



**Leeds**  
CITY COUNCIL

Originator: David Jones

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**Report of the Chief Planning Officer**

***PLANS PANEL EAST***

**Date: 6<sup>th</sup> September 2012**

**Subject: Application 12/02738/FU – 3 bedroom detached house incorporating second floor ancillary granny annex to garden plot (part retrospective) at No. 56 The Drive, Cross Gates, Leeds**

**APPLICANT**

Mr I Gordon

**DATE VALID**

17.07.12

**TARGET DATE**

11.09.12

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**Electoral Wards Affected:**

**Crossgates & Whinmoor**

Yes

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**RECOMMENDATION: REFUSE for the following reason:**

1. The proposed retention and modification of the dwelling house would by reason of its excessive height and resulting scale, mass and bulk and overall design relative to its immediate neighbours, appear obtrusive and represent a discordant feature in the street scene to the detriment of the character and appearance of the area. As such, the development would be contrary to Policies GP5, N12 and N13 of the Leeds Unitary Development Plan (Review), residential design guide for Leeds 'Neighbourhoods for living' and the design advice contained within the National Planning Policy Framework.

**1.0 INTRODUCTION:**

1.1 This application is brought to Plans Panel for determination as it relates to a scheme which Members have previously found to be unacceptable. The application like others before it has also generated significant representations from local residents and has a long and complex planning history.

- 1.2 Members will recall considering a previous planning application on this site for a very similar proposal at a meeting held in April this year. The April meeting was the second time that application was considered and was necessary despite an earlier Panel resolution to refuse permission because the matter had been brought to the High Court to determine if the Council was entitled to consider the issue of height or not. A further report from officers was therefore provided which outlined the decision of the High Court on the matter. Members resolved that permission should still be refused in accordance with the officer recommendation and the decision notice confirming this was issued on 20<sup>th</sup> April 2012.
- 1.3 The decision to refuse the application was appealed within 14 days in accordance with a previous undertaking given by the applicant to the High Court and was intended to secure a timely conclusion to matters due to the considerable delays which had occurred to date. However, as part of the most recent court proceedings, the applicant was released from the part of his original undertaking which would have ensured the appeal progressed to a decision. As such, the applicant has recently withdrawn his appeal and is now progressing this revised planning application as an alternative way of moving matters forward.
- 1.4 The current application proposes a form of development which is very similar to the scheme which Members considered earlier this year and found to be unacceptable. Members will note the recommendation for this application is that planning permission should also be refused and this is again made purely on the basis it is considered the proposal represents an overdevelopment of the site and that it is not a form of development that adequately respects the established residential character of the area.
- 1.5 As before, in reaching a decision on this particular planning application, Members clearly should have regard to the fallback position as created by the 2005 planning permission. The officer recommendation before Members reflects the view that although a fallback position exists, planning permission would not be granted for this form of development now in this location. As such, for a development on this site to receive a favourable officer recommendation it would have to represent a significant improvement (in terms of its relationship to the spatial characteristics of the area, its scale in relation to neighbouring buildings and its impact on neighbours) over the fallback position. This approach to developing the site was clearly stated within the previous officer report and is followed again in terms of consideration of this application.
- 1.6 For Members information, a brief summary of the history of the site is set out below for ease of reference and to provide context.
- Permission granted in 2005 to construct a detached dwelling (with granny annex) within the side garden of No. 56.
  - Work commenced on site in 2007 but not in accordance with approved plans.
  - Revised application submitted to retain what had already been constructed but Members resolved to refuse permission.
  - Appeal against non determination lodged before the refusal was issued - appeal dismissed in April 2008.
  - Enforcement notice requiring demolition served 2008.
  - Notice appealed but also dismissed (notice required demolition of the dwelling by late March 2009)

- Applicant failed to comply with enforcement notice and was successfully prosecuted within the Magistrates Court.
- Injunction proceedings then brought to require compliance with the enforcement notice and considered in the High Court.
- Injunction not granted - applicant gave undertaking that a fresh planning application would be submitted as an alternative to complete demolition. Building width confirmed as being 9.3m.
- Planning application submitted January 2010 but recommended for refusal. Decision to refuse deferred pending outcome of ongoing legal proceedings.
- Further High Court hearing suggesting the Council was estopped from considering the issue of height. Issue not supported by the court.
- Planning application reconsidered by East Panel and formally refused in April 2012.
- Appeal lodged shortly afterwards in accordance with original undertaking but subsequently withdrawn.
- Current application submitted in July 2012.

1.7 With respect to the current application, the applicant, through his agent requested a meeting to discuss potential amendments to the scheme as officers had indicated the proposal was unacceptable. A meeting was held on 21<sup>st</sup> August and officers outlined various concerns with the scheme as submitted and in response the applicant discussed some potential amendments. The meeting was followed up with correspondence confirming options to amend the building were being considered and on this basis the application should be deferred from being presented to the September Panel meeting.

1.8 Officers have carefully considered this request but do not think it is appropriate to remove the application from the September meeting agenda. The reason for this is because the correspondence contains no firm commitment to formally undertake any revisions, to outline what those revisions could involve or even provide a timeline within which they would be submitted for consideration. The backdrop of considerable delays which have occurred to date is also relevant.

## **2.0 PROPOSAL:**

### **Current Application:**

2.1 The application seeks to retain and make physical alterations to a substantially completed detached dwelling house situated within the side garden of No. 56 The Drive, Cross Gates.

2.2 The proposed dwelling house would be three storeys in height and includes ancillary accommodation in the form of a granny annex on the second floor. The dwelling is shown to be retained at a width of 9.30m although the existing depth (circ 13.30m) would be reduced by removing the front and rear elevations and setting them in by 900mm and 800mm respectively - thereby giving a total depth of 11.60m reducing to 10.60m where the dwelling steps in at the front. The building as currently constructed includes a basement area with the structure that appears above the ground built off its foundations. The structure of the basement is to be retained and amended (in order to provide support for the amended front and back walls) but the space itself is identified as being made incapable of use by capping off the stairway opening with a pot and beam structure and covering it with a concrete screed.

- 2.3 The submitted plans and supporting documents indicate the total height of the dwelling house would measure 10.4m from the ground level to the top of the ridge. The existing roof structure would be altered to suit the dwelling's reduced depth through the removal of gabled sections and by changing the roof pitch. The ridge height is not identified as altering from its current, as built position.
- 2.4 A street scene plan (proposed) and existing survey plans have been provided as part of the application to show the existing/proposed relationship between the dwelling house and the neighbouring properties either side.
- 2.5 Internally, the dwelling would include the following separate rooms:
- Ground floor - Entrance hall, dining room, living room, breakfast kitchen and cloak room.
- First floor – 2 bedrooms with en-suite and dressing areas, laundry room and linen cupboard.
- Second floor (i.e. the granny annex) – living room, kitchen, bathroom, bedroom and store room.
- 2.6 A lift shaft is shown to provide access to all three floors (in addition to a main staircase) with final details understood to be subject to the contractor's specification. All main rooms have windows facing out either forwards or backwards and all the side windows are identified to be obscure glazed.
- 2.7 With respect to the dwelling's siting within the plot relative to its immediate neighbours, at its reduced depth the building would sit 8.50m into the site from the back edge of the footpath (when measured from its closest point and based on the site plan which is at a scale of 1:100). The same plan also shows a distance to neighbouring properties to be approximately 4.15m to No. 50 The Drive (at its closest and increasing to 4.65m) and 2.20m to No. 56 The Drive.

**Approved Application (32/306/05/FU) - The fallback:**

- 2.8 Erection of three storey, 3 bedroom detached dwelling house (with ancillary granny annex in the second floor) and detached garage. Basic external measurements for the dwelling as shown on the approved plans (hand drawn) are as follows and have been used for comparison purposes.
- Height: 10.4m (no part of the ridge is to be more than 10.4m higher than the ground level adjacent to the footprint of the building as it existed at the time of the grant of the original planning permission)
- Width: 9.3m (in accordance with the High Court declaration)
- Depth: 11.6m reducing to 10.6m where it steps in at the front (in accordance with the undertaking given to the High Court)

For the avoidance of doubt, both the height and width dimensions as stated above have been specified by the High Court itself through separate declarations.

**3.0 SITE AND SURROUNDINGS:**

- 3.1 The application site comprises of a section of land originally used as the side and rear garden of No. 56 The Drive, a large, period, brick built detached dwellinghouse, with first floor balcony and attractive stone detailing.
- 3.2 The front and side boundaries to No. 56 The Drive comprise of 0.3m high dwarf walls constructed in red brick with approximately 1.3m high piers. In between these piers are metal railings. Behind this boundary treatment is densely packed mature trees and hedges. One of these trees to the southwest corner of the site (in front of the application site) is a large London Plane that is now protected by a Tree Preservation order (Ref: 2005/60). There is a similarly protected tree in the northwest corner of the site at the junction of The Drive and Manston Gardens. The side boundary treatment with No. 50 consists of a brick wall with decorative railings on top. The rear boundary (separating the site from the private gardens associated with Park Avenue properties) comprises of a relatively low level close boarded fence with trellis above. Ground levels around the unfinished building now raise up towards its base when viewed from the side next to No. 56.
- 3.3 The surrounding area is entirely residential and a number of differing styles and sizes of properties can be found. The general character of the area is relatively spacious in terms of dwellings sitting comfortably within curtilages. The street is also noted to slope down from the north (No. 56) to the south (towards No. 50) and an approximate ratio of 1 in 48 is recorded relative to the application site. The actual site still steps down at the common boundary with No. 50 and is retained by the boundary wall. The step down in terms of ground levels appears to be in the region of 1m.

#### **4.0 RELEVANT PLANNING AND LEGAL HISTORY:**

- 4.1 The application site has been the subject of multiple planning applications, appeals, enforcement action and legal proceedings since work started on site constructing a dwelling house which was substantially different to the one which was approved under the original planning permission issued in September 2005 (Application No. 32/306/05/FU).

- 4.2 A brief summary of the site's legal history is set out in the following paragraphs:

##### **High Court (January 2012)**

- 4.3 This action was brought by the applicant as he considered that the Council in determining the 2010 planning application was prohibited from considering the issue of the height of the dwelling house as this had not previously been an issue between the parties. The Court ruled that the Council could consider the issue of height and that the 2005 planning permission approved a dwelling of 10.4m high. The High Court also released the applicant from the obligation he had undertaken to demolish the building in the event of any eventual planning appeal being refused. The text of the main part of the order is set out below for Members information:

IT IS DECLARED that a building constructed pursuant to planning permission 32/306/05/FU in such a manner that no part of the ridge thereof was more than 10.4m metres higher than the ground level adjacent to the footprint of the building at the time of the grant of the said planning permission would accord with the said planning permission in respect of its absolute height and its height relative to Nos.50 and 56 The Drive.

1. The Defendant be and is hereby discharged from paragraph (4) of the undertaking given to the Court on 25<sup>th</sup> November 2010, namely that in the event that planning permission was initially refused by the Claimant and then the appeal to the Secretary of State was unsuccessful he would demolish the existing building on site within four months of such dismissal.

#### **High Court (November 2010)**

4.4 Proceedings were brought by the Council to enforce compliance with the enforcement notice requiring demolition of the unauthorised dwelling. As part of these proceedings, the applicant put forward a case to show that there was an alternative to complete demolition and that alterations could be made to the as built structure to bring it largely into conformity with the 2005 planning permission. The interpretation of the existing permission therefore became an important issue. A number of discrepancies between the approved plans for the 2005 planning permission were noted, primarily in respect of the width and depth of the property. Agreement was reached between the Council and the applicant on the depth of the property (see para. 2.8) but not on width. The Judge heard arguments on the interpretation of the width of the approved dwelling and concluded that the 2005 planning permission granted approval for a dwelling of a width of 9.30m. A declaration was therefore given that the 2005 permission authorised a building which was 9.3m wide and on this basis the applicant has not sought to alter the width of the existing building. Height was not considered.

4.5 In considering not to grant an injunction requiring complete demolition, the applicant gave an undertaking to the High Court that a revised planning application would be submitted in an attempt to regularise the situation. The undertaking comprised of the following:

1. to apply for planning permission within 21 days seeking permission to undertake such works as are necessary to:
  - i) render the basement of the premises incapable of use
  - ii) obscure glaze such existing windows as are considered necessary so as to protect the privacy of adjacent occupiers
  - iii) reduce the depth of the building to coincide with the approved permission (900mm to the front and 800mm to the rear)
  - iv) carry out such works to the roof as are considered reasonably necessary to facilitate the matters detailed in section iii above.
2. upon the grant of permission (either by the Council or through the appeal process), to complete such works as are authorised within 4 months of the date of any approval.
3. in the event permission is refused by the Council, to appeal the decision within 14 days.
4. in the event the application is initially refused by the Council and the appeal is unsuccessful, to demolish the existing building on site within 4 months of the appeal decision (the applicant has now released from this particular element as a result of the January 2012 High Court proceedings)

4.6 Below is a brief summary of the site's planning history (provided chronologically) which is considered to be relevant:

32/306/05/FU - One 3 bedroom detached house incorporating a second floor ancillary granny annex with detached garage – Granted 08/09/05.

07/03979/FU – One 4 bedroom detached house incorporating basement level, second floor ancillary granny annex and detached garage – Committee resolution to refuse but non-determination appeal submitted – Appeal dismissed 17/04/08 on the grounds the dwelling would adversely affect residents living conditions in terms of overlooking, dominance and overshadowing issues and it would also adversely affect the character and appearance of the area due to its design, height, scale and massing.

07/00432/NCP2 – Enforcement Notice requiring demolition of existing building – Appeal dismissed and notice upheld on 27/11/08 (4 Month compliance period for demolition specified)

Prosecution proceedings (Magistrates Court) – brought for non compliance with the Enforcement Notice requiring demolition. Applicant pleaded guilty but advanced mitigating circumstances in his defence - Court decision dated 01/07/10 and resulted in a fine of £2,500 and the applicant was ordered to pay £10,000 towards the Council's costs.

Injunction proceedings (High Court) – brought to require compliance with the Enforcement Notice that required complete demolition. Judge's decision dated 25/11/10 - see para. 4.4 onwards for details.

10/05670/FU – 3 bedroom detached house incorporating second floor ancillary granny annex – Refused 20/04/12 – Decision initially appealed but withdrawn once revised application was validated.

High Court proceedings were brought prior to formal determination of the 2010 planning application in January 2012 (considered on 12<sup>th</sup> with the formal judgment published on 27<sup>th</sup>) – see para 4.3

4.7 Application relating to No. 56 (for information only):

06/02972/FU - Change of use of a detached house to 2 one bedroom flats and 3 two bedroom flats including 2 second floor front extensions, 1 first floor rear extension and 1 two storey rear extension – Refused 07/07/06

## **5.0 HISTORY OF NEGOTIATIONS:**

5.1 Prior to the submission of this application, the agent was reminded of the significant improvements which would be expected over the fallback position as outlined in para. 1.5.

5.2 In addition to the above, officers have met with the applicant and his agent during consideration of the application as referred to in para. 1.7. Whilst a number of possible amendments were discussed including reducing the building's overall height, no revised plans have been received.

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

- 6.1 The application has been advertised by individual neighbour notification letters (sent to immediate neighbours or those who have previously commented) on 18/07/12. Site notices dated 27/07/12 have also been displayed around the site.
- 6.2 The following objections have been received:

Cross Gates Watch Residents Association:

The resident's association has submitted a substantial document in response to the current application which makes numerous points including detailed calculations and analysis concerning the likely position of the original ground level (considered to be well below that now being claimed by the applicant) and concerns regarding the accuracy of the submitted plans. The main points are summarised below -

- Applicant details vary between Mr Gordon (alone) and Mr & Mrs Gordon. Not clear if this is a mistake or intentional but could have implications for recouping costs.
- The new application is at best only slightly different to the refused scheme and appears to have been submitted to achieve further procrastination and delay rather than pursue the appeal. The supporting documents are nearly identical to those previously submitted and fail to explain the why a new application has been submitted or what has changed. Planning statement indicates that permission is sought for exactly the same form of development as is allowed by the 2005 permission.
- The planning statement and plans maintain the building would be 10.4m high but the ground level has been manipulated upwards (with the deposition of an estimated 26 tons of soil) so the 10.4m height is substantially exceeded. The plans also contain significant distortions.
- No mention is made of the basement or the lift within the planning statement. Only the plan mentions how the basement will be capped off. This method of making the basement incapable of use is insufficient as it could be easily altered. The lift is a planning matter as access details or pit/loft requirements are not detailed and could have implications.
- One aspect of professional practice is how a registered architect came to present drawings which failed to show that the site was on a slope. The 2005 to 2012 drawings submitted seem to be prone to gross drafting errors. Another is the damp proof course being accidentally placed at the wrong level and needs to be inserted higher. How could architect, builder and building inspector miss such a key feature?
- The existing building is significantly higher than that allowed and clearly towers over adjoining properties. Because the street is on a slope the excessive height is exaggerated with the building being intrusive and overbearing, quite out of character with the rest of the street and simply jars incongruously with the street scene. All vegetation to the rear originally shown to be retained has been removed so the building can clearly be seen. Loss of daylight and a 'closed in' jail like feeling occurs to No. 50.
- The proposed building although to be altered will continue to have a major adverse impact on the amenity of adjoining residents.

88 letters (many standardised) have been received from separate households. The main comments made are as follows:

- The application seeks to alter the existing unlawful dwelling so that it is consistent with the 2005 permission. As the third retrospective application it is only marginally different to previous applications and has the same deficiencies in terms of excessive height, poor design and reduction in neighbours amenity.
- Impossible to get the existing building to match the 2005 application without altering/lowering the window positions, floors, eaves and ridge.



- The submitted plans still contain errors and the Cross Gates Watch Residents Association report proves this.
- Comments made that the property would blend into the neighbourhood are ridiculous and not accepted.
- Photographs show the original ground level sloped away and down from No. 56 and the side boundary wall is clearly visible. The ground level has been increased by at least half a metre.
- The site survey confirms the building is much higher than claimed in 2005. This has been a serious misrepresentation and had it been presented accurately in the original application most people would have objected.

## **7.0 CONSULTATIONS RESPONSES:**

### **7.1 Non-statutory:**

Highways: No objection subject to conditions

Flood Risk Management: No objection as building regulations can deal with surface water drainage requirements.

## **8.0 PLANNING POLICIES:**

Development Plan

8.1 The development plan comprises the Regional Spatial Strategy to 2026 (RSS) and the adopted Leeds Unitary Development Plan -Review 2006 (UDPR). 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. No RSS policies have a specific relevance to the application site or scheme proposed.

8.2 The site is unallocated on the UDPR proposals map but the following policies are nevertheless considered to be of relevance:

GP5: Seeks to resolve detailed planning considerations including highway safety and loss of amenity.

BD5: All new buildings should be designed with consideration given to both their own amenity and that of their surroundings.

N12: Urban design principles

N13: Principles of good building design.

Adopted Supplementary Planning Guidance: A guide for residential design in Leeds 'Neighbourhood for Living' (Dec 2003)

8.3 National Planning Policy Framework:

## **9.0 MAIN ISSUES**

9.1 The main issues for consideration as part of this application are:

1. The scheme's visual impact on the character and appearance of the street scene
2. The scheme's impact on surrounding residents living conditions
3. Third Party comments

## **10.0 APPRAISAL**

10.1 Members are aware that the site's planning history is long and complex however as with all planning applications the starting point should be the scheme's compliance or otherwise with the statutory development plan. The pertinent policies as contained within the UDPR are detailed in section 8 of this report and in respect to the consideration of this application seek to ensure the appearance of the dwelling house is acceptable bearing in mind the character and appearance of the surrounding area and also that residents living conditions (both existing and proposed) are not adversely affected. The fallback position as provided by the 2005 permission (including the declarations by both High Court Judges) and the Inspectors appeal decisions are also material considerations.

### **1. Impact on character and appearance:**

10.2 The key issue to consider in respect of the current application's acceptability or not is its impact on the character and appearance of the area. As part of this, it is also necessary to consider what impact the approved 2005 application would have as this does represent a potential fallback position - albeit as already stated this scheme would not be considered acceptable if it were proposed today. The Inspector's consideration of the previous scheme is also relevant although it was based on a different scheme to the one now proposed and this fact is important.

10.3 In considering the above, the topography of the surrounding area is such that the dwelling house is highly visible from a number of public vantage points including The Drive itself (despite the presence of the protected tree and vegetation within the front garden), Manston Gardens to the north and Park Avenue to the east – through the gap between the semi-detached properties which back onto the application site. UDPR policies GP5, N12, N13 and design advice provided by 'Neighbourhoods for Living' are therefore considered to be fully relevant and require all residential developments to have a high standard of design and appropriate regard to the character and appearance of the surrounding area. The NPPF also includes design advice which seeks to achieve the same basic aims as specified by the local plan policies and guidance.

10.4 In terms of siting, in its amended form (i.e. the front and rear elevations set in from their current position) the dwelling's footprint would be nearly identical to the 2005 approval in terms of positioning within the plot itself. The only real exception to this relates to the small, 100mm front projection but even this only applies to the part of the building. The side walls are also in a slightly different position to that originally anticipated (and are not proposed to be altered) but the first High Court declaration regarding the interpretation of the 2005 permission is the reason for this since it permits a 9.30m wide building. In the light of this and noting the difference between the front projection is comparatively small no concerns are raised regarding the building's siting within the plot.

10.5 In terms of height, the second High Court declaration that the total height of the dwelling house permitted under the 2005 permission should not exceed 10.4m when measured from the ground level as it existed before building works commenced on site is fundamental. Importantly, agreement between officers and the applicant about the position of the original ground level cannot be reached. Officers suggest the existing ground level has been increased above that which originally existed to achieve the total height of 10.4m now shown whereas the applicant states levels have merely be restored to their original position. This issue also features strongly in the third party objections.

- 10.6 In terms of providing support for the position which officers have adopted on this matter, reference has previously been made to the position where the Damp Proof Course (DPC) has been installed on the existing building since this must always be above the finished ground level. The officer report prepared for the 2010 application suggested the building would be at least 10.65m high in terms of where the ground level could be restored relative to the closest point to No. 56. The building would obviously be higher relative to No. 50 due to the sloping nature of the area. The applicant's response to this issue at the time and which is still maintained through this application is that the DPC has been installed in the wrong position and it will be altered to suit the restored ground levels which will ensure the building is no higher than 10.4m.
- 10.7 In addition to the above, a number of photographs taken by the planning officer during consideration of the 2005 application and critically before work started on site show the side garden. These photographs have already been provided to the agent. The majority of the garden is laid out as lawn and the photographs show at worst the side garden is level (and marginally below the level of an existing concrete footpath which runs to the side of No. 56) but far more likely that it follows the slope of the area/road down from north to south. Local residents have compiled detailed evidence on this point which lends considerable support to the view reached by officers on this topic (and also that the ground originally sloped down with the street). Ground levels as they exist now show the ground sloping up to the base of the building in order to achieve the 10.4m height which conflicts with these historic photographs. The applicant has not provided any explanation into the above.
- 10.8 In reaching the conclusion that an increase in height over the permitted 10.4m has occurred a consequence must be that additional scale, massing and bulk would result since the dwelling is a three dimensional building and must accordingly be assessed as such. Notwithstanding this, it is also important to assess the relative height of the dwelling in comparison to the neighbouring properties as this significantly impacts on its overall appearance within the street scene. The overall design of the building is also important.
- 10.9 When considering the 2005 application, officers as well as local residents regrettably relied too much on the relationship shown on the submitted street scene plan which not only showed the street as being level but also contained a number of drafting errors relating to how No. 56 in particular was portrayed. The plan indicated the new dwelling would have a ridge height only slightly higher than No. 56 and would be some 900mm higher than No. 50. Eaves levels between buildings were also an important consideration as was the dwelling's overall design.
- 10.10 Whilst the above is helpful in terms of providing some context, the outcome of the most recent High Court proceedings has confirmed the 2005 street scene plan contains so many discrepancies that it cannot be relied on. For this reason and as highlighted in the previous panel report, the acceptability of the new plans should be the focus and not what has gone before – albeit the dwelling's approved dimensions as established by the fallback are clearly important. Officers have therefore concentrated on assessing the submitted plans but are still mindful both appeal decisions included site visits and accordingly these decisions are still of some relevance.
- 10.11 A close examination of the existing survey plan when compared to the proposed elevations and street scene plan indicate the dwelling house would now look nearly identical to the 2005 approval, as least as far as the front and rear elevations are

concerned since a reduced eaves is clearly shown above the second floor stairs/store and bathroom and the side hip has also been increased. This however also implies the eaves line of the three storey element will be slightly lowered from its as built position (by circa 300mm), the width of the three storey element is to be slightly reduced and also some windows positions would be altered when the front and rear elevations are rebuilt. Unfortunately the supporting documents which accompany the application make no reference to these additional alterations but the applicant has confirmed they are intended (rather than the plans being incorrect) during the recent meeting held with officers. This helps explain some of the plan discrepancies identified within the detailed report prepared by the resident's association.

- 10.12 Whilst the design alterations now proposed as part of this latest application are considered to have some merit, the building's overall impact both relative to its immediate neighbours and within the wider streetscene is still considered to be unacceptable. The unacceptable elements comprise of the building's overall height and design relative to its surroundings with particular regard to the total ridge height to be provided, the substantial difference between eaves heights with No. 50, the three storey nature of the design and ultimately the overall scale, massing and bulk that results from all the above. It is notable the appeal Inspector also raised similar concerns when considering the earlier scheme and whilst the current application is obviously different these issues are yet to be adequately resolved, particularly as the building is visible from more than just The Drive.
- 10.13 Although the position regarding the fallback is acknowledged, the application site is already very tight in terms of the separation distances which can be achieved and accordingly very slight amendments can have a significant impact on the general character and appearance of the street scene. This is particularly so with regards to the dwelling appearing obtrusive relative to its immediate neighbours due to its increased height and the resulting additional scale, massing and bulk.
- 10.14 For the above reasons, it is considered that the amended dwelling would still have a demonstrable adverse impact on the character and appearance of the area and fail to address the requirements of UDPR policies GP5, N12, N13 and the design advice contained in 'Neighbourhoods for Living'. The application is therefore recommended for refusal.

## **2. Impact on living conditions:**

- 10.15 As with the consideration of previous applications, the existence of the fallback position created by the original approval is acknowledged and accordingly the main method of assessment in respect of residential amenity issues has been to undertake a comparison between the impact of the 2005 approval and that of the current proposal. As part of this assessment, the declarations from the High Court are clearly relevant (including the confirmed inaccuracy of the original streetscene plan) as are the previous appeal Inspectors comments. In terms of consideration against UDPR policies, those to be addressed under this heading are GP5 and BD6 which both seek to ensure the development does not adversely affect the living conditions of existing or proposed residents. Guidance contained within the Council's adopted residential design guide 'Neighbourhoods for Living' also considers these same issues and is therefore relevant.

### **Overlooking/Loss of Privacy:**

- 10.16 As part of the previous planning appeal, the Inspector confirmed unacceptable overlooking of the Park Avenue properties and their gardens would occur due to a

relatively short separation distance that would be provided and the three storey nature of the property was no doubt an important factor in reaching this view. In particular, Nos. 3 and 5 Park Avenue share a common boundary with the application site although both of these properties are noted to be semi-detached themselves so their adjoining neighbours (Nos. 10a Manston Lane and 7 Park Avenue respectively) would also be affected – albeit not to the same extent. The appeal Inspector's conclusion regarding overlooking is clearly important but was reached in respect of the dwelling house as already built whereas the current application seeks to amend it by removing the entire rear elevation and setting it in by 800mm so as to create the same general relationship as already approved.

- 10.17 In considering the acceptability of the actual relationship now proposed, the overall separation distance to the Park Avenue common boundary would be the same as previously accepted under the 2005 application. On this basis, the development's impact on the occupiers of the Park Avenue properties from an overlooking perspective would be very similar to the fallback position and accordingly no reason for refusal on this particular relationship is advanced.
- 10.18 A second area of overlooking was also highlighted by the planning appeal Inspector and related to a ground floor dining room window that faced No. 50 The Drive. A side window is still proposed in a similar location (but now serving the living room) as part of the current application but would be secondary in nature and is annotated to be obscure glazed. On this basis, the opportunity for overlooking to occur has been substantially reduced and accordingly the problem is considered to have been adequately addressed.
- 10.19 Overlooking from the remaining side windows would also not occur as the submitted plans confirm they would all be obscure glazed and this could be secured by condition if the application were to be approved.

#### Visual Dominance:

- 10.20 The previous appeal Inspector considered that the increased size of the dwelling over and above that originally approved resulted in significant visual dominance when viewed by the occupiers of the Park Avenue properties to the rear and from the garden areas of Nos. 56 and 50 The Drive to either side.
- 10.21 The proposed removal of the existing rear elevation and its rebuilding on the same line as permitted under the 2005 application in order to address overlooking concerns also has the added benefit of offering improvements over the existing relationship from a visual dominance perspective. The separation distance to the common boundary is noted to be no less than 11.5m.
- 10.22 In terms of the acceptability of the dwelling house now proposed from a dominance perspective, the additional height which is considered to exist with the proposal due to the ground level alterations is such that the relationship can never be directly comparable to that of the fallback. The High Court declaration on the total width allowed under the 2005 application is also important. After weighing up all of the above factors and noting only part of the dwelling house would be the full three storeys so the additional height's impact from a residents perspective does not feature across the entire rear elevation, on balance officers have not advanced a separate dominance reason for refusal.

#### Overshadowing/Loss of Light:

- 10.23 The background to overshadowing and loss of light considerations is that the previous appeal Inspector supported the Council's position that problems would be

experienced by the occupiers of Nos. 56 and 50 The Drive. The existing dwelling's close proximity to the common boundaries combined with its orientation, height and bulk were identified as being the cause of these problems.

- 10.24 The current application would offer improvements over the existing situation for the neighbouring occupiers by removing the rear elevation and rebuilding it in its fallback position. The declaration from the High Court regarding width is also important and accordingly the position of the side elevations does not need to be altered. As such, only consideration of the additional height associated with the dwelling house remains as the orientation would not alter. The potential impact of the additional height has been carefully considered and again on balance officers have not advanced an amenity reason for refusal concerning overshadowing or loss of light. The reason for this is because officers feel it would be particularly difficult to apportion harm to that associated with the extra height alone since in all other respects the impact would be the same as that already permitted.
- 10.25 In addition to the above comments regarding individual considerations, it is important to acknowledge that from a purely residential amenity perspective, the current application would have a very similar impact as the 2010 application which was refused in April this year - arguably the current application's impact is slightly less due to the design tweaks which are now proposed. As part of the assessment of the 2010 application, Members resolved to only refuse the application because of its adverse visual impact and officers recommend the same approach is taken with this application.

### **3. Third party comments**

- 10.26 The main comments and concerns expressed in the letters of representation and the local resident association's objection document have either been addressed in sections 1 and 2 of the appraisal or are covered by the officer recommendation to refuse permission.
- 10.27 In terms of commenting specifically on some of the comments made about the accuracy of the plans submitted, it is understandable that questions have again been raised on this matter due in part to the quality of previous submissions but also because of the lack of explanation provided within the supporting documents which accompany this application in the form of the Design and Access statement and the separate planning statement. Neither of these documents explain the full extent of the alterations proposed relative to the existing building and it is only because officers have met with the applicant who has confirmed the submitted plans are correct and more extensive alterations are indeed proposed (e.g. reducing the eaves height adjacent to No. 50 and altering some of the window positions).

## **11.0 CONCLUSION**

- 11.1 Section 38(6) of the Planning and Compensation Act 2004 requires that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The relevant policies in this particular case are considered to be GP5, BD6, N12, N13 and supplementary guidance 'Neighbourhoods for living' which all seek to ensure dwellings are appropriately designed and pay due regard to residents living conditions. The fallback position as established by the 2005 permission (including the High Court declarations which accompany it) and the previous appeal decisions are also material considerations.

- 11.2 Having carefully considered the current application, including against the 2005 permission and the findings of the appeal Inspectors, in recognition of the current proposal's reduced depth and proposed treatment to all side windows (i.e. that they would obscure glazed) it is not considered to adversely affect residents living conditions beyond that which could already take place under the fallback position.
- 11.3 With respect to visual amenity considerations, even in its revised form the excessive height and resulting scale, mass, bulk and overall design of the dwelling relative to its immediate neighbouring properties would cause significant harm to the character and appearance of the area contrary to UDPR policies GP5, N12 and N13 and the design advice contained within 'Neighbourhoods for Living' and the National Planning Policy Framework.
- 11.4 Members are therefore recommended to refuse the application for the reason specified.

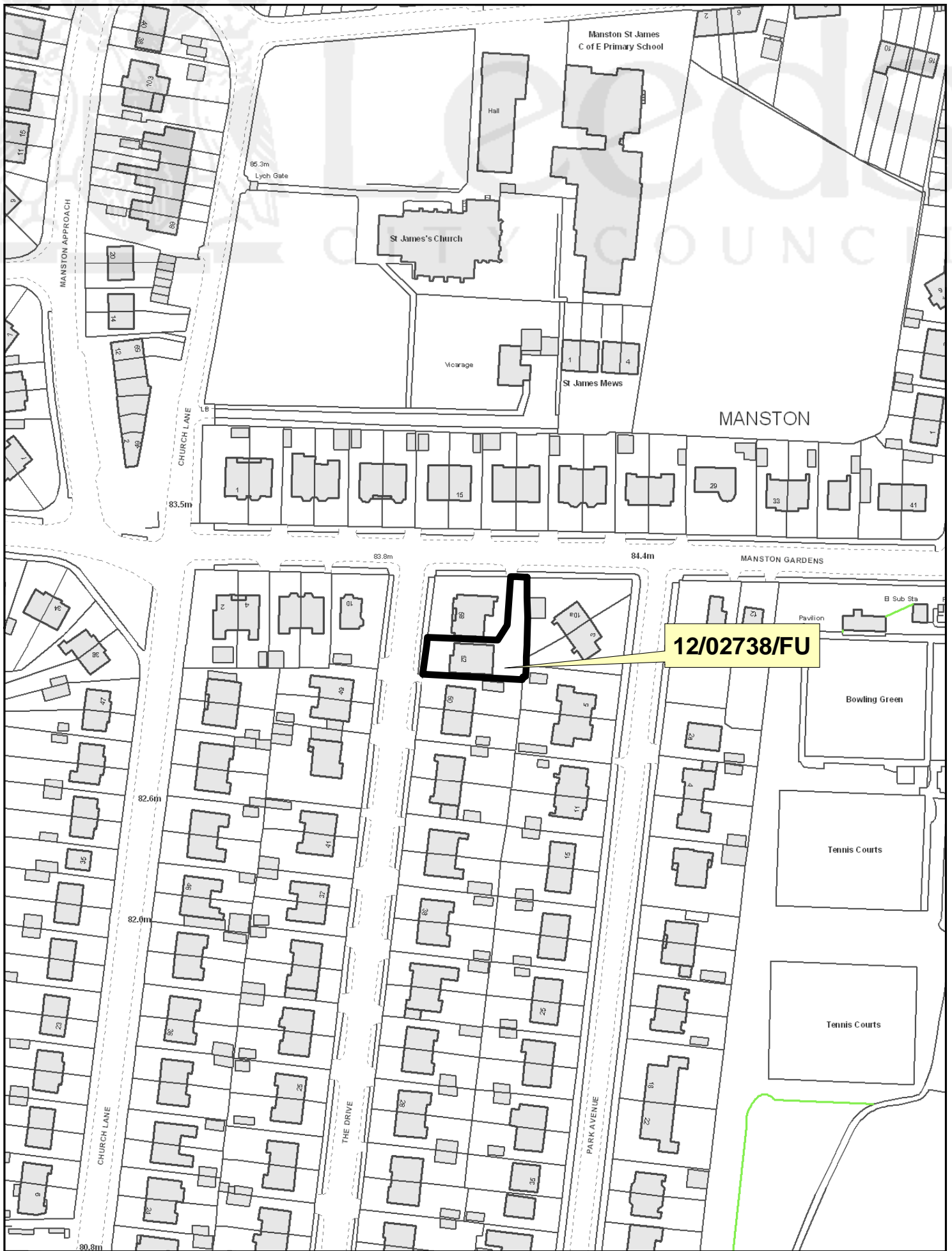
**Background Papers:**

Application file 08/06130/FU

Certificate of Ownership: Signed by applicant







# EAST PLANS PANEL

