



Report of the Chief Planning Officer

PLANS PANEL EAST

Date: 19th May 2011

Subject: Application 10/05711/FU - Alterations to existing unlawful residential annexe to form 3 bedroom residential annexe at 11 Old Park Road, Gledhow, Leeds, LS8 1JT.

APPLICANT

Mr W Hussain

DATE VALID

23rd December 2010

TARGET DATE

17th February 2011

Electoral Wards Affected:

Roundhay

Y

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

REFUSE for the following reasons

1. The building, by virtue of its length, scale, massing and siting, and the lack of scope for the planting or re-establishment of a boundary hedge along the north western boundary, would result in an incongruous and unduly prominent development which would detract from the setting of the host property, which is a positive building within the conservation area, from the streetscene, and from views across the registered historic park, and would significantly erode the sense of spaciousness which characterises this part of the conservation area. As such it is considered that the development would be of significant detriment to the character and appearance of Roundhay conservation area, contrary to policies GP5, N12, N13, N19, N25, BD5 and LD1 of the Leeds Unitary Development Plan Review 2006 and the guidance in Supplementary Planning Guidance 13, the Roundhay Conservation Area Appraisal, PPS1 and PPS5.
2. The position of the building in relation to the sycamore tree to the rear of the site is such that it is likely to result in conflicts regarding perceived nuisance from maintenance issues and apprehension regarding the stability of the tree during windy conditions, and lead to pressure for the tree to be removed or radically pruned. The

tree is an important feature within the Roundhay conservation area, and is protected by a Tree Preservation Order, and its loss, together with the loss of the boundary hedge and lack of scope or space for the replacement of this hedge, would be of significant detriment to the character and appearance of the area. Insufficient information has been submitted to demonstrate that such conflicts would not occur, or that an appropriate boundary treatment could be achieved to screen the building. The application is therefore considered to be contrary to policies GP5, N19, N20, N26, BD5 and LD1 of the Leeds Unitary Development Plan Review 2006 and the guidance in Supplementary Planning Guidance 13, Leeds City Council's *Guideline Distances from Development to Trees* document and British Standard 5837: Trees in Relation to Construction.

1.0 INTRODUCTION:

- 1.1 This application is reported to Plans Panel on the basis of the extensive planning and enforcement history relating to the unauthorised building, and because it is considered that the determination of the application has implications for the wider public interest. The Chief Planning Officer has therefore decided not to exercise his delegated powers in this instance.
- 1.2 The application relates to an unauthorised annexe building which stands in the rear garden of an existing dwelling at 11 Old Park Road in Gledhow. Permission was granted in February 2007 for a detached two storey building with a double garage and games room to the ground floor with a one bedroom 'granny flat' above, to replace a detached single storey garage which formerly stood to the rear of the dwelling. The approved building included the retention of a small single storey garden store which stood to the rear of the former garage. The building which now stands on the site was not built in accordance with the plans approved at that time, and is 4.7m longer at first floor level, 2.7m longer at ground floor level, 1.4m higher and of a different design, with gable ends rather than a hipped roof and with no integral garage. The unauthorised building also includes a basement and rooms in the roofspace which were not part of the original permission.
- 1.3 Permission was refused for the retention of the unauthorised building in May 2009 and again in August 2009, and an enforcement notice was subsequently served, requiring the building to be demolished. Appeals against the second refusal and the enforcement notice were dismissed in August 2010 following a public inquiry in July 2010. The enforcement notice as amended by the appeal Inspector required the building to be demolished within 8 months of the date of his decision (i.e. by 19th April 2011), and the site to be reinstated within 10 months (i.e. by 19th June 2011). In determining these timescales for compliance, the Inspector noted that he understood it was the appellant's intention to implement the scheme approved in 2007 in the event that the appeal was dismissed, and that either planning permission or a lawful development certificate would be required before that scheme could be implemented. He therefore concluded that 'to allow sufficient time for either consent to be obtained before works can commence' an 8 month period for compliance with the notice was reasonable.
- 1.4 The current application seeks to retain the unauthorised building, but to reduce it in size by reducing its height and its length at first floor level, while retaining the full length of the building at ground floor level. Alterations to the design are also proposed, including new windows and the formation of an archway above the patio doors in the north eastern elevation of the building.

2.0 PROPOSAL:

2.1 Permission is now sought for alterations to the existing unauthorised building to create a smaller annexe building. The supporting documentation for the application states that the building provides additional living space for the applicant's extended family, and the appeal Inspector took the view that on this basis it was appropriate to assess the building as an annexe/ancillary building to the main house, rather than as a separate dwelling. It is therefore on this basis that the current application has been considered.

2.2 The alterations now proposed to the unauthorised building include:

- Replacement of existing gable-ended roof with a lower, shallower hipped roof and removal of rooflights. Replacement of existing tiles with plain clay tiles.
- Reducing the length of the building by 3m at first floor level, retaining the full length of the building at ground floor level in the form of a single storey projection to the rear with a monopitch roof.
- Blocking up of kitchen window in the south western elevation of the building.
- Replacement of existing UPVC windows with timber framed casements.
- Creation of an archway above the patio doors in the north eastern elevation.

2.3 The proposed alterations would result in the removal of the accommodation in the roofspace of the building, but would allow the basement area to be retained. According to the submitted plans, the proposed building as amended would be 17m long at ground floor level, as it is at present, and 14m long at first floor level. The overall height of the building to the ridge would be 6.9m.

2.4 The table below sets out the dimensions and details of the accommodation provided in the unauthorised building at present, the building approved in 2007 and the amended building now proposed:

	2007 Permission	Existing unauthorised building	Current proposal
Length	14.4m (ground floor) 12.3m (first floor)	17m (ground and first floor)	17m (ground floor) 14m (first floor)
Width	7.2m	7m	7m
Height	5m to eaves 6.6m to ridge	5m to eaves 8m to ridge	5m to eaves 6.9m to ridge
Footprint	95m ²	119m ²	119m ²
Floorspace	158m ²	344m ²	275m ²
Basement	None	Storage/gym	Storage
Ground Floor	Double garage, shower room, store, games room	Living room, hall, cloakroom, kitchen/dining room	Living room, hall, cloakroom, kitchen/dining room
First Floor	1 bedroom, store, lounge, bathroom, kitchenette	3 bedrooms, bathroom	3 bedrooms, bathroom
Second floor	None	Playroom	None

2.4 Having compared the details on the submitted plans with the approved plans for the 2007 application, the building as now proposed would still be 1.7m longer at first floor level and 2.7m longer at ground floor level than that which was approved in 2007. It would also be slightly higher (approx 30cm). When the basement is taken into account, the floorspace of the building as now proposed, according to the

submitted plans, is 275m², resulting in a building 72% larger in terms of its floorspace than that which was approved in 2007. The footprint of the building, at 119m², would be 25% larger than that of the building approved in 2007.

3.0 SITE AND SURROUNDINGS:

- 3.1 The application relates to an unauthorised building to the rear of 11 Old Park Road. The main house is a stone and render detached dwelling with a red tile roof, a front gable with half-timber detailing and bay windows. The unauthorised building is constructed of stone, with a concrete pan-tile roof, and has accommodation over 4 storeys, including a basement and rooms in the roofspace, served by large rooflights. The building has a pitched roof with gable ends and brown UPVC windows and doors.
- 3.2 The front of the site has been laid out with hardstanding, and a low stone wall and black metal gates and railings mark the front boundary. Much of the north western boundary of the site is enclosed by a hedge over 2m high, although the section of the hedge adjacent to the application building was lost at the time of the building's construction. Some new planting has now taken place in the area between the north western elevation of the unauthorised building and the boundary with the school fields to the north, however at present this is still relatively low level (under 1m high). There are a number of mature trees along the rear boundary of the site which are protected by a Tree Preservation Order (TPO), including a purple-leafed sycamore immediately to the rear of the unauthorised building.
- 3.3 The site is within Roundhay conservation area, and the main dwelling is identified as a positive building in the conservation area appraisal. Old Park Road runs along the western edge of Roundhay Park, a registered historic park to the east of the site. To the north west of the site are the grounds of Roundhay School, with the school buildings some distance away to the west. Mature trees form a key part of the area's character, both in public spaces such as the park, and in private areas like the school grounds and the gardens of residential properties. The unauthorised building is visible in views along Old Park Road and in more distant views across Roundhay Park from the north east.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 The first proposal for an outbuilding/detached building in the grounds of 11 Old Park Road was submitted in August 2006 (application 06/05086/FU) and sought permission for a replacement detached double garage and games room with granny flat over. The application was withdrawn in October 2006 following advice from the local planning authority that the proposed building was too large, and concerns regarding the impact on trees around the site.
- 4.2 A revised application was submitted in January 2007 for a smaller building, again to contain a detached garage with granny flat over (application 07/0030/FU). The details submitted with the 2007 application showed a building 14.4m long at ground floor level and 12.3m long at first floor level, and 6.6m high. The approved building had a shallow hipped roof, and details submitted with the application confirmed that the building had been designed 'to have as little impact as possible on the surrounding area', and that materials would match the existing building.
- 4.3 Construction works commenced on site in early 2008, and during the course of the works it became evident that the building was not being constructed in accordance with the approved plans, and enforcement action commenced. During the

construction of the unauthorised building, and prior to the serving of an enforcement notice, the first application to retain the building was submitted in December 2008 (reference 08/06852/FU). The application was refused in May 2009 for the following reasons:

- Height, length, scale, design, materials and siting of the building and the loss of the boundary hedge result in a building which fails to reflect the character of surrounding development and detracts from the host building, the streetscene and the conservation area, including views across the registered historic park.
- Level of accommodation proposed exceeds that associated with an ancillary annexe, and is of a scale which is detrimental to the character of the area.
- Proximity to trees to the rear – likely damage to roots, concerns regarding light and stability and pressure for trees to be removed or radically pruned. Insufficient information that an appropriate replacement boundary treatment could be achieved to the west.

4.4 The second application to retain the building was submitted in August 2009 (reference 09/03515/FU) and was accompanied by accurate survey plans of the site and the building and additional supporting documentation setting out the applicant's justification for the building. The application was refused in September 2009 for the three reasons set out above, as well as reasons relating to the loss of amenity space for the existing dwelling, disruption to the existing property due to intensification in the use of the site, and overdevelopment of the site.

4.5 An enforcement notice was served in relation to the unauthorised building in August 2009, requiring the demolition of the building and the reinstatement of the garden area. Appeals against the enforcement notice and the second refusal of planning permission were dismissed in August 2010 following a public inquiry in July 2010. As part of the appeal the applicants submitted a Unilateral Undertaking offering to restrict the use of the building to occupation by family members only.

5.0 HISTORY OF NEGOTIATIONS:

5.1 Discussions were held between planning and conservation officers, the applicant and their agent prior to the submission of this application. A number of suggestions were considered, including the reduction of the building at first floor level by 2m and the reduction in the height of the roof. Concerns were raised that this was still unlikely to overcome concerns regarding the size of the development and its impact on the conservation area and the health and long term survival of the sycamore tree to the rear.

5.2 The application as originally submitted proposed to reduce the length of the building at first floor level by 2m, as had been discussed prior to the submission of the application. As the applicant was advised prior to the submission of the application, this was not considered to address the previous concerns regarding the size and scale of the building and the potential impact on the tree to the rear, and following discussions with the agent for the application, they were provided with the opportunity to submit revised plans in the light of the concerns raised. Revised plans have now been received showing the first floor of the building reduced by a further metre. It is still proposed to retain the full extent of the ground floor of the building. A revised site plan has also been received which shows the retaining wall alongside the retained ground floor section at the rear of the building realigned, together with a note stating 'existing store wall and railings to be realigned to provide sufficient planting strip for former boundary hedge to be reinstated.'

5.3 In the interests of clarity, the originally submitted plans showing the building reduced by 2m at first floor level will hereafter be referred to as the 'original plans', and the plans which were subsequently submitted, showing the building reduced by 3m at first floor level and the realignment of the retaining wall within the site will be referred to as the 'revised plans.' The consideration of the application is based on the revised plans.

6.0 PUBLIC/LOCAL RESPONSE:

Ward Members

6.1 Two letters were received from Councillor Matthew Lobley in relation to the original plans, who advises that he wishes to object in the 'strongest possible terms' to the application on the following grounds:

- Too much accommodation on site for a single residential plot.
- The site is in a conservation area and all previous issues stand.
- Proposed changes to building are minor and don't address Planning Inspector's objections – they do not make it subservient to the existing house and don't address the issues of damage to the tree, or allow planting of a screen to reduce the visual impact due to the building's proximity to the boundary.
- Use of tarmac area outside the front of the site as parking for the site – obstructs visibility for people exiting neighbouring property, and should not be included in considerations of whether there is sufficient parking on site for the 17 people who the applicant states live at the property.
- Original permission in 2007 was granted on the basis of a demand for the parking of cars within a garage. The building is still not a garage so previous approval should not be used to justify an application for a different development.
- Approval of the application would set a dangerous precedent allowing people to build what they like without permission even in a conservation area, to ignore the decision of a Planning Inspector and to cost the Council millions of pounds.

6.2 Councillor Lobley requested that the application be reported to Plans Panel in the event that officers were minded to approve. He also seeks assurance that the submission of this application will not delay the timescales for enforcement action as set out in the Inspector's decision.

6.3 Two emails have been received from former Ward Councillor Valerie Kendall, advising that she supports Councillor Lobley's reasons for objecting, and reiterating the concern that if this application is approved it will be a precedent for many others. She advises that she supports the effort to prevent the development, understanding that it is diverting time and effort from other work, and raises the following specific concerns:

- Traffic on Old Park Road around the school when pupils arrive and leave, parking of vehicles on the land outside the site by the applicant makes this worse.
- Overuse of the site.
- Abuse of the planning system

Roundhay Conservation Society

6.4 Objected to the proposals on the following grounds:

- Did not object to the 2007 application, on the basis of scale and nature of use. Building as constructed is out of proportion and much larger, and did not include a garage.

- Inspector had regard to effect of the building on the conservation area, the 2007 permission and the needs of the applicant and his family and concluded that the building neither preserves nor enhances the character and appearance of the conservation area. He also stated that any cosmetic changes proposed would not mitigate the harm caused, nor could this harm be overcome by altering the profile of the roof, he concluded that the appeal building was simply too large for the site and that he found ‘no overriding personal, religious or cultural reasons for permitting the appeal building to remain.’
- Dangerous precedent if developers are allowed to benefit from breach of planning rules.
- Allowing the development after such a lengthy and exhaustive procedure culminating in a three day inquiry would have major implications for future developments and make a mockery of the detailed involvement of the planning department and the Inspectorate.

6.5 They request that the application is refused and that the applicant adheres to the 2007 permission.

Gledhow Valley Conservation Group

6.6 Object on the following grounds:

- Contrary to UDP policies.
- Alterations proposed are not sufficient to overcome previous refusal reasons regarding materials, scale, length, height and massing of building, or impact on sycamore tree to rear.
- Approved plan included a garage – no garage in unauthorised building, nor is one proposed.
- Insufficient space to the north west to plant a screen hedge.
- Concerns regarding parking of vehicles on area of tarmac outside the front boundary of the site by the applicant. Does the applicant have the consent of the highway authority for the laying out of this area? Concern that this will be included in consideration of parking provision for the site.

6.7 The Group suggests that the building should be demolished as required by the Inspector, and raise concerns that if permitted the application would have serious implications for future planning decisions in Leeds and undermine the work of conservation groups and officers within Leeds. Reference is made to the Roundhay Neighbourhood Design Statement, and concerns that the development would be in breach of the guidance therein.

6.8 In response to the revised plans, a further email was received from the group, raising the following points:

- Proposed changes would not make unlawful building ‘lawful.’ Should be demolished and started again from scratch.
- Any new building should be in keeping with the conservation area.
- New buildings in conservation areas should be monitored by planning and enforcement officers and retrospective planning applications should not be permitted in conservation areas.

Other public response

6.9 The application as originally submitted was advertised as affecting the character of a conservation area by site notice and press notice, and by neighbour notification letter. Following notification from a local resident that site notices had been removed, new site notices were posted. These were checked by the case officer on 17th

January and were still in place. 27 letters of objection and 2 letters of comment were received from local residents in response to the original plans, raising the following concerns:

- Building will still detract from conservation area – still too prominent and intrusive in distant views across park and from Old Park Road, materials and design unsympathetic and not typical of other dwellings in the street. Proposed minor cosmetic changes do not address this.
- Overdevelopment.
- Ground and first floor of building still extend under the canopy of the purple sycamore to the rear – potential of conflict with the tree remains. Other trees also damaged during construction.
- By leaving foundations and basement of the building in their current position, there is still a risk of stress to the sycamore tree.
- Contrast to recent rebuilding of Roundhay School, which was done sympathetically, retaining the original school façade and meeting conservation requirements.
- Overbearing on property to rear. Loss of privacy to neighbouring residents and to children using school field.
- Too close to school boundary to allow hedge to be planted, meaning that the building cannot be screened and appears obtrusive.
- There are numerous differences between the unauthorised building and what the applicant claims is their ‘fallback position’ (the 2007 permission) – still larger than the 2007 permission.
- Concern that enforcement action being delayed by submission of a further application for retention of building. Timing of this should not prevent the Council proceeding with its enforcement notice. Council should take appropriate action if the Inspector’s decision is not complied with.
- This is a dwelling, not an annexe.
- Large amount of paving in garden – concerns regarding drainage and wildlife.
- Insufficient parking on site for 17 people.
- Parking of cars on tarmac area outside site – do they have consent for works to lay out this area? Impact on visibility from neighbouring properties.
- Original plan included a garage – no garage in new building. Concern regarding possible further application for/development of a garage.
- New policy prevents ‘garden grabbing’.
- If permission is granted, permitted development rights for any new outbuildings should be removed.
- Do not believe that personal circumstances of applicant override harm to area resulting from the building.
- Building is unlawful, should not be allowed. Planning regulations have been flouted. Should be demolished. Shouldn’t be allowed to keep applying and appealing. Allowing this would bring planning system into disrepute and set a precedent for future developments.
- This has been ongoing for almost 5 years and needs to be brought to a close. It has cost the Council and taxpayers a huge amount.

6.10 Following the receipt of the revised plans, the application was readvertised by site notice and by letter to all those who had made representations on the original plans. In addition to the representations summarised above, 11 further letters of objection have been received in response to the revised plans, many of which reiterate comments made previously. The following concerns are raised:

- No major changes, still overdevelopment, too large for the site, too close to boundary, and still an eyesore, and not in accordance with planning guidelines or in keeping with conservation area.
- Plans don't attempt to address fundamental character and structure of the building, very little difference between these and previous plans appear to be an attempt to further delay enforcement process.
- Previous comments still stand.
- No resemblance to building approved in 2007 - until this original design is implemented, the application should be refused, and building should be demolished as required by appeal Inspector as soon as possible.
- Residents who have complied with requirements of planning system wish to see same standards applied in this case.
- Disappointed to see submission of yet more revised plans. Council should not accept any further revised plans, allowing this to continue brings the planning system into disrepute and is a waste of public money.

7.0 CONSULTATION RESPONSES:

Statutory

7.1 None.

Non-statutory

Highways

7.2 No objection. The existing house has two access points onto Old Park Road, and as such more than adequate off-street parking can be provided.

Contaminated Land

7.3 Historic map review requested. *On the basis that the application is for an ancillary outbuilding which has already been built, no further information has been requested in this respect.*

Flood Risk Management

7.4 No objections.

8.0 PLANNING POLICIES:

Development Plan

8.1 The development plan includes the Regional Spatial Strategy to 2026 (RSS) and the adopted Leeds Unitary Development Plan (Review 2006) (UDP). The RSS was issued in May 2008 and includes a broad development strategy for the region, setting out regional priorities in terms of location and scale of development. In view of the relatively small scale of this proposal, it is not considered that there are any particular policies which are relevant to the assessment of this application.

8.2 The site is in Roundhay conservation area. Roundhay Park, to the east, is a registered historic park, and is designated as Green Belt and greenspace. The park and the grounds of Roundhay School to the north west are designated as Urban Green Corridor. The following UDP policies are relevant to the consideration of the application:

GP5 – General planning considerations

N12 – Urban design

N13 – Design and new buildings

N19 – New development in conservation areas

N20 – Retention of features that contribute to the character of a conservation area
N25 – Development and site boundaries
N26 – Landscaping schemes
N28 – Historic parks and gardens
BC2 – Materials in conservation areas
BD5 – Amenity and new buildings
T2 – Highways
T24 – Parking
LD1 – Landscape design and retention of trees and vegetation.

Relevant supplementary guidance

8.3 The following Supplementary Planning Guidance (SPGs) and Supplementary Planning Documents (SPDs) are relevant to the consideration of the application:

SPG13 – Neighbourhoods for Living: A Guide for Residential Design in Leeds
Guideline Distances from Development to Trees: Updated March 2011
Roundhay Conservation Area Appraisal.

Government Planning Policy Guidance/Statements

8.4 The following Planning Policy Guidance (PPGs) and Planning Policy Statements (PPSs) are relevant to the consideration of the application:

PPS1 – Delivering Sustainable Development
PPS5 – Planning for the Historic Environment

Other relevant guidance

8.5 BS5837: Trees in Relation to Construction.

9.0 MAIN ISSUES

1. Principle of development
2. Visual amenity and impact on character and appearance of the conservation area
3. Trees and landscaping
4. Residential amenity
5. Highway safety
6. Personal circumstances of the applicant
7. Other issues

10.0 APPRAISAL

Principle of development

10.1 Despite the Council's concerns regarding the nature of the accommodation provided and the potential for the building to be used as a separate dwelling, the appeal Inspector accepted that the building provides living accommodation additional to that provided by the main house, and is used solely as an annex to the main house, not as a separate dwelling, and he considered the appeal on that basis. In the light of this, the consideration of the current application is also made on the basis of the building being an annex to the existing dwelling, rather than a separate dwelling. The principle of an ancillary outbuilding to the rear of 11 Old Park Road was established through the permission granted for a detached garage and granny annexe in 2007, and is still considered to be acceptable, subject to other material considerations such as the impact of any such building on the conservation area and the trees to the rear of the site.

Visual amenity and impact on character and appearance of the conservation area

- 10.2 The appeal Inspector identified one of the recurring themes of the Roundhay Conservation Area Appraisal as being the importance of open space to the character of the conservation area. He noted that 'open space, whether in the form of parkland, a playing field, the separation between the fronts of houses and adjoining roads, or just in terms of the gaps between houses, gives the locality a sense of spaciousness', and that this was a characteristic he considered worthy of preservation or enhancement.
- 10.3 The Inspector noted that views of the building from the playing fields of the school to the north were 'conspicuous' and that, whilst not an area to which the public have unrestricted access, the fields were likely to be well used and therefore views from this area were an important consideration. In this respect, he notes that when viewed from the playing fields, the existing building, by reason of its height and length, 'dominates the rear garden of no. 11 and it appears to fill much of the visible space between the rear of the main house and the neighbouring property [to the rear] at no. 4 Ryder Gardens.' He also comments that while the unauthorised building is an annex to the main house, its length was 'comparable to that of nearby dwellings', and appeared to be of a size 'more akin to a detached dwelling than of a structure that is ancillary to the main house.' On this basis, he concluded that when viewed from the playing fields, the building 'significantly erodes the sense of spaciousness that would otherwise exist between properties.'
- 10.4 In terms of views from Old Park Road and Roundhay Park, the Inspector comments that the existing building is visible through gaps between street trees on Old Park Road, and that from these directions 'the considerable bulk of the structure is readily apparent and its adverse impact upon the openness of the area is clearly seen.' He noted that a new hedge had been planted along the boundary between the site and the school, but considered that even if the hedge were to grow well, much of the building would still be visible, and that the 'height, length and massing of the structure would still be readily apparent'. He therefore concluded that 'accordingly, the harm caused by the development might be lessened but it would not be materially overcome by replacing the hedge.'
- 10.5 The Inspector noted that the length and massing of the existing building were not readily apparent when viewed along the drive to no.11, but that the height was very evident in this view and that the steeply pitched roof and gable elevation 'accentuate the height of the structure in a way that challenges the dominance of the main house,' making the building 'incongruously tall.'
- 10.6 In the light of his comments on the appearance of the building as set out above, the appeal Inspector concluded that:
- The appeal building, due to its inappropriate height, length and massing, neither preserves nor enhances the character or appearance of the Conservation Area. Rather it materially harms the sense of spaciousness that is an important feature of the locality. Such harm could not be overcome by [a number of alterations suggested to the windows and materials as part of the appeal]. Nor could this harm be overcome by altering the profile of the roof. The appeal building is simply too large for this site.*
- 10.7 In the light of the Inspectors conclusions regarding the existing building on the site, the key considerations in assessing the amendments now proposed to the building are whether they would overcome his concerns regarding the height, length and massing of the building and the resultant loss to the 'sense of spaciousness' which

is such an important part of the conservation area's character. The judgment to be made is whether the resultant building would preserve or enhance the conservation area.

- 10.8 It is proposed to reduce the length of the unauthorised building by 3m at first floor level only, and to replace the pitched, gable-ended roof with a lower, shallower hipped roof more akin to that which was proposed on the garage building which was approved in 2007. The footprint of the ground floor of the unauthorised building would remain unchanged, and the remaining single storey projection to the rear would be roofed with a monopitch roof, the ridge of which would be around 1.3m higher than that of the single storey projection which would have remained to the rear of the building as approved in 2007.
- 10.9 it is considered that the alterations now proposed to the building fail to address the Inspectors' concerns regarding the size of the building in relation to the back garden area and spaces between existing buildings, and the building's impact on the spaciousness of the conservation area as a result. The ratio of gaps to buildings in the scheme as now proposed is such that the proposed building would still dominate the rear garden area and would fail to preserve the special character of the conservation area. The building would be built in very close proximity to the side boundary with the playing fields with relatively small gaps between its front elevation and the rear extension to the main house, and between its rear elevation and the rear boundary, and would still appear less as an annex and more as a detached dwelling. There are also concerns regarding the potential for the hedge to screen the retained ground floor section since a hedge could be removed or reduced in height without requiring planning permission. In the light of these concerns, it is considered that the development would still detract from the character and appearance of the conservation area and refusal is recommended on this basis.
- 10.10 The applicant's supporting documentation makes reference to the 'fallback position', (i.e. the scheme which was approved in 2007). Whilst this permission has expired, the Council accepted at the public inquiry in July 2010 that it was unlikely permission would be withheld were a new application for an identical development to that approved in 2007 to be submitted. By comparison with this 'fallback position', it is noted that the building as now proposed would still be 1.7m longer at first floor level (14% larger) and 2.7m longer at ground floor level (19% larger) than that which was approved in 2007. It would also be slightly higher (approx 30cm), and 25% larger in terms of its footprint than the previously approved building. For the reasons stated above, this is considered unacceptable.
- 10.11 The proposals to reduce the height of the building and to replace the existing windows with more appropriately designed timber windows are considered to go some way to mitigating the impact of the development, particularly in views along the drive of no.11, however as the Inspector commented in his decision, these alterations and the reduction in height are not sufficient in themselves to overcome the harm that the building causes to the sense of spaciousness of the conservation area, as the building is 'simply too large for this site'. Whilst it is noted that it is now proposed to reduce the length of the building, this would still result in a building which would fill much of the gap between the existing property and buildings to the rear on Ryder Gardens, and which would still be 1.7m longer at first floor level than that for which permission was granted in 2007. In the light of the conservation officer's comments regarding the visual impact of the building on views it is not considered that the proposed reduction in the length of the first floor of the building is sufficient to overcome the Inspector's concerns regarding the length and massing of the building and the detrimental impact that the building has on the sense of

spaciousness which is an important characteristic of the Roundhay conservation area. On this basis it is considered that the development is contrary to policies N12, N13 and N19 of the UDP and the guidance in the Roundhay Conservation Area Appraisal, PPS1 and PPS5.

Trees and landscaping

- 10.12 The tree most affected by the development is the purple-leaved sycamore immediately to the rear of the unauthorised building. The appeal Inspector considered that the tree 'makes a positive contribution to the character and appearance of the conservation area and deserves to be safeguarded'. Since the appeal decision, the tree in question and a number of others along the south western boundary of the site have been protected by a TPO.
- 10.13 With regard to the potential impact of the building on the roots of the sycamore tree, which a number of local residents have raised concerns about, the Inspector noted that a retaining wall and raised patio was built to the rear of the site, adjacent to the tree, in 2003, and that this was likely to have had an adverse impact on the trees roots, but that the tree was not showing any evident signs of distress as a result. In the light of this he concluded that it was difficult to conclude with any certainty that the more recent excavation works to construct the building would have caused material harm to the roots of the tree. It is not therefore considered that refusal of the application on this basis could be justified.
- 10.14 However, with regard to the relationship between the building and the canopy of the tree, the Inspector did raise concerns. He noted that the branches of the tree extend well over the roof of the unauthorised building, and are very close to the existing structure in places. He considered that the dense crown of the tree resulted in significant shading of the kitchen window in the end elevation, making this area 'gloomy' despite the large window in the south eastern elevation of this room, and that this could lead to pressure from occupants of the building for the crown to be thinned or even for the tree to be felled. He also noted the Council's concerns regarding occupants' apprehensions about the tree during windy conditions and annoyance caused by leaves, twigs and other debris falling onto the roof. In this respect, while he noted that 'with judicious directional pruning it is possible for future growth to be encouraged to develop away from the roof of the building', reducing the risk of physical damage being caused during strong winds, he considered that this was 'an unsatisfactory arrangement where the long term retention of important branches is dependent upon periodic pruning. He noted that in his experience:

it is not uncommon for occupiers of premises to be fearful of branches that directly overhang their properties, especially where those branches are close to the roof. Such fears are often coupled with annoyance at the general mess the tree is seen to cause from the fall of leaves, twigs and other debris. A situation such as this can lead to frequent requests being made to the Council for consent to remove those branches and such requests cannot always be rejected.

- 10.15 In the light of this, the Inspector considered that the building is too close to the sycamore tree and, noting the undisputed evidence of the Council and a neighbour that unauthorised pruning works to the tree had already taken place, that there was reason to suppose that 'at some time in the future further action might be taken in respect of the sycamore if occupiers of the appeal building were to find it a cause for concern'. He therefore concluded that the long term amenity value of the sycamore tree was therefore put at risk by its proximity to the appeal building.

- 10.16 Whilst it is now proposed to remove 3 metres from the rear of the building at first floor level, the ground floor of the unauthorised building would be retained in its current position. The applicant has provided a cross section showing the tree canopy and the position of the unauthorised building in relation to this. This drawing demonstrates that even with the proposed amendments to the building, the canopy of the tree to the rear would still overhang the single storey rear projection by at least 2m. The rear elevation of the building would be only 3m from the tree itself according to the submitted cross section, which is considerably closer than the separation distance of 10m recommended in the Council's *Guideline Distances from Development to Trees* document, which updates guidance in the former *Residential Design Aid 4* in this respect.
- 10.17 Whilst the reduction in the height of the rear section of the building would mean that the branches themselves were not in such close proximity to the roof, it is not considered that this would overcome the ongoing annoyance and maintenance issues resulting from the fall of twigs, leaves and other debris from the tree onto the roof, blocking gutters and downpipes, and from moss growth promoted by debris and shade. Significant discolouration of the rear section of the unauthorised building's roof beneath the tree canopy has already occurred, and was clearly evident at the time of the previous application, when the building had only been in place for a relatively short period of time. It is not considered that these concerns would be satisfactorily addressed by reducing the height of this section, since the tree would still overhang this section of the building by around 2m according to the cross section survey plans submitted by the applicant, and would still suffer these problems, making repeated requests for the pruning or felling of the tree likely. It is therefore considered that the long term amenity value of the tree, which is considered to make a positive contribution to the character and appearance of the conservation area, would still be put at risk by its proximity to the annex building.
- 10.18 The revised scheme which has now been submitted proposes to retain the ground floor of the building in its current position, but to block up the kitchen window in the south western elevation, looking onto the tree. As this would remove the outlook from this part of the kitchen onto the tree it is considered that it would partially overcome the Inspector's concerns regarding the indirect conflict between the building's occupiers and the tree insofar as it relates to the oppressive impact that the tree would have on the outlook from this window. Whilst the blocking up of the window would still result in this area of the kitchen being 'gloomy' as identified by the Inspector, and would still lead to a situation which is less than ideal in terms of providing natural light and outlook to the kitchen, it is not considered on balance that refusal of the application on these grounds could be justified. However, in the light of the above discussion regarding the canopy of the tree overhanging this section of the building, it is not considered that this alteration in itself is sufficient to overcome the concerns regarding the annoyance and apprehension that the tree is likely to cause for residents and the potential pressure for the tree's removal as a result.
- 10.19 The applicant's design and access statement (para 6.8.3) states that the current application proposes a single storey development in a similar location to that granted by the 'fallback position' (the 2007 permission) and as previously existed on the site, and that regard must be had to this when assessing the impact of this rear projection on the crown spread of the tree. It states that 'the impact of this fallback position is now the same given the alterations made. Therefore the Council cannot refuse the application due to the proximity of the annex to the sycamore tree.' The single storey projection to the rear of the building as now proposed would extend 2.7m further to the rear than the retained single storey projection on the rear of the building which was granted permission in 2007. The single storey element of the

building approved in 2007 was a part of the pre-existing garage building which was proposed for retention as part of the 2007 scheme with the specific intention, as stated in the documents submitted by the applicant at that time, of ensuring that the building encroached no further into the root/canopy area of the tree than the building which formerly stood on the site. As well as constituting a 19% increase in the length of the building, the additional 2.7m of the building proposed for retention would fall almost entirely beneath the canopy of the sycamore tree, on the basis of the information on the submitted site plan. It is therefore considered that far from being 'the same' or even 'similar' to the 2007 scheme, this additional projection actually constitutes a significant difference to the 'fallback' scheme, which is material to the Council's consideration of the current application, and that refusal of the application on these grounds can therefore be justified.

- 10.20 With regard to the hedge alongside the north western elevation of the building, the appeal Inspector noted that at the time of his site visit in July 2010 new replacement hedging had been planted, and that where there were gaps in this planting they could be filled. He considered that, were the new planting to grow well, then over the space of a few years the prominence of the building would be less than it is at present. While he goes on to say that this would not overcome his concerns regarding the harm caused by the length and massing of the building, it can be inferred from these comments that the Inspector considered the planting and survival/success of a hedge along this boundary to be an important component in providing screening of the building. It is noted that the retention of this boundary hedge was also a condition on the 2007 permission, demonstrating the Council's view regarding the importance of this hedge to the amenities of the area.
- 10.21 At the time of the case officer's most recent visit to view the site from the school playing fields to the north west (07/02/11) the privet hedge plants which were planted before the appeal inquiry in July 2010 did not appear to have become well established. The planting still appeared sparse and was not readily visible in views of the building across the school playing fields to the north, providing very little screening of the building. Privet is a semi-evergreen species, therefore even in winter some leaves would be expected. Upon closer inspection it appeared that while some leaves were in evidence, these were only visible on some of the plants in the wider section of the planting bed, and that on the plants in the narrower section of land, where the retaining wall within the site approaches the boundary, the leaves were actually dying. The landscape officer has advised that this is likely to be a result of the lack of space between the wall's foundations and the site boundary in this position, restrictions in the amount of moisture reaching the soil as a result of the position of the wall's foundations, and the shading provided by the building, and that in view of their current condition and these restrictions on the plants' ability to grow, the long term survival of this hedge appears to be unlikely.
- 10.22 In response to the Inspector's comments that alterations to the retaining wall within the site are likely to be necessary before the remaining gap could be filled with planting, a revised site plan has now been submitted as part of the application. This plan shows a slight realignment of the section of the retaining wall adjacent to the rear part of the unauthorised building, to move it slightly further away from the site boundary with the aim of providing a wider area in which to provide hedge planting. The area between the proposed realigned retaining wall and the site boundary would be no wider than 0.5m at its widest point, reducing down to only 0.2m at the point adjacent to the rear corner of the unauthorised building's ground floor.
- 10.23 As discussed above, there are concerns at present regarding the apparent lack of success of the hedge which has been planted adjacent to the unauthorised

building, where the area available for planting is over twice as wide in parts as that now proposed adjacent to the realigned retaining wall. It is likely that to provide a reasonable density of hedging, at least two staggered rows of planting would be required, however there is insufficient space in the area proposed at present to allow for even a single row of hedge planting. In view of this, and the likely restrictions on the long-term survival of the hedge resulting from the lack of space available and the shading caused by the building, it is considered that there would be insufficient space within this area to plant a hedge of sufficient height or density to provide screening of the building, or with any reasonable prospect of it becoming established and surviving in the long term as if the rear section of the unauthorized building were to be retained. In the light of this, less weight can be given to the applicant's assertions in their design and access statement (Para's 6.6.7 and 6.6.12) that the retained ground floor section of the building 'will not be visible due to the privet hedge' and would therefore be considered to have a 'neutral impact on the character and appearance of the conservation area', as views of this section of the building would still remain due to the lack of sufficient boundary screening. On this basis it is not considered acceptable for the rear section of the building to be retained.

Residential amenity

- 10.24 Concerns regarding the impact of the development on the privacy and amenities of neighbouring residents are noted. In view of the distance between windows in the building and neighbouring properties, no significant increase in overlooking of neighbouring properties is anticipated. In view of its orientation in relation to neighbouring dwellings and positioning to the rear of the neighbours' garage to the rear, it is considered that it would not have such a significant impact in terms of overshadowing or have such an overbearing impact on neighbouring dwellings or their gardens as to justify refusal on these grounds. On balance therefore it is not considered that the building would be detrimental to the amenities of neighbouring residents.
- 10.25 Previous reasons for the refusal of the application based on the loss of amenity space for the existing dwelling and the impact of the new building on the amenities of the existing dwelling's occupiers in terms of noise and disturbance were based on the concern that the building could be used as a separate dwelling. However as the Inspector at the public inquiry accepted that the building is an annex to the existing building and should be considered as such, it is not considered that refusal of the application on this basis could be justified, as all occupiers of the site would be from the same family group. However, in the event that the application were to be approved, a condition would need to be included to ensure that the building could only be used as an annexe to the main house and not as a separate dwelling unit.

Highway safety

- 10.26 Neighbours' concerns regarding the level of parking available, the fact that the building no longer contains a garage, and the use of an area of hardstanding outside the site for parking by the applicants are noted. The highways officer has confirmed that the area of parking outside the site was not included in their consideration of the application in terms of assessing access to the site and the level of parking available. On the basis of the land included within the site, excluding this area, the highways officer has advised that as there are two accesses to the property they consider that there is more than sufficient off-street parking available, and that refusal of the application on these grounds could not be justified.
- 10.27 In terms of the laying out of the area of hardstanding outside the site, which is within the adopted highway, it appears from aerial photographs dating back to 1999 that

this area has been in existence for some time. Whilst the consent of the highway authority may have been required for these works, it is unlikely that planning permission would have been required for these works, since Old Park Road is not a classified road. The highways officer has not raised any concerns regarding the existence of this area or its use for parking, and therefore on this basis, and as there is sufficient parking within the site without relying on this area, it was not considered expedient to pursue this matter further in this instance.

Equality issues and the personal circumstances of the applicant

- 10.28 Section 38 of the Planning and Compulsory Purchase Act 2004 requires 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'. Whilst the personal circumstances of an applicant can be a material planning consideration, the view held by the Courts is that 'such circumstances, when they arise, fall to be considered not as a general rule but as an exception to a general rule to be met in special cases' and that such matters should only be given direct effect 'as an exceptional or special circumstance'.
- 10.29 It is noted that the building in question has been constructed by the applicant to allow his extended family to live together as a family unit, in accordance with their religious and cultural beliefs. The local planning authority and the appeal Inspector agree that the religious and cultural needs of the applicant and his family are material planning considerations to be weighed in the balance in the determination of this application, together with other matters such as the impact of the development on the character and appearance of the conservation area and on the tree to the rear of the site, and specific consideration has been given to the cultural requirements of the applicant and their extended family. However, it is not considered in this instance that the personal circumstances of the applicant are sufficiently exceptional as to outweigh the significant harm to the character and appearance of the conservation area and to the amenity value provided by the trees and landscaping at the site, since this harm will continue long after the immediate needs of the applicant and his family have been met. It is therefore not considered that the applicant's personal circumstances are sufficient to justify setting aside adopted development plan policy in this instance.
- #### Other issues
- 10.30 Concerns regarding the amount of hardstanding on the site are noted. No objections have been received from the Council's Flood Risk Management section and therefore it is not considered that refusal of the application on these grounds could be justified.
- 10.31 Concerns relating to 'garden grabbing' are noted, however the changes to PPS3 to remove private residential gardens from the definition of 'previously developed land' relate primarily to the development of new dwellings. The Inspector accepted that the building which has been erected at the site is being used as an annex to the main building, and it is on this basis that the application has been assessed. The intention behind the reclassification of residential gardens was to allow local planning authorities greater control over the development of such sites, in the interests of preserving the character of residential areas. Notwithstanding its status as an annex rather than a new dwelling, the application is nonetheless considered to be unacceptable in terms of its impact on the character of the conservation area.
- 10.32 Concerns have been raised regarding the retrospective nature of the application and the precedent for other unauthorised developments in the event that the application

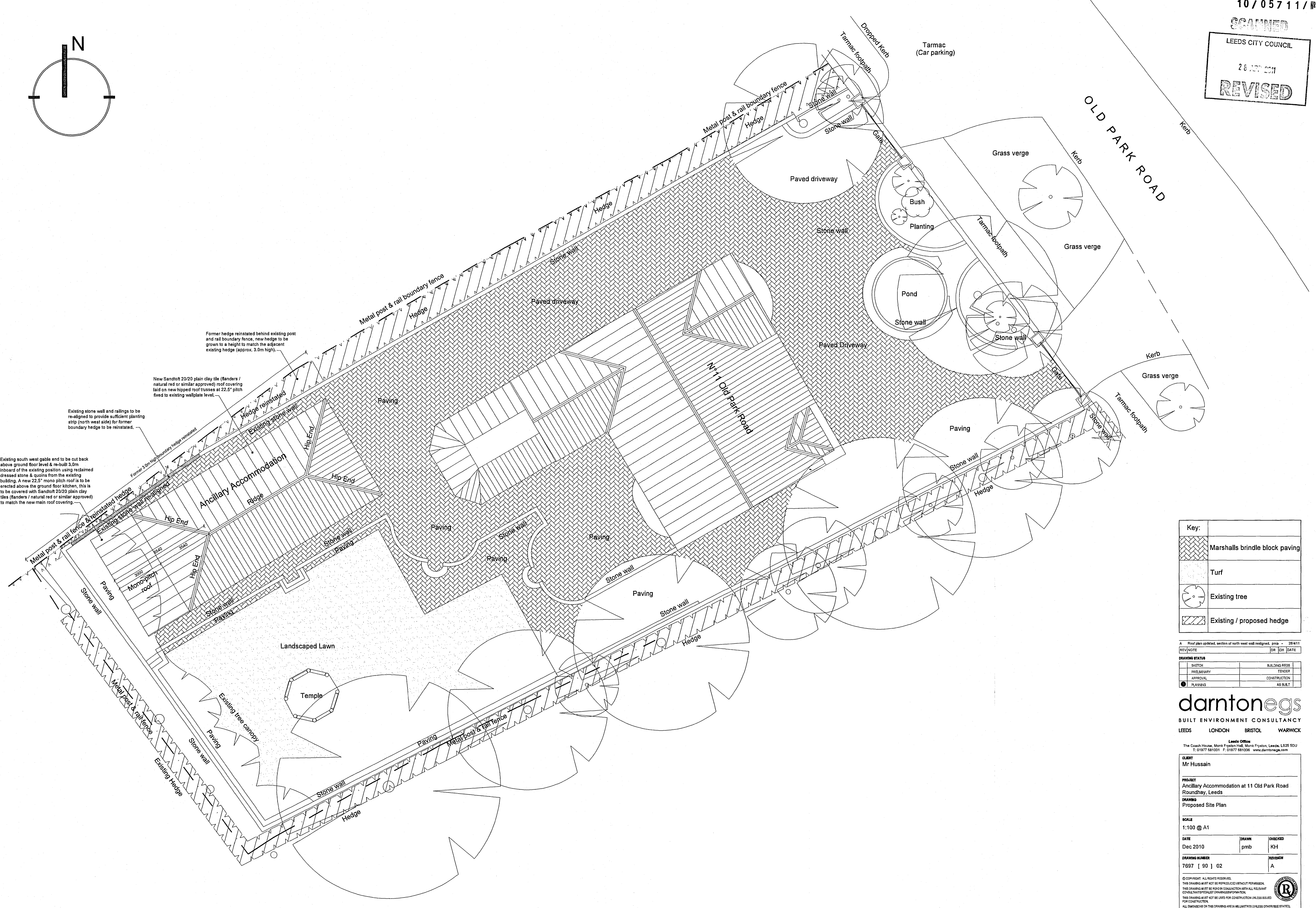
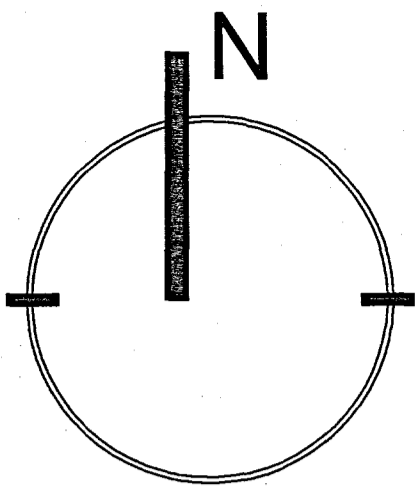
were to be approved. The local planning authority must consider retrospective and non-retrospective applications in the same way, based on their own merits, and any future developments on this or other sites would similarly be considered on their merits in the light of planning policy and other material considerations.

11.0 CONCLUSION

- 11.1 It is not considered that the amendments proposed to the unauthorised building are sufficient to overcome the previous reasons for refusal and the Inspector's reasons for the dismissal of the appeals in August 2010 on the grounds of the impact of the development on the character and appearance of the conservation area and trees and landscaping and on the boundary hedge at the site. On this basis, it is recommended that the application be refused.

Background Papers:

Application and history files 09/03515/FU, 08/06852/FU, 07/00030/FU and 06/05086/FU.
Certificate of Ownership: Signed by applicant.



Existing south west gable end to be cut back above ground floor level & re-built 3.0m inboard of the existing position using reclaimed dressed stone & quoins from the existing building. A new 22.5° mono pitch roof is to be erected above the ground floor kitchen, this is to be covered with Sandtoft 20/20 plain clay tiles (fenders / natural red or similar approved) to match the new main roof covering.

Existing stone wall and railings to be re-aligned to provide sufficient planting strip (north west side) for former boundary hedge to be reinstated.

New Sandtoft 20/20 plain clay tile (fenders / natural red or similar approved) roof covering laid on new hipped roof trusses at 22.5° pitch fixed to existing wallplate level.

Former hedge reinstated behind existing post and rail boundary fence, new hedge to be grown to a height to match the adjacent existing hedge (approx. 3.0m high).

Key:

	Marshall's brindle block paving
	Turf
	Existing tree
	Existing / proposed hedge

A: Roof plan updated, sections of north west wall realigned, pmb - 28/4/11

REV	NOTE	DR	CH	DATE

DRAWING STATUS		BUILDING RES	
	SKETCH		TENDER
	PRELIMINARY		CONSTRUCTION
	APPROVAL		AS BUILT
	PLANNING		

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CLIENT	Mr Hussain
PROJECT	Ancillary Accommodation at 11 Old Park Road Roundhay, Leeds
DRAWING	Proposed Site Plan
SCALE	1:100 @ A1
DATE	Dec 2010
DRAWN	pmb
CHECKED	KH
DRAWING NUMBER	7697 [90] 02
REVISION	A

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107.0m

SportsGround

10/05711/FU

RYDER GARDENS

OLD PARK ROAD

101.2m

GLEDHOW LANE

EAST PLANS PANEL

