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**Report of the Chief Planning Officer**

***PLANS PANEL EAST***

**Date: 11/03/2010**

**Subject: APPLICATION 09/04018/FU/ – Engineering works to form flood storage area, land off First Avenue, Bardsey.**

**APPLICANT**

Mahdlo Contractors Limited

**DATE VALID**

09 October 2009

**TARGET DATE**

08 January 2010

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**Electoral Wards Affected: Harewood**

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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

1. Time limit on full permission
2. Approved plans
3. Limitations relating to the future use of the site
4. Removal of permitted development rights
5. Removal of existing man-made structures
6. Limitations relating to the times for construction works (0800–1600 Mon–Fri; 0800 – 1300 Sat)
7. Limitations relating to the days for construction works (No works on Sundays, Bank or Public Holidays)
8. Landscaping scheme required

**Reasons for approval:** The proposed development is considered to be acceptable having had regard to Policies GP5, N32, N33, N37, N38A, and N38B of the Leeds Unitary Development Plan Review and all other material considerations.

## **1.0 INTRODUCTION:**

- 1.1 This application was brought to Plans Panel East on the 11<sup>th</sup> February 2010 at the request of the ward member for Harewood, Councillor Ann Castle, on flood risk and drainage grounds, and because of the sensitive nature of the proposal.
- 1.2 Members resolved during that Panel meeting to defer the application to enable Members to undertake a site visit, and so the attendance of an Environment Agency officer at the next Panel meeting could be arranged.

## **2.0 PROPOSAL:**

- 2.1 The background to this proposal is discussed in detail in Section 5 of this report.
- 2.2 The proposed development comprises of a compensatory flood storage area, relating to an approved residential development, which is located in the functional Floodplain. As discussed in Section 5 of this report, the approved residential development would involve raising land levels at the residential site.
- 2.3 The flood storage area is purely intended to compensate for the increase in land levels at the residential site, and the consequent loss of flood storage capacity in the Floodplain. The proposal comprises of an area of land adjacent to the housing site being engineered to have lower levels than currently exist. The material being excavated from this site would be used to raise the land levels at the residential site, with an anticipated surplus of 70m<sup>3</sup> to be transported off site. On average, land levels within the proposed flood storage area would be reduced by approximately 17cm (6.5 inches), whilst the average increase in land levels across the smaller residential site would be approximately 50cm (19.5 inches).

## **3.0 SITE AND SURROUNDINGS:**

- 3.1 The site comprises of open agricultural land used for the grazing of livestock, and is located to the northwest of First Avenue, Bardsey. The site is located beyond the north western and south western boundaries of the approved residential development, and extends to Keswick Beck in the west.
- 3.2 According to the Strategic Flood Risk Assessment for Leeds, most of the site is located in the functional Floodplain (Flood Zone 3(ii)), with smaller portions towards the southwest being located in Flood Zones 1, 2 and 3(i). The site is also located in the Green Belt and is designated as a Special Landscape Area.

## **4.0 RELEVANT PLANNING HISTORY:**

- 4.1 Outline planning permission was granted for the residential development in July 1997, with reserved matters approval eventually being granted on appeal in 2006. A further planning application was received in 2006 for the creation of a compensatory flood storage area in association with the approved housing development in an attempt to comply with the requirements of a Section 106 Agreement. The flood storage area proposed was considered to be insufficient and a further application for a flood storage area was received in 2009 to complement that submitted in 2006. In order to simplify the process, the applicants agreed to withdraw these two flood storage applications and re-submit them as one, hence the application under consideration.

31/154/96/OT

Outline application to erect residential development – Approved 25<sup>th</sup> July, 1997.

31/200/00/RM

Four 5 bedroom detached houses and two 4 bedroom detached houses – Refused 26<sup>th</sup> April, 2002 for the following reasons:

- “1. In the light of recent climatic changes which have brought about severe flooding of the application site and nearby residential property, and in the absence of any satisfactory solution to the problem, it is considered that the amenity of future occupants of the site would be adversely affected by flooding during periods of heavy rainfall and that the development would be likely to exacerbate the flooding of nearby residential property, to the detriment of the amenity of those occupants, contrary to the advice in Planning Policy Guidance Note 25.
  
2. It is furthermore considered that the discharge of surface water from the development into Keswick Beck would be likely to exacerbate flooding of the application site and nearby property during periods of heavy rainfall, to the detriment of the amenity of the occupants, and contrary to Leeds Unitary Development Plan Policy GP5 and the advice in Planning Policy Guidance Note 25.”

Decision overturned on appeal 19<sup>th</sup> July 2006 (Reference: APP/N4720/A/02/1100885.)

06/07400/FU

Application for compensatory flood storage area – Withdrawn.

09/02311/FU

Application for additional compensatory flood storage area – Withdrawn.

## **5.0 HISTORY OF NEGOTIATIONS:**

- 5.1 Reserved matters approval for the related residential development was granted on appeal in July 2006. For the avoidance of doubt, the Planning Inspector was unable to consider issues relating to the principle of development, including its acceptability in flood risk terms, as these were matters to be dealt with during the outline application stage, which was approved by the Council in 1997. At that time, only a very small part of the residential site was designated as being in the Floodplain. However, by the time the Council considered the reserved matters application, the bulk of the site had been designated as Floodplain.
  
- 5.2 As the bulk of the approved residential site is located in the Floodplain, it was considered possible, within the scope of a reserved matters determination, for the Planning Inspector to impose a condition stipulating minimum floor levels relating to the ground level of the site and the floor levels of the approved dwellings. The minimum ground level stipulated (35.7m AOD) is equivalent to the maximum water level anticipated in a 1 in 100 year flood event and has meant that the residential site would have to be raised above its original level.
  
- 5.3 A consequence of this would be that flood storage capacity within the Floodplain would be diminished. To compensate for this, the applicants proposed to undertake

off-site engineering works to lower land levels around the site, creating additional flood storage to compensate for the aforementioned loss.

- 5.4 To this end, the applicants entered into a Section 106 Agreement during the course of the appeal, the provisions of which accompany the planning permission for residential development. The Section 106 Agreement stated that the applicants would make provision for the creation of a compensatory flood storage area, prior to the residential development being constructed. As the required flood storage scheme itself constitutes development, planning permission is required for it, hence the planning application under consideration.
- 5.5 The proposed flood storage area is purely intended to compensate for the increase in land levels at the residential site, and the consequent loss of flood storage capacity in the Floodplain. The proposal comprises of an area of land adjacent to the housing site being engineered to have lower levels than it currently has. The material being excavated out of this site would be used to raise the land levels at the residential site, with an anticipated surplus of 70m<sup>3</sup> to be transported off site. On average, land levels within the proposed flood storage area would be reduced by approximately 17cm (6.5 inches), whilst the average increase in land levels across the smaller residential site would be approximately 50cm (19.5 inches).
- 5.6 The application is accompanied by a Section 106 Agreement stipulating that the proposed development, if approved, will be undertaken prior to the housing development being constructed and brought into use, and that it will be retained for the life of the residential development.

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

- 6.1 The Neighbour Notification Letters were posted on 12/10/09 and the application was advertised by site notices posted on 20/10/09, and by advertisements placed in the local press on 30/10/09. Additional Neighbour Notification Letters were issued on 04/12/09 relating to amended plans and information submitted by the applicants. The publicity period ultimately expired on 14/12/2009.
- 6.2 A batch of 107 objections was received from neighbouring occupiers in November 2009, followed by a further 106 objections in December 2009 following the receipt of revised information from the applicants. A further 9 objection letters have been received individually. A summary of the objections raised is as follows:
- 1) There are concerns regarding future maintenance arrangements relating to the flood storage area;
  - 2) The engineering works associated with the flood storage area would undermine a sewer that crosses the site, resulting in pollution;
  - 3) The minimum level of the housing site should be higher, and the capacity of the flood storage area would therefore need to be larger;
  - 4) The proposed surface water sewer relating to the housing development would collide with an existing sewer and is therefore impossible to construct;
  - 5) The approved housing development would prevent flood water arising from various sources escaping into the land occupied by the housing site;

- 6) If the housing development proceeds, it will exacerbate flooding to existing properties;
- 7) The drainage works proposed as part of the housing development are insufficient to accommodate flooding in the area;
- 8) The residential development site has not been raised sufficiently to prevent the proposed houses and surrounding gardens and access road from flooding;
- 9) The housing site floods on a regular basis and this is likely to worsen over time with climate change. Houses should not be built in the Floodplain;
- 10) It is also stated that if planning permission is granted, the residents will have to consider injunctive relief.

6.3 An additional objection was submitted by agents acting on behalf of local residents. A summary of the points raised is as follows:

- 1) If implemented, the residential development would be detrimental to existing residents, and to residents of the approved housing development. The proposed development would exacerbate existing flooding problems;
- 2) The drainage arrangements relating to the housing site are insufficient to cope with flooding events arising from Keswick Beck and the fields above Wetherby Road;
- 3) Flood water arising from the fields above Wetherby Road will be unable to escape into the Floodplain from First Avenue as the raised levels of the residential development will result in an obstruction;
- 4) The ground and floor levels proposed for the residential site are insufficient. They need to be raised, and in doing so the proposed flood storage area would need to have greater capacity.

6.4 An objection has been received from the ward member for Harewood, Councillor Ann Castle, stating that if the residential development were proposed today, it would be refused on flood risk grounds as it is contrary to the guidance contained in PPS25. Although the proposal under consideration is for a flood storage area, this should be refused to prevent the residential development commencing.

6.5 An objection has also been received from Colin Burgon, Member of Parliament for the constituency of Elmet, which refers to the findings of the report summarised under paragraph 6.3 of this report. It is also stated that the proposed flood storage area would be insufficient to off-set the loss of flood storage in the Floodplain, and the concerns raised by local residents are referred to.

## **7.0 CONSULTATIONS RESPONSES:**

7.1 Statutory:

Environment Agency received 08/01/2010 – No objections; condition recommended relating to approved plans and information.

7.2 Non-statutory:

Bardsey Parish Council 02/11/2009 – No objections.

Mains Drainage 26/01/2010 – No objections; condition recommended relating to approved plans and information.

Yorkshire Water Services – No objections.

## **8.0 PLANNING POLICIES:**

### **8.1 Development Plan**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". The development plan for Leeds comprises of the Regional Spatial Strategy for Yorkshire and The Humber (published in May 2008), and the Leeds Unitary Development Plan Review (July 2006), policies as saved by direction of the Secretary of State, dated September 2007.

### **8.2 Leeds Unitary Development Plan (Review):**

Policy GP5 – (Amenity and environmental considerations)

Policy N32 – (Green Belt and the Proposal Map)

Policy N33 – (Development in the Green Belt)

Policy N37 – (Special Landscape Areas)

Policy N38A – (Development and Flood Risk)

Policy N38B – (Planning Applications and Flood Risk Assessments)

### **8.3 National planning policy guidance documents:**

Planning Policy Guidance 2 'Green belts'

Planning Policy Statement 25 'Development and Flood Risk'

## **9.0 MAIN ISSUES**

1. Principle of Development
2. Visual Impact
3. Amenity
4. Flood Risk
5. Conclusion

## **10.0 APPRAISAL**

### **Principle of Development**

10.1 The planning application under consideration relates only to a proposed compensatory flood storage area, associated with a residential development that has already been approved and implemented.

10.2 The preliminary assessment when considering proposals for development in the Green Belt is as follows:-

- a) It must be determined whether or not the development is inappropriate development in the Green Belt. PPG2 and the Development Plan set out the categories of appropriate development.
- b) If the development is considered not to be inappropriate, the application should be determined on its own merits.
- c) If the development is inappropriate, the presumption against inappropriate development in the Green Belt applies.

10.3 Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. It is for the applicant to show why permission should be granted and “very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations” (PPG2, paragraph 3.2).

10.4 In terms of Green Belt policy, this application proposes operations for the creation of a flood storage area, comprising entirely of a reduction in ground levels. Paragraph 3.12 of PPG2 states that engineering and other operations constitute inappropriate development in the Green Belt except where they maintain openness and do not conflict with the purposes of including land in the Green Belt.

10.5 Based on the information submitted as part of this application, it is considered that the nature of the proposed works, including their scale, design and materials, would not have a significant adverse impact on the openness of the Green Belt, or conflict with the purposes of including land in the Green Belt. It is therefore considered that the proposed development would not constitute inappropriate development in the Green Belt.

10.6 The proposal is considered to be acceptable in principle.

#### Visual Impact

10.7 Policy GP5 of the Leeds UDPR states that development proposals should avoid “problems of environmental intrusion”. Policy N37 of the UDPR states that proposed development in special landscape areas will be acceptable providing it does not seriously harm the character and appearance of the landscape. Paragraph 3.15 of PPG2 states that the visual amenities of the Green Belt should not be harmed by development within or conspicuous from the Green Belt, by reason of their siting, materials or design.

10.8 The proposal would result in the levels of an area of open grassland being reduced, on average, by approximately 17cm. It is recommended that, should planning permission be granted, a condition be imposed requiring the submission of details to ensure that the site is grassed over following the proposed engineering works. Subject to the aforementioned condition, it is considered that the visual impact of the proposal would be negligible, and that it is therefore in accordance with Policies GP5 and N37 of the UDPR and the guidance contained in PPG2.

#### Amenity

10.9 Policy GP5 of the Leeds UDPR states that development proposals should avoid a loss of amenity.

- 10.10 It is recommended that conditions be imposed, in the interests of residential amenity, to ensure there are time restrictions imposed on construction works. Subject to the afore mentioned condition, it is considered that the proposal would not result in any significant adverse impacts on local amenity, and that it is in accordance with Policy GP5 of the UDPR.

#### Flood Risk and Drainage

- 10.11 Policy 38A of the RUDP stipulates the types of development that are deemed acceptable in the functional Floodplain, and this includes “essential transport and utilities infrastructure which cannot practicably be located elsewhere.” The preamble to this policy also provides guidance on what are considered to be “appropriate” uses in the Floodplain. The proposal is considered to constitute essential infrastructure in relation to an approved development, and to satisfy the guidance contained in the preamble. The proposal is therefore considered to be in accordance with the objectives of Policy 38A. Policy 38B requires the submission of a Flood Risk Assessment under given circumstances; an FRA has been submitted with this application.
- 10.12 The functional Floodplain performs a practical function during flood events by providing a temporary storage area to accommodate rising water levels. The proposed development is intended to compensate for a loss of flood storage capacity in the Floodplain arising from an approved residential development. The capacity of the proposed flood storage area makes a contingency for future climate change and potential increases in water levels.
- 10.13 According to the Strategic Flood Risk Assessment for Leeds, most of the site is located in the functional Floodplain (Flood Zone 3(ii)), with smaller portions towards the southwest being located in Flood Zones 1, 2 and 3(i). The proposed development is considered to constitute a water compatible use, and given that it is required in relation to an approved residential development, it is considered to pass the Sequential Test in accordance with PPS25.
- 10.14 221 objection letters have been received from neighbouring occupiers in addition to a report submitted by an agent on behalf of residents. The objections concern flood risk and drainage issues, however, most of the objections relate to the residential development, which has already been approved and implemented. The application under consideration is specifically for a compensatory flood storage area and it should be determined on its own merits, in accordance with the Development Plan and all other material considerations. Objections relating to the housing development itself are not considered to be material in this and are not afforded any weight.
- 10.15 The objections raised in relation to the proposed flood storage area are that the ground lowering works associated with it could undermine a sewer that crosses the site resulting in pollution; that maintenance arrangements may be insufficient; and that the capacity of the proposed flood storage area should be greater.
- 10.16 The submitted Flood Risk Assessment and associated plans and information relating to the drainage arrangements and flood risk have been considered by the Environment Agency and the Council’s Mains Drainage officers. No objections are raised to the proposed development. Both consultees have recommended a condition requiring compliance with certain approved plans and information, which can be imposed should planning permission be granted. The capacity of the flood



storage area and any maintenance arrangements relating to it are therefore considered to be adequate.

- 10.17 In relation to the sewer that crosses the site, the applicants propose the installation of a concrete layer above the sewer, intended to protect it from any potential damage arising from the development. Yorkshire Water Services have been consulted about the proposed development and have raised no objections.
- 10.18 The applicants have entered into a Section 106 Agreement, which states that the associated housing development will not be continued until the proposed flood storage area has been completed. It also requires that the applicants retain the flood storage area for the life of the residential development.
- 10.19 In addition to the provisions of the Section 106 Agreement, it is recommended that conditions be imposed, should planning permission be granted, removing any relevant permitted development rights and to ensure that the site, in addition to being used as a flood storage area, only be employed for the grazing of livestock, with no storage of equipment or materials to take place. A condition is also recommended requiring the removal of any existing structures at the site for the life of the development.
- 10.20 An objection has been received from the ward councillor for Harewood stating that, given the residential development would most likely be refused under current planning guidance, that the application for a flood storage area should be refused to prevent the residential development commencing. Members are advised to consider this planning application on its own merits. Planning consent has already been granted for the residential development on the basis that it would be possible for the applicants to create a satisfactory flood storage area associated with it.
- 10.21 As the Environment Agency and Mains Drainage officers have no objections to the proposal, it is considered that, subject to the recommended planning conditions and the Section 106 Agreement, the proposed development would adequately achieve its objective of compensating for the loss of flood storage capacity arising from the approved residential development. It is also considered that the proposal would not result in any significant adverse impacts in terms of flood risk and drainage arrangements, and that it is in accordance with Policies 38A and 38B of the UDPR, and the guidance contained in PPS25.

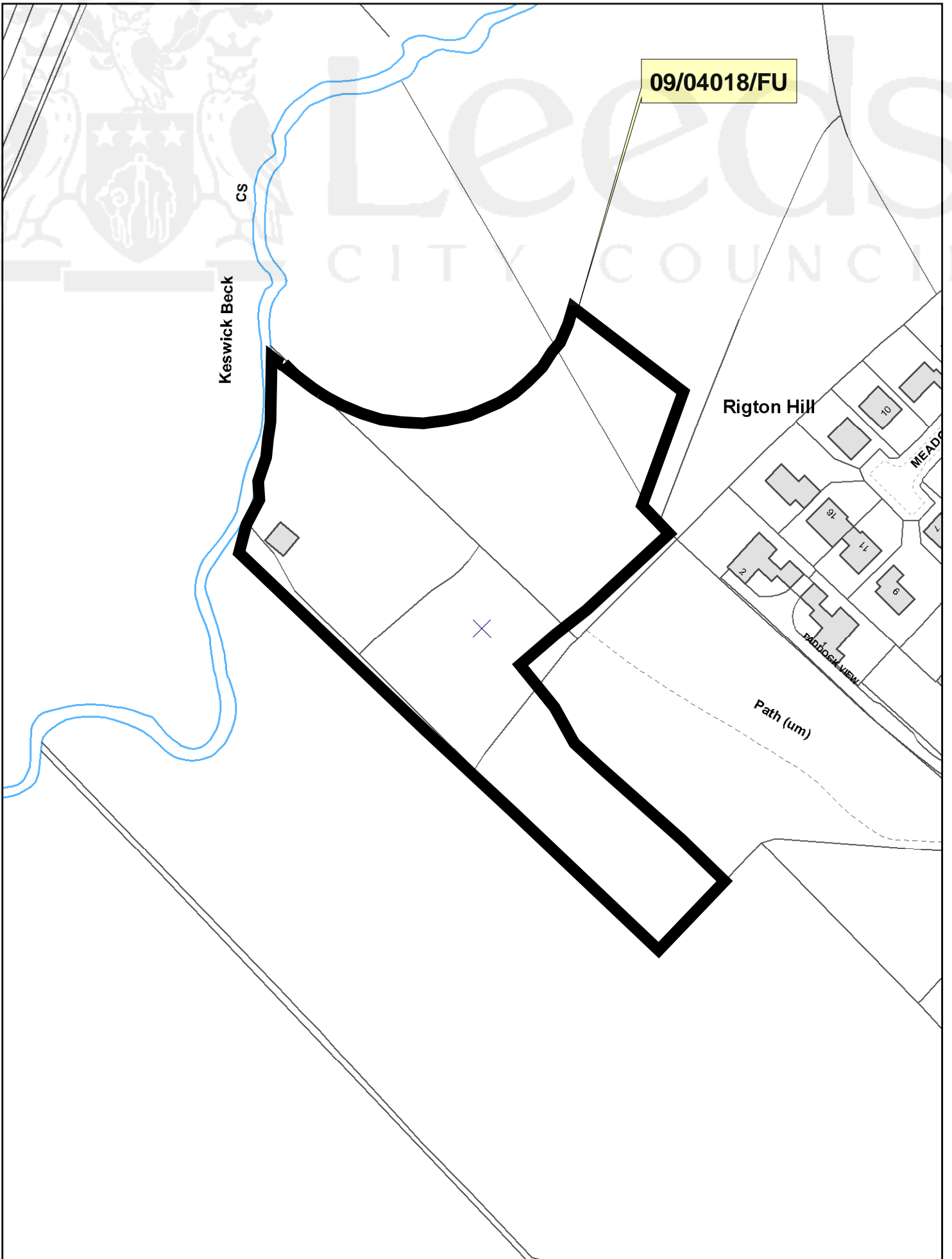
## **11.0 CONCLUSION**

- 11.1 The proposed development is considered to be acceptable having had regard to Policies GP5, N32, N33, N37, N38A, and N38B of the UDPR and all other material considerations.
- 11.2 It is recommended that planning permission be granted, subject to conditions and the associated Section 106 Agreement.

### **Background Papers:**

Application file: 09/04018/FU/MIN

Certificate of Ownership: Mr Mervyn Kenneth Oldham and Mahdlo Contactors Limited



# EAST PLANS PANEL

○  
Scale 1/1500