate meeting point.

Yours sincerely

David Newbury  
Group Manager

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## NORTH AND EAST PLANS PANEL

THURSDAY, 7TH JUNE, 2018

**PRESENT:** Councillor N Walshaw in the Chair

Councillors S Arif, D Collins, M Dobson,  
D Jenkins, E Nash, K Ritchie, S Seary,  
A Wenham and G Wilkinson

### **SITE VISITS**

The site visits were attended by Councillors Walshaw, Jenkins, Arif, Nash, Ritchie, Collins, Seary, and Wilkinson.

#### **1 Appeals against refusal of inspection of documents**

There were no appeals against refusal of inspection of documents.

#### **2 Exempt Information - Possible Exclusion of the Press and Public**

There were no exempt items.

#### **3 Late Items**

There were no late items.

#### **4 Declarations of Disclosable Pecuniary Interests**

There were no declarations of disclosable pecuniary interests.

However, Cllr. Dobson did declare an interest in Item 11 – 18/01519/FU Two storey rear extension 43 New Sturton Lane, Garforth, Leeds, LS25 2NW. Cllr. Dobson informed the Panel that he would be removing himself from the Panel for this item as he was speaking on behalf of the objectors. Minute 11 refers.

#### **5 Apologies for Absence**

No apologies of absence had been received.

#### **6 Minutes - 26th April 2018**

The minutes of the meeting held on 26<sup>th</sup> April 2018 were approved as a correct record.

**7 16/05185/FU - APPEAL SUMMARY CHANGE OF USE OF GROUND FLOOR FROM DOCTORS SURGERY/PHARMACY TO PUBLIC BAR, TWO STOREY REAR EXTENSION; BEER GARDEN AREA; EXTERNAL ALTERATIONS INCLUDING NEW DOORS AND WINDOWS, CONDENSER AND EXTRACTION EQUIPMENT TO ROOF; NEW FENCING AND PARKING TO REAR 39 AUSTHORPE ROAD CROSS GATES LEEDS LS15 8BA**

The report of the Chief Planning Officer informed Members of the outcome of an appeal by JD Weatherspoon Plc against Leeds City Council's failure to determine a planning application for change of use of ground floor from doctors surgery/ pharmacy to public bar, two storey rear extension; beer garden area; external alterations including new doors and windows, condenser and extraction equipment to roof; new fencing and parking to rear, 39 Austhorpe Road, Leeds, LS15 8BA.

Members heard that the appeal had been allowed and an application for full costs against the Council had also been successful.

Members were advised that learning had been taken from this application and would be disseminated to officers.

Plans Panel Members also noted the Inspector's comments and were of the opinion that contentious applications should be brought to Plans Panel sooner.

**RESOLVED** – To note the appeal and costs decisions.

**8 18/01447/FU TWO DETACHED HOUSES LAND OPPOSITE 6 TO 10 CHURCH DRIVE EAST KESWICK LEEDS**

The report of the Chief Planning Officer set out an application for full planning permission for the erection of two detached houses each with a detached single garage, landscaping and provision of new footway across the site frontage on land between 11 and 37 Church Drive, East Keswick, LS17 9EP.

It was noted that the proposal was for the properties to be constructed of stone and slate with front projecting gables, window head and sill details and chimneys.

Members had visited the site earlier in the day, photographs and plans were shown throughout the presentation.

Members were informed of the following:

- A number of planning applications had been submitted for this site.
- This submission followed the recent dismissal of an appeal for a scheme for 3 houses at this site. The appeal for non-determination was dismissed on 23<sup>rd</sup> January 2018.

- A previous appeal also for non-determination had also been dismissed on 27<sup>th</sup> February 2017. The Inspector had dismissed the appeal on the basis that the narrow gaps between the proposed 3 dwellings and the relatively shallow spaces between the back edge of the highway and the front of the dwellings would give the appearance of being cramped and would result in the lack of spaciousness that characterises the locality. It was also noted that the Inspector had raised concerns with regards to the proximity of the dwelling to the ground floor windows of the flats to the south and would raise issues of over-dominance.
- This proposal for two dwellings tried to address the issues raised by the Inspector, providing larger gaps between the two proposed dwellings and larger gaps between the neighbouring properties. The minimum requirement between was 12 metres and the proposal was for 17 metres.
- An assessment had been undertaken to look at overshadowing and it was noted that there would be slight overshadowing in a westerly direction.
- Additional planning history omitted from report in relation to:
  - 17/00877/UOPS2 – Erection of fence: case closed
  - 17/01003/US3 – Unauthorised banner signs: case closed

Mr Fowler and resident of Church Drive and Mr Lord of the Parish Council attended the meeting and addressed the Panel informing them of the following points:

- The development was too large for the area
- It would be preferable for 2 single storey dwellings
- Concerns for the boundary and the fact that the developer had erected a fence and posters without permission
- The proposed dwellings would not have a sufficient back garden/yard
- Street parking issues
- That garages were out of character and would not be used for cars
- Turning movement in that area would be limited
- A development that provided smaller units would be more acceptable

The agent Mr Watts addressed the Panel saying that the development had been designed to be in keeping with the local area, detached garages were not an exception with many houses having detached garages.

Mr Watts was of the view that a block of flats at the development site would be more dominant and cause overshadowing. He also noted that neither of the speakers were residents of the nearby flats. Mr Watts was of the opinion that there was sufficient on street parking and that the proposed driveways could hold 2 cars.

Mr Watts said that the developer had addressed the 2 outstanding matters they being the size of the gaps between the properties and the impact on the amenity of the flats to the south. It was noted that the proposal was now in accordance of the council's design guidance.

In response to Members questions and comments the follow was noted:

- The garages could be brought forward to increase the size of the rear gardens
- Planning breaches had been the mistake of the original architect which as soon as realised had been rectified
- The developer had tried to consult with the Parish Council inviting comments and discussion without success.
- There had been the required 21 day consultation period for comments to be gathered for the report.
- There had been an error in the report and it should be noted that the Neighbourhood Plan had been given weight in relation to this application.
- Boundaries could be changed to provide plots of equal size.

At the conclusion of the discussions Members agreed to change the officer's recommendations to defer and delegate the permission once changes had been made in relation repositioning of garages to create larger rear gardens.

**RESOLVED** – To defer and delegated to the Chief Planning Officer pending further negotiations and the receipt of revised plans showing the repositioning of the garages to maximise garden space.

Under the provisions of Council Procedure Rule 16.5, Councillor Jenkins required it to be recorded that he abstained against the decision to grant the permissions as resolved by the Panel

**9      17/06469/FU CHANGE OF USE OF FORMER RESIDENTIAL CARE HOME TO FORM 12 BED HOUSE IN MULTIPLE OCCUPATION MOUNT CARMEL 88 CHURCH LANE CROSS GATES LEEDS LS15 8JE**

The report of the Chief Planning Officer advised Members of a change of use of former residential care home to form a 12 bed house in multiple occupation at 88 Church Lane, Crossgates, Leeds, LS15.

It was noted that the plan provided at page 60 of the agenda was the original submission for 16 beds not revised scheme. Also the red line boundary had been amended to reflect correct ownership.

Clarification was also provided that there was 15 occupants in the property currently, all on rolling month by month contracts. Members were also advised that this had been a HMO since 2016, and that enforcement action was being held in abeyance pending the outcome of the determination of this application. In light of this it was considered appropriate to reduce the time limit for the implementation of the permission to 6 months.

Members had visited the site earlier in the day with photographs and plans shown throughout the presentation.

Members were informed of the following points:

Draft minutes to be approved at the meeting  
to be held on Thursday, 5th July, 2018

- The property was adjacent to a primary school;
- The conservatory and an outbuilding to the rear were to be removed;
- Care use for the property had gone and another use had to be sought for the property;
- 6 parking spaces to be provided;
- A noise assessment had been undertaken by Environment Officers and an acoustic barrier in the form of a timber panel fence and additional planting were proposed for screening and noise containment purposes;
- The original plan had proposed 16 rooms this had now been reduced to 12 rooms this would allow more amenity / lounge areas on each of the floors;
- All bedrooms were to be en-suite, although separate bathrooms were proposed;
- Secure cycle parking was proposed to the lower ground floor for residents;
- A new refuse store with keypad for convenience of residents and waste disposal operatives.

The Panel was also informed of the following condition changes and additions:

- Standard time limit for implementation changed to 6 months
- Implementation of access alterations
- Management condition
- Details of boundary treatment to be submitted and agreed – the plan showed a retaining wall was to be moved

Mr Judge attended the meeting to speak against the recommendations. Mr Judge informed the meeting that the HMO was positioned close to a school and that the rear boundary backed onto an area used by the children for activities and lunch breaks.

Mr Judge said that parking was an issue in the area and he was of the view that parking spaces provided would not be sufficient or used by the residents. Mr Judge was of the opinion that there was no such thing as a sound proof fence and, that the people who would live in the HMO would have a different lifestyle pattern to those who already lived in the area. He was of the view that this would cause a disturbance to the neighbouring residents.

Mr Judge highlighted the concerns raised by Cllr. Pauleen Grahame in relation to the impact on road users and highway safety regarding the number of cars parked outside Mount Carmel on the road. It was also noted at night time there were often groups outside the building.

The agent Andrew Windress addressed the Panel providing a background on the applicant who had inherited the care home from his parents. It was noted that this was his only source of income and that he currently lived at the property providing the day to day management and maintenance. He also had another property close by.

Mr Windress informed the Panel that the ages living at the HMO ranged from 22 to 67 years old. Mr Windress highlighted the need for HMO's providing housing for those who were unable to afford a different tenure.

The location of the HMO had not been raised as an issue by the Inspector and it was noted that the Inspector was happy with the ratio of occupants to parking spaces which the Council had adopted. Members were also informed that the parking spaces were oversized to allow cars to drive out onto Church Lane rather than reverse into the main highway.

The boundary with the school was deep and should mitigate any concerns.

Members briefly discussed the points raised and the conditions to be imposed on the application.

**RESOLVED** - To grant permission as set out in the submitted report with the additional conditions as follows:

- Standard time for implementation reduced from 3 years to 6 months
- Implementation of access alterations including dropped kerbs
- Management condition to include the bin storage, amenity areas and the future maintenance of the acoustic fence
- Boundary treatment to be submitted and agreed (including details of the re-siting of a section of retaining wall)
- Assess parking arrangements to condition additional spaces if required
- Additional condition for Electric Vehicle Charging Point (EVCP)

**10 17/07114/RM RESERVED MATTERS APPLICATION FOR CONSTRUCTION OF 18 FLATS AND ASSOCIATED CAR PARKING FORMER SITE OF STANKS FIRE STATION SHERBURN ROAD SWARCLIFFE LEEDS LS14 5DW**

The report of the Chief Planning Officer advised Members of a reserved matters application for the construction of 18 flats and associated car parking at the former Stanks Fire Station, Sherburn Road, Swarcliffe, Leeds LS14.

Members had visited the site earlier in the day and were shown photographs and plans throughout the presentation.

It was noted that a previous application for the construction of 13 houses had been refused on the grounds relating to the overdevelopment of the site; adverse impact of design, car parking arrangements, protected trees. The appeal was dismissed by the Inspector on the basis that the proposal was likely to increase opportunities for crime and anti-social behaviour and would have an unacceptable effect on the character and appearance of the area where the landscape was concerned.

Members were informed of the following points:

- All the trees on the site currently have TPOs on them although it is recognised that some trees may have to be removed;
- The bus stop will remain as it would not impinge on sightlines from the proposed access;
- Additional conditions to include:
  - Closing up of redundant access
  - Maintenance details for access road as it is to remain un-adopted
- Existing access is to be used;
- The application was for 18 flats of 1, 2 and 3 bedrooms;
- The flats were within the guidelines of the National Space Standards;
- 28 unallocated car parking spaces including 2 disabled bays;
- Communal bins and cycle store; and
- Proposal for 3 affordable units.

The recommendation to defer and delegate would be subject to Section 106 agreement.

Members briefly discussed the application highlighting the need for disabled access, provision for more or larger bin store, use of solar panels and sustainability of the development and the size of the proposed units.

Members were advised that Condition 3 related to sustainability requirements would include Photovoltaic Panels including these to serve the affordable units.

**RESOLVED-** To defer and delegate to the Chief Planning Officer as set out in the submitted report and to include the following additional conditions and an amendment to Condition 3:

- Closing up of redundant access;
- Maintenance details for access road as road is to be un-adopted;
- Condition 3 sustainability requirements to include use of Photovoltaic Panels including affordable units also to include Electric Vehicle Charging Point (EVCP)

## **11 18/01519/FU TWO STOREY REAR EXTENSION 43 NEW STURTON LANE GARFORTH LEEDS LS25 2NW**

Before the commencement of Item 11 Cllr. Dobson removed himself from the Panel so that he could speak on behalf of the objectors as referred to in minute 4.

The report of the Chief Planning Officer set out the proposal for a two storey extension at 43, New Sturton Lane, Garforth, LS25 2NW.

Members had attended a site visit and were shown photographs and plans throughout the presentation.

Members heard that the application involved the removal of the existing conservatory and the construction of a two storey rear extension. This would build partly over the existing single storey rear extension and will stretch the full width of the rear elevation with a hipped roof. One new rear window was proposed and two new first floor windows. It would be set 1m away from the common boundary with no. 6 Braemar Drive. It was proposed that a side window to the extension would be obscure glazed.

It was noted that the houses in the immediate vicinity had staggered siting and many of the properties in the locality had been extended in some form.

It was also noted that at the request of officers the roof extension had been hipped to lessen the massing of the extension.

Members were informed that a number of representations had been made by the neighbours of 6 Braemar Drive whose property lies to the north raising concerns about overshadowing and loss of light to a side porch, and garden, their comments were maintained despite the revision to the scheme.

Cllr. Dobson spoke at the Plans Panel on behalf of Mr and Mrs Peverell of 6 Braemar Drive. Cllr. Dobson informed the Panel that the extension would impact on Mr and Mrs Peverell due to loss of light in their kitchen/dining area. He explained that although it was a large part of the living space it was a significantly gloomy area.

Cllr. Dobson said that the extension was an increase to the property of 50% and would over dominate and cause loss of light from about 2pm. Cllr. Dobson was of the opinion that 40 years ago when the properties were built they had been staggered to allow for more natural light to flow into the properties and that this should have significant weight to the objections raised.

Mrs Driver the applicant attended the Panel and addressed the Panel explaining that the extension was not a 50% increase to the upper floor. She also said that many houses in the area had been extended and it would be in keeping with the character of the area.

Mrs Driver said that the porch to the side of the neighbouring property was a secondary source of light as the neighbouring property did have a window to the rear.

Mrs Driver was of the view that due to the original staggering of the property there would be limit direct overshadowing and reasonable over dominance.

Group Manager Area Planning, David Newbury said that the scheme was policy compliant. He went on to explain, although there would be an impact on the light to the neighbouring property he clarified that the planning perspective viewed the main source of light to be from the rear window.



Members briefly discussed the overshadowing issue and although they were sympathetic to the issues raised by the neighbours they noted that the scheme was policy compliant.

**RESOLVED** – To grant permission as set out in the submitted report.

## **12 Date and Time of Next Meeting**

The next meeting of the North and East Plans Panel to be held on Thursday 5<sup>th</sup> July 2018 at 1:30pm.

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Originator: J Thomas  
Tel: 0113 222 4409

## Report of the Chief Planning Officer

### NORTH AND EAST PLANS PANEL

Date: 5<sup>th</sup> July 2018

**Subject: 18/01769/FU – Retrospective application for the housing of animals within a detached agricultural building at, Swillington Organic Farm, Coach Road, off Wakefield Road, Swillington, LS26 8QA**

**APPLICANT**

Mrs Jo Cartwright

**DATE VALID**

21<sup>st</sup> March 2018

**TARGET DATE**

14<sup>th</sup> May 2018

**Electoral Wards Affected:**

**GARFORTH AND SWILLINGTON**

Yes

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

**RECOMMENDATION: GRANT A TEMPORARY PERMISSION subject to the following condition(s):**

1. The use of the building for the accommodation of livestock shall cease within twelve months

**1.0 INTRODUCTION**

1.1 The application relates to an existing barn which was erected under agricultural permitted development rights in 2016, but which from March 2017 has been used to house animals. The applicant wishes to continue to use the barn for livestock and thus retrospective consent is sought for this use of the structure.

1.2 As the structure lies close to a listed building and the applicant is leasing land from St Aidan's Trust, which is managed by Leeds City Council, the application has been referred to Plans Panel for determination.

1.3 Councillor Mark Dobson has expressed support for the proposal.

**2.0 PROPOSAL:**

2.1 The existing barn measures approximately 21m<sup>2</sup> and has a pitched roof to a height of 5.5m at eaves and 8.4m to ridge. The structure is constructed of pre-cast concrete panels to its lower walls with timber boarding to the upper portion and a fibre cement roof. The interior of the barn is subdivided into a number of pens and at the time of site visit the floor was laid with fresh straw.

### **3.0 SITE AND SURROUNDINGS:**

3.1 The application relates to Swillington Organic Farm which is an established farming enterprise located to the east of the A642 and within the Green Belt and a Special Landscape area. The farm is accessed via a narrow, uneven track which marks the northern boundary of the agricultural unit, and leads to the farm shop, a collection of farm buildings and a dwelling which is assumed to serve the farm. The access continues a little further to the east and a footpath continues on toward Astley Lane, with the vehicular access turning to the south, leading to Swillington House, the application barn, fishing ponds associated with the farm and an area of hardstanding used for car parking. Historic walled gardens assumed to be associated with the former Swillington Hall, demolished in 1952 are located to the rear of the farm shop and an area of caravan storage is situated to the west of the access road. The holding is a mixed organic farm, farming 500 acres (150 acres owned and 350 acres grazing licence from St Aiden's). As outlined within the submitted supporting information there are approximately 80 beef cattle, 100 sheep, 30 pigs, 1200 chickens and 200 seasonal poultry. Cattle and sheep numbers have recently been increased due to an extended grazing licence with St Aiden's and in addition to the 80 beef cattle there are 45 breeding cattle and 45 calves being reared.

3.2 Historically the farm was a larger unit which has now been subdivided, with Swillington House to the immediate east of the application building now within separate ownership. This is a grade II listed building, with a U-shaped footprint and constructed of ashlar stone with a slate roof.

### **4.0 RELEVANT PLANNING HISTORY:**

4.1 16/03657/DAG Agricultural Determination for detached storage building  
**Approved**

14/04962/DAG Determination for single storey detached storage unit  
**Not Required**

33/461/05/FU Change of use of riding stables involving alterations to poultry slaughter house  
**Approved**

### **5.0 HISTORY OF NEGOTIATIONS:**

5.1 Following the officer site visit concerns relating to noise and odour were raised with the agent and mitigation measures were requested. In response the agent notes that no consultees have raised such concerns and has declined to provide any odour mitigation. Additional planting between the barn and Swillington House has been proposed to minimise noise. A condition relating to planting has not been included at this time due to the recommendation of a temporary permission.

### **6.0 PUBLIC/LOCAL RESPONSE:**

- 6.1 The site has been advertised by Site Notice and in the Yorkshire Evening Post. The applicant has also used their business communications to raise awareness of the planning application.
- 6.2 Ten letters of objection have been received from the occupants of Swillington House; 24 letters of support have been received from seventeen addresses including from the applicant, employees, customers and a veterinary practice in Retford, Nottinghamshire. Of these seventeen addresses the nearest to the site is 208 Leeds Road, approximately 2.5 miles away in Rothwell (an employee) and others are from Liverpool, Coldstream, Lockerbie, Herefordshire and Gloucester.
- 6.3 The objection letters raise concern regarding noise and odour, with noise being a particular concern during the night and audio recordings provided as part of the submissions. Concern is also raised regarding the planning prior approval process, the accuracy of the submitted landholding information, the human rights act, and health and safety legislation.
- 6.4 The letters of support note that the farm is a working business that produces high quality food, that the barn supports animal welfare, and that the structure is screed from the adjacent dwelling. The RSPB have written to note the wetland environment within the land leased from St Aidens Trust means that animals may have to be moved at short notice.
- 6.5 Swillington Parish Council raise no objection to the development.

**7.0 CONSULTATIONS RESPONSES:**

- 7.1 Highways No objection
- Agricultural Surveyor Notes that the size of the structure is reasonable for the needs of the holding and concludes that the noise and odour impacts are unlikely to be unreasonable.
- Environmental Health Note that the structure is part of a working farm and the impacts cannot easily be mitigated, and also that noise recording equipment has been offered to the objectors but declined at the present time.

**8.0 PLANNING POLICIES:**

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Leeds currently comprises the Core Strategy (2014), saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013), The Aire Valley Area Action Plan and any made Neighbourhood Development Plan.

Local Planning Policy

- 8.2 The following Core Strategy policy is relevant to the proposal:

<u>SP8</u>	Seeks to ensure a competitive local economy and supports the growth and diversification of the rural economy.
<u>P10</u>	Seeks to ensure that new development is well designed and respect its context.
<u>P11</u>	Seeks to ensure that Leeds' heritage assets are conserved and enhanced.
<u>P12</u>	Seeks to ensure Leeds' landscapes are protected.

The following saved UDPR policies are also relevant:

<u>GP5:</u>	Seeks to ensure that development proposals resolve detailed planning considerations, including amenity.
<u>BD6:</u>	Seeks to ensure that development proposals respect the scale, form and detail of the original building.
<u>BD5:</u>	Seeks to ensure new development protects amenity.
<u>N37:</u>	Special Landscape Area
<u>N37A:</u>	Development within the countryside

### National Planning Policy

- 8.3 The National Planning Policy Framework (2012) 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 National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.
- 8.4 The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. It is considered that the local planning policies mentioned above are consistent with the wider aims of the NPPF. Draft revisions to the NPPF are currently being consulted upon; at the present time these carry little weight.
- 8.5 The Planning Practice Guidance (PPG) provides comment 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. The Neighbourhood Planning Act 2017 requires that all pre-commencement conditions are agreed in advance with applicants.

## **9.0 MAIN ISSUES**

- 1) Green Belt
- 2) Rural Enterprise
- 3) Design and Character / Visual Amenity
- 4) Neighbour Amenity
- 5) Representations

## **10.0 APPRAISAL**

### Green Belt

- 10.1 The proposed development is located within the Green Belt. As outlined within the National Planning Policy Framework (NPPF) the essential characteristics of Green Belt are their openness and their permanence. The construction of new buildings within the Green Belt is inappropriate, except within certain circumstances. As outlined within the NPPF inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
- 10.2 The barn was originally constructed under Part 6 of section 2 of the General Permitted Development Order, which allows the construction of agricultural buildings subject to certain conditions and criteria. One of these is that the structure is not used to house animals. As noted above the structure is now being used to house animals, and this permission does not seek retrospective consent for the erection of the structure, merely its extended use. The use of the building to house animals will have no greater impact upon the Green Belt than its use to house hay, fodder and equipment. As such the application is acceptable in this regard.

### Rural Enterprise

- 10.3 Spatial Policy 8 of the Core Strategy and section 3 of the Framework seek to support a prosperous rural economy, noting that the sustainable growth and expansion of businesses and enterprises in rural area will be supported. It is understood that the farm has recently expanded the available grazing areas by leasing additional land from St Aidens Trust and that as a consequence the herd size has increased and thus the additional barn is required. There is therefore policy support for the expansion of the business, including the necessary building and structures to support that expansion. Whilst the principle of the development is therefore acceptable, both in respect of the Green Belt and economic development, before reaching a view as to whether the barn is acceptable its impact upon visual amenity and neighbour amenity must first be considered. These assessments are outlined below.

### Design and Character / Visual Amenity

- 10.4 The National Planning Policy Framework states that “good design is indivisible from good planning” and authorities are encouraged to refuse “development of poor design”, and that which “fails to take the opportunities available for the improving the character and quality of an area and the way it functions, should not be accepted”. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of the listed building. In such cases, it is necessary to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which it possesses. This statutory framework is reinforced by the National Planning Policy Framework (the Framework) at Section 12. Core Strategy policy P11 reflects this special duty and seek to ensure that development is appropriate to its context and preserves the city’s heritage assets. Policy P10 of the Core Strategy seek to ensure that new development is of high quality and is appropriate to its context whilst policy P12 seeks to protect the character, quality and biodiversity of Leeds’ townscapes and landscapes. As outlined above the site is located within a special landscape area (saved policy N37) and it is therefore important to ensure that new development does not harm its character and quality.
- 10.5 The barn which has been constructed is large and is a distinctly utilitarian structure, which has a semi-industrial appearance. Whilst this might suggest that its presence

within a special landscape area and close to a listed building is not appropriate, the barn is typical of modern agricultural buildings and lies adjacent to a similar structure located to the immediate north. The barn is therefore an agricultural building, set adjacent to similar buildings and within a working agricultural landscape, of which the listed building is formally a part. The barn is set approximately 70m from the listed building, and is separated from it by a shared access road and some existing established planting. The listed building is also enclosed by a domestic wall and gates, with a courtyard to the front and outbuildings and gardens to the rear. There is thus a clear sense of separation between the house and the farm building, with the former having a defined curtilage and setting which is both physically distinct and of a different character to the working farm. The physical separation between the two structures and the clearly separate character of each landholding means that the barn is not considered to cause harm to the setting of the listed building. As such the application is acceptable in this regard.

### Residential Amenity

- 10.6 As outlined within Policy P10 of the Core Strategy and saved policy BD5 of the UDP new development must protect amenity, including residential amenity. There is only one independent residential dwelling in close proximity to the barn which is Swillington House to the east. The occupants of this dwelling have raised concern about noise (in particular disturbed sleep) as well as odour. Site visits have been made by the case officer and the agricultural surveyor to the organic farm, and also by the case officer to Swillington House.
- 10.7 At the time of the case officer's site visit to the farm no significant odour was perceptible, nor any significant noise; similar observations were recorded by the agricultural surveyor. During the site visit to Swillington House cattle were audible from within the property, including in upper floor bedrooms. Odour was perceptible from a field to the east where manure had been deposited in piles, clearly over a number of weeks/months. The issues of noise and odour will be discussed in turn.

### *Noise*

- 10.8 It is clear from the neighbour's objection letters that the noise and disturbance they experience is related to the cattle which are housed / weaned within the building. The letters acknowledge that this is not a permanent source of noise, and it is clear that the problems are most acute during the winter months and during weaning. The neighbours have reported particular concerns about lost sleep and night time noise and have reported noise levels of over 80dBb within bedrooms during night-time hours (11pm – 7am). The council has no definitive guidance relating to acceptable noise levels, however the WHO night noise guidance suggests that levels should not exceed 40dB. It is therefore clear that if the recorded levels of over 80bB are accurate, then the impact upon the amenity of Swillington House will be severe and unacceptable. It is understood that neighbours have been in contact with Environmental Health since late last year, and noise monitoring equipment was offered in spring in order to assess the noise impact of the barn. This equipment has been declined at the present time as cattle are no longer routinely housed in the barn and thus the noise impacts are not at the same levels as previously experienced.
- 10.9 Within the objection letters attention has been drawn to the fact that the permitted development regulations under which the barn was constructed prevent the erection of buildings used for cattle within 400m of residential dwellings. From this the inference is drawn that any structure within 400m must, as an a priori fact be harmful to amenity. This however is not the case, and it is simply that any structure within



400m of a residential dwelling that is used to house animals requires planning permission, and thus the impact upon amenity can be fully assessed. In making such an assessment the views of relevant specialist consultees will be of significance. As noted above, both the agricultural surveyor and environmental health colleagues have reviewed the application and both conclude that the barn is part of a working farm, and suggest that the noise levels created by the building are unlikely to be any worse than that generated by cattle within the fields and the general activity of the farm.

- 10.10 These conclusions are noted, although it should also be borne in mind that the barn is now the second structure used to house animals in proximity to Swillington House and thus this creates a concentration and intensification of activities, particularly during weaning and over wintering. The use of the barns and associated activity will have a materially different impact than the general grazing of cattle on land which is remote from the residential dwelling. This said planning permission can only be refused where there is clear and demonstrable evidence of unreasonable harm. At present, the reported 80dB reading taken by the neighbours is unverified by the authority's environmental health team, and in the absence of independent readings, the refusal of planning permission on account of noise would be un-evidenced and thus unreasonable. It is for this reason that officers are recommending that a temporary permission be considered for a period of twelve months, as this would allow the full impact of the structure to be considered through all seasons. If harm is demonstrated through environmental health monitoring then the permission would fall away after twelve months; if harm is not demonstrated than a further application can be made and permanent permission granted. Temporary permissions can sometimes be considered unreasonable as they can require significant investment on the part of an applicant with no guarantee of a permanent return. However, in this instance the building has already been erected and its interior is fitted out to enable the use required by the working farm. As such a temporary permission would pose no financial risk to the applicant, nor curtail the working of the farm, and thus is not an unreasonable proposition in the circumstances.

#### *Odour*

- 10.11 As outlined above concern is also raised by the objectors about the impact of odour. The presence of manure piles on fields to the immediate rear of Swillington House was noted during the officer site visit to the neighbours, and odour from these piles was perceptible within the gardens and grounds of Swillington House. It was also clear that manure has been deposited within the field over a long period of time and thus depositing refuse material close to the neighbours is an established practice. No odour was detected within the barn or its immediate environs by the case officer or the agricultural surveyor, with the surveyor noting that more frequent cleaning of the structure will likely lead to increased odour. Whilst it is unfortunate that the manure is deposited close to the neighbours garden area and not on fields further away from the house, there is little that can be done to regulate this aspect of the working farm. It is likely that this practice pre-dated the construction of the barn, and the manure piles will include material from other structures such as the other barn to the north. Planning conditions can only address the direct impacts of a development and it would be very difficult enforce any condition that sought to regulate the impact of manure from the application barn, as other areas of the farm will still generate manure, and could be stored or deposited anywhere within the farm's land. Officers have requested that the agent look to mitigate the impact of the odour from the manure piles, and it was hoped that perhaps a management plan that sought to deposit such material away from the dwelling would be produced. However, the

agent has declined to address the odour impacts and as noted the ability of the LPA to address this issue through the current planning application is limited, and even a condition that sought to manage the waste material from the application barn would not likely resolve the concerns of the neighbours in relation to odour.

#### *Overdominance and Overshadowing*

- 10.12 Concern has been raised by the neighbours in relation to the size and scale of the barn. The barn is undoubtedly a structure with a large footprint, and is essentially two stories in scale and is visible from the front windows of Swillington House. However, at a distance of approximately 70m the barn cannot be said to have an unreasonably overbearing or overdominant impact upon main windows and main amenity space, nor to cause harmful overshadowing. The barn has undoubtedly changed the view experienced by the residents of Swillington House, from one of open fields to a semi-industrial structure, however there is no right to a pleasant view within planning legislation, merely the right to appropriate outlook and light penetration. As noted the distance to the barn is sufficient to mitigate any impact in these respects.

#### Other Matters

- 10.13 All material considerations raised through representations have been discussed above. It is noted that the objectors have drawn attention to the ECHR, Health and Safety Legislation, the planning prior approval process and the accuracy of the submitted landholding information.
- 10.14 Concern has been raised relating to public health and the impact of the odour emissions. Whilst public health is a general material planning consideration, specific harmful impacts of any development are regulated by separate legislation and regimes. It is generally accepted that when considering planning applications a Local Planning Authority must assume that these regimes will operate effectively and not seek to duplicate the regulatory functions of other public bodies.
- 10.15 Article 8 of the European Convention on Human Rights relates to the right to privacy and a family life. It is well established that the grant, or denial, of planning permission does not breach the European Convention on Human Rights. The general purpose of the ECHR is to protect human rights and fundamental freedoms and to maintain and promote the ideals and values of a democratic society. It sets out the basic rights of every person together with the limitations placed on these rights in order to protect the rights of others and of the wider community. The planning system by its very nature respects the rights of the individual whilst acting in the interest of the wider community. It is an inherent part of the decision-making process to assess the effects that a proposal will have on individuals and weigh these against the wider public interest in determining whether development should be allowed to proceed.
- 10.16 In respect of the landholding information, the applicant has signed certificate A to state that they own all the land relating to the application (ie the land on which the barn sits). Any disputes that relate to the wider landholding are ultimately a matter between the relevant parties which must be resolved outside the planning process. The concerns relating to the prior approval process are noted and it is understood that the this matter is being pursued through the council's complaints procedure and the Local Government Ombudsman.

## **11.0 CONCLUSION**

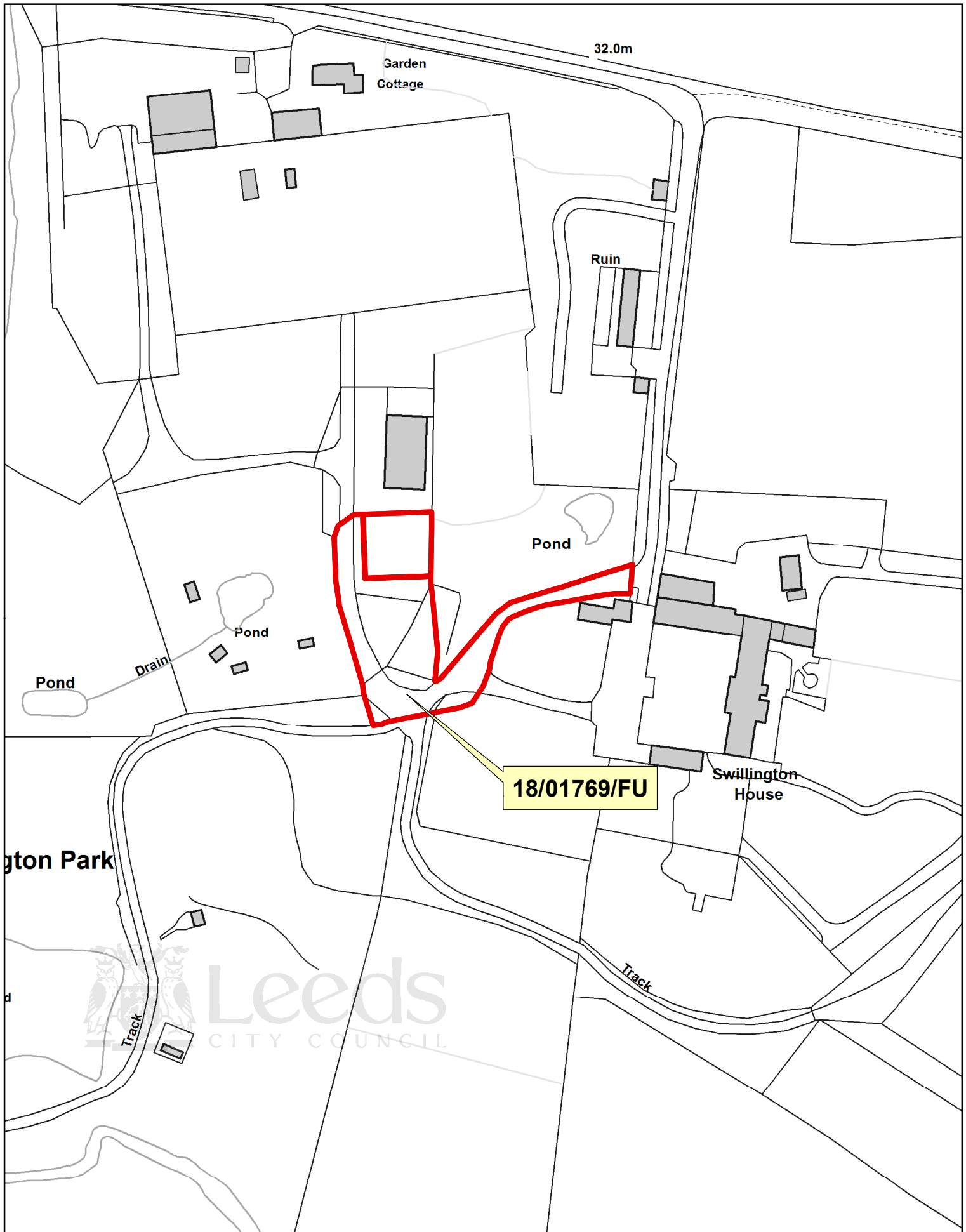
11.1 The application is therefore considered to be acceptable. The barn is considered to be an appropriate structure within a working agricultural landscape that will not harm the character of the listed building, special landscape nor the wider area. At the present time the full impact in respect of neighbouring amenity cannot be fully assessed and thus a temporary permission is recommended to allow for the impact to be monitored.

**Background Papers:**

Application files

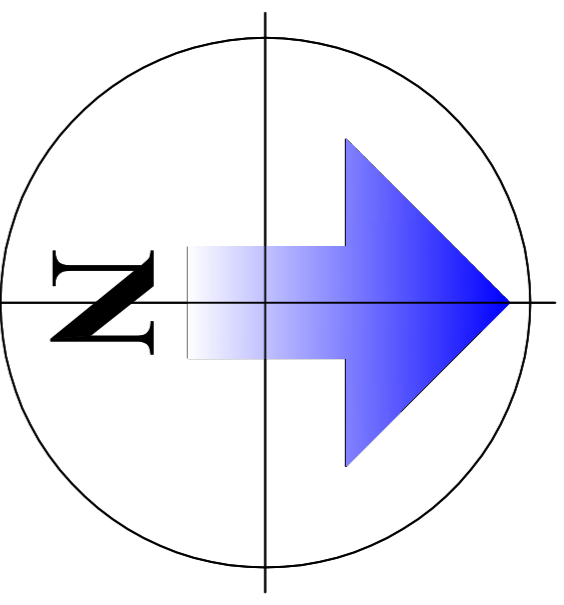
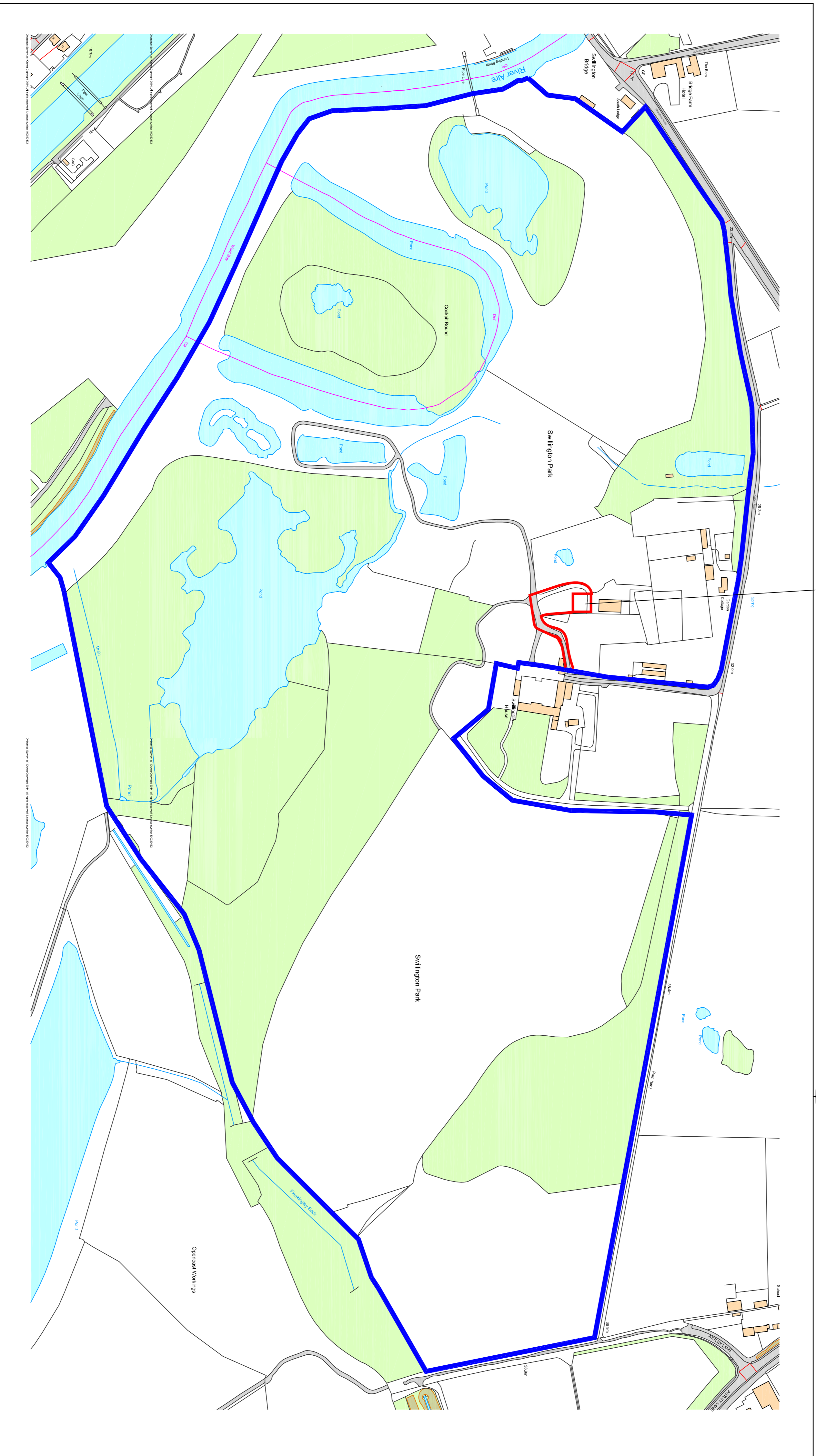
18/01769/FU

Certificate of ownership: Certificate A signed by the agent



# NORTH AND EAST PLANS PANEL





Proposed agricultural barn

Site location plan

Swillington Organic Farm  
 Garden Cottage  
 Coach Road  
 Swillington  
 Leeds  
 LS26 8QA

SCALE  
 1:2500

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Originator- U Dadhiwala Tel: 0113 247 8059
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**Report of the Chief Planning Officer**

**NORTH AND EAST PLANS PANEL**

**Date: 5<sup>th</sup> July 2018**

**Subject: 18/01883/FU – Raising ridge height, two storey and single storey extensions to front, side and rear with Juliet balcony to rear, dormer windows to front, alterations to boundary treatment at 50 Roper Avenue, Gledhow Leeds LS8 1LG**

APPLICANT	DATE VALID	TARGET DATE
Mr & Mrs R & J Pinder	27 <sup>th</sup> March 2018	22 <sup>nd</sup> May 2018

<p><b>Electoral Wards Affected:</b></p> <p><b>Roundhay</b></p> <p><input type="checkbox"/> Yes    Ward Members consulted (referred to in report)</p>	<p><b>Specific Implications For:</b></p> <p>Equality and Diversity    <input type="checkbox"/></p> <p>Community Cohesion    <input type="checkbox"/></p> <p>Narrowing the Gap    <input type="checkbox"/></p>
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**RECOMMENDATION: GRANT PERMISSION subject to the following conditions:**

1. Time limit on full permission;
2. Development carried out in accordance with approved plans
3. Materials to match
4. Trees/ Hedges shown to be retained to be protected
5. Submission of Arboriculture Method Statement
6. No new windows in the side elevations of the extensions.
7. Implementation of a Landscape Scheme
8. Tree protection
9. Permitted development rights for extensions and out buildings removed
10. Details of the front boundary treatment to be submitted
11. The garage within the site will be demolished prior to works being completed on site
12. Details of any new walls and fences to be submitted

## **1.0 INTRODUCTION**

1.1 The alterations proposed will convert this bungalow into a two storey dwelling. This application has been brought to Plans Panel at the request of Cllr J Goddard. The following concerns have been raised;

- The proposal is too large for the plot and will be overbearing, over dominant and out of context in the street.
- There are a number of trees in close proximity of the site, which are protected due to their location within the Conservation Area. Residents were advised that such a substantially bigger building would require deeper and bigger foundations which would undoubtedly affect the roots of these trees and cause them damage.
- There are concerns that parking is increasingly a problem on Roper Avenue as the street is narrow. This is particularly acute at the cul-de-sac end of the street as there is no turning circle and residents are not convinced that there is room to park three cars in the way that it is shown on the plans.

1.2 The request sets out material planning considerations that give rise to concerns affecting more than neighbouring properties and therefore it is appropriate to report the application to Panel for determination.

## **2.0 PROPOSAL**

2.1 The application proposes to alter the existing bungalow to form a two storey dwelling. The submitted block plan shows that parts of the original building will be retained as part of the scheme. The resulting extensions will increase both the height and the width of the bungalow. Following the alterations, the footprint of the dwelling would measure approximately 10.6 by 13.2m. Whilst the measurement of the footprint of the existing bungalow is around 8m by 9m. The proposed dwelling will measure 8.3m in height, making it around 2.1m taller than the existing building. The proposal will feature two dormers to the front and will have a pitched roof.

2.2 The driveway and access is also shown to be modified, no details of this has been given; but as the works appear minor and do not raise any materials planning concerns these details can be secured via conditions.

## **3.0 SITE AND SURROUNDINGS**

3.1 The application site is located on Roper Avenue, Leeds, LS8 1LG and falls just outside the boundary of the Roundhay Conservation Area, which is located to the west. The application site is located at the end of a residential cul-de-sac, where the immediate dwellings are generally two storey semi-detached dwellings of similar design but the materials of the dwellings vary. There are however some dwellings within the street that have a much more of a bespoke design with pitched roofs. The style and form of the dwellings on the street become much more varied the street further away from the site.

3.2 The application property features a reasonably size garden which is enclosed by trees and shrubs. The trees along the eastern boundary are located within the Conservation Area boundary and therefore benefit from protection. These trees and shrubs, screen the site from the Conservation Area and therefore currently the application site results in a limited impact upon the character of the Conservation Area. Dwellings adjoin the garden of the application site on all sides. There is a level



difference between application site and the adjacent dwelling No. 48, with the adjacent dwelling being set 0.5 lower than the host dwelling.

#### **4.0 RELEVANT PLANNING HISTORY:**

4.1 None.

#### **5.0 HISTORY OF NEGOTIATIONS:**

5.1 Following comments made by the Landscape Officer that the proposal may have an adverse impact upon the trees and shrubs within the site, the applicant was advised to carry out an impact assessment and a tree survey. These documents have been submitted.

5.2 Concerns were also raised by Officer's that the first floor windows in the rear elevation would overlook the dwelling beyond the rear boundary. After discussions with the applicant the depth of the first floor area was reduced so that a gap of 7.5m is retained from the rear boundary of the site.

#### **6.0 PUBLIC/LOCAL RESPONSE:**

6.1 The application was originally advertised by Neighbour Notification Letters that were sent 27.03.2018. Following revised plans being submitted the scheme was re-advertised on 09.04.2018 and on 21.05.2018.

6.2 12 objection letters have been received. The following concerns have been raised:

- The hedges along the boundaries of the site should not be altered
- The proposal will raise overlooking issues.
- The remaining garden space would not be adequate for this family home
- Trees will be damaged, pruned and removed would harm the character of the area
- Overdevelopment of the site
- No references made with regards to the trees within the site
- Drainage issues
- The proposal will harm the character of the area
- Overshadowing / dominance/ loss of light
- The plans are inaccurate
- The lack of information on the plans makes it difficult for the application to be properly judged.
- The proposal will overshadow and over-dominate neighbouring dwellings.
- The proposal is contrary to national and local planning policy guidance
- PD rights is not a fallback position
- The parking spaces are substandard and would raise highway safety issues.
- The amended plans do not overcome the issues raised by neighbours
- The elevations plans does not correspond to the reduction in the depth of the scheme that was made under the revised plan
- The level differences between the site and the neighboring sites have not been accurately shown on the plans

6.3 Cllr Goddard has raised the following concerns with the scheme;

- The proposal is too large for the plot and will be overbearing, over dominant and out of context in the street.
- Impact of the scheme on existing trees.
- On street parking.

## **7.0 CONSULTATIONS RESPONSES:**

7.1 Landscape Team - The proposed house footprint in relation to the site is certainly 'tight for comfort' spatially. It is questionable that there are sufficient grounds for objection on tree grounds alone in terms of increased risk arising from the proposal. If the overall planning balance supported the proposal, it should be possible with an appropriate Arboricultural Method Statement for the leafy boundary of the adjacent Conservation Area to the east to be maintained - albeit with some moderate pruning, conscientious developer commitment and with arboriculturist supervision and input. See paragraphs 10.10 to 10.13 below.

## **8.0 PLANNING POLICIES:**

8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2 Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 requires development, as a whole, to preserve or enhance the appearance or character of Conservation Areas.

### Development Plan

8.3 The Development Plan for Leeds comprises the Adopted Core Strategy (November 2014), saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013) and any made neighbourhood development plan.

The application site has no specific allocations or proposals other than being adjacent to the Conservation Area.

### Adopted Core Strategy

8.4 The Core Strategy is the development plan for the whole of the Leeds district. The following core strategy policies are considered most relevant:

Policy P10: Seeks to ensure that new development is well designed and respect its context

Policy P11: Seeks to ensure developments that affect designated and undesignated heritage assets conserve and enhance local character

Policy T2: Accessibility requirements and new development

### Saved UDP policies:

8.5 Policy GP5: Seeks to ensure that development proposals resolve detailed planning considerations, including amenity.

Policy LD1: Seeks to ensure that development is adequately landscaped

Policy N23: Refers to open space and the retention of existing features which make a positive visual contribution.

Policy N25: Refers to boundaries around sites

Policy N19: Developments within or adjacent to conservation areas.

Relevant Supplementary Planning Guidance includes:

- 8.6 Supplementary Planning Guidance “Householder Design Guide” – that includes guidance that the design and layout of new extensions and that they should have regard to the character of the local area the impact on their neighbours.

HDG1: All alterations and extensions should respect the scale, form, proportions, character and appearance of the main dwelling and the locality. Particular attention should be paid to:

- i) the roof form and roof line;
- ii) window details;
- iii) architectural features;
- iv) boundary treatments and;
- v) materials.

Extensions or alterations which harm the character and appearance of the main dwelling or the locality will be resisted.

HDG2: All development proposals should protect the amenity of neighbours. Proposals which harm the existing residential amenity of neighbours through excessive overshadowing, overdominance or overlooking will be strongly resisted.

The HDG sets out that as a general rule of thumb two storey rear extensions when sited on a common boundary should not project more than one metre beyond the rear of the neighbouring property. It also sets out this extent of projection may be increased where the extension is set away from the common boundary. This explanatory text informs the interpretation of the relevant policies set out in the HDG and UDP.

- 8.7 Roundhay Conservation Area Appraisal – tree planting is identified as a key element of the conservation area in general and the area west of Roundhay Park.
- 8.8 Roundhay Ward Neighbourhood Design Statement (adopted as supplementary guidance) – Character Area 7 Gledhow – “The sweep of beeches and leafy verges give Gledhow its principal appeal.”

National Planning Policy (NPPF)

- 8.8 The National Planning Policy Framework (2012) 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 and promotes sustainable (economic, social and environmental) development. NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.
- 8.9 In relation to heritage assets The NPPF states that the Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary

expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Para's 132 and 138 of the NPPF with regards to Heritage Assets states that,

*'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting'.*

*'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.'*

8.10 Guidance on conditions is provided within the Planning Policy Guidance (NPPG).

## **9.0 MAIN ISSUES**

- 1) Principle of Development
- 2) Design and Character
- 3) Impact on the Conservation Area
- 4) Impact on trees
- 5) Residential amenity
- 6) Garden Space
- 7) Parking
- 8) Public Representations

## **10.0 APPRAISAL**

### Principle of Development

- 10.1 The bungalow is located within a street where the majority of the dwellings are two storey structures and that there is a variation in the design of dwellings along the street. Moreover the application bungalow is arguably a structure that is itself out of keeping with its immediate vicinity, as it is the only bungalow. There is therefore no material planning reason why the change of the character of the plot through the conversion from a bungalow to a two storey dwelling is not acceptable in principle.
- 10.2 The issue has been raised by objectors regarding the policy relating to the usual requirement for extensions to be subservient and to respect original property. Clearly in this case the scheme, if allowed will totally transform the character of the property leaving little if anything behind of that original character. This is the limitation of such a policy and its application where the character of the application site is to be retained such as the erection of a two-storey side/rear extension to an existing dwelling. Where all other material considerations are met the change in character of the dwelling, so long as it affords a coherent design to the street and is otherwise not out of keeping with its location, is considered an acceptable approach. Had the applicants been seeking to simply extend the bungalow but retain its character as a bungalow, then the policy of keeping the extensions subservient would be given more weight.

### Design and Character

- 10.3 The main concern with this scheme is whether the transformation, from a bungalow to a two storey dwelling, would otherwise adversely impact on the street scene generally. Given that the street features some dwellings that are of a varied design and that the existing building on the site is unlike any other dwelling in close proximity to the site, there is some flexibility that can be afforded to the design of the dwelling on this plot. It is considered that the dwelling proposed is of a good design and will be of a simple traditional form with a pitched roof and will be built using traditional materials and fenestration. Similar to the majority of the dwellings on the street, the proposed structure will have a two storey scale and will follow the established building line of the dwelling. Therefore, it is not considered that the proposed design and scale of the dwelling will harm the character of the area.
- 10.4 The dormers proposed are of a reasonable scale that appear subordinate to the main building and whilst also taking into account the location at the end of the cul-de-sac and not particularly prominent from public view, it is considered that the front dormers will not harm the character of the area.
- 10.5 The dwelling proposed will be taller than the adjacent dwelling because of a difference in ground levels. Due to the varied character of the dwellings on the street and the site not occupying a prominent position on the street, and in particular because of its location at the end of a cul-de-sac, it is considered that the difference in the heights between the proposal and the adjacent dwelling will not harm the character of the area.
- 10.6 Gaps between dwellings on the street is an important character of the area, and it is considered that the 1.2m gap the first floor area of the proposed dwelling will retain from the adjacent common boundary with No.48 and the 7.4m gap from the side elevation of the No.48 itself, is considered adequate to ensure that the proposal will uphold the spatial character of the area and the proposal will not appear as an over-development of the site. It is noted that very little gap to the common boundary will be left at ground level and that the neighbouring dwelling have obtained permission for a single storey side extension which will result in the gap at ground level being substantially closed. As the developments that occur at ground level generally do not appear prominent from the street, the impact from such developments upon the overall character of the streetscene would be minimal and certainly not harmful.
- 10.7 A new driveway is proposed as well as modification to the front boundary. The modifications proposed to the front are minor, and should not harm the character of the area. Details of the works to the boundary can be conditioned, so as to ensure that these works are carried out sensitively without any harm being caused to the character of the area.
- 10.8 On the whole, it is considered that the proposal is of a good design and will not harm the character of the area. Therefore, the proposal will comply with Policy P10 of the Core Strategy, which seeks to ensure that new development is well designed and respect its context, and with saved Policies GP5 and BD6 which seeks to ensure buildings are designed with consideration given to both their own amenity and the amenity of their surroundings.

#### Impact on Character of Conservation Area

- 10.9 There will be limited views of the dwelling available from the adjacent Conservation Area with much of the dwelling being screened by the mature landscaping that will be largely retained (see 10.10 to 10.13 below). The Conservation Area Appraisal

and Neighbourhood Design Statement identify mature planting as a key characteristic of the area. Therefore, it is not considered that the proposal will harm the character of the adjacent Conservation Area and that the proposal will comply with policy P11, Saved Policy N19 and with the Roundhay Conservation Area Appraisal, which advises that new developments should protect and, or, enhance the character of the Conservation Area.

### Impact on Trees

- 10.10 The proposed dwelling will be located close to the trees present along the eastern boundary. The more significant trees along the boundary of the site are B grade Holly (Tree Survey reference T3, which is part of protected group G3 under TPO 1986/38) and Hawthorn (Tree Survey reference T6). Some pruning is proposed to both and incursion of the root zone of T3; also incursion into root zones of Leylandii T1 and Privet T2.
- 10.11 The Landscape Officer advises that, with an appropriate Arboriculture Method Statement which could be secured by the imposition of a suitably worded condition, it should be possible to adequately address construction phase impacts on these trees and other vegetation in order to ensure the retention of the trees. The main issue therefore, is more about future pressure on the long term survival of the perimeter trees.
- 10.12 While there will be an increase in house height and footprint, and taking into account the tree species and in relation to the proposed house footprint, it is considered that on balance, the pruning proposed to accommodate the construction phase is considered reasonable and it is anticipated that Holly T3 would not be jeopardised in the longer term.
- 10.13 The Landscape officer has sought confirmation on the trees that are proposed to be removed along the rear boundary. However, as these trees are not protected in any way, and are unlikely to be impacted due to their remoteness from the actual development itself, they can be removed at any time and therefore it is considered that it would be unreasonable to seek to control the possible removal of these.

### Residential Amenity

- 10.14 The proposal will result in a larger mass of walling being constructed close to the adjacent dwelling No. 48 Roper Avenue, The occupant of which has objected to the scheme on the basis that the proposal will unduly harm living conditions by way of overshadowing and dominance. No.50 is set to the east of No.48.
- 10.15 Much of the additional massing that will be created, will be set close against the side of a detached garage and the side elevation of No.48 which does not feature any prominent windows. There is however a two storey element will project approximately 4.8m (as scaled from the submitted plans) beyond the rear wall of No.48 and will be visible from its rear garden of No. 48. The first 2.3m (as scaled from the submitted plans) of the 1<sup>st</sup> floor element of this rearward projection is shown to be set off the common side boundary by approximately 1.2m. To address concerns in respect of overshadowing and dominance from the extension, the first floor area of the remainder of this part of the extension is shown to be set approximately 2.6m away from the common side boundary. This separation distance, in combination with the orientation of the dwellings (No.50 is located to the east of No.48), is considered adequate to ensure that the first floor area will not raise significant issues of overshadowing or dominance. As it is located to the east

of No.48 it is likely that any overshadowing will be limited to parts of the morning. The ground floor element of the extension will be set close to the common boundary. As this is a single storey element, it is considered that by itself it will not be overly dominant to No. 48. There may be some overshadowing but this will be over a relatively small area of the side garden of No.48, which is considered less usable and the applicant has considered erecting a single storey extension on this section of the garden. Furthermore, a larger area of the garden will remain unaffected by the development in this regard. The extension will be set 6.9m away from the habitable room windows in the rear elevation of No.48 which is considered sufficient to ensure that the proposal, will not to harm internal area of No.48 by way of loss of outlook or dominance.

- 10.16 The occupant of No.48 has pointed out that the ground level of the application site stands higher than the ground level at No.48 and that No.48 has permission to build a single storey side and rear extension. Some of the plans submitted by the applicant show the approved single storey extension, and this scheme has also been assessed in the event that the approved extension at No.48 is completed. In the event that the extension approved at No.48 is completed it is considered that the proposed scheme would still be acceptable in planning terms and would not be harmful to the amenity of No.48. The approved extension, if erected, would rather ease some of the concerns with the scheme. As any overshadowing that occurs would fall over the extension as opposed to garden area. It is considered the differences in ground levels of approximately 0.5m that exists between the application site and No.48, does not result in the proposed dwelling appearing unduly dominant nor would this level difference cause harm by way of dominance.
- 10.17 In relation to the dwellings of The Drive that are to the east of the site, the proposed dwelling would be set adjacent to the rear gardens of Nos. 57 and 59. These gardens are approximately 32m deep and feature mature trees and shrubs along their boundary. It is considered that the vegetation along the eastern boundary will screen much of the development from the dwelling to the east, and therefore the proposal will not appear dominant nor will it significantly overshadow the neighbours to the east.
- 10.18 The proposed windows in the rear elevation will not offer unacceptable views of the private areas of the neighbouring dwellings. Whilst the dormer windows will offer views to the rear most section of garden areas of the adjacent dwelling to the east, much of the views will be obscured by the vegetation that exists along the boundary and therefore it is not considered that the proposal will unduly harm the privacy of the occupants of these dwelling. It is considered that the views out the ground floor windows in the side elevation and the rear elevation will be obstructed by the mature boundary treatment that encloses the site which includes hedges 1.8m in height and a new fence 1.8m in height.
- 10.19 The first floor windows in the rear elevation will be set approximately 7.7m away from the rear boundary which is sufficient to ensure that the garden area of the dwelling beyond the rear boundary will not be significantly overlooked and the separation distance exceeds the 7.5m separation advocated by the separation distance guidance set out within the Householder Design Guide. A distance of 18m will be kept from the proposed rear bedroom rear elevation windows of the rear elevation window of the dwelling beyond the rear boundary. This complies with the guidance within the Householder Design Guide which states;

*'The minimum distance between a main window and a secondary window should therefore normally be 18.0m (10.5m + 7.5m).'* (Page 12)

- 10.20 It is noted that the extension will not meet the Householder Design Guide advice that states that the main ground floor windows to main ground floor windows should maintain a distance of 21m. However, the dwelling proposed will be set on a similar footprint to the existing dwelling, and the line or the proposed rear elevation will be similar to rear elevation of the existing conservatory on the site. Furthermore, the 21m guidance is discussed in the section of overlooking and as there are mature trees and hedge (over 1.8m in height) that are present along the rear boundary of the site, it is not considered that the proposal ground floor elevation windows will raise issues of overlooking. On the whole, it is considered that this separation distance the proposal will maintain from the dwellings beyond the rear boundary is adequate to ensure the proposal will not significant overlook the internal or the external private areas of the dwelling beyond the rear boundary.

#### Garden space

- 10.21 The Householder Design Guide states that sufficient usable private garden space for the enjoyment of residents should be provided and advices that normally no more than half the existing garden space should be covered by extensions. It is considered that the proposal will leave more than half the garden area undeveloped for the use of the residence. Therefore it is considered that the garden space that will be available to the occupant of dwelling would be sufficient to meet their needs. Permitted development rights would be removed (condition 9) to ensure that no further encroachment is made over the garden area of the dwelling.

#### Parking

- 10.22 The scheme proposes to move the vehicle access point of the site closer to access point of No.48, it is considered that this alteration would not normally require planning permission and therefore this aspect of the scheme is not objected to and will not raise highway safety issues. Moreover, the plans show that the driveway measuring 7.3m and with a 6.7m width (at its widest point) will be provide. It is considered that size of the drive is sufficient to park two vehicles, which meets the requirements of the council's parking standards. Therefore, it is considered that the proposal will not raise on street parking issues.

#### Public Representation

- 10.23 Most of the material planning issues highlighted by the objectors have been addressed within the report, therefore this section of the report will cover the non-material issues and some specific concerns that may not have been covered in the report.
- 10.24 The concern raised with regards to the impact of the development on the trees and hedges, has been assessed by the council's Landscape Officer. It is considered that the important trees within the site can be protected through appropriate conditions. The hedges around the site are also proposed to be retained.
- 10.25 The comments made that the plans do not show the level differences between the site and the neighbouring sites is not accurate as the street view plans and the section plans submitted both show the differences in levels.
- 10.26 The comments made with regards to the drainage issues, are noted. As the proposal relates to a domestic extension this issue will be dealt under the Building



## Regulations.

- 10.27 Comments have been made that the plans are not accurate and lack sufficient information. It is however considered that the plans are sufficiently detailed to allow an assessment of the scheme.
- 10.28 One of the objections received highlight that PD rights are not a fallback position. It is however considered that PD rights are a material consideration and the Local Planning Authority decides what weight to put to them. Notwithstanding any PD rights, in this instance, the proposal has been assessed on its merits and found to be acceptable and policy compliant.
- 10.29 The comment made that the elevations plans does not correspond to the reduction in the depth of the scheme that was made under the revised plan, is noted. However this had been addressed through the request by officers for accurate drawings to reflect this.

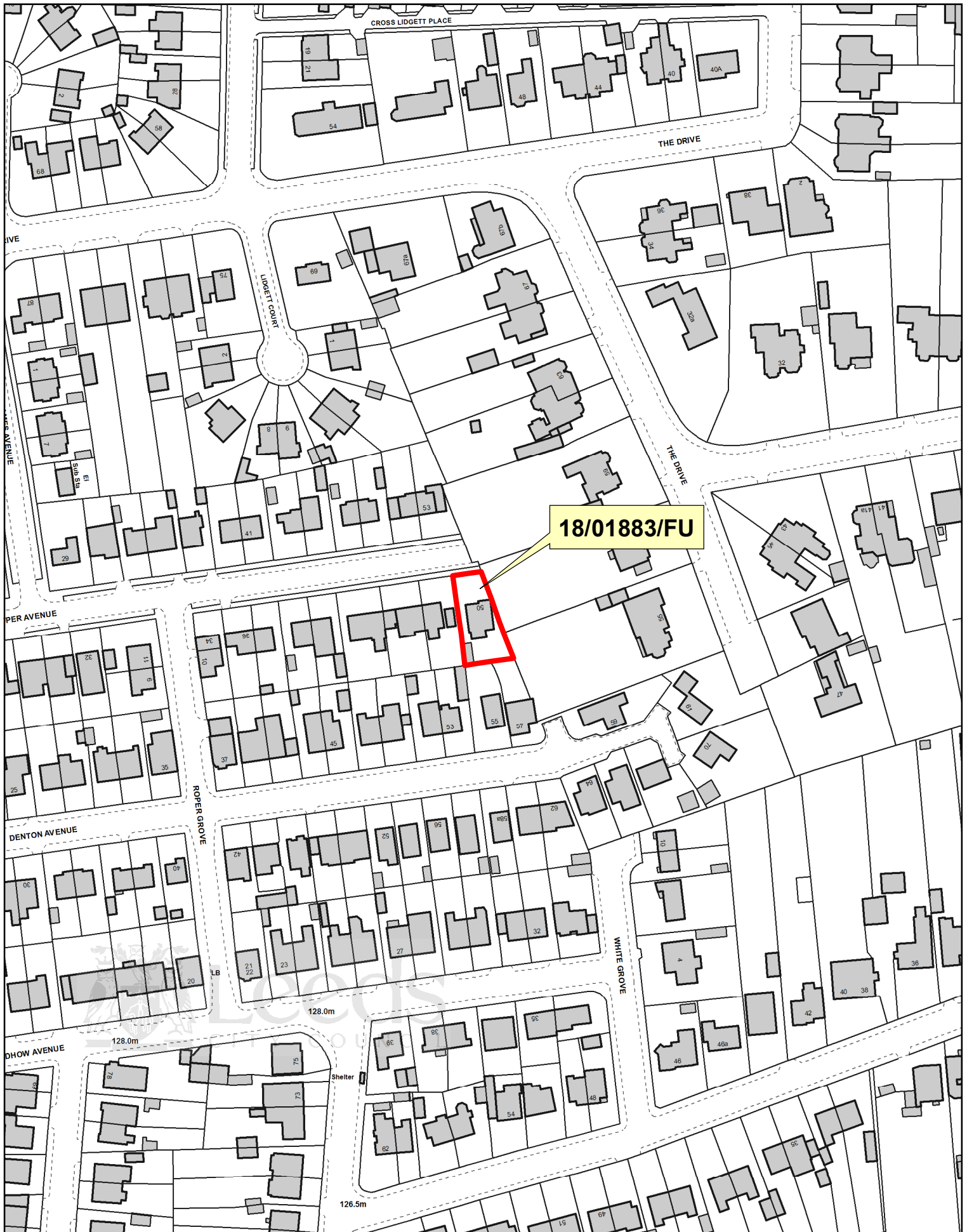
## **11.0 CONCLUSION**

- 11.1 In conclusion, it is considered that the design, scale height and principle of the development are acceptable within the immediate context and will not harm the character or he appearance of the area generally or the adjacent Conservation Area in particular. Furthermore, the Landscape Officer has found that the proposal will not cause significant harm to the protected trees close to the site subject to the imposition of conditions. As such, the proposed scheme is considered compliant with the relevant policies and guidance detailed within this report and subject to the conditions listed at the head of this report approval is recommended.

### **Background Papers:**

Application file: 18/01883/FU

Certificate of ownership: Certificate 'B' signed by the applicant Mr Pinder, with notice served on the owner of the site (Wendy Anne Swift).



# NORTH AND EAST PLANS PANEL





CLIENT  
**ROB & JENNY PINDER**

PROJECT  
**50 ROPER AVE. ROUNDHAY  
 LEEDS LS8 1LG**

TITLE  
**BLOCK PLAN**

SCALE 1:200 DATE 20/02/2018

DRAWN PMS CHECKED TBA

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Originator: Glen Allen

Tel: 0113 3787976

**Report of the Chief Planning Officer**

**NORTH AND EAST PLANS PANEL**

**Date: 5<sup>th</sup> July 2018**

**Subject: 18/00344/FU - Demolition of former care home and construction of new build extra care housing scheme comprising 44 apartments with associated communal facilities, parking and external amenity space at Westwood Way, Boston Spa, LS23 6DX**

**APPLICANT**  
Housing and Care 21

**DATE VALID**  
16/01/2018

**TARGET DATE**  
19/04/2018

**Electoral Wards Affected:**  
Wetherby

Yes Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

**RECOMMENDATION: DEFER AND DELEGATE approval, subject to the following conditions, to the Chief Planning Officer subject to the expiry of the current round of neighbour notification and that there are no new significant material planning objections raised.**

- 1 Commencement of development within 3 years
- 2 To be implemented in accordance with submitted drawings
- 3 Materials
- 4 Landscaping scheme
- 5 Drainage conditions
- 6 Limit occupancy to over 55's
- 7 Land contamination conditions
- 8 Construction management plan
- 9 Tree protection
- 10 Survey of wall on boundary with Conservation Area
- 11 Erection of privacy screen on balcony facing south on east wing of development.
- 12 Arboricultural Method Statement
- 13 Access to site to remain un-gated
- 14 Provision of 2 EVCP

- 15 Provision of secure cycle storage
- 16 Vehicle spaces to be laid out
- 17 Construction/demolition hours restricted to 08:00-18:00 Monday to Friday, 08:00 – 13:00 Saturday no works on Sunday's or Bank Holidays
- 18 Submission of lighting scheme
- 19 Sound Insulation relating to plant and machinery

## **1.0 INTRODUCTION**

- 1.1 Ward Councillors Lamb, Harrington and Wilkinson have requested that the application be reported to Panel on the grounds that there could be a significant impact on resident's amenities at Church Road as a result of the introduction of bulk and massing close to their rear boundaries potentially affecting the amenity of the rear gardens. In light of the scale of development, in the context of Boston Spa, and that the site is owned by the city council it is considered appropriate to report the application to Panel for determination.

## **2.0 PROPOSAL**

- 2.1 The proposal is for a 44 apartment Extra Care housing scheme following the demolition of the exiting building on site. Car parking and access is provided off Westwood Way and communal open space around the building. The development also contains a number of shared elements such as communal rooms, kitchens and other services such as hair salons within the envelope of the building. Ancillary offices and staff accommodation is also provided.
- 2.2 The accommodation proposed consists of 18 one bedroom and 26 two bedroom apartments.

## **3.0 SITE AND SURROUNDINGS:**

- 3.1 The site relates to a former residential care home owned and run by the city council which is now closed and up for sale. The part single storey and part two storey building was constructed in the 1980s and is of its age, comprising a red/orange multi brick with a slate roof. It can be said that the building is of little architectural merit. There are also a number of car parking spaces in front of the building.
- 3.2 The site is set within a mainly residential area, with houses backing onto the site in Church Street to the east. The boundary of these properties forms the boundary to the Boston Spa Conservation and therefore the site falls outside this, but abutting its boundary. The boundary that divides the site and the dwellings on Church Street mainly consists of the large stone wall. Some of the properties on Church Street feature a varied mix of rear extensions, some of which are relatively large and unsympathetic.
- 3.3 To the north of the site are allotments, between which runs the public footpath which connects Church Street and Westwood Way. To the west are several two storey residential properties located within the cul-de-sac. At the junction with Westwood Way is St Edward's Catholic Primary School. To the south of this there is also West Oaks School. To the south of the site lies the school playing pitches associated with Primrose Lane Primary School. There are a number of trees within the site, some of which are mature and contribute to the character of the character of the area.

#### **4.0 RELEVANT PLANNING HISTORY:**

- 4.1 There is no relevant planning history pertaining to this development proposal, any history relates to the now vacated building on the site that is scheduled to be demolished. Revised plans have been received that increase the degree of separation from the building to properties on Church Street.

#### **5.0 HISTORY OF NEGOTIATIONS:**

- 5.1 A pre-application submission was made whereupon the advice given to the applicants was broadly that the proposal for an Extra Care Scheme was acceptable in principle and subject to detailed considerations could be supported.

#### **6.0 PUBLIC/LOCAL RESPONSE:**

- 6.1 The application has been advertised by site notice and newspaper advert. At the time of writing a further round of public consultation had been undertaken in respect of amendments that had been submitted and officers will give an oral update on any responses received as a result of this process.
- 6.2 The following objections (eleven at the time of writing) were received in response of the first round of public consultation:

Close proximity of the eastern wing to the rear of properties on Church Street  
Reduction in light levels  
Loss of light including on residents of Church Street  
Overbearing impact  
Planting of tree will further reduce light and root system will cause problems for neighbouring residents  
Loss of parking for allotments users  
Concerns over demolition/construction workers parking  
Concern over impact on footpaths  
Concern over hours of construction  
Proposal will over develop the site due to its density  
Exacerbate parking on Westwood Way and other nearby roads.  
Any Sec. 106 or CIL monies should be used to provide off street car parking at the local schools or a common car park for all three local schools at one of those schools.  
Height (3 Storey), and bulk and massing in relation to Church Street properties.  
A shame that Leeds CC allowed the existing building to fall into disrepair rather than maintaining and improving this facility.  
Car parking inadequate  
Impact on Trees  
Gardens at rear of Church Street properties will be overlooked  
Proposal will breach Human Rights Protocol 1 Article 1 "a person has the right to peaceful enjoyment of all their possessions, which includes the home and other land".  
Reduction of the amount of green space within the village

- 6.3 3 letters made in support or observations are as follows:

Development supports policies found in the Neighbourhood Plan  
Neighbourhood Plan identifies the need for accommodation for this demographic  
Will provide much needed accommodation of this type  
Concerns over parking provision

## **7.0 CONSULTATIONS RESPONSES:**

- 7.1 Environmental Studies – Transportation Strategy - On examination of Defra's strategic road maps and the layout and orientation of the proposed dwellings, noise from road traffic is unlikely to be of a level that would require specific measures over and above standard building elements. Therefore in this case we do not require an acoustic assessment to be submitted.
- 7.2 West Yorkshire Police – No comments, all security measures have been addressed and the proposal appears safe and secure.
- 7.3 Conservation Team – Only concern relates to the historic stone wall to the rear of Church Street that this is made good to preserve and maintain a positive and distinct conservation area boundary.
- 7.4 Yorkshire Water – No objections subject to the development been carried out in accordance with the submitted Flood Risk Assessment and associated drawings.
- 7.5 Highways – No objections subject to conditions
- 7.6 Flood Risk Management – No objections subject to conditions
- 7.7 Landscape – Recommend the conditioning of an Arboricultural Method Statement in order to ensure the protection of trees and other vegetation on the site.
- 7.8 Contaminated Land – Recommend that conditions be imposed relating to the submission of information relating to site investigations post demolition.
- 7.9 Neighbourhoods and Housing – Recommend conditions be imposed relating to; Sound insulation of plant and machinery, any lighting scheme to be approved, Construction management plan, Restrict hours of demolition/construction 08:00-18:00 Mon-Fri, 08:00-13:00 Saturdays and no works on Sun/Bank Holidays.

## **8.0 PLANNING POLICIES:**

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Leeds currently comprises the Core Strategy (2014), saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013) and any made neighbourhood plan.

### Local Planning Policy

- 8.2 The most relevant Core Strategy policies are outlined below:

Spatial Policy 1	Location of Development
Spatial Policy 7	Distribution of housing land and allocations
Policy H2	New housing on non-allocated sites
Policy P9	Community facilities and other services
Policy P10	Design
Policy P11	Heritage Matters
Policy T1	Transportation management
Policy T2	Accessibility Requirements and New Development



8.3 The Boston Spa Neighbourhood Plan (part of the development plan) policies:

**Dev 1;** New housing within the village should reflect the need for additional homes for young people and the over 55's.

**Dev 2;** Any new development should be located within the existing village envelope and should only be considered outside this area in exceptional circumstances.

**Des 2;** (a) Development should be designed to reflect the predominant characteristics of existing developments within the immediate vicinity in terms of scale, density, massing and materials. (b) innovative design and use of materials will be encouraged where it is not in conflict with existing design and can be assimilated within existing development. (c) New boundary treatments will match the materials of those already in existence.

**T1;** Developments that retain existing trees will be welcomed:

**CW1;** proposals for the improvement of existing and the provision of new services and facilities for community use will be supported, subject to detailed considerations.

Relevant supplementary guidance:

8.4 Supplementary Planning Guidance provides a more detailed explanation of how strategic policies of the Unitary Development Plan can be practically implemented. The following SPGs are most relevant and have been included in the Local Development Scheme, with the intention to retain these documents as 'guidance' for local planning purposes:

- Neighbourhoods for Living SPG
- Street Design Guide
- Parking Standards

National Planning Policy Framework

8.5 The National Planning Policy Framework (NPPF), published on 27<sup>th</sup> March 2012, sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system and strongly promotes good design and sustainable developments. One of the key principles at the heart of the Framework is a presumption in favour of Sustainable Development.

8.6 The NPPF constitutes guidance for Local Planning Authorities and its introduction has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.7 The NPPF attaches great importance to the design of the built environment and view this as being indivisible from good planning (para.56, NPPF). The advice also seeks for development proposals to add to the overall quality of the area, create attractive and comfortable places to live and respond to local character (para.58, NPPF).

8.8 In addition, advice is contained within chapter 4 (Promoting sustainable transport) that deals with sustainable transport modes and avoiding severe highway impacts; and, chapter 6 (Delivering a wide choice of high quality homes) which includes housing supply/ delivery and affordable housing provision; chapter 8 (Promoting healthy communities) in relation to access to existing open/ green space; and,

chapter 10 (Meeting the challenge of climate change and flooding) which includes matters of flood risk and promote renewable energy sources. Chapter 12 (conserving and enhancing the historic environment) provides that LPA's should identify and assess the particular significance of any heritage asset that may be affected by a development.

## **9.0 MAIN ISSUES**

9.1 The main issues relating to this development are:

- Principle of Development
- Design
- Impact on Neighbours Amenity
- Highways Matters
- Impact on Heritage Assets
- Other matters raised in comments

## **10.0 APPRAISAL**

### Principle of Development

10.1 In its simplest terms the development is a residential development in a location that is predominantly residential in character and well located in relation to a range of local facilities and as such is acceptable in principle.

10.2 That the scheme is an Extra Care scheme means that whilst it likely falls within the Class C3 of the Use Classes Order it is sufficiently different from a standard C3 use so as not to attract any of the normal planning 'benefits' associated with C3 dwellinghouse developments. That the occupancy will be restricted to the over 55's (through a recommended condition), means that the proposals impact on issues such as green space does not apply in this instance. Likewise, due to the nature of the scheme, Leeds CC maintains nomination rights for the lifetime of the development (subject to certain conditions), as such the scheme is considered in those circumstances to provide a 100% affordable housing scheme.

10.3 That the scheme is considered to adhere to these policy requirements and is in broad compliance with the Boston Spa Neighbourhood Plan the scheme is considered to be acceptable in principle.

### Design

10.4 The design of the proposal is considered acceptable. Policy P10 requires a high quality of design which is in accordance with NPPF policies on such issues and are also reflected in the Boston Spa Neighbourhood Plan. However the issue of scale it one that needs to be addressed. Concern has been raised through the consultation process that the scheme is not in keeping with the local area and there is a sense in which this is correct. However the nature of the development means that it is inevitable that a different design philosophy is required in order to the scheme to be function appropriately.

10.5 The predominant nature of the surrounding vernacular is that of 2 storey dwellings of various ages. There are pockets of single storey development, particularly in relation to the nearby schools. The buildings that it is seeking to replace are also two storey. This, however, does not preclude the development of three storey

developments if the context is acceptable. The site sits 'behind' as it were, the two storey almost in isolation in that it does not address the road network that serves the local area. As such the development can be 'freed' from many of the constraints that might otherwise be applicable if it were to form part of the frontage to a road in the immediate location.

- 10.6 The design is such that whilst unashamedly three storey, it seeks to pay due regard to the surrounding developments through the lowering of the eaves and the projection of the living accommodation into the roof space. A common technique to achieve a lower overall height and/or illusion of lower height and massing. This married with the breaks in roof height, and "S" shaped foot print all helps to reduce the bulk and massing to what is considered an acceptable degree.
- 10.7 It is agreed with the objectors that the density of the development is greater than that of surrounding residential developments, however, this in itself, is not a reason to reject the proposal. In terms of site coverage of building, the 'sprawl' of the building is not unlike the nearby school without, admittedly, the benefit of the playing fields adjacent or surrounding them. That the density is higher means that the development is more sustainable in that it can offer more accommodation in an identified area of need for this type of accommodation.
- 10.8 Overall the window to stone ratio is considered acceptable, the use of gables reflects much of the local vernacular and the integration of modern materials add an interest that renders the scheme in its entirety acceptable from a design perspective.

#### Impact on Neighbours Amenity

- 10.9 Through discussions with officers the whole unit has been moved to the north by 1.5 metres. This was largely in response to concerns that have been raised in respect of the material change in circumstance that will occur, should the development proceed for the occupiers of particular properties facing Church Street but backing onto the application site. There are a few properties on Church Street that benefit from rear gardens that have a common boundary with the application site and the layout of the proposed development will introduce a two storey gable wall directly facing those properties. The original distance of this gable to the common boundary measured approx. 6.64 metres. The revised drawings show that distance now at 8.14 metres. The SPG Neighbourhoods for Living suggests that the starting point for distances of 'side elevation' to common boundaries where the windows in those elevations are secondary, as in the case of the application proposal, the distance should be a minimum of 7.5 metres. The scheme now exceeds this distance but possibly more importantly where there are elevational relationships between development proposals the secondary window to rear elevation distance should be a minimum of 18 metres. The revised scheme provides for a distance between the gable elevation facing the rear of the properties facing Church Street to the main rear elevations of those properties of 22.43 metres.
- 10.10 Therefore it is concluded that whilst there will be a material alteration in the views from the rear gardens of those properties, it is not considered that there will be an overbearing impact or loss of outlook sufficient to warrant a recommendation to refuse planning permission.
- 10.11 In terms of potential loss of light, the site lies east of these properties any overshadowing of the rear of the properties fronting Church Street will occur during

the evening and will only be noticeable during the periods of the year when the sun is lower in the sky during the late autumnal and winter months, and then in the period before sun set. It is concluded that there will be no material harm caused to the amenities of occupiers of those properties.

- 10.12 In respect of the relationship of the development to other properties surrounding the site, to the north are the allotment gardens that provides adequate separation between the development and properties on the far side of the application site to those allotment gardens, to the south are the nearby schools playing fields and to the west are the properties that front the spur of Westwood Way that serves the application site. The development will cast a shadow over the side elevation and side garden space of the immediately adjoining neighbour, however these are 'less sensitive' parts of that property and consequently will not adversely impact on the amenities of the occupiers of that property.

#### Highways Matters

- 10.13 As an Extra Care scheme, (data gathered demonstrates that such accommodation has less of a demand for parking), the off street car parking requirements are significantly lower than would otherwise be the case. The concerns raised in regards to car parking and servicing are noted, however the car parking shown on the submitted drawings has been assessed and is considered to be provided to an acceptable level for this type of accommodation. It is not expected that the development will contribute to the problems highlighted by the various objectors and that appears to be primarily related to the existence of three school premises in close proximity to each other.
- 10.14 Suggestion as to the use of any financial receipts that are necessary as a result of this development, of which there are none identified, are noted but would be outside the scope of the planning process to dictate where they are spent.
- 10.15 Comments regarding the use of the site presently for either the opportunist car parking for staff at nearby schools and or the more long term parking for users of the allotment gardens are also noted. However once again it is outside the scope of this application to control these issues or secure alternative parking provision for these uses. In particular what appears to have been a longer term permissive use of the car park for users of the allotment gardens is not controllable under the planning system through the grant or otherwise of a planning permission. It is not for this development to provide parking for uses that are unrelated to the development site or the development proposed.

#### Impact on Heritage Assets

- 10.16 The site sits adjacent to the Boston Spa Conservation Area and the design and massing of the development has been assessed in respect of this and it is concluded that the proposed development does not pose any threat to the Character of the Conservation Area or will cause any harm. Arguably, the design is such that it will enhance views from the Conservation Area.
- 10.17 The boundary treatment that runs along the length of the boundary of the site with the Conservation Area boundary has been identified as an asset that helps demark and set the character of the Conservation Area. It is therefore recommended that a condition be imposed that requires a photographic survey of that wall noting any significant details prior to demolition of the building on site at present and that

should any damage be suffered to the wall that this be made good in accordance with the submitted photographic survey.

#### Other matters raised in comments

- 10.18 Those comments that have been raised and are material planning considerations have all been covered in the main body of the report above or are addressed by the recommended conditions to be imposed. Other matters raised that are not dealt with above are not material planning considerations and thus cannot be given any weight in the decision making process.

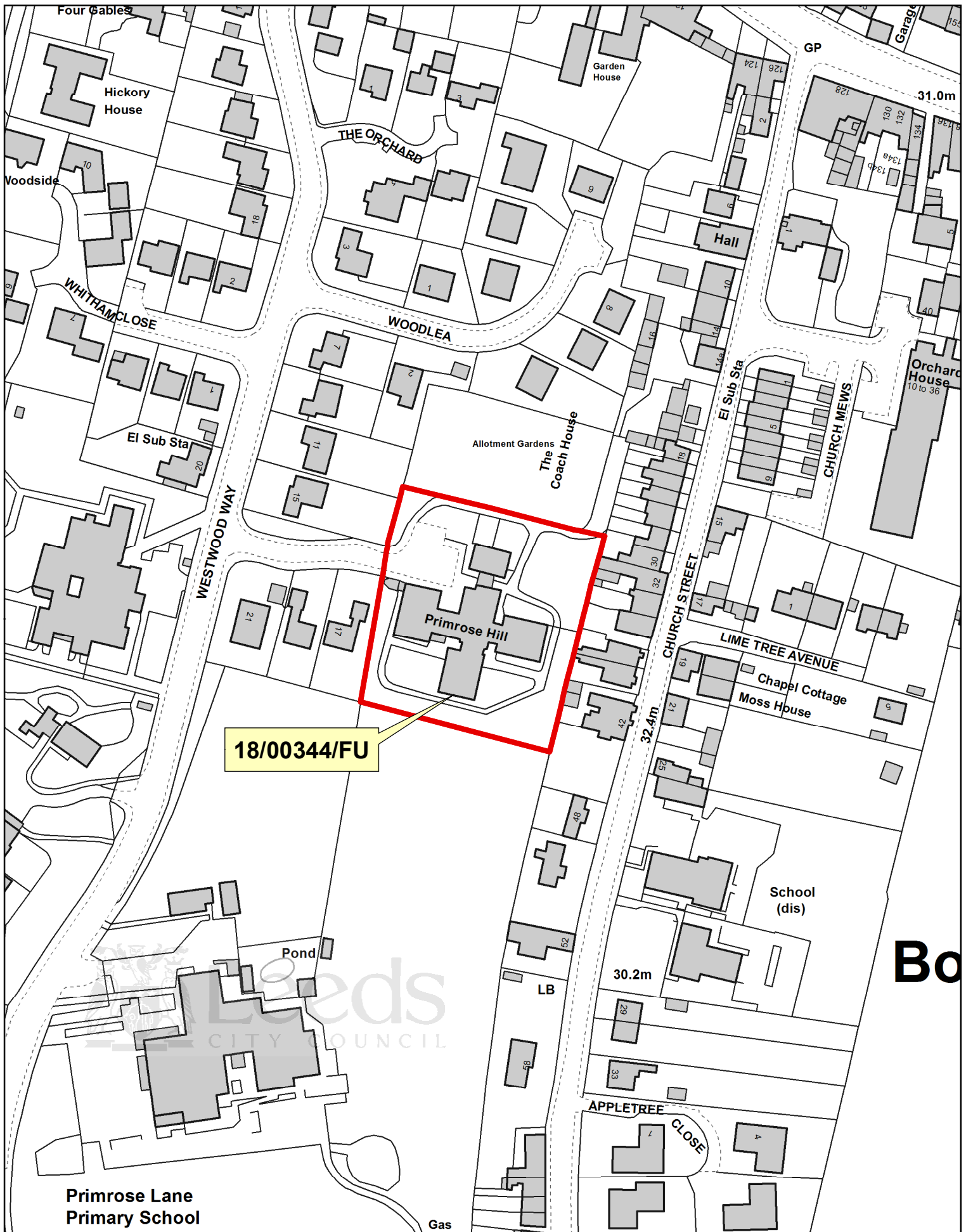
### **11.0 CONCLUSION**

- 11.1 It is considered that the principle of this residential use in an established residential area, and on a previously developed site, is in accordance with adopted local and national planning policies. The scale of the building, although bigger than the building it replaces, is acceptable as the size of the site allows for a larger building to be placed within it without it appearing overly dominating or out of place. The scheme has been well designed with a good quality landscaping scheme that will mitigate and enhance the site, and the proposal is considered not to harm the character of the adjacent conservation area.
- 11.2 Good separation distances, in accordance with the council's design guidance, are provided to neighbouring dwellings.
- 11.3 No technical highway objections are raised to the proposal as the level of parking provision is considered adequate in light of its sustainable location. It is not considered that the traffic generated by the proposal will cause harm to highway safety and the access arrangements to and from the site are considered to be acceptable.
- 11.4 The proposal will provide extra care accommodation which is in high demand across the district. The location is good in that it is sited within walking distance of the High Street and consequently has relatively good transport links.
- 11.5 It is considered that the proposal provides a valuable need, utilising brownfield land. Consequently it is recommended that approval be granted subject to the conditions outlined above.

#### **Background Papers:**

Application files: 18/00344/FU

Certificate of ownership: Notice served on the city council



# NORTH AND EAST PLANS PANEL



All work to be carried out in accordance with the requirements of the Building Regulations and the Water Authority Regulations currently in force.  
 An approval from this drawing is not to be construed as a guarantee of any description.  
 Verify relevant dimensions on site before commencing work or preparing shop drawings.  
 This drawing is copyright.

REV	DATE	AMENDMENT
1	01/18	Issued for tender
2	02/18	Revised to include
3	03/18	Cost of the works to be
4	04/18	Revised to include
5	05/18	Revised to include
6	06/18	External works updated

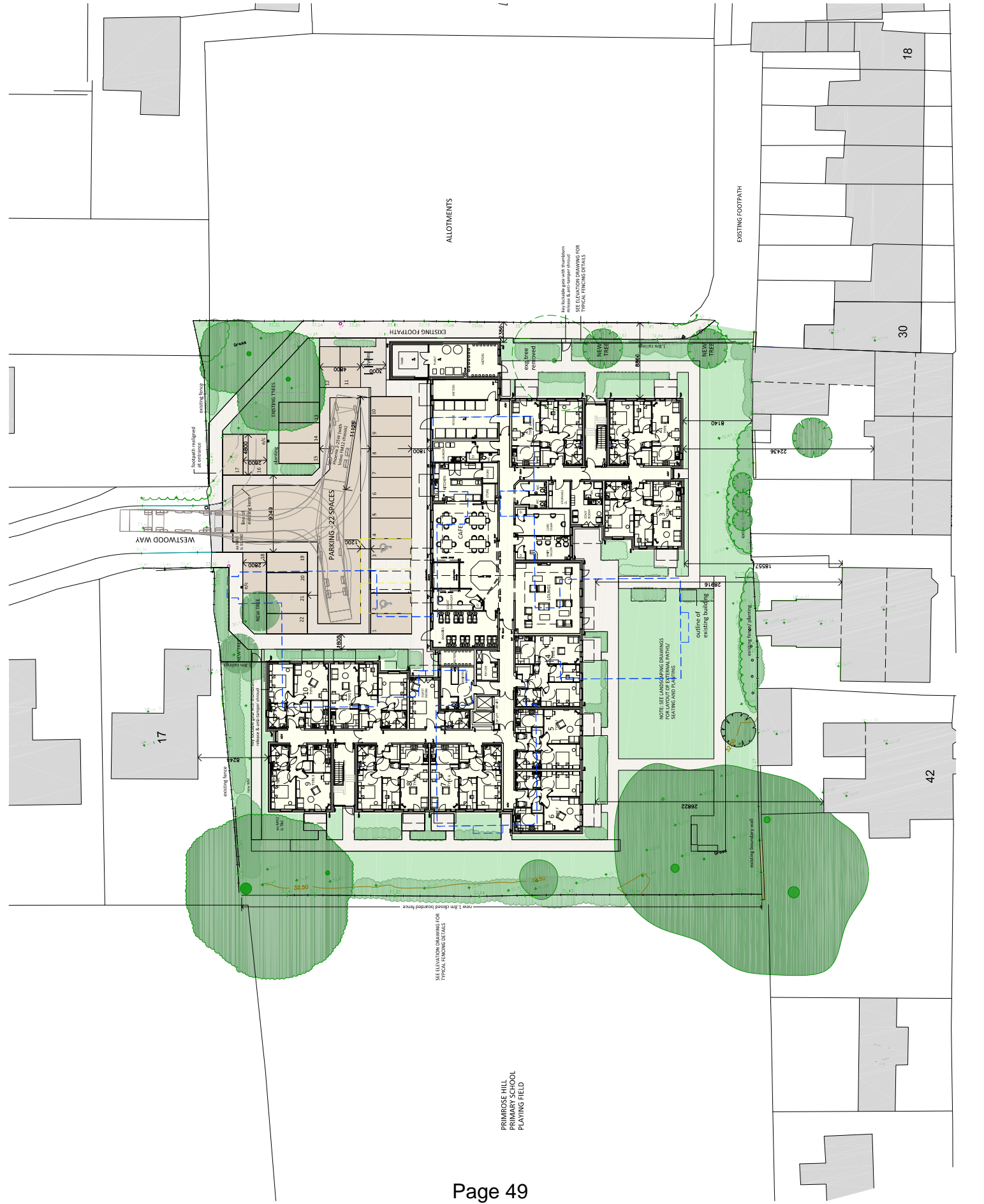
NOTE: PROPOSED LEVELS ARE SHOWN WITHIN BOXES. ALL OTHER LEVELS SHOWN ARE EXISTING

**LANGTRY-LANGTON ARCHITECTS**  
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PROJECT  
**EXTRA CARE DEVELOPMENT  
 WESTWOOD WAY  
 BOSTON SPA**

DRAWING TITLE  
**SITE PLAN**

PROJECT NO. **15086**    DRAWING NO. **02**    REVISION **G**  
 STATUS **PLANNING**  
 SCALE @ 1:200    DATE 01/18    DRAWN



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Originator: Glen Allen

Tel: 0113 3787976

## Report of the Chief Planning Officer

### NORTH AND EAST PLANS PANEL

Date: 5<sup>th</sup> July 2018

**Subject: 17/04368/FU – Retrospective application for dwelling with new detached outbuilding to rear at Wigton Court, Alwoodley, Leeds.**

#### APPLICANT

Mr C Durkin  
C/O Agent

#### DATE VALID

4<sup>th</sup> July 2017

#### TARGET DATE

26<sup>th</sup> March 2018

#### Electoral Wards Affected:

Alwoodley

Yes

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

#### RECOMMENDATION: GRANT PERMISSION subject to the following conditions:

- 1 Standard Time Limit
- 2 Standard reference to approved drawings
- 3 Materials to be submitted
- 4 Landscaping
- 5 Bin storage provision
- 6 Standard Land Contamination Conditions
- 7 Submission of a Surface Water Drainage Strategy
- 8 Removal of all PD rights for dwelling
- 9 Extraction facilitates for outbuilding to be submitted for approval including sound proofing details
- 10 Details of retaining structures to be submitted

#### 1.0 INTRODUCTION

1.1 This application was previously reported to Plans Panel at its meeting on 22<sup>nd</sup> March 2018 whereupon the following resolution was made:

1.2 To defer and delegate approval subject to:

- Further negotiation to reduce height of the outbuilding by (in region of) 1.5m with the objective of reducing impact of building on neighbours to rear.
- Upon receipt of revised plans re-consult neighbours.
- Consult with ward Members. If agreement is reached with ward Members on the revised scheme then the application can be approved under delegated authority. If no such agreement can be reached the application will be reported back to Panel for determination.
- Add conditions in respect of detail of retaining structures and boundary treatments and the soundproofing of the plant room and outbuilding.

1.3 The applicant has, following further discussions with officers decided that they wish to retain the scheme as originally presented to Plans Panel and have requested that the “fall-back” position regarding what could be achieved under Permitted Development rights for the original scheme be presented for comparison.

1.4 A copy of the original report is attached to this report for ease of reference.

## 2.0 APPRAISAL

2.1 As the history, neighbour responses and policy context have not changed since the previous report there is no intention to repeat that here as the attached copy of that report contains all of that information. Instead this report will concentrate on the benefits and disadvantages of the schemes in order to assist Plans Panel to make a balanced decision on the merits of the case.

2.2 Submitted Scheme:

### **Advantages:**

Local Planning Authority (LPA) maintains control through the imposition of conditions including any additional landscaping considered necessary

Is smaller than what might be achieved under the Permitted Development (PD) regime.

Can be built out by developer in conjunction with the remaining part of the permission  
Allows the LPA opportunity to remove PD rights to control future development of the site (recommended condition 8 – see above)

### **Disadvantages:**

Close proximity to common boundary with adjoining residential properties

Requires relatively extensive excavation raising concerns from residents particularly in connection with drainage issues

2.3 Permitted Development Scheme:

### **Advantages:**

### **Disadvantages:**

The development is significantly distant from the common boundary of neighbours to the rear and thus further from the rear elevation of those dwellings.

Developer can achieve a much larger scheme.

Will require careful implementation. Given the retrospective nature of the development and that some steel work has already been erected on the dwelling, the applicant will need to ensure that the original dwelling is the dwelling that is implemented, then occupy that dwelling for it to lawfully enjoy PD rights.

There is a question over the existence of what PD rights that property would enjoy, thus bringing into doubt the potential 'lawfulness' of the scheme on display – further discussion on this point is given below at paragraph 2.4 but it would be up to the developer to prove the lawfulness of his proposed development.

Less potential for overshadowing of neighbours gardens due to increased distance. (building is due south of gardens)

Assuming this is PD the LPA's level of control is diminished and circumvents the ability to remove PD rights thus controlling other potential development. Control over any noise disturbance would fall to Environmental Health officers and would depend upon the proving of a Statutory Nuisance which is a higher bar than the consideration of amenity under planning.

Maximum potential height is 4.0 metres with a dual pitch roof.

Agent argues that the PD scheme is not likely to be as well screened compared to application version.

2.4 The issue of PD rights in relation to the scheme presented to Plans Panel is complex one. The applicant would not enjoy any PD rights until the dwelling as originally approved is actually occupied as a dwelling. This is because until then, for the purposes of planning it is a structure and it is the implementation of the use (C3 Dwellinghouse) that bestows the PD rights. Thus the outbuilding would not be able to be built contemporaneously with the dwelling.

2.5 Further, the dwelling that would enjoy the PD rights is that approved under the original permission. The superstructure that exists on site presently reflects the dwelling in the application, thus the developer will need to revert the structure back to the originally approved dwelling rather than the one the subject of this

application. This brings into question the likelihood of the PD schemes' implementation.

- 2.6 There is a question over whether the site enjoys any Class E - PD rights in any case. The current Permitted Development allowances are subject to limitations the main one of which in this case would be what is considered to be the "principal elevation" of the dwelling. In the vast majority of cases the principal elevation equates to the front elevation of the dwelling but that is not always the case. The Government's technical guidance note offers the following:

"Principal elevation" – in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house."

- 2.7 It is arguable as to what is the front of the house in this case given its unconventional orientation and no direct relationship to the public highway. In any case it would be up to the developer to prove that the permitted development scheme was lawful and enjoyed the PD rights that have been assumed to exist. It should be noted that the recommendation in this report to remove PD rights is not an acceptance that PD rights exist on the site but a precaution to ensure that the LPA maintains control over any future development for the site.

## 11.0 CONCLUSION

- 11.1 Officers are still of the opinion that the scheme as negotiated and under the formal consideration of this Panel is acceptable subject to the proposed conditions which allows future control of any future development potential of the site.

### Background Papers:

Application files: 17/04368/FU  
Certificate of ownership: Signed by the Applicant as the sole owner

# Appendix 1



Originator: Glen Allen

Tel: 0113 3787976

**Report of the Chief Planning Officer**

**NORTH AND EAST PLANS PANEL**

**Date: 22 March 2018**

**Subject: 17/04368/FU – Retrospective application for dwelling with new detached outbuilding to rear; Wigton Court, Alwoodley, Leeds.**

**APPLICANT**

Mr C Durkin  
C/O Agent

**DATE VALID**

4 July 2017

**TARGET DATE**

26<sup>th</sup> March 2018

**Electoral Wards Affected:**

**Alwoodley**

Yes

Ward Members consulted  
(Referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

**RECOMMENDATION: GRANT PERMISSION subject to the following conditions:**

- 1 Standard Time Limit
- 2 Standard reference to approved drawings
- 3 Materials to be submitted
- 4 Landscaping
- 5 Bin storage provision
- 6 Standard Land Contamination Conditions
- 7 Submission of a Surface Water Drainage Strategy
- 8 Removal of all PD rights for dwelling
- 9 Extraction facilitates for outbuilding to be submitted for approval.

**1.0 INTRODUCTION**

- 1.1 This application is brought to Plans Panel at the request of Councillors Harrand, Buckley and Cohen as the revised proposal:

- Clearly lies outside of the parameters of the original approval,
- The development lies on what was formerly green field land,
- The proposal is a gross over development of the site,
- The visual impact and cumulative effect of the proposal will be detrimental to occupiers of properties in the Wike Ridges that will be overlooked by the proposed development.

1.2 The Councillors raise material planning considerations that give rise to concerns affecting more than neighbouring properties and therefore it is appropriate for the application to be determined by the Plans Panel.

## **2.0 PROPOSAL**

2.1 The proposal seeks in part, to vary an earlier approval (13/01614/FU) for the 'redevelopment' of the site through the refurbishment of Wigton Court itself the original building on the site and which constitutes several apartments, and the construction of a separate dwelling to the rear of the that building on land that was originally the garage court for the apartments. The parking provision for the apartments was re-located within the site. The variation to that permission relates to the proposed dwelling and does not alter the refurbished apartment building itself.

2.2 Since the grant of that permission, and the partial implementation of that earlier permission, the site has changed ownership and the new owner seeks to change the dwelling that was approved under the original permission and to provide an outbuilding at the bottom of the garden to the proposed dwelling that will provide a gym, patio, covered pool and garden store. The outbuilding is proposed in the north east corner of the site and has an "L" shaped foot print, which projects approximately half way across the rear boundary which is the common boundary to properties in the Wike Ridges development.

2.3 The new house which also forms part of the proposal has already been commenced hence the reference to 'retrospective' in the description, and this proposal seeks to add an additional 'storey' to the dwelling to that already approved.

2.4 Other alterations include the provision of a terraced landscaped garden, replacing the naturally sloping garden of the original proposal.

## **3.0 SITE AND SURROUNDINGS:**

3.1 The site lies on the north side of Wigton Lane and is wholly surrounded by existing residential properties. To the east and west are single dwellings houses that are the predominant form of development along this part of Wigton lane. To the south beyond Wigton Lane itself that runs in a roughly east west direction are detached residential properties and to the north properties that from the Wike Ridges development back onto the application site.

3.2 The site slopes from Wigton Lane to its rear boundary, with Wigton Lane being the high part of the site. The Wike Ridges development continues to slope away from the application site to the Brenden Drain running roughly east west to the north of that development.

3.3 Wigton Court itself appears to date from the 1960's or 1970's and is a development of apartments. The refurbishment of those apartments under the earlier permission has been completed and the block is currently occupied. As part of this permission was also granted for the construction of a modern dwelling to the rear that was located on the original garage court for the apartments. This gave the impression of being 'set into' the natural slope of the site and did not consume any additional 'greenfield' land of the site due to the previously developed nature of the garage court upon which it was proposed. The superstructure of this house currently exists on site.

#### 4.0 RELEVANT PLANNING HISTORY:

4.1 The following planning history is considered to be relevant:

12/04848/FU	Refurbishment and extensions, including raised roof height and balconies, of existing flats; replacement of garage block to rear with undercroft car parking with terrace over; construction of two detached houses to rear; alterations to landscaping to form private and communal amenity areas	Withdrawn
13/01614/FU	Alterations to flats including single storey rear extension with terrace over, Juliet balcony, roof lights, bin store and new boundary treatment to front	Approved
13/05516/COND	Consent, agreement or approval required by conditions 3, 4 and 5 of Planning Application 13/01614/FU	Approved
14/03655/FU	Variation of condition 2 (Plans schedule) of approval 13/01614/FU to vary the form of the approved elevations	Approved
16/03198/FU	First Floor Rear Extension	Approved

#### 5.0 HISTORY OF NEGOTIATIONS:

5.1 Since the submission of the application the location and the foot print of the proposed outbuilding near to the northern boundary has been reduced and the terracing of the garden has been negotiated to be a less 'engineered' solution.

5.2 As originally submitted the outbuilding was along the entire width of the northern boundary that is shared with the properties accessed from the Wike Ridges development. That original outbuilding was also in the form of a 'L' shaped foot print but mirrored that which is currently under consideration, the current proposal having being flipped so that the 'L' shape is north east corner of the site rather than the north west corner of the site.

5.3 In addition to this it was proposed to provide a terraced garden that has resulted in the proposed outbuilding to be raised above ground level and thus appear, from the rear, as a two storey structure albeit one screened by existing vegetation along that common boundary with properties on the Wike Ridges development.

5.4 The scheme currently under consideration removes the need for the outbuilding to be supported by construction methods and allows it to sit on the revised ground levels. The terraced garden likewise will provide for two areas of level garden

space the higher one adjacent to the proposed dwelling with a gentle slope away and the lower level garden at grade with the out building.

## **6.0 PUBLIC/LOCAL RESPONSE:**

6.1 The application has been advertised by site notice and letters sent to occupiers of identifiable residential properties surrounding the application site including the occupiers of Wigton Court itself.

6.2 A further round of consultation was undertaken upon the receipt of the amended plans and the time for comment to this most recent round expired on 9<sup>th</sup> February 2018. Comments of support and objection have been received covering the following issues:

Support Comments (6 in total):

- Site has been a mess for some time thus support the proposals to help tidy it up
- State of site currently detracts from the area
- Design appears modern and attractive
- Will not cause any further harm to surrounding residents
- Will not result in overlooking
- Existing trees will screen out building
- As the outbuilding is for domestic use it will not cause any noise or disturbance more than any other residential property.
- Residents of Wigton Court never have had right of access into the garden space of the new house.
- Will offer additional privacy
- Development will enhance area

Objection Comments (18 in total including Alwoodley Councillors and the Parish Council:

- Proposal represents gross overdevelopment of site
- The site is essentially the garden space for the re-furbished flats and now the whole of the amenity space is under the control of the future occupier of the house
- New scheme likely to encroach significantly into the 'Greenfield' part of the site
- Visual Impact will be very detrimental to occupiers of properties in the Wike Ridges development.
- Height of outbuilding unacceptable
- Obscure light to gardens in the Wike Ridge development
- Affect the value of neighbouring property
- Access to outbuilding from Wike Ridge properties not acceptable.
- Allowing the development will set a precedent
- Scheme is simply for profit
- Retrospective application which is at odds with the over-arching design principles already agreed by Leeds CC.
- Concerns about emissions from plant room for pool
- Potential for noise from plant room
- Access for the maintenance of Leylandii trees on boundary would be restricted



- Impact of roots on foundations of existing buildings
- Application is not detailed enough thus neighbours can't make a full assessment
- Drainage
- A warranty should be provided by the developer that any damage will be made good.
- A condition survey of the Wike Ridge properties should be undertaken so any future impact of the Wigton Court development on these properties can be monitored against the information recorded by that survey.
- The current planning permission contains a condition that prevents the sub-division or cordoning off of the garden from Wigton Court
- The works that have already being carried out cannot be reasonable given the restraints of the previous planning permission.
- Developers have failed to consider the character of the area
- Adversely impact on the open green character compared to other Wigton Lane properties
- Reference is made to the Alwoodley Neighbourhood Plan (which does not cover this part of Alwoodley Ward)
- Development seeks to provide a luxury lifestyle which does not fulfil the aims of affordable housing for Leeds City Council
- Proposal does not comply with the House Holder Design Guide
- Increase in height of dwelling will impact on privacy
- Out building will appear as a two storey structure
- Bin store will attract rats and emit smells
- Large conifers are not a permanent fixture to screen development and they are contrary to Sec. 8 of the Anti Social Behaviour Act 2003
- Overshadowing
- The detached building is not reasonably ancillary to the main dwelling
- The detached building is out of keeping with residential nature of the locality in an affluent area on the edge of Green Belt land
- Reduce value of neighbouring properties
- Will set a precedent for future proposals along Wigton Lane

## **7.0 CONSULTATIONS RESPONSES:**

- 7.1 Highways: - Condition Bin Store  
 Flood Risk Management: - Condition drainage scheme  
 Contaminated Land: - Low risk site due to residential - use standard land contamination conditions

## **8.0 PLANNING POLICIES:**

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Leeds currently comprises the Core Strategy (2014), saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013) and any made Neighbourhood Plans.

8.2 The most relevant Core Strategy policies are outlined below:

Spatial Policy 1	Location of Development
Spatial Policy 7	Distribution of housing land and allocations
Policy H2	New housing on non-allocated sites
Policy P10	Design
Policy T2	Accessibility Requirements and New Development

8.3 Relevant policies form the UDP:

GP5 – General Considerations  
BD6 – Impact of developments on amenity

8.4 Advice in the Supplementary Planning Guidance Documents Neighbourhoods for Living (in relation to the new build dwelling) and the Housholder Design Guide (in respect of the alterations to the dwelling) are considered relevant.

#### National Planning Policy Framework

8.5 This document sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system and strongly promotes good design and sustainable development. There is a strong presumption in favour of sustainable development running throughout the NPPF.

## **9.0 MAIN ISSUES**

9.1 The main issues are considered to be:  
Principle of the development  
Neighbour amenity  
Highways issues  
Objections comments not covered in main body of report

## **10.0 APPRAISAL**

### Principle of the development

10.1 The development, by virtue of the earlier grant of planning permission for the creation of a single unit of accommodation on the former garage area for Wigton Court is considered acceptable as a matter of principle.

10.2 The creation of an outbuilding near to the north boundary, as a matter of principle is also considered acceptable. There exists for the dwelling, as approved, Permitted Development rights (PD) under the General Permitted Development Order 2015. These would allow for the development of a substantial free standing building up to 50% of the garden space of the dwelling across the entire width of the common boundary. The main restriction would be that the height of such a building within 2 metres of the boundary would be restricted to 2.5 metres height. It is therefore incumbent for the consideration of this proposal to assess if the additional increase in height of the outbuilding over and above this PD right would be sufficiently harmful on the amenity of occupiers of the neighbouring properties to justify a refusal of planning permission. This will be discussed in more detail in the amenity section below.

- 10.3 In relation to the “In Principle” issue, a number of the objections received appear to assume that the earlier permission that established the principle of the dwelling house development somehow represents the maximum extent of potential development on this site and that the Local Planning Authority is in some way constrained by the limits of that permission. This is not necessarily the case and this discussion is not seeking to add a value judgement to this aspect one way or the other at this stage, but the simple facts are that an earlier permission, or indeed refusal is a material consideration in the determination of any future development proposals for the same site, but they in no way limit the consideration of future proposals in any absolute sense. So that this permission exists and is extant, is a consideration rather, than as is suggested in the objections, a limit that the LPA have imposed on the site for the development potential of the site.
- 10.4 The addition of an additional storey albeit in part only, on the approved dwelling is also considered acceptable in this instance as a matter of principle. The site is located in a part of Leeds where two storey dwellings are commonplace and indeed this part of the application site is located adjacent to Wigton Court which sits higher than the proposed dwelling and at three storeys.

#### Neighbour amenity

- 10.5 This falls into two main areas; (i) the potential loss of amenity due to the alterations to the dwelling house itself and (ii) the potential loss of amenity as a result of the proposed out building.
- (i) Impact of the alterations to the dwelling:
- 10.6 The alterations to the dwelling itself include the insertion of an upper floor over part of the building compared to that originally proposed. This is restricted to the part of the proposed dwelling that lies closest to Wigton Court itself and would be seen to be to the ‘rear’ of the dwelling. The north facing windows therefore overlooks the roof of the ground floor living space of the dwelling and the glazed atrium. The distances of the first floor ‘extension’ to the common boundary to the north with properties on the Wike Ridges development exceed the minimum distances advocated at starting points in the SPD, Neighbourhoods for Living, (relevant to the property as a new dwelling). They measure well in excess of 30 metres, this, combined with the proposed landscaping on the boundary will minimise if not prevent any direct overlooking of those properties.
- 10.7 Similarly the relationship of this rear elevation is such that these windows are set in from the nearest side boundary to the west and views of the neighbour’s garden on the west side of the application site will not significantly overlook that garden and views of it will be, at worst, the bottom end of the garden, where that garden abuts the boundary of the properties on the Wike Ridges development and so at such a distance as to be acceptable.
- 10.8 There are no concerns regards the development relationship to the common boundary with the neighbours to the east and west. This is due to the limited scale of the extension, the orientation of the extension (it is set to the north) and the degree of separation. And the additional floor to the dwelling has no impact on the amenity of occupiers of Wigton Court itself. Cross sections of the proposed development will be displayed at the Plans Panel meeting so these relationship can be clearly seen.

(ii) Impact on amenity due to outbuilding;

- 10.9 It is accepted that the outbuilding will be higher than what would be allowed under normal PD rights. However, any measurements of the PD allowances are always as a matter of course taken on the developer's side of the boundary regardless of any levels differences between sites. This can, in some instances, lead to significant disparities. It should be noted that if planning permission is granted, there is, as part of that recommendation the suggestion that a condition be imposed that removes further PD rights from the site for the single dwelling. This is to maintain control over any future developments given the additional development proposed under this proposal.
- 10.10 From the Wigton Court side of the boundary the single storey outbuilding will appear at a height of around 2.5 metres with a shallow sloping roof towards the rear of the building. The proposal indicates additional planting between the outbuilding and the common boundary with the Wike Ridge development properties which will give additional screening over and above that afforded the development by existing trees on the Wike Ridge development properties.
- 10.11 The distances between the rear elevation of the proposed outbuilding and the rear elevation of the nearest neighbouring property on the Wike Ridges development is circa 13.4 metres. If the structure was left to be built under any PD rights the site may enjoy, this could be built on the boundary at circa 11 metres distance to the rear elevation. Any screening would thus rely solely on the existing lower lying planting on that neighbours side of the boundary. These distances relate to the relationship between the outbuilding and 71 Wike Ridge Avenue and they are greater for 69 Wike Ridge Avenue by between approximately 0.75 - 2 meters. It is considered therefore that the proposal is compliant with Policies GP5, BD6 of the UDPR, to P10 of the Core Strategy and to advice in the HDG and Neighbourhoods for Living.
- 10.12 In terms of loss of light, the site lies due south of properties on Wike Ridge Avenue and there will be some additional overshadowing as a result. This will be variable through the year and through the day, with the worst case scenario being during the winter months, when the sun is at its lowest in the sky through the middle part of the day. A significant portion of the garden to number 69 and to a lesser degree number 71 could be in shadow. This of course coincides with the time of year when the garden is less likely to be used as an amenity resource. During the summer months the impact of the out building will be lessened by the increased height of the sun in the sky, however some over shadowing will still occur. For both properties directly affected this will be greater for the occupiers of number 69 where the entire width of the rear boundary will have the single storey extension across it. However, this is also the property that presently has a relatively mature vegetation belt along this boundary which itself will be presently causing overshadowing on their garden space. By mid-afternoon and into the evening, particularly during the summer months, the overshadowing impact of the proposed out building will be lessened due to the position of the sun in the sky vis-à-vis the out building. In conclusion, whilst it is acknowledged that there will be a degree of overshadowing as a result of this out building proposal, it is considered that it is not sufficiently detrimental to the amenities of occupiers of neighbouring properties to justify a refusal of planning permission and that the scheme is compliant with Policies GP5 and BD6 of the UDPR and advice found in the HDG and Neighbourhoods for Living.
- 10.13 The outbuilding is proposed for the housing of a pool and gym will require some plant to be installed that is not normally associated with domestic development.

Concern has been raised regarding the potential for noise and emissions from the building as a result of this. On the application drawings the plant is shown to be wholly contained within the confines of the building and thus contain any noise in particular. It is considered that a condition requiring details of extraction facilities be submitted to the LPA through the imposition of a condition.

#### Highways issues

- 10.14 The scheme provides more off street car parking that would normally be required for a development of this size and as such is compliant with Policy T2 of the Core Strategy. Information relating to the location of a bin store within 25 metres of the bin collection point is required but this can be dealt with by means of a condition as recommended at the head of this report.

#### Objections comments not covered in main body of report

- 10.15 The following paragraphs deal with those objections that are not dealt with in the main body of the report:

##### *Proposal represents gross overdevelopment of site*

- 10.16 The scheme represents an increase in intensity of the development of the site, however subject to the safeguard of the conditions recommended it is not considered to lead to an over development of the site.

##### *The site is essentially the garden space for the re-furbished flats and now the whole of the amenity space is under the control of the future occupier of the house*

- 10.17 This was historically the case however, and despite one of the objectors claiming that there are planning restrictions on this, no such condition exists on the permission that was issued in 2013 for the refurbishment of the flats and the construction of the dwelling to the rear. As such and from the planning point of view, the owner can subdivide the site as he sees fit into two planning units, and the proposal as submitted needs to be treated on its own individual planning merits.

##### *New scheme likely to encroach significantly into the 'Greenfield' part of the site*

- 10.18 Whilst the development of green field sites or what is commonly referred to as "garden grabbing" is generally resisted by Leeds that is not what is happening in this instance. The principle of the additional dwelling is established by the earlier grant of planning permission and the erection of out buildings under Class E of Part 1 of Schedule 2 of the General Permitted Development Order 2015 is a right that this approved property would enjoy. Those buildings are ancillary to the occupation of the main dwelling and as such does not constitute a garden grabbing exercise, which typically involves the further subdivision of a plot to create two or more plots that in themselves would be self-contained. This is not the case here.

##### *Affect the value of neighbouring property*

- 10.19 This is not a material Planning Consideration

##### *Access to outbuilding from Wike Ridge properties not acceptable.*

- 10.20 This is not a material planning consideration and is covered in the Party Wall Act to settle any disputes between private land owners as to accessibility for the purposes of maintenance etc.

##### *Allowing the development will set a precedent*

- 10.21 Any planning approval can be used as a reference for being a material consideration for future developments and weigh in their acceptability, or otherwise,

however it is does not set a precedent and it is up to future decision makers to decide what weight previous decisions are given when considering contemporary proposals.

*Scheme is simply for profit*

10.22 This is not a material planning consideration

*Retrospective application which is at odds with the over-arching design principles already agreed by Leeds CC.*

10.23 The retrospective (in part) nature of the proposal is not determinative in the acceptability or otherwise of the material planning considerations of the case.

*Impact of roots on foundations of existing buildings*

10.24 The site is located at the end of the respective gardens of both the application site and the properties adjoining the application site and so it is considered that there will be little impact of tree roots on existing buildings.

*Application is not detailed enough thus neighbours can't make a full assessment*

10.25 It is considered that there is sufficient information within the application for a decision to be made.

*A warranty should be provided by the developer that any damage will be made good.*

10.26 This is not a material planning consideration and it is up to the parties involved to make any necessary indemnity arrangements.

*A condition survey of the Wike Ridge properties should be undertaken so any future impact of the Wigton Court development on these properties can be monitored against the information recorded by that survey.*

10.27 It is not fully understood that is meant by this, however once again it is considered that this is not a material planning consideration and it is up to the parties involved to make any necessary indemnity arrangements.

*Development seeks to provide a luxury lifestyle which does not fulfil the aims of affordable housing for Leeds City Council*

10.28 Affordable housing considerations do not apply to single domestic developments

*The detached building is out of keeping with residential nature of the locality in an affluent area on the edge of Green Belt land*

10.29 The site is not within or on the edge of the Green Belt.

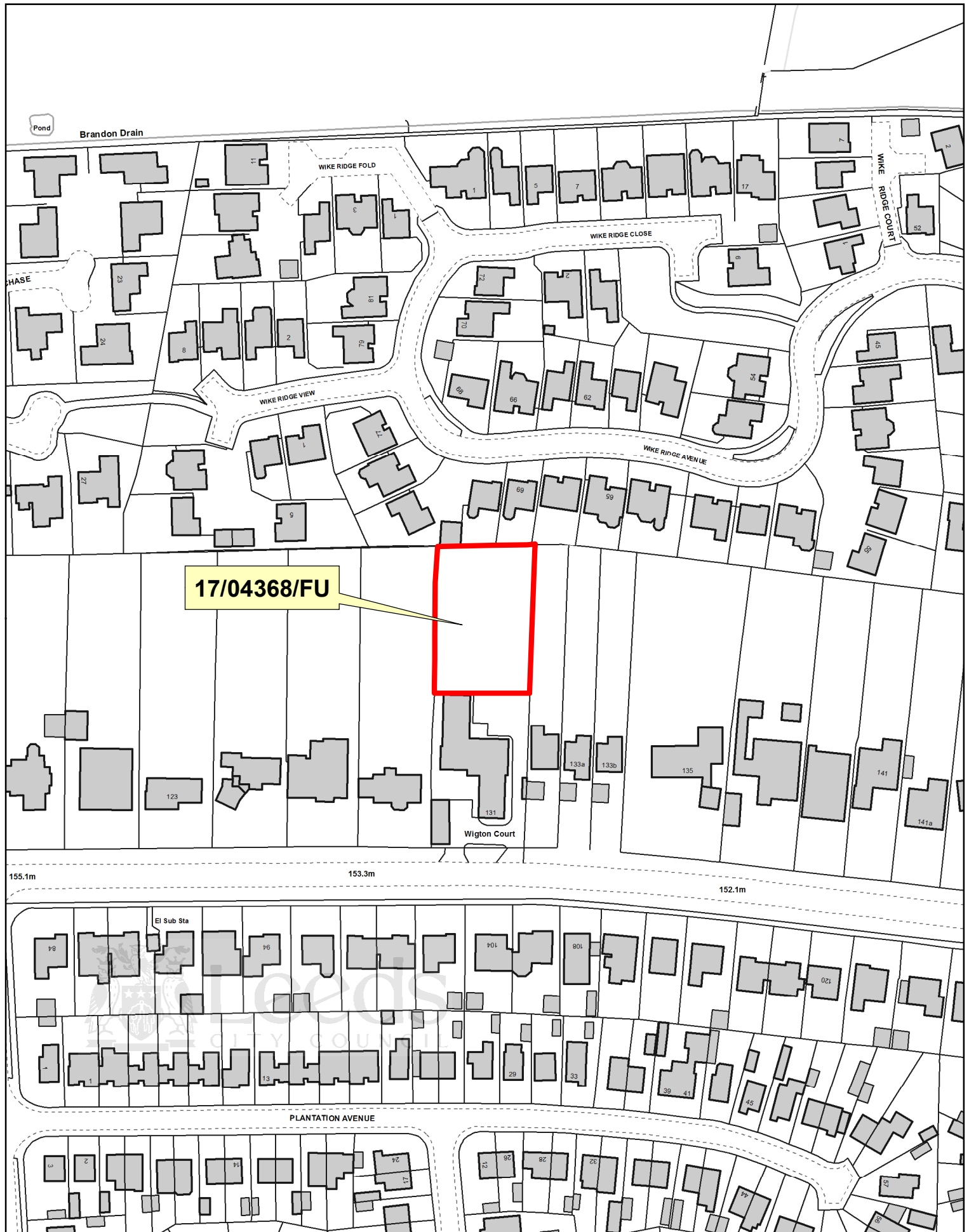
## 11.0 CONCLUSION

11.1 On balance it is considered that the proposal as amended are acceptable and that the proposal now complies with the policies of the Core Strategy, the UDPR and the NPPF and as such, subject to the recommended conditions that planning permission can be granted.

### Background Papers:

Application files: 17/04368/FU

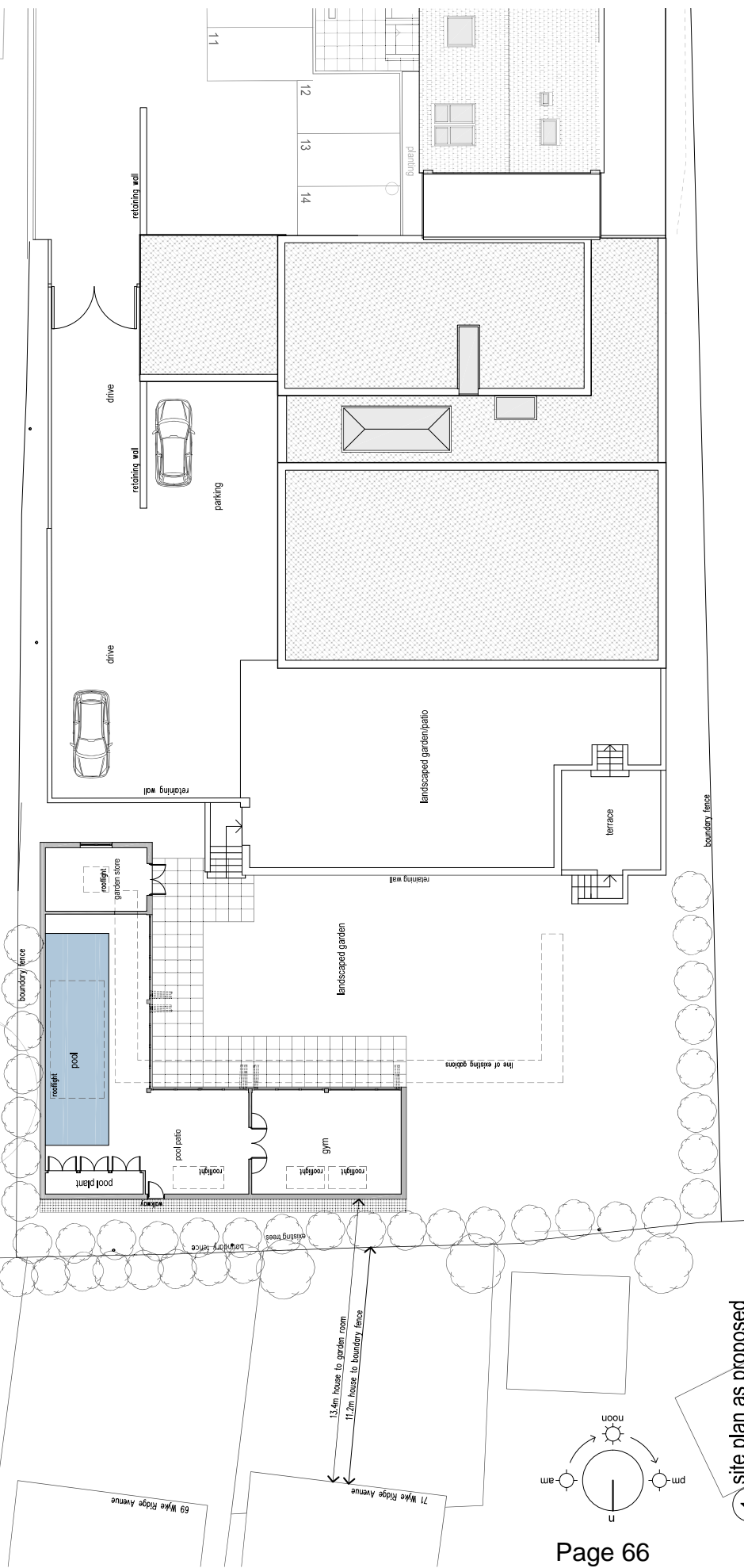
Certificate of ownership: Applicant signed as sole owner of application site



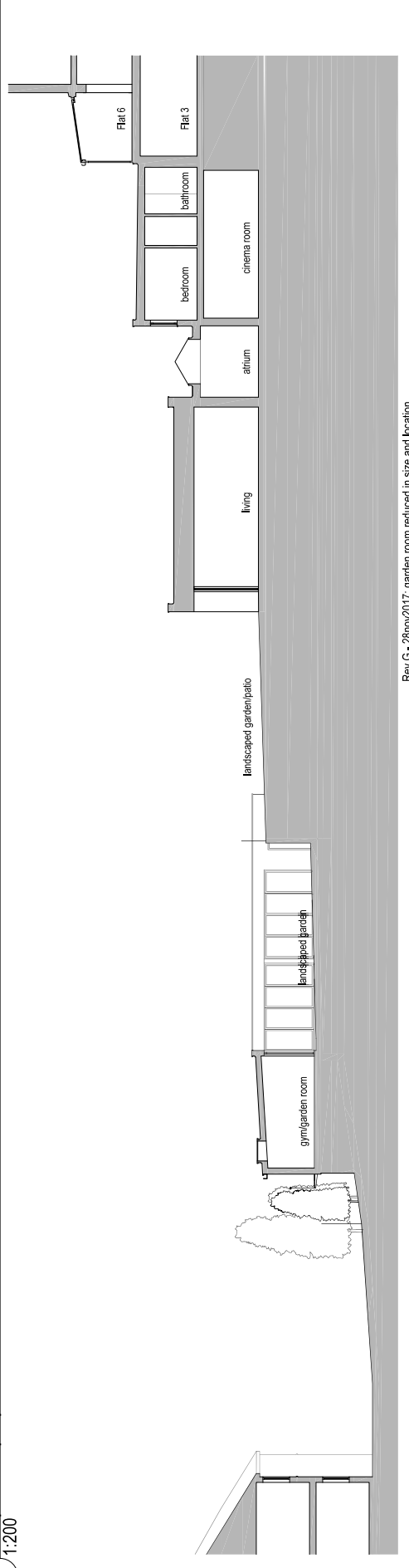
17/04368/FU

# NORTH AND EAST PLANS PANEL





1 site plan as proposed  
 1:200



2 section as proposed  
 1:200

Rev.G - 28nov2017, garden room reduced in size and location  
 Rev.F - 22aug2017, garden room reduced in size and height; neighbouring houses indicated  
 Rev.E - 02aug2017, photovoltaic panels relocated closer to southern parapet  
 Rev.D - 01aug2017, roof to garden room amended





Originator: Glen Allen

Tel: 0113 37 87976

## Report of the Chief Planning Officer

### NORTH AND EAST PLANS PANEL

Date: 7<sup>th</sup> July 2018

**Subject: 16/06911/FU – Appeal(s) by Mr T Doran against the decision of the City Council to refuse planning permission for the change of use of land to create a single travellers pitch and against the decision of the City Council to serve an enforcement notice to cease the use of the site and restore it to its former condition at land off Hollinhurst, Allerton Bywater, Leeds.**

**The Appeals; the appeal against the refusal of planning permission was allowed subject to conditions and the appeal against the serving of the enforcement notice was allowed in part on grounds (g) with modifications made to the notice.**

**A claim for the award of full costs against the Council was dismissed.**

**Electoral Wards Affected:  
Kippax & Methley and Garforth &  
Swillington**

Yes

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

### **RECOMMENDATION:**

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

#### **1.0 BACKGROUND**

- 1.1 The planning application had previously been considered by Plans Panel on two occasions initially on 9<sup>th</sup> March 2016 when Officer brought the proposal to Plans Panel for consideration with a recommendation to approve the scheme subject to conditions.
- 1.2 However, this recommendation was rejected by Plans Panel following due consideration and the case was deferred to return to Plans Panel with suggested reasons for refusal for Members to consider. This occurred on 13<sup>th</sup> April 2017 where two substantive reasons for refusal were presented to Plans Panel relating to overdevelopment of the site and impact on the character of the immediate area. Members, during the further discussion of this case, requested a third reason for refusal be imposed relating to highways safety matters.

1.3 The final reasons for refusal of planning permission was issued as:

- 1) The proposed change of use encompassing the siting of a static mobile home and two touring caravans, the building of a permanent utility room and the provision of three off street car parking spaces is considered to represent an overdevelopment of the site which will be detrimental to the amenities of the future occupiers of the site by reason of the close proximity of the individual caravans, and inadequate space remaining around those caravans for the purposes of recreation. The space remaining would also make the manoeuvring of vehicles difficult causing a danger to users of the site. As such the proposal is contrary to policies GP5 and BD6 of saved UDPR and to Policies P10 and H7 of the Core Strategy. It is also considered to be contrary to Policy H Determining planning applications for travellers sites of the Governments policy document Planning Policy for Travellers Sites issued August 2015.
- 2) The development by reason of the nature of the caravans, the lack of appropriate landscaping and the enclosure of the site by high walls, fences and gates is considered to be out of character with the semi-rural character of the immediate area and as such is detrimental to the amenities of the location as a whole. The proposal is considered to be contrary to Policy P10 of the Core Strategy and Policies GP5 and BD6 of saved UDPR. It is also considered to be contrary to Policy H Determining planning applications for travellers sites of the Governments policy document Planning Policy for Travellers Sites issued August 2015.
- 3) In the opinion of the local planning authority it is considered that the proposed development would result in the intensification of the use of Hollinhurst which is a highway with substandard layout and geometry, unable in places to accommodate two way passing vehicles, with side roads of restricted visibility and substandard provision for pedestrians. Additionally, difficulties associated with the development access, which is located on a ninety degree bend in the road, are likely to require users to carry out reversing or turning manoeuvres within this substandard highway environment. The development would therefore be prejudicial to the interests of highway safety for pedestrians and road users alike. As a consequence the development conflicts with policies GP5 of saved UDPR and T2 of the Core Strategy

1.4 It was also noted by Plans Panel that it was normal practice for any enforcement notice to be served at the same time as the decision refusing an application. In this case the reasons for the serving of the enforcement notice are different to those for the refusal of planning permission as the occupied site encompassed Green Belt land whereas the application for planning permission was only on part of the land owned by the applicant and included that part of his ownership that lay outside of the Green Belt designation.

1.5 The decision notice and enforcement notice were subsequently issued and appeals lodged against both of them. This resulted in a more complex system of appeals than would normally be the case and in summary there were as follows:

- Sec.78 Appeal – Against the refusal of planning application 16/06911/FU, and

- Sec.174 Appeals against the serving of the enforcement notice – one appeal each made by Mr T Doran and Mrs N Doran (as both had been served with copies of the enforcement notice).

- 1.6 The Sec.174 Appeals were further subdivided into different parts as the legislation allows for different grounds for appealing against an enforcement notice referenced (a) – (g). Any appeal under ground (a) also results in the creation of what is known as a Deemed Application for Planning Permission as this ground of appeal is on the basis that planning permission ought to be granted for the breach stated in the enforcement notice. The defence of this part of the case was different from the defence of the Sec.78 Appeal as this deemed application for planning permission also encompassed the land owned by the appellant and occupied by them that is green Belt.
- 1.7 The appeal under Sec.174 was also made on ground (g) which relates to the time period given to comply with the enforcement notice.

## **2.0 ISSUES IDENTIFIED BY THE INSPECTOR**

- 2.1 The Sec.78 Appeal, the appeal relating to the same area of land that was the subject of the application for planning permission determined by Plans Panel, was allowed. The Inspector noted that the nature of the development had changed the physical appearance of the site but then noted that the residential use is limited in scale.
- 2.2 The close proximity to the Green Belt boundary was also noted but he concluded that “...the development is unlikely to have an intrusive effect when seen from the adjacent woodland, because of the siting and position of the caravans. The nature and extent of the caravan site does not have an incongruous or intrusive impact when viewed from the wider countryside.”
- 2.3 In relation to views of the site from Hollinhurst itself and particularly from the southern approach the Inspector noted “...Local residents will see the development from surrounding dwellings. Nonetheless, in my assessment, the visual impact of the development is likely to be localised and limited given the potential boundary treatment. Any visual impact would be softened by introducing soft landscaping along the boundaries to the site.” He also commented on the material differences between the scheme that was subject to this appeal and the previous scheme that had been determined by previous Inspector that was for a more ‘traditional’ dwelling. He concluded in this matter “...that the mobile home would appear as a small bungalow and its siting is unlikely to have an incongruous effect.”
- 2.4 Turning to the concerns regarding the future living conditions as expressed in the second reasons for refusal the Inspector made the following observations.
- 2.5 A site licence under the 1960 Act relating to Caravans would be needed and that this licence is a means of ensuring that public health standards are maintained and that residents’ amenity and health and safety is safeguarded. Whilst accepting that this has no Planning Status he concluded that “given the number of caravans stationed upon the land, there is sufficient circulation space and reasonable amount of private and useable amenity space.”
- 2.6 Likewise in relation to disturbance through comings and goings he concluded that it is his opinion there is not likely to be significant levels of such activities and that the noise that is currently created by the petrol generator could be controlled by condition pending the implementation of mains services to the site.

- 2.7 In conclusion on this matter he stated "...the development does not, and would not, have a materially harmful effect upon the living conditions of existing and future occupants."
- 2.8 On the matter of Highway Safety the Inspector concluded that because the proposal is for a single pitch and in the absence of any evidence that the nature of the residential pitch has the potential to significantly increase the use of the site access, that Hollinhurst is not heavily trafficked and there has been no reported incident or accident in connection with the sites residential use "that the development does not have a materially harmful effect upon highway safety." The Inspector also concluded the visibility at the junction of Hollinhurst and Leeds Road was satisfactory.
- 2.9 Another consideration made by the Inspector related to; the need for additional Traveller Pitch's. The Inspector noted the advances that the Council have made in the emerging SAP but that at the time of the appeal there were no alternative sites available and in particular that there was no 5 year land supply of specific deliverable sites. He noted that the SAP will make provision for the identified need for 25 publicly provided pitch's and noted the 9 proposed negotiated pitch's (which in the discussion was applauded by the appellants agent as a forward thinking solution), but also noted that the SAP will not meet the need for the necessary number of private pitch's identified for the Plan period.
- 2.10 The Inspector also noted that the appellant's agent put forward arguments in respect of the status of the appellants as Travellers, the needs of the children, their rights under Article 8 of the European Convention on Human Rights and commented that it was necessary for him "to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case" and "to consider whether refusal would have a disproportionate effect on the occupiers of the site."
- 2.11 In conclusion he attached significant weight to the following matters: The unmet need for gypsy and traveller sites in the area, the lack of a five year land supply of specific deliverable sites and the lack of available, suitable and affordable alternative accommodation. He concluded that "...These factors combined are sufficient to outweigh any localised visual effect of the development on the character and appearance of the area." What is also significant is that whilst the Inspector made this conclusion he also went on to say that "Although not determinative in this case, I attach personal circumstances including the best interests of the child involved moderately some weight in favour."
- 2.12 In conclusion on the planning application appeal the inspector found that the development was acceptable and imposed conditions relating to certain specific matters. The approval relates to an alternative scheme that is less intensive than that considered under the terms of the original planning permission and it was agreed at the hearing that as the scheme was less intensive there would be no prejudice to interests of acknowledged importance and in particular the occupiers of nearby properties.
- 2.13 Turning to the enforcement appeals the main point of discussion was the impact of the development occupying the entire site that also encompasses the Green Belt land owned by the appellant. The Inspector noted that this land encompassed approximately 11 metres by 26 metres.
- 2.14 The Inspector concluded the residential use of this part of the land including all the paraphernalia associated with residential occupation has diminished the openness of

the Green Belt. He noted that whilst caravans might come and go on a regular basis the mobile home will remain in situ for a considerable period of time. The site is directly visible from Hollinhurst and the static caravan is likely to have the appearance of a small bungalow. He concluded that the caravan site (as a whole) "is perceived as intrusive development and causes an actual and appreciable loss in openness."

- 2.15 Overall in relation to the ground (a) appeal relating to the entire site including the Green Belt land, the Inspector concluded that "the development has a significantly and adverse visual effect upon the character and the appearance of the surrounding area." In response to the appellants arguments regarding the lack of a 5 year land supply for private traveller pitch's and that this might outweigh the considerations of the Green Belt designation the Inspector made reference to Government advice on this matter that currently advises that the Green Belt boundary should only be altered through the plan making process rather than through the piecemeal grant of planning permission. In his conclusions the Inspector again made reference to the status of the appellants, their personal circumstances and that in his considerations he was mindful to allow the Sec.78 appeal thus making provision for the family in this instance. Therefore, he concluded that in this instance the harm done to the Green Belt was not outweighed by the other considerations.
- 2.16 The Inspector also gave consideration to the grant of a temporary permission however found that the harm caused even over a temporary period of time given that he was mindful to allow the Sec 78 Appeal was unacceptable including that the personal circumstances of the family were protected through this grant of permission under the Sec.78 appeal. The appeal under ground (a) was therefore dismissed.
- 2.16 The remaining consideration, the appeal under ground (g) was a matter for the Inspector to consider in terms of the length of time allowed to comply with any extant notice as a result of the appeal process. To this end he imposed a slightly longer time limit for compliance and amended the notice to 7 months. This he did in the interest of proportionality.

### **3.0 APPLICATION FOR FULL COSTS AGAINST THE COUNCIL**

- 3.1 There was a claim for a full award of costs against the Council for unreasonable behaviour in respect of this case. There were two main thrusts to this case namely that the original recommendation of Officers was to grant planning permission and the Local Highway Authority did not object to the previous application for residential development of the land, however, Members resolved to refuse planning permission but the Council failed to demonstrate why the case was refused on highway grounds therefore the Council had delayed development that was acceptable.
- 3.2 The defence offered by Officers was that the point of having elected Members determine applications is a part of the local democratic process and that particularly in relation to the highways issues Members had decided to place different weight to the various material considerations after listening to the concerns raised by local residents.
- 3.3 The Inspector noted that despite the initial lack of objection on highways grounds that a Highways Officer was in attendance at the Hearing and defended the Councils case and further the Inspector found that the Council "has, on this occasion, substantiated all reasons for refusal on this particular matter." He then went on to conclude "unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is unjustified in this case."

## 4.0 IMPLICATIONS

- 4.1 The decision by the Inspector highlights the need to take into account the material differences between cases where there is a planning history. That the site had been the subject, previously, of decisions relating to residential accommodation does not, in the absence of an “in principle” objection to such a use render it unacceptable to alternative forms of residential development.
- 4.2 Notwithstanding that the Inspector agreed with the initial findings of Officer’s that the principle of a travellers site was acceptable in this location the Inspectors report does draw out in some detail the significant weight that he placed on the status of the applicant as a traveller and thus their Human Rights and to a lesser but still significant degree the best interests of the child that is part of the appellants family. This is something that should be noted by Members as in other cases where there may be an “in principle” objection to the establishment of a travellers site on material planning grounds, the aforementioned issues might outweigh those considerations.
- 4.3 The issue of the Green Belt was given significant weight by the Inspector and his reference to the Planning Practice Guidance in regards to how the boundary of the Green Belt should be changed through the plan making process supports this. However, because the Inspector had made provision for the family under the Sec.78 Appeal (the appeal against the refusal of planning permission), the decision does not give any indication whether the issues discussed at 4.2 above would outweigh the harm identified to the Green Belt.
- 4.4 In respect of the Costs decision this exonerates the Council and supports the democratic process of bringing certain applications to Members for determination. Whilst the reasons for refusal included a reason relating to an issue that the officers did not identify as being problematic, that of Highway Safety, that members had placed greater weight on this issue and then it was subsequently defended in a reasonable manner at the hearing led the Inspector to conclude that this did not constitute unreasonable behaviour.
- 4.5 Likewise that Plans Panel’s decision ran contrary to the initial advice of the Officers does not in and of itself constitute unreasonable behaviour and again supports the democratic process of the Planning System in that it is not unreasonable behaviour for Members to give different weight to different material considerations and come to a different conclusion than that of their advisors.

### **Background papers:**

Application file: 16/06911/FU

Appeal and Costs decisions appended



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## Appeal Decisions

Hearing and site visit held on 17 April 2018

**by Mr A U Ghafoor BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 May 2018**

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### **Appeal A Ref: APP/W/17/3177207**

#### **Land off Hollinhurst, Allerton Bywater, Leeds WF10 2HY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Mr T Doran against the decision of Leeds City Council.
- The application ref 16/06911/FU, dated 4 November 2016, was refused by notice dated 27 April 2017.
- The development proposed is described on the application form for planning permission as *the change of use of land to 1 family traveller pitch with associated works including 1 no. mobile home, 2 no. touring caravans, 1 no. utility room, fencing and hardstanding.*

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

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### **Appeals B and C Refs: APP/C/17/3177209 and 3177210**

#### **Land off Hollinhurst, Allerton Bywater, Leeds WF10 2HY**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr T Doran (Appeal B) and Mrs N Doran (Appeal C) against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 8 May 2017.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land for the purposes of the stationing of caravans for human habitation, the creation of a hard standing by the deposit of hardcore or similar material, the erection of a gate, toilet cabins, wooden hut and siting of generators and the parking of private motor vehicles ancillary to the residential use of the land.
- The requirements of the notice are to:
  - 1) Cease the use of the land for the stationing of caravans for human habitation and the parking of all motor vehicles in connection therewith and remove all such caravans and motor vehicles from the land.
  - 2) Remove all ancillary paraphernalia including tent, toilet cabin/s, timber dog hut, generators and metal clad green gate from the land.
  - 3) Remove the hardcore laid on the land to its full depth and cultivate the area of the land from which the hardcore has been removed to create a seedbed suitable for sowing grass.
  - 4) Seed the entire area cultivated in accordance with Step 3 above with an appropriate agricultural grass seed mix and repeat the seeding where necessary until a grass sward is established.
- The period for compliance with the requirements is two months for Steps 1) and 2), three months for Step 3) and during the first available grass seeding season following the completion of Step 3) above.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
- Since the prescribed fees have not been paid within the specified period in Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decision: Both Appeal B and C succeed in part on ground (g)**

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**and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.**

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**Procedural matters**

1. At the Hearing an application for costs was made by Mr T Doran against Leeds City Council. This application is the subject of a separate decision.

**The site, proposal and background information**

2. The enforcement notice covers all of the land under the ownership of the appellant. It is in residential use and partly falls within the settlement and partly on land designated as Green Belt. The site under consideration in Appeal A falls within the settlement boundary and retrospective planning permission is sought for its continued use as a residential caravan site. In Appeal B, the deemed application relates to all of the land. For reasons that will become clearer later, I will first evaluate the s78 appeal and then the s174 case. I will return to matters relating to the notice when I address the latter.
3. The Council as local planning authority (LPA) determined the application for planning permission on the basis that the proposal is for a single traveller pitch. The plan show a mobile home and space for two touring caravans, hardstanding , a utility building and three off-street car parking spaces along the front. This application was refused permission because of the impact of the development upon the character and appearance of the locality, the effect upon existing and future occupants' living conditions and highway safety.
4. An amended plan has been submitted for my consideration. This drawing shows a static and a touring caravan, two car parking spaces and a hard-surfaced area<sup>1</sup>. Due to the reduction in the number of caravans, the site layout changes but the caravans and car parking spaces are located within the compound. The dayroom and the three car parking spaces are removed and the hard-surfaced is reduced. Overall, the alterations to the site layout are minor and the scale of development is reduced. To my mind, the amended scheme does not fundamentally alter the nature of the development considered by the LPA, because permission is sought for a single pitch with a slightly different site layout. I am satisfied that the amended scheme is not substantially different to such an extent that my consideration of it potentially deprives those who should have been consulted an opportunity to do so<sup>2</sup>. I will therefore proceed on the basis that planning permission is sought for the amended scheme.
5. There is a previous s78 appeal decision in relation to an application for planning permission to erect a single detached dwelling at the site<sup>3</sup>. Whilst the findings of the previous Inspector are material and there is a need for consistency in the planning process, I am not bound to reach the same conclusion provided there are sound planning reasons for departing from her approach.
6. The appellant's claim that he meets the gypsy and traveller planning policy definition given in the *Planning policy for traveller sites 2015 (PPTS)* is unchallenged. The definition of gypsies and travellers is set out at annex 1 to PPTS. The appellant is an Irish Traveller who has a travelling lifestyle that is nomadic in

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<sup>1</sup> Drawing no.TDA.2333.01, dated September 2017.

<sup>2</sup> Applying the principles established in *Bernard Wheatcroft Ltd v SSE* (Journal of Planning and Environmental Law 1982 P37).

<sup>3</sup> Appeal dismissed 6 July 2015 ref: W/15/3013414.



character. All of the site occupants have a clear cultural and family history of travelling. This lifestyle was, and remains, for the purposes of work and for attending the traditional gypsy fairs, indeed sometimes often attending fairs and seeking work would coincide. There is no suggestion that either intended to give up travelling. They want a settled base from which to travel.

### **Planning policy**

7. Policy N33 of the Leeds Unitary Development Plan Review 2006 (UDP), which is saved by Direction of the Secretary of State, relates to development proposals inside the Green Belt. Amongst other things, the policy refers to change of use of land for purposes which do not compromise Green Belt objectives. The National Planning Policy Framework (NPPF) is a relevant consideration. Paragraphs 89 – 90 set out policy for assessing proposals inside the Green Belt. Paragraph 90 does not include material change of use of land. Paragraph 87 records inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I find some tension between paragraph 90 and UDP Policy N33 because of the phraseology used and I will attach it limited weight in the context of Appeal B. However, Policy BD5 and GP5 are general development control policies broadly consistent with the NPPF<sup>4</sup>.
8. The Core Strategy 2014 (CS), Policy H7, which relates to accommodation for gypsies, travellers and travelling show people, is relevant. Policy P10 relates to design matters and Policy T2 to accessibility requirements and new development. In terms of emerging policy, the Local Plan Site Allocations Plan (SAP) has been the subject of public consultation and a draft version has been submitted to the Secretary of State in March 2018. However, there has been some delay as a result of additional research. Examination in public is planned for summer 2018 and adoption early 2019. Having regard to NPPF 216, I attach this emerging policy little weight as it is yet to be scrutinised by an independent Inspector and it might change in the future.

### **Appeal A – the s78 appeal**

9. The main issue to consider is the effect of the development upon: 1) the character and appearance of the street scene and locality; 2) the living conditions of existing and future occupiers of the site having particular regard to site layout, amenity and space standards; 3) highway safety with particular reference to servicing, turning space and on-site parking space. In addition, whether any harm arising from the above matters is outweighed by other considerations, including the level of need for gypsy and traveller sites, personal circumstances and Human Rights considerations.

#### *Character and appearance*

10. The estate is characterised by rows of two-storey terraced dwellings. The site is situated at the top of Hollinhurst, which is a lane that roughly runs northwards from Leeds Road and turns into an access to the rear of existing dwellings. The site adjoins residential gardens to the east and dense woodland to the north and west. To the south and southeast there is residential development.
11. The site is roughly rectangular in shape some 230 square metres in size and was overgrown by vegetation. It is located on the edge of the settlement and forms a visual gap between the wooded area and built-up development to the south. I consider that the nature of the development has changed the physical appearance

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<sup>4</sup> NPPF paragraph 215 applied.

of the site. That said, however, the residential use is limited in scale and is facilitated by the stationing of a single static caravan and a touring caravan.

12. The LPA is concerned that the site is located close to the Green Belt boundary. However, the development is unlikely to have an intrusive effect when seen from the adjacent woodland, because of the siting and position of the caravans. The nature and extent of the caravan site does not have an incongruous or intrusive impact when viewed from the wider countryside. Additionally, a suitable boundary could be erected between the appeal site and the countryside. Such a barrier would address concerns about the potential expansion of residential activity onto land within the countryside.
13. The caravans are noticeable in views from the south along Hollinhurst. Passers-by are likely to perceive the existence of a caravan site. Local residents will see the development from surrounding dwellings. Nonetheless, in my assessment, the visual impact of the development is likely to be localised and limited given the potential boundary treatment. Any visual impact would be softened by introducing soft landscaping along the boundaries to the site.
14. There is material difference between the scheme before me and the previous Inspector. In comparison, a two-storey house would have stood alone at the western end of the row of gardens close to the boundary of the Green Belt. In contrast, the revised scheme shows that the static caravan would be located close to the eastern boundary of the site, which is defined by a tall solid wall. I consider that the mobile home would appear as a small bungalow and its siting is unlikely to have an incongruous effect.
15. Pulling all of the above points together, I conclude that the development does not compromise the semi-rural character of the site or locality. Accordingly, the caravan site complies with UDP Policies BD5 and GP5 and CS Policy P10.

#### *Living conditions*

16. The LPA is concerned about the lack of amenity space for existing occupants of the site and is concerned about safety. It is likely that a site licence pursuant to the Caravan Sites and Control of Development Act 1960 as amended would be needed. The space would need to be satisfactory. The site licence is a means of ensuring that public health standards are maintained and residents' amenity and health and safety is safeguarded. The *Model Standards 2008 for Caravan Sites in England Caravan Sites and Control of Development Act 1960* are developed for good practice. However, these standards have no planning status and the standards are not set in any DP policy, or supplementary planning document. In any event, given the number of caravans stationed upon the land, there is sufficient circulation space and reasonable amount of private and usable amenity space. I consider that the nature of development provides acceptable amenity for existing and future occupants.
17. I do not consider the scale of development is likely to generate significant level of comings and goings to and from the site. The level of noise created by the petrol generator has disturbed residents and is unacceptable, though the appellants is negotiating with local utility providers. In the short term sound attenuation scheme could be submitted to the LPA for its consideration.
18. There is nothing before me to indicate that the scale of the development dominates the settled community when considered on its own or cumulatively. I consider that the nature of the development, as illustrated on drawing no.TDA.2333.01, does not have a materially harmful effect upon the neighbours' quality of life.

19. Drawing all of the above points together, the development has been designed with consideration given to both existing and future occupants' amenity. I conclude that the development does not, and would not, have a materially harmful effect upon the living conditions of existing and future occupants. Accordingly, subject to conditions, the scheme complies with UDP Policy BD5 and GP5, and CS Policy P10.

#### *Highway safety*

20. The estate is accessed via Hollinhurst which, in turn, is accessed from Leeds Road. Pedestrian provision within the estate comprises a single footway which is located between no.99 and Leeds Road along the eastern side of Hollinhurst. Pedestrians walking to and from the estate mainly use the carriageway. The evidence presented does not suggest there is a particular problem caused by the local highway network's design and layout.

21. There is adequate visibility at the junction where Hollinhurst meets the main carriageway, but the local highway authority (LHA) is concerned about the intensified use of the site access. The driveway is located on the outside of a 90-degree bend opposite no.99 Hollinhurst. The carriageway approaching the bend does not permit two vehicles to pass simultaneously, because of its width. The bend is about 3.8 m wide and visibility is restricted by a boundary wall. However, the scheme is for a single pitch. There is no evidence before me to suggest that the nature of the residential use has the potential to significantly increase the use of the site access. Hollinhurst is not heavily trafficked and there has been no reported incident or accident in connection with the site's residential use. The gates are slightly set back from the highway and there are adequate sightlines in both directions, due to the location of the access. There is sufficient space for drivers to turn within the site and exit in forward gear.

22. The LHA acknowledged that the shared surface road layout has not caused a particular problem between pedestrians and vehicles. Indeed, users of the local highway network are likely to be cognisant and alert of their surroundings. The evidence presented does not show to me that the caravan site has the potential to increase the risk to other users of shared surfaces including pedestrians and cyclists.

23. I note that CS Policy T2(v) requires parking provision and sets out specific accessibility standards at appendix 3. However, two car parking spaces would be sufficient and appropriate in terms of length and width to allow simple manoeuvring to get in and out of the space. Concerns about inadequate off-street car parking are misplaced.

24. In my assessment, the use of the access in connection with the residential caravan site does not, and would not, have a negative effect upon the safe and efficient operation of Hollinhurst, given the limited nature and scale of the development. I conclude that the development does not have a materially harmful effect upon highway safety. Accordingly, the development would not conflict with UDP Policy GP5 and CS Policy T2.

#### *Other considerations*

25. The following arguments are advanced as other considerations that might weigh in favour of the development.

26. The need for additional traveller sites is set out in CS Policy H7, which refers to the Gypsy and Traveller pitch requirement study in 2013-2014. The supporting text to Policy H7 indicates a need for 62 pitches to March 2028 made up of: 25 pitches

Council provision, 28 pitches private provision and nine negotiated stopping provision. Although sites will be allocated via the emerging SAP, there are currently no alternative sites available. Furthermore, there is no five-year supply of specific deliverable sites. I note the argument that there has been a local policy failure to provide sites, but the SAP would meet the identified need for additional public sites. There will remain an unmet need for privately owned traveller sites. Although minor, the appeal scheme would represent a way of meeting that identified and significant unmet need.

27. The appellant maintains that the appeal site is previously-developed whereas the LPA state it was probably an allotment. The agreed position, however, is that the site is reasonably accessible by public transport and a short car journey away to healthcare and educational facilities, supermarkets and local services. Economic benefits would be limited to the occupants of the site but there is social advantage in providing settled accommodation to meet the needs of travellers.
28. The Hearing received a range of detailed evidence relating to the general medical and educational needs of the family and, in particular, the needs of the children involved in this case. Details of anti-social behaviour targeted at the family have been submitted. Evidently, there is a dependence upon existing various educational and health services in the locality. I have heard and read sufficient evidence to satisfy me of the validity of the health claims and special educational needs of the children. Accessing facilities from an unsettled base is problematic as opposed to a more permanent abode. I appreciate the argument that these facilities could be accessed from a different site, but the family will have benefited from the ability to receive regular education and healthcare, which living at a settled base provides.
29. The appellant and occupiers' rights, including each child, under Article 8 of the European Convention on Human Rights (ECHR)<sup>5</sup> must be taken into consideration. This includes not only respect for their home but also their private and family life and their traditional gypsy lifestyle. The dismissal of planning permission could result in occupiers being evicted. Interference with their home, private and family life is therefore serious but must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. There is a need for restrictive development control policies and this restriction is an appropriate proportional response to that need.
30. A primary consideration for me is the best interests of the children<sup>6</sup>; the latter being aligned with adults' interests. I concur it is, and would be, in the children's best interests to continue to have access to health services and education from a settled base. It would be preferable for those facilities to be the same that they access at present and are familiar with. However, it is not necessary to access these facilities from this site. For example, it is also not uncommon for families to move home from time-to-time and their children to have to change schools. It is not that uncommon for people to change health providers as a consequence of moving home. That said there is no suggestion of another site being available right now that would provide a settled base from which health facilities could be accessed.

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<sup>5</sup> The ECHR protections have been codified into UK law by the Human Rights Act 1998.

<sup>6</sup> The Planning Practice Guidance (PPG) [Ref 21b-028-2015091] states that; *Local authorities need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.*

31. There is no alternative suitable site presently available for occupation in the district, or indeed, the wider area, which makes the interference more serious and, as indicated above, given that background, it would be in the best interests of the children to remain on the site. This is a primary consideration in the proportionality assessment required by Article 8. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case. I shall consider whether refusal would have a disproportionate effect on the occupiers of the site in my conclusions.

### ***The planning balance***

32. The proposal would not harm the character and appearance of the surrounding area. A comprehensive landscaping scheme would considerably mitigate any visual effect of the development on walkers and passers-by. The site would be suitable and sustainable for the development. I find that the development complies with LP UDP Policy GP5, BD5, CS Policy H7 and PS10.

33. I attach significant weight to each of the following matters: the unmet need for gypsy and traveller sites in the area, the lack of a five-year supply of specific deliverable sites and the lack of available, suitable and affordable alternative accommodation. These factors combined are sufficient to outweigh any localised visual effect of the development on the character and appearance of the area. Although not determinative in this case, I attach personal circumstances including best interests of the child involved moderately some weight in favour. Limited weight is given to the intentional unauthorised development argument.

34. A favourable outcome would not violate the appellant's human rights. I have had due regard to the Public Sector Equality Duty (PSED) set out in the Equality Act 2010. I consider that a refusal of permission for development that is acceptable in planning terms would fail to foster good relations between the site's proposed occupants and the settled community. The PSED adds weight to my overall conclusion that the appeal should be allowed.

### **Conditions**

35. I have considered the suggested conditions in the light of advice found in paragraph 203 and 206 of the NPPF and the relevant sections of the Planning Practice Guidance. Residential use of the land has already commenced. The grant of planning permission will generally be for the use of the land as a residential caravan site.

36. To ensure adequate control over the development and in the interests of amenity, details of sound insulation to address the level of noise emitted by the generator need to be submitted to the LPA for its approval. Details for foul and surface water drainage scheme as well as site connection to utility services, scheme for external lighting, hard and soft landscaping and boundary treatments need to be submitted to the LPA for approval. The details should include details of a physical boundary that subdivides the appeal site from land within the Green Belt. A timetable for implementation of the approved details must also be submitted. These matters need to be part of a site development scheme and a retrospective condition is reasonable and necessary.

37. The condition requiring a site development scheme reflects the significance that I attach to the various matters mentioned above, and the need to enforce the use in their absence. It is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters. These matters need to be addressed in order to make the development

acceptable in planning terms. I shall draft the retrospective condition so that it imposes certain timescales to ensure submission of the details within three months and to allow time for approval of those details, or appeal if necessary.

38. In the interests of visual amenity, there is a need to impose a landscaping retention condition given the potential visual effect of the development upon views from Hollinhurst. In the interests of good planning and to avoid doubt, it is necessary to retain control over the siting of the caravans and the layout of the pitch. To address my concern about the spread of development over the entire land, drawing no.TDA.2333.01, dated September 2017, should be specified.
39. In the interests of visual amenity and proper planning, a condition specifying the maximum number of caravans or pitches is necessary to limit the scale of the development. Occupation of the site is to be restricted to gypsies and travellers, in accordance with the definition given in the PPTS, as the need for such sites has been held to weigh in favour. Control commercial activity and vehicle size will address concern about business use of the site.

### **Conclusion on Appeal A**

40. In reaching my decision on Appeal A I have taken into account all of the representations made by local residents. On balance, for the reasons given above and having considered all other matters, I conclude that Appeal A should be allowed subject to the conditions set out in the formal decision below. This is a proportionate response to the competing interests.

### **Appeals B and C – the s174 appeal**

41. There are a few matters relating to the wording of the notice that require an assessment with a view to correct it, which is possible using the powers available to me subject, of course, to the essential test of injustice<sup>7</sup>. It alleges '*...the change of use of the land for the purposes of the stationing of caravans for human habitation, the creation of a hard standing by the deposit of hardcore or similar material, the erection of a gate, toilet cabins, wooden hut and siting of generators and the parking of private motor vehicles ancillary to the residential use of the land*'.
42. The allegation is imprecise in that it refers to a *change of use of the land*. To reflect the definition of the term *development* in s55(1) of the Act, it should state a *material change in the use of the land*. Furthermore, the evidence presented indicates that the purpose of the caravans and deposit of hard-core and the erection of walls and gates facilitated the residential use.
43. The description of the alleged contravention has caused no significant confusion nor has it misled any party. It told the appellant what had gone wrong and what was needed to put things right. For greater precision, I agree with the parties that the allegation should be described in the following terms: *Without planning permission, the making of a material change in the use of the land to a residential caravan site facilitated by the laying of hard standings and the stationing of caravans and the erection of a gate, toilet cabins, wooden hut and siting of generator*. There are also some typographical errors in the reasons for issuing the notice. For example, the reference to planning policy guidance 2 which is no longer extant. UDP Policy H16 that has been replaced by CS Policy H7.

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<sup>7</sup> Section 176(1)(a)(b) of the Act – On an appeal under section 174 the Secretary of State may correct any defect, error or misdescription in the notice, or vary its terms, if he is satisfied that the correction or variation will not cause injustice to the appellant or the LPA.

44. The steps required to comply with the notice need to flow from the corrected allegation. Step 5(4) requires the recipient to seed the entire area but the LPA accept that the notice should simply require the removal of the hard-surface that facilitated the residential use. I concur with the appeal parties that all of these corrections do not make the notice any more onerous than first issued. I am satisfied that no injustice is caused by the intended corrections and I will correct the notice.

### **Appeal B - ground (a)**

45. I note that the area designated as Green Belt is about 11 metres wide and 26 m deep, but nonetheless all of the land identified on the site plan attached to the issued notice is in use as a caravan site. The deemed application relates to this entire parcel of land. Planning permission is therefore sought for the continued residential use of the whole land. It is therefore necessary to apply relevant Green Belt planning policy to the development.

46. PPTS policy E describes material changes of use of land to traveller sites in the Green Belt as inappropriate development. The appeal parties agree that a change of use to a residential caravan site amounts to inappropriate development inside the Green Belt which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. NPPF paragraph 88 indicates any Green Belt harm attracts substantial weight.

47. Against all of that background, the **main issue** is whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether very special circumstances exist to justify the development. An assessment of the following matters is necessary in order to address the main issue:

The effect of the development upon: (1) the openness and purposes of the Green Belt, (2) the character and appearance of the surrounding area, (3) the existing level of provision and need for traveller sites, the availability, or lack of, alternative accommodation taking account of whether there is a supply of specific deliverable sites and the policy response to address any under-provision of traveller sites in the district, and to what extent the personal circumstances and human rights of the residents contribute to the need for the development.

### ***Reasons - Openness and purposes***

48. There is no evidence to contradict or make less than credible the LPA's claim that the site was overgrown with vegetation before residential use. The development extends over a significant part of the land and the introduction of a static mobile home and touring caravans to facilitate that activity has diminished openness. In my assessment, the introduction of caravans with all attendant domestic features, such as gates and boundary walls and paraphernalia to support the residential use, all together results in the loss of openness.

49. Caravans could be moved on or off the site at any time. In practice, however, the mobile home is likely to remain on the land for a considerable period of time. The site is directly visible from Hollinghurst. The static caravan is likely to have a similar appearance to a small bungalow and the site is, and is intended to be, used as a settled base. The introduction of comings and goings to and from the caravan site as well as the parking of vehicles in the open adds to the visual impact of the development on the edge of the built-up area. To my mind, the caravan site is perceived as intrusive development and causes an actual and appreciable loss in openness.

50. The site is located on the edge of a built-up area and the development. The residential use has resulted in the introduction of all of the trappings associated with living, and extended domestication into land that was formerly undeveloped. I consider that the caravan site represents encroachment into the countryside and conflicts with the fundamental aim of Green Belt policy, which is to prevent urban sprawl by keeping land permanently open. There is conflict with Green Belt purposes. I conclude that the development has a materially harmful effect on openness.

#### *Character and appearance*

51. The nature of the residential caravan site has changed the physical appearance of the land. Given the potential stationing of the caravans on any part of the area, the development is likely to be intrusive in views from the surrounding countryside. The extent and scale of the site's residential use has an urbanising effect. In my assessment, the use of the land that is partly within the Green Belt is unwarranted and unacceptable as it severely compromises the semi-rural quality of the site and its immediate environs. I therefore conclude that the development has a significantly adverse visual effect upon the character and appearance of the surrounding area. Accordingly, the development conflicts with UDP Policies BD5 and GP5 and CS Policy P10.

#### *Other considerations*

52. The appellant advances the following arguments that might weigh in favour. He contends that drawing no.TDA.2333.01 represents an alternative scheme and planning permission should be granted for part of the site. I have evaluated the merits of the Appeal A scheme and found in favour. However, I am concerned about the potential residential use of land within the Green Belt. The notice covers the entire land under the appellant's ownership and prohibits residential use of land that does not benefit from planning permission.

53. The appellant argues that land designated Green Belt may have to be allocated for future pitch provision for travellers, but there is nothing before me to indicate that the site was an area of land considered or identified and has been through an assessment process. PPTS, paragraph 17, states that Green Belt boundaries should be altered only in exceptional circumstances via a plan-led approach; not in response to a planning application. Any alteration to Green Belt boundaries to accommodate traveller sites, or any other development, should be carried out as part of the plan-making process with all available sites being considered. That approach would meet the Government's objectives of delivering sustainable development in a planned and co-ordinated manner. I acknowledge this application does not seek alteration of any Green Belt boundary, but the effect of a permanent permission would be similar.

#### ***The planning balance***

54. The development has harmful implications for the Green Belt in terms of inappropriateness. It results in an appreciable loss of openness of the Green Belt and represents encroachment into the countryside, which is a serious planning objection. In accordance with national policy, such harm carries substantial weight. Added to that is the significant adverse visual effect of the development upon character and appearance arising from the residential use of the entire land under the appellant's control. Accordingly, there is conflict with the Green Belt protection objectives found in the NPPF and PPTS, and UDP Policies BD5 and GP5 and CS Policy P10.



55. My findings on the effect of the development upon existing and future occupants and neighbours' living conditions apply in Appeal B as the caravan site is for a single pitch albeit spread across a wider area. In a similar vein, residential use of the entire site is likely to have the same impact in terms of highway safety. These factors have a neutral effect on the overall balance as they neither weigh for or against the development.
56. On the other side of the scales, the site is accessible to local services and the scale of development does not dominate the settled community. There are some social and economic benefits from a settled base, but the use of the entire land has considerable environmental harm.
57. There is deficiency in that the LPA cannot demonstrate an up-to-date five year supply of deliverable traveller sites. This should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, as paragraph 27 to the PPTS points out, the exception is where the proposal is on land designated as Green Belt.
58. The lack of an alternative site is linked to the absence of deliverable sites. There is a recognised national and regional need for additional traveller pitches, but these should be provided in a planned and co-ordinated manner. My deliberations above suggest there is an unmet need for additional pitches in the short-to-medium term arising from households who meet the PPTS definition. I accept that a single pitch makes a small contribution overall; nevertheless, I attribute significant weight to my findings on need for additional pitches.
59. I am satisfied steps are now being taken to address the perceived historic shortcomings in meeting needs of gypsies and travellers via the local plan-making process. In assessing this kind of scheme, the LPA rely on national policy and a new Local Plan is programmed for adoption in 2019 or thereabouts. The debate suggests the authority will proceed expeditiously in adopting a new Local Plan that addresses the needs of travellers. I attach limited weight to the historic failure of traveller site provision.
60. I have not lost sight of the fact that planning permission will be granted in Appeal A; there is no immediate threat of homelessness and risk of an unauthorised roadside existence. The lack of alternative sites carries very little, if any, weight in favour. In addition, limited weight is given to the advanced alternative scheme.
61. I am cognisant of the voluminous court judgements submitted in the bundle of evidence. The case in favour of planning permission has been forcefully put, and the case against is strong. In my planning judgement, the advanced considerations in support of the appeal, whether taken individually or collectively, do not, on balance, clearly outweigh harm to the Green Belt by reason of inappropriateness and the other identified harms. I will next examine whether personal circumstances can tip the balance in favour of a permanent planning permission.
62. Government policy is that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. The appellant and site occupants need a permanent pitch which would facilitate their travelling lifestyle but the development causes significant environmental harm because the residential use extends onto land within the designated Green Belt. Presently and in the future the family has a need to access health facilities and educational services, but these could be accessed while living on part of the land

that is not within the designated Green Belt. I attach moderately some weight to the personal circumstances.

63. Of primary importance is the fact that the site is the home of young children but, as the PPG makes clear, these interests do not always outweigh other considerations. The best interests of the children involved would clearly be served if the family has a settled base, which carries significant weight in favour. However, a settled base can be achieved on part of the appellant's land. In my assessment, these considerations, individually or collectively with the other considerations advanced, do not clearly outweigh the substantial harm to the Green Belt and the other identified harm. The material change of use is contrary to policy in the NPPF and the PPTS.
64. Interference with a person's right to respect for private and family life and the home may be justified in the public interest. In this case, the interference would be in accordance with the law provided that planning policy and relevant statutory duties are appropriately and lawfully applied. The interference would be in pursuit of a legitimate aim – the economic well-being of the country, which encompasses the protection of the environment through the regulation of land use. The means that would impair individual rights must be no more than necessary to accomplish that objective.
65. There are close family ties with members of the extended family who live on pitches elsewhere in the district, but there is no risk of homelessness because the appellant and site occupants will move onto land that has the benefit of planning permission. Hardship will not be caused as the scheme in Appeal A seeks to reduce the number of caravans and hard-standing. I consider that the regulation of the land-use is in accordance with the statutory framework. More specifically importance is attached to protecting the Green Belt both at national and local level. An essential characteristic is its permanence and openness. Consideration of the main issue confirms that the purpose of the Green Belt in which part of the site is situated fulfils an important function. The conclusion on other environmental harm relates to the character and appearance, which is a matter of acknowledged importance.
66. The site occupants are Irish Travellers and are persons who share a protected characteristic for the purposes of the Equality Act 2010. Having regard to the PSED, I have borne in mind the need to eliminate discrimination; advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I have taken into account their need for a settled base and the present lack of a suitable available alternative site, although a grant of planning permission in Appeal A satisfactorily addresses welfare concerns.
67. A lack of success in Appeal B causes minimal disruption to home and family life. I consider that the best interests of the children will be safeguarded by reducing the caravan site's size and scale. I find that the legitimate aim of protecting the environment in the public interest has very substantial weight. I consider that the entire land that forms the appeal site in Appeal B is not suitable for a traveller site even for a single pitch. Permanent long term provision should be plan-led in the wider community interest. In this case, interference with the Convention Rights is necessary and proportionate. I shall, however, consider the grant of temporary planning permission next.

68. The material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. The latter might be appropriate where planning circumstances will change in a particular way at the end of that period. The totality of harm to the Green Belt is substantial. Although it would be reduced were it for only a limited period, the PPTS states that even temporary traveller sites are inappropriate development in the Green Belt which again should only be granted permission on the basis of very special circumstances.
69. The appellant states that temporary planning permission is required for at least four years, because of a lack of progress relating to the SAP and the likelihood of alternative sites coming forward and delivered within that period. It would give sufficient time to allow for examining alternative site options, addressing the need and identifying a five-year deliverable supply of sites. It would allow for the possibility of the provision of a gypsy site through the grant of planning permission once suitable sites have been identified.
70. I have already said there remains a deficiency in that there is no up-to-date five year supply of deliverable traveller sites. This should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. As I have said elsewhere, PPTS paragraph 27 points out that the exception is where the proposal is on land designated as Green Belt, such as this site.
71. The appellant intends to reduce the size of the residential caravan site should planning permission be granted in Appeal A. I have concluded that the s78 appeal should be allowed subject to conditions. This will address my concerns about the residential use of land that falls within the Green Belt and an extended period of compliance might assist, which I will come to later. There is, therefore, no persuasive or good planning justification in granting temporary planning permission for this caravan site due to environmental harm caused by the use of the entire land under the appellant's control.
72. On the particular circumstances of this case, I conclude that the points raised in support of the proposal, including best interests of the children, are not sufficient to clearly outweigh the harm identified so that very special circumstances exist to grant temporary planning permission.

### **Ground (g)**

73. It is necessary to consider whether or not the specified compliance period, which is staged, falls short of what should reasonably be allowed. I observed that the entire land is currently occupied by the appellant. He conceded that it is likely that the Appeal A site will be used for residential purposes if the s174 ground (a) appeal fails. The residential use of the part of the land that falls within the Green Belt could cease relatively quickly. Additionally, the hard-surface covering that area could also be removed without causing much disruption.
74. I note an application will need to be made to the LPA to discharge conditions imposed on grant of planning permission in Appeal A. However, the breach of planning controls should not be allowed to continue more than absolutely necessary. As I am correcting the steps required by the notice for greater precision, I shall extend the period of compliance to seven months given the nature of the work required by the corrected notice. This is a proportionate response. In my assessment, this period would strike a fair balance between the competing interests of the wider public and individuals involved in this case. I am content that there

would be no violation of the rights of the Appellants and occupiers under Article 8 of the Human Rights Act. Therefore, ground (g) succeeds to this extent.

### **Appeals A, B and C - overall conclusions**

75. Appeal A, having regard to all other matters, I conclude that the appeal should be allowed subject to conditions. In Appeal B, for the reasons given above, I conclude that the appeal should not succeed on ground (a). The Appeals on ground (g) succeed as I am varying the compliance period. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application. The notice will remain extant as corrected and varied. To the extent that the planning permission granted by virtue of the s78 is inconsistent with the terms of the notice, s180 of the Act<sup>8</sup> will ensure that the former prevails.

### **Formal Decision - Appeal A**

76. The appeal is allowed and planning permission is granted for the change of use of land to 1 family traveller pitch with associated works at land off Hollinhurst, Allerton Bywater, Leeds WF10 2HY in accordance with the terms of the application, ref 16/06911/FU, dated 4 November 2016 subject to the following conditions:

- 1) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within six months of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within three months of the date of this decision a scheme for the siting and layout of the caravans hereby permitted, attenuation measures to reduce sound produced by the generator, a scheme for foul and surface water drainage, details of site connection to utility services and a scheme for external lighting, and hard and soft landscaping and the type and location of boundary treatments, including a physical and solid boundary between the land designated as Green Belt and the appeal site, hereafter referred to as the site development scheme, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
  - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

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<sup>8</sup> Where a planning permission is subsequently granted for the same development, or for some part of it, the permission overrides the Notice to the extent that its requirements are inconsistent with the planning permission, but the Notice does not cease to have effect altogether.

- 2) At the same time as the site development scheme required by condition 1) above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
- 3) Notwithstanding condition 1) above, the caravans shall be sited in accordance with plan no.TDA.2333.01, dated September 2017. The area of land upon which the caravans are shown to be sited shall only be used for residential purposes and no other part of the land shall be used for residential purposes without prior written approval by the local planning authority.
- 4) There shall be no more than one (1) pitch on the site and on the pitch hereby approved no more than two (2) caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed at any time, of which only one (1) caravan shall be a static caravan.
- 5) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) No commercial activities shall take place on the land, including the storage of materials.

## Appeal B

77. It is directed that the enforcement notice be corrected by:

- 1) The deletion of all of the text in section 3, matters which appear to constitute the breach of planning control, and substitution therefor by the following text:  
*Without planning permission, the making of a material change in the use of the land to a residential caravan site facilitated by the laying of hard standings and the stationing of caravans and the erection of a gate, toilet cabins, wooden hut and siting of generator;*
- 2) In section 4, reasons for issuing this notice, delete the following words: '*...planning policy guidance note 2 – Green Belts*' in paragraph 1), and delete the text 'H16' and substitute by H7 in paragraphs 1) to 3); and
- 3) The deletion of all of the text in section 5, what you are required to do, and the substitution therefor by the following text:
  - 1) Cease the residential use of the land,
  - 2) Remove all caravans, tent, toilet cabin/s, timber dog hut, generators and metal clad green gate, and hard-standings from the land.
- 4) The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion all of the text in section 6, time for compliance, and the substitution therefor by the following text: *The time for compliance with step 1) and 2) above is seven months.*

78. Subject to these corrections and variations, the enforcement notice is upheld.  
Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Appeal C**

79. It is directed that the enforcement notice be corrected by:

- 1) The deletion of all of the text in section 3, matters which appear to constitute the breach of planning control, and substitution therefor by the following text:  
*Without planning permission, the making of a material change in the use of the land to a residential caravan site facilitated by the laying of hard standings and the stationing of caravans and the erection of a gate, toilet cabins, wooden hut and siting of generator;*
- 2) In section 4, reasons for issuing this notice, delete the following words: '*...planning policy guidance note 2 – Green Belts*' in paragraph 1), and delete the text 'H16' and substitute by H7 in paragraphs 1) to 3); and
- 3) The deletion of all of the text in section 5, what you are required to do, and the substitution therefor by the following text:
  - 3) Cease the residential use of the land,
  - 4) Remove all caravans, tent, toilet cabin/s, timber dog hut, generators and metal cladded green gate, and hard-standings from the land.
- 4) The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion all of the text in section 6, time for compliance, and the substitution therefor by the following text: *The time for compliance with step 1) and 2) above is seven months.*

80. Subject to these corrections and variations, the enforcement notice is upheld.

*A U Ghafoor*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Simon Ruston	Ruston Planning Limited
Rhodri Crandon	Tirlun Design Associates Ltd
T Doran	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Glen Allen	Principal Planning Officer
Janet Bauer	Planning Compliance Officer
Chris Dows	Senior Highways Development Engineer

### INTERESTED PERSONS:

Councillor James Lewis	}
Councillor Keith Wakefield	} Ward Members Kippax and Methley

### DOCUMENTS

- 1 Statement of Common Ground
- 2 Appeal decision ref: 3013414
- 3 Extract copy of CS Policy H7
- 4 Letter of objection from Ward Councillors
- 5 Letter from Nova Scotia Medical Centre

### PLANS

- 1 Drawing no.TDA.2333.01 dated September 2017



## Costs Decision

Hearing and site visit held on 17 April 2018

**by Mr A U Ghafoor BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 17 May 2018**

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### **Costs application in relation to appeal refs:**

**APP/W/17/3177207, C/17/3177209 and 3177210**

**Land off Hollinhurst, Allerton Bywater, Leeds WF10 2HY**

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr T Doran and Mrs N Doran for a partial award of costs against Leeds City Council.
  - The Hearing was in connection with an appeal against the refusal of planning permission for the change of use of land to 1 family traveller pitch with associated works and the issuing of an enforcement notice alleging the making of a material change in the use of the land to a residential caravan site facilitated by the laying of hard standings and the stationing of caravans and the erection of a gate, toilet cabins, wooden hut and siting of generator.
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions on behalf of the applicants**

2. The following key points form the basis of this application. The planning officer's recommendation was to grant planning permission for the s78 proposal and the local highway authority (LHA) did not object on highway safety grounds. Furthermore, the LHA did not object to previous application for residential development on the land. Members refused to grant planning permission but the respondent has failed to demonstrate why the planning application was refused on highway safety grounds. A similar reason was given for taking enforcement action. The respondent has delayed development that is acceptable.

### **The response on behalf of the respondent**

3. Officers employed by the respondent authority conducted site visits. Representatives of the LHA observed a number of vehicles and caravans stationed upon the land. On the basis of the evidence submitted with the application and site observations, the LHA opined that the development has the potential to increase vehicular traffic using Hollinhurst. Members disagreed with the planning officer's recommendation and placed greater weight upon residents' concerns about traffic using Hollinhurst.

### **The final response on behalf of the applicants**

4. If proper consideration had been given to national policy and the development's impact on the landscape, significant weight would have been attributed to other considerations leading to a grant of permanent planning permission.

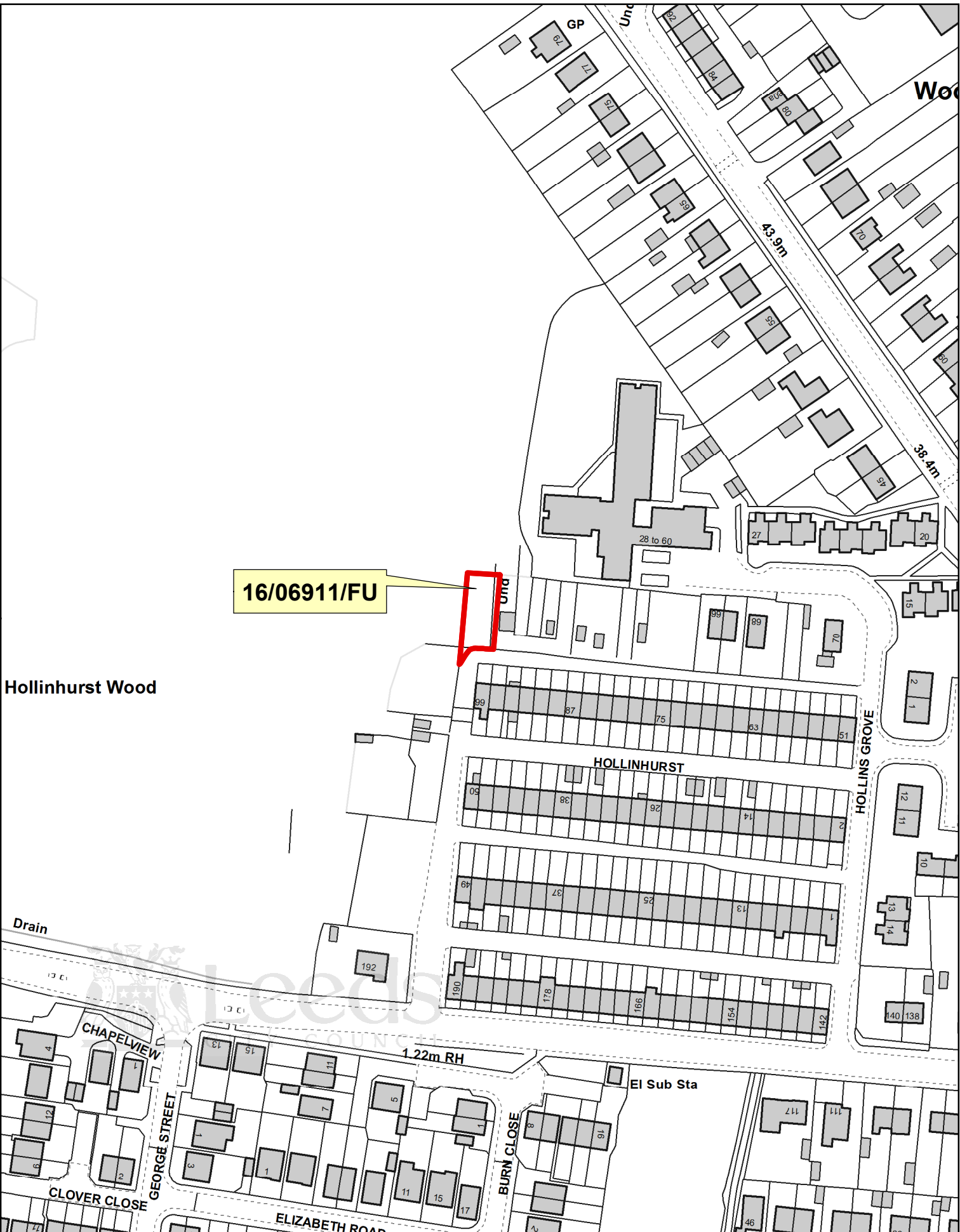


## Reasons

5. The respondent authority's planning committee decided to refuse permission for a number of reasons, including highway safety, contrary to officers' recommendations. It focused on site access and local amenity issues rather than technical highway matters. Moreover engineers were present at the Hearing to support the reason for refusal. The stance on highway safety was a realistic one and the respondent cannot be criticised for it. The concerns raised were evident in the representations submitted by local residents and ward councillors; this matter could not have come as a surprise to the applicants. I am quite satisfied that the respondent has, on this occasion, substantiated all reasons for refusal on this particular matter.
6. Sufficient and substantial evidence was produced in support of the respondent's decision to refuse planning permission contrary to their officers' recommendation. The quantum of that oral and written information suggests it provided a respectable basis for the authority's stance on highway safety. There is nothing to suggest that the handling of the planning application or decision to take enforcement action, and the subsequent defence of that decision, warrants a finding of unreasonableness.
7. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is unjustified in this case.

*A U Ghafoor*

Inspector



Hollinhurst Wood

16/06911/FU

# NORTH AND EAST PLANS PANEL

