



Report of the Chief Planning Officer

PLANS PANEL EAST

Date: 11/03/10

Subject: APPLICATION 09/03138/FU – THREE 4 BEDROOM DETACHED HOUSES WITH INTEGRAL GARAGE TO REAR GARDEN AND REPLACEMENT DETACHED DOUBLE GARAGE TO EXISTING DWELLING, 10 ELMETE AVENUE, SCHOLLS, LEEDS, LS15 4BL.

APPLICANT

Mr Steven Green

DATE VALID

06/08/09

TARGET DATE

01/10/09

**Electoral Wards Affected:
Harewood**

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

An appeal against non-determination has been submitted. Members are therefore asked to consider whether they would have recommended refusal on the grounds set out below.

1. The Local Planning Authority considers that the proposed dwellings will be out of keeping with the spatial character of the area due to their location within an area of rear gardens. As a consequence the development is considered to be detrimental to the character and appearance of the locality, and the overall design is inappropriate in its context, and fails to take the opportunities available for improving the character and quality of an area. The proposal, if allowed, would also create a precedent for similar development on neighbouring garden areas to the further detriment of the spatial character of the area. The application is therefore contrary to Policies H4, GP5, N12 and N13 of the Unitary Development Plan (Review 2006) and guidance contained within SPG13 Neighbourhoods for Living and the guidance set out within Planning Policy Statement 1 Delivering Sustainable Development and PPS3 Housing.

2. The proposed residential development is considered to result in overdevelopment of the site as a result of the site characteristics, the number of properties proposed and the layout. This results in harm to residential amenity as a result of overlooking, noise and disturbance from vehicles, inadequate waste disposal provision and poor space about dwellings. The proposal is therefore considered to be contrary to guidance in Neighbourhoods for Living, and policies GP5 and H4 of the adopted UDP and to guidance contained in PPS3 Housing.

3. INTRODUCTION:

- 3.1. The application was previously put before Panel Members on 11th February 2010 with an officer recommendation of approval. Members resolved not to accept this recommendation and therefore this application is brought back to Panel with suggested reasons for contesting the appeal. The minutes of the previous Panel are reported below;
- 3.2. Minutes of 11/02/10 –
- Plans, photographs and drawings were displayed at the meeting.
 - Officers presented the report which sought permission for the erection of three 4 bedroom detached houses to rear garden and replacement detached garage to existing dwelling at 10 Elmete Avenue Scholes LS15.
 - Details of the extensive planning history of the site; the proposed house types and materials were provided and Members were informed of a revision to the siting of plot 1 which had now been moved 2 metres to the east, so increasing the distance of the plot from the side boundary of 8 Elmete Avenue.
 - The Panel heard representations from the applicant's agent and an objector who attended the meeting.
 - Members commented on the following matters:
 - that the proposals represented further 'garden grabbing' from that which had occurred to develop houses on Elmete Croft.
 - the proposed access arrangements and the suitability of these for service and emergency vehicles.
 - the proposals for refuse collection.
 - that the proposals were over-intensive; intrusive and would have a detrimental impact on residents' amenity and the character of the area.
 - that a smaller scheme might be more acceptable.
 - that the application should be refused and that if appealed, the Panel's decision should be tested at a Public Inquiry.
 - The Panel's Lead Officer informed Members that the recommendation before them was a product of the planning history of the site. Two previous applications had been refused, with one being the subject of an appeal which was dismissed. The Panel was advised that if it was minded to refuse the application, the reasons for refusal would need to be given careful consideration. To assist in this matter a further report containing information on the Planning Inspector's decision of 2006 and a site visit was suggested. Regarding a possible appeal if the application was refused, Members were informed that it was for the Inspector to decide on the method to be adopted in planning appeals
 - The Panel considered how to proceed. **RESOLVED** - That the Officer's recommendation to approve the application be not agreed; that a site visit be

arranged prior to the next meeting and that the Chief Planning Officer be asked to submit a further report containing information on the appeal decision of 2006 and setting out possible reasons for refusal of the application based upon the concerns raised by Panel relating to harm to character and overdevelopment

- 3.3. Members are advised that the applicant has now appealed against non-determination of this application and the appeal has been accepted by the Planning Inspectorate. The appeal will be dealt with by written representations. For this reason the application cannot be determined, however Members are asked to indicate whether they would approve or refuse the proposal.
- 3.4. Members have requested a timeline of the history of this site and this is set out below.

4. RELEVANT PLANNING HISTORY:

09/01168/FU

- 4.1. Full application for three 4 bedroom detached dwelling houses to rear garden and replacement detached garage to existing dwelling. The application was refused on 29/04/09 for the following reasons;
- “It is considered that the proposed layout will result in unacceptable levels of vehicular activity close to the common boundary of properties on Elmete Croft, who have sub-standard garden depths. The close proximity of this vehicular activity both to that private amenity space and the living accommodation of those properties will result in disturbance by reason of noise and general activity associated with vehicles and people accessing and leaving the site. These being amenities that occupiers of those dwellings can reasonably expect to continue to enjoy. As such the proposal is contrary to Policies SA1, GP5, BD5 of the Leeds UDPR and to the advice contained in Neighbourhoods for Living”.
 - “There appears to be a conflict between the submitted arboricultural report and the proposed layout in particular in respect of a protected Ash and Birch trees on adjoining site. So far as can be ascertained from that information, the layout as currently proposed would conflict with the long term future of those trees to the detriment of the amenities of the area generally. As such the proposal is contrary to Policy LD1 of the Leeds UDPR”.
- 4.2. This application was for a scheme similar to the application currently before Panel. Members should note that the application was not refused on the grounds of harm to character and amenity of the streetscene. In considering the application the case officer took the view that the previous Inspectors decision did not conclude that a more intense flatted scheme would harm the character of the area, and that the less intense house scheme was more appropriate than flats.
- 4.3. The current application has sought to overcome the prior reasons for refusal through the inclusion of a sound attenuating fence, and clarification over tree locations. Comments from both the Councils Tree Officer and Environmental Health confirm that there are no further objections to the scheme regarding noise and disturbance or trees.
- 4.4. Members are advised that if an Authority does not determine applications in a like for like manner, and introduce reasons for refusal that were not previously given despite there being no change in policy, then an award of costs at appeal is likely (Circular 03/09).

07/04094/OT

4.5. Outline application to layout access and erect 12 flats in two 2 storey blocks. Refused 13/11/07 on the following grounds;

- “The Local Planning Authority considers that, by reason of the close proximity of the parking and turning area to 3 and 4 Elmete Croft, the level of noise, nuisance and intrusion from vehicular movements will be detrimental to the living conditions of these properties. As such, the development is contrary to Policies GP5 and BD5 of the Unitary Development Plan Review and guidance found within Supplementary Planning Guidance 'Neighbourhoods for Living”.
- “The Local Planning Authority considers that, by reason of its close proximity to 3 and 4 Elmete Croft, the proposed 2 metre screen wall will cause an unacceptable level of over dominance of the property's private amenity space to the detriment of the occupiers living conditions. As such, the development is contrary to Policies GP5 and BD5 and Unitary Development Plan Review along with guidance found within Supplementary Planning Guidance 'Neighbourhoods for Living”.
- “The Local Planning Authority considers that the proposed development will be harmful to the residential amenities of future occupants due to the absence of a suitable and adequate level of amenity space, contrary to Policy BD5 of the Leeds Unitary Development Plan (Review 2006) and the guidance contained within the Council's Supplementary Planning Guidance document 'Neighbourhoods for Living”.

4.6. The application was refused under delegated powers. In considering the impact on character and appearance the Case Officer concluded that;

- “The surrounding area is characterised by dwellings with a close relationship to the road. The proposed development would introduce development to the rear of an existing building that would be reached via an access road from Elmet Avenue. As a result it is officer opinion that the proposed scheme would be out of character with the grain of development in the area therefore causing harm to the character of this part of the village. However, due regard needs to be given to the Planning Inspectorates decision for appeal reference APP/N4720/A/06/2021907, this reason was provided by Leeds City Council as a reason for refusal and was not accepted by the Inspector. As such, it is not considered appropriate to refuse the application for this reason.”

20/22/06/OT

4.7. Outline application for 12 flats in two 2 storey blocks. This application was refused on 06/04/06 for the following reasons;

- “The Local Planning Authority considers that the proposed development introduces an incongruous form of development that by reason of the siting, size and spatial setting of the buildings and the extent of hardstanding would be incompatible with and causing harm to the character of the surrounding area and, as such, would be contrary to Policy H1A of the Unitary Development Plan, Policy H4 of the Leeds Unitary Development Plan Review and the guidance set out within the City Councils Neighbourhoods for Living - A Guide for Residential Design in Leeds.”
- “The proposed development would introduce buildings that by reason of their size and siting would result in an overbearing form of development and, in addition, would introduce significant vehicular movements in close proximity to the rear of properties abutting the site causing an increase in noise and disturbance both of which would be to the detriment of the amenities of the occupiers of the adjacent properties contrary to Policy GP5 of the Unitary Development Plan.”

- “The proposed development is unacceptable by reason of the potential detrimental impact of the development of the nearby trees that make a positive contribution to the character and appearance of the area and as such the proposal is contrary to Policies GP5 and LD1 of the Unitary Development Plan, and to Part 6 of the Councils Supplementary Planning Guidance No. 4.”

4.8. This application was appealed and the appeal was dismissed on 19/12/06. In considering the proposal the Inspector stated;

- “The appeal site comprises the greater part of the large back garden of number 10 Elmete Ave. To the west are other large gardens, but these are not a predominant feature of the area. On the east side of the site, the closely grouped houses at Elmete Croft have been built behind the frontage properties, whilst dwellings on the opposite side of Elmete Avenue have relatively short gardens beyond which is a further row of housing. I find that the principle of housing on the appeal site would not be out of keeping with the pattern of development in the locality.”
- “The 12 apartments proposed would give rise to a density of about 50 dwellings per hectare, well above the national indicative minimum of 30 dwellings per hectare set out in PPS3. The scheme would, therefore, make more efficient use of previously developed land, and I do not consider that the density would be excessive, given the form of development proposed. Both the apartment blocks are intended to be two storeys in height, and, having regard to the presence of semi-detached and detached properties in the neighbourhood, their footprints would not be inconsistent with those displayed in the surrounding built form.”
- “Nor do I consider that the extent or disposition of hard surfacing would have a harmful effect. The turning and parking area would be contained between blocks A and B., and being at the southern end of the site it would not be conspicuous from Elmete Avenue. The position of the access road alongside the eastern boundary would lessen its prominence, and, having regard to the existing plot as a whole, the adjacent areas of garden space to the front of number 10 in between it and block B would provide an adequate contrast in treatment.”
- “I conclude that the proposed development would not be damaging to the character and appearance of this part of Scholes. In this respect it would not conflict with policies GP5 and N13 of the UDP or the aims of the SPG neighbourhoods for living.”

4.9. The Inspector dismissed the appeal, but made it clear in his conclusion that he found that the proposed development would not harm the character and appearance of the area nor pose a threat to nearby trees. The appeal was dismissed due to the impact of noise from the turning area on numbers three and four Elmete Croft.

4.10. It should be noted that PPS3 was introduced prior to this decision, and indeed the Inspector refers to it. Since then there has been no significant policy change with regard to this type of development, other than the introduction of PPS1 with its emphasis on good design. This would however have been considered in the 2009 application for three houses.

Prior History

4.11. Prior to these applications in the early 1990s two applications for a single detached house in the rear garden area were submitted. Both were refused, primarily on harm to residential amenity through overlooking, noise and disturbance.

- 4.12. The Elmete Croft site which lies directly to the east of the application site was granted approval in 1986 (H32/64/86/) and 1987 (H32/233/87/) for the laying out of access road and erection of eight 4 bed detached houses to vacant garden site.

5. PLANNING POLICY & GUIDANCE

- 5.1. In terms of local policy there have been no fundamental changes since either the most recent application decision (2009) or the Inspectors appeal decision in 2006 other than the introduction of the Street Design Guide, this has not however affected the way in which highway officers view the proposal in terms of road safety. Changes to relevant national policy are outlined below:

PPS1 Delivering Sustainable Development

- 5.2. This PPS was introduced in January 2005 and brought in an emphasis on achieving high quality, inclusive design that improves the character and quality of an area and the way it functions. This PPS would have formed part of the appeal Inspectors considerations.
- 5.3. In December 2007 PPS: Planning and Climate Change – Supplement to PPS1 was brought out which placed an emphasis on consideration of sustainable development issues with particular regard to the need to reduce carbon dioxide emissions. This urges development to take account of landforms, layouts, orientation etc. as well as making efficient use of resources.
- 5.4. This was followed in July 2009 by PPS: Eco-Towns. A Supplement to PPS1. Although primarily aimed at the emerging Eco-Towns this supplement provides a number of guiding principles that are applicable to all developments including the need to provide quality sustainable development utilising land efficiently and minimising harm to the environment.

PPS3 Housing

- 5.5. This was introduced in November 2006 and replaced the former PPG3 Housing. PPS3 brought in an emphasis on the re-use of previously developed land which includes garden space
- 5.6. Paragraph 41 was recently (in January 2010) altered to emphasise that there is no presumption that because a site is previously developed then development should automatically be allowed, or that development should encompass the whole curtilage of a site. This codicil has always been in PPS3, however it was previously contained within an annex, and has now been moved into paragraph 41 of the main text to make it more explicit.
- 5.7. As with PPS1, PPS3 reiterates the need for high quality and inclusive design and the need to improve or enhance the character and quality of the local area. The appeal Inspector makes note of the replacement of PPG3 with PPS3 in his decision letter.
- 5.8. PPS3 does not contain explicit requirements for housing density; however it does suggest a minimum density of 30 dwellings per hectare be used until such time as density is addressed through Development Plan documents. This density is considered to achieve optimum resource use reflecting sustainable development principles.

6. HISTORY OF NEGOTIATIONS:

- 6.1. Following the dismissed appeal the applicant sought officer opinion as to alternative development options and a planning officer responded with the advice that a development of individual dwellings, for example three detached properties, would be more appropriate than a proposal for flats.
- 6.2. Subsequent to this and prior to the first proposal for three detached dwellings being submitted, further advice was sought from officers, however due to staff shortages

this was not able to be provided and the applicant was advised of the relevant policies and guidance available.

- 6.3. Following refusal of the most recent application a meeting was held with the area planning manager for the North-East team at which the issues regarding refusal were discussed.

7. CONCLUSION

- 7.1. Members are asked to note the potential for an award of costs against the Council with regard to introducing new reasons for refusal on a like for like scheme. Furthermore with regard to overdevelopment Members are advised that the present scheme will provide a density of only 14 dwellings per hectare which is well below the guideline density in PPS3. Very clear arguments for overdevelopment will need to be made if the Council are not to have an award of costs against them for introducing “spurious” reasons for refusal (Circular 03/09).
- 7.2. Members are further advised that opinion of Council Legal Officers has been sought who have advised that the previous Inspectors decisions, and prior refusal reasons are all material considerations, and that an application for costs against the Council could be successful if these material considerations are not given due weight.
- 7.3. Members discussed the issue of precedent at the last Panel meeting expressing concern that if this proposal is allowed then the remaining garden areas on Elmete Avenue could also be lost in a similar manner. The fear of precedence is capable of being a material consideration where a proposal is being considered that is contrary to established policy or principles. This will carry more weight in cases where there are likely to be similarities between proposals or site characteristics which would make it hard to refuse other schemes. If proposals for neighbouring gardens were to come in there would be detailed matters to consider such as siting and access points, however it is considered that the principle of residential development would be acceptable and it would be difficult to justify refusal on grounds of principle for the other garden areas once the principle of development on this site has been established.
- 7.4. In considering the issue of precedence however Members should note that the neighbouring Elmete Croft development was itself a garden development and could be considered to have set a precedent, and that the principle of development on this site was accepted by the previous appeal Inspector.
- 7.5. Members have requested that reasons for refusal are given with regard to harm to character and overdevelopment. Due to the submission of an appeal against non-determination Members are asked to agree these reasons for refusal to form the basis of the Councils case at appeal.

Background Papers

All relevant papers are on planning files corresponding with numbers given above.

SCANNED

LEEDS CITY COUNCIL
Please refer to Decision Notice
13 OCT 2009
REVISED

Proposed Residential Development at Elmete Avenue, Scholes



Key

- Existing Tree
- Existing trees removed.
- Existing hedge removed.
- Proposed Tree.

For further details of existing trees refer to Arboricultural Survey August 2007 by JCA

Proposed new surface water drainage to taken to soakaways in accordance with Fennel Green and bates FRA July 2007.

Proposed new Foul water drainage to taken to existing main drain in Elmete Avenue

Schedule Of Accommodation

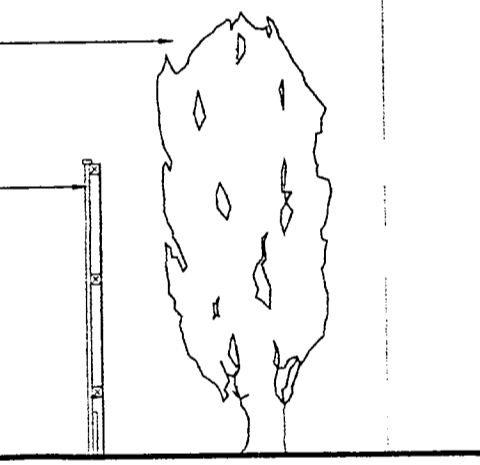
Houses		
A	4 Bed 2 Storey	2
B	4 Bed 2 Storey	1
Total		3

Semi-mature Leylandi (Up to 3m high)

2.0m high 'Beta Reflective Acoustic Barrier', or similar appd. Performance rating in accordance with BS EN 1793-1:1998 of 'DLR = 20dB-Category A4' (Refer to test summary submitted with application).

Drive surface to be smooth porous asphalt with graded 8/11 aggregate.

Section Through Eastern Boundary - Scale 1:50



- Car Noise at 5m distance circa 44dB (A)
- 2m high reflective acoustic barrier to give at least 10dB reduction
- Car noise circa 34dB (A)
- NB car noise is periodic, not continuous

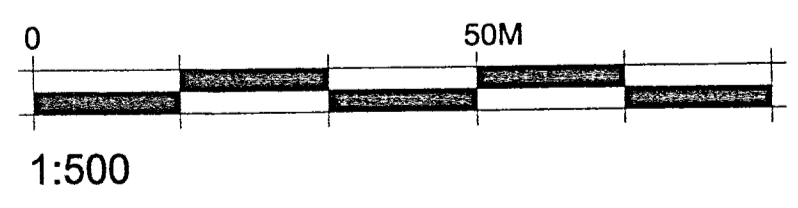
E	PJR	Planning changes in response to LCC email 25.09.09 16.53	02.10.09
D	TP	Reflective Acoustic Barrier details & drive surface note added.	17/07/09
C	JD	Tree positions amended to JCA info.	29/04/09
B	PM	Further notes & drainage details added.	13/03/09
A	PM	Minor amendment	12/03/09
Rev	By	Note	Date



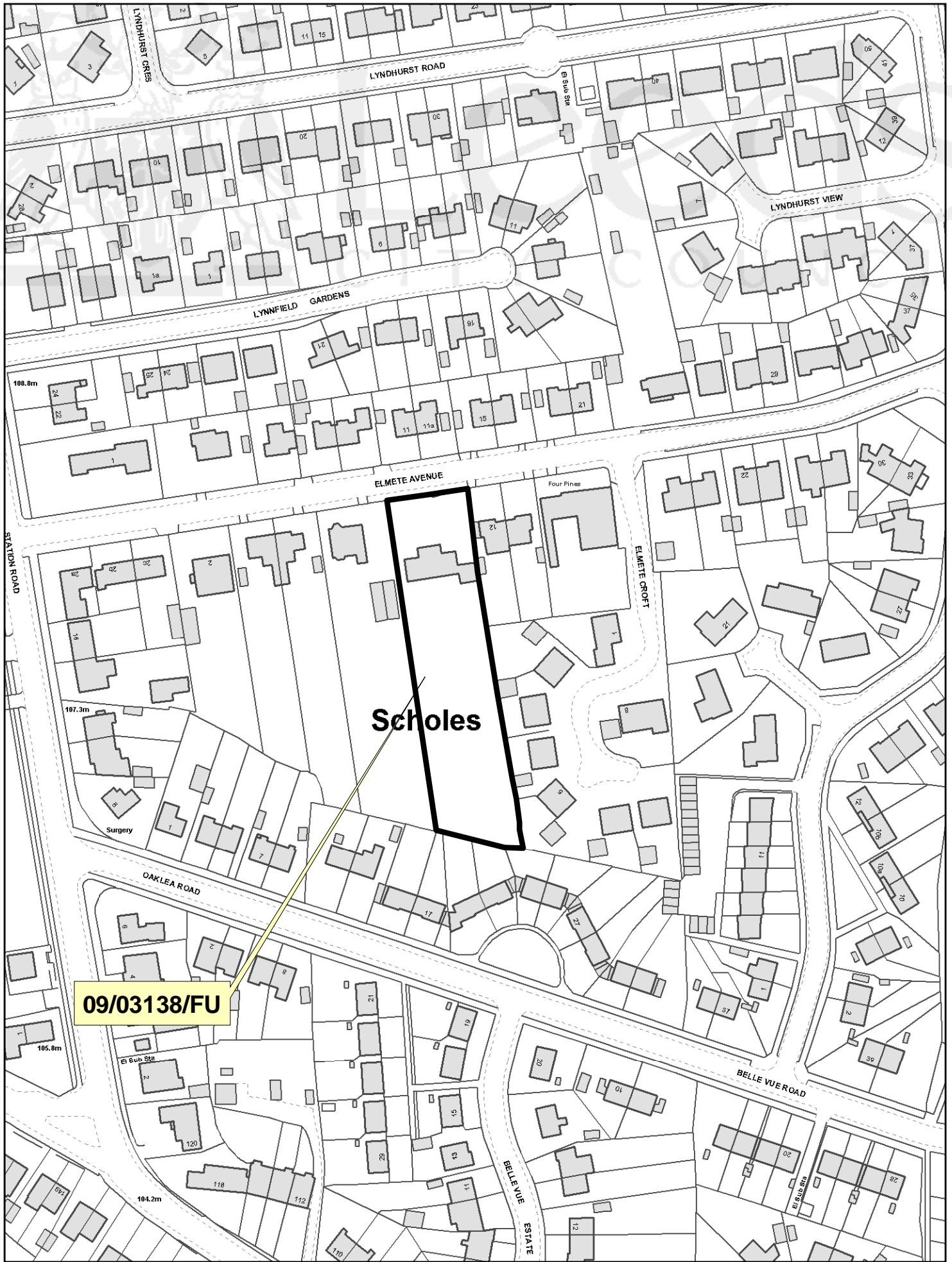
53 The Tannery Lawrence Street York YO10 3WH T: 01904 653772 F: 01904 653779 E: mail@pra-architects.com W: www.pra-architects.com

PROJECT Elmete Avenue, Scholes
TITLE Proposed Site Plan
CLIENT Steven Green
DATE 03.03.09 SCALE 1:500@A2
DWS. NO Y81722/02 REVISION E
DRAWN PM CHECKED

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Proposed Site Plan (Subject to survey and planning)



EAST PLANS PANEL

Scale 1/1500

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