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**Report of the Chief Planning Officer**

**PLANS PANEL EAST**

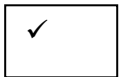
**Date: 5<sup>th</sup> August 2010**

**Subject: Applications 09/00500/FU and 09/00501/CA – Appeals by Messrs Tate, Smith, Tate and Spry against the refusal of planning permission and the non-determination of an application for conservation area consent for the demolition of workshops and storage buildings and the erection of 5 new dwellings, and the change of use of an existing building to form an additional dwelling at land to the rear of 134-140 High Street, Boston Spa.**

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**Electoral Wards Affected:**

**Wetherby**



Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**RECOMMENDATION:**

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

**1.0 THE APPEAL WAS DEALT WITH BY WRITTEN REPRESENTATIONS**

1.1 These applications were recommended for approval by Officers, however Members of Plans Panel East resolved to refuse the applications on 11<sup>th</sup> March 2010. The planning application was refused, however owing to a delay in the issuing of the conservation area consent application, the applicants lodged an appeal before this had been formally determined. The planning appeal was therefore an appeal against the refusal of the planning application, while the conservation area consent appeal was an appeal against the non-determination of the application for conservation area consent. The Council's defence of the conservation area consent application was nonetheless based on Members' resolution to refuse this application as well as the planning application.

1.2 An application for a full award of costs against the Council on both applications was made by the appellants.

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

- 2.1 The main issues identified by the Inspector were the effect of the proposals on highway safety and whether there would be adequate and safe provision for refuse storage and collection, which would preserve or enhance the character and appearance of Boston Spa Conservation Area.

## **3.0 SUMMARY OF COMMENTS**

### Highway safety

- 3.1 The Inspector acknowledged that the private drive from High Street falls well below current highway safety standards in terms of its width, however she attached 'significant weight' to the appellant's fallback position in terms of the existing lawful uses of the site, and noted that not only would the proposed use be likely to reduce traffic levels on the access drive, but also that the amount of larger commercial vehicles would lessen substantially.
- 3.2 The Inspector noted that a long stretch of the access drive from High Street is straight, allowing vehicles good visibility along it when entering from either end, and enabling vehicles to wait for the short time it would take for the other vehicle to clear the access drive. She considered that the need for one party to reverse back along the access drive would happen 'very infrequently'. Whilst noting that the sightlines at the junction with High Street were hindered at times by parked vehicles on High Street and by pedestrians on the footpath, she observed that these parking bays are not in constant use, and that parked cars had a traffic calming effect, reducing vehicle speeds on High Street. Again, in the light of the fallback position and her observations during her site visit, she considered that the visibility when leaving the site onto High Street would be acceptable.
- 3.3 In terms of pedestrian movements, while acknowledging that there is barely enough space for a pedestrian and a car to pass on the access drive, the Inspector noted that it is possible, and that residents using this access would be aware of its limitations and therefore be 'extra cautious'. In terms of transporting bins along the access drive, she accepted that it would not be possible for a pedestrian wheeling a bin to pass a car, but considered that this would happen so infrequently that it would not be unduly problematic, particularly in view of the good visibility along the access from High Street to the bin store.
- 3.4 In conclusion therefore, in terms of highway safety, the Inspector considered that the proposals would 'improve highway safety when compared to the existing use or potential [lawful] future commercial use of the site'.

### Bin storage

- 3.5 The Inspector considered that bin storage provision within the site, in the designated storage area and in individual gardens, was adequate. Whilst noting that the access drive is not of sufficient proportions to be accessed by refuse vehicles, thereby requiring vehicles to be left on the High Street on collection days, she considered that this would only be for a relatively short period of time, and that this was inevitable in a mixed use area such as this. She felt that the distance between the bin store and High Street was acceptable, and considered it unlikely that bins would be left on the High Street any longer than absolutely necessary, since this would

lead to additional inconvenience for residents, who would have to carry rubbish further from their dwellings.

- 3.6 In conclusion, the Inspector considered that there would be 'adequate and safe provision for refuse storage and collection', and 'little discernible difference to the current situation in terms of the effect on the character and appearance of the conservation area', and that the proposals were therefore acceptable in this respect.

#### Conservation Area Consent

- 3.7 The Inspector considered that the buildings proposed for demolition were of no architectural merit, and having concluded that the proposed redevelopment scheme was appropriate, she found that the proposed demolition works to facilitate this were therefore also acceptable.

### **4.0 DECISION**

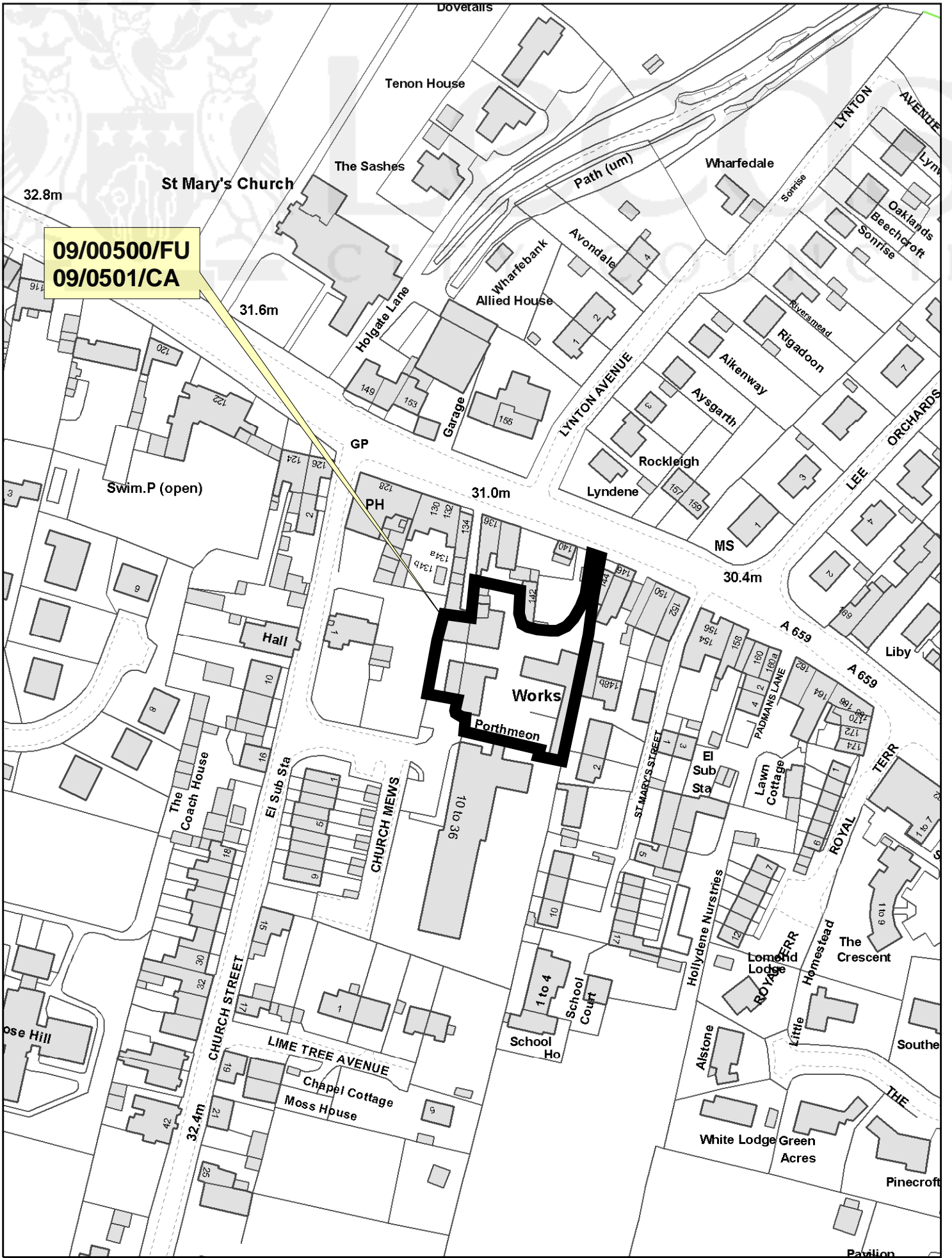
- 4.1 The appeals were allowed subject to conditions by letter dated 16<sup>th</sup> July 2010.

### **5.0 COSTS**

- 5.1 The Inspector noted that Members resolved to refuse both applications contrary to the recommendations of their officers. Circular 03/2009 advises that Planning authorities are not bound to accept the recommendations of their officers, but that in doing so they must substantiate their decision and reasons for refusal.
- 5.2 The Inspector considered that the Council 'had very little regard' to the appellant's lawful fallback position in their determination of the applications, both in relation to highway safety and bin collection, and that they 'failed to provide a convincing argument to demonstrate that the proposals would result in poorer highway safety.'
- 5.3 In terms of the second reason for refusal, relating to the negative impact that bins left on High Street would have in terms of visual amenity, the Inspector referred again to Circular 03/2009, which advises that vague, generalized or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, are more likely to result in a costs award. She states that 'it seems that Members gave greater weight, in relation to this matter, to local knowledge and experience than the evidenced fall back position', and that while local planning authorities are expected to take the views of local residents into account, these need to be supported by substantial evidence if they are to carry significant weight. She considered that 'substantial evidence was not...put forward by the Council in this case.'
- 5.4 The Inspector concluded that in the light of its failure to have regard to the applicants' fallback position, and the lack of justification put forward in terms of the local residents' assertions regarding bins being left on High Street, the Council acted unreasonably in refusing planning permission for the proposals, and Conservation Area Consent for the proposed demolition works, which are inextricably linked to the outcome of the planning permission. She considered that the Council's unreasonable behaviour in this respect resulted in the appellants' being put to the unnecessary cost of making the appeals, and made a full award of costs to the appellants in respect of both appeals.

## **6.0 IMPLICATIONS**

- 6.1 Members are asked to note the comments of the Inspector in this case and in particular her reference to Circular 03/2009 in terms of the need to provide evidence to substantiate relation to costs awards, and for the views of local residents to be supported by 'substantial evidence' if they are to be given significant weight in the determination of applications. Members attention is also drawn to the need to take into account the fall-back position.



# EAST PLANS PANEL

Scale 1/1500