



Appeal Decisions

Site visit made on 14 December 2021

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 8th March 2022

Appeal A Ref: APP/E2734/W/21/3279737

Site of 68 to 69 North Street, Ripon

Easting: 431144, Northing: 471561

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms S J Dawson, Spinksburn Ltd against Harrogate Borough Council.
 - The application Ref: 19/02941/FUL, is dated 9 July 2019.
 - The development proposed is the erection of 4no. apartments and 4no. townhouses.
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Appeal B Ref: APP/E2734/Y/21/3279742

Site of 68 to 69 North Street, Ripon

Easting: 431144, Northing: 471561

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Ms S J Dawson, Spinksburn Ltd against Harrogate Borough Council.
 - The application Ref: 19/04849/LB is dated 20 November 2019.
 - The works proposed are the removal of buttress adjoining no.67 North Street and tying in of new structural walls into no.67 North Street to allow for the erection of 4no. apartments and 4no. townhouses including connection to no.67 North Street.
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Decisions

1. **Appeal A:** The appeal is dismissed and planning permission is refused for the erection of 4no. apartments and 4no. townhouses.
2. **Appeal B:** The appeal is dismissed and listed building consent is refused for the partial removal of buttress adjoining no.67 North Street and tying in of new structural walls into no.67 North Street to allow for the erection of 4no. apartments and 4no. townhouses including connection to no.67 North Street.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. This replaced the 2019 version. My decisions are made in the context of the revised Framework.
4. The two appeals concern the same scheme and have been submitted under different, complementary legislation. Whilst the proposed development and works differ in their descriptions, they are physically and functionally associated. Therefore, to avoid duplication, I have dealt with both appeals together in my reasoning.

5. During the determination of the applications, the appellant submitted revised plans and additional information with the aim of addressing comments made by the Council. The most recent plans and information were received by the Council in February 2021 and have been submitted with the appeals. The revised plans include changes to the connection with No 67 North Street (No 67), boundary treatment and rooflights. The additional information includes window details, materials and an addendum to the Heritage Statement¹. From the evidence before me, it appears that the revised plans were considered by the Council in its assessment of the proposal, but not all consultees/interested parties were formally consulted on the amended scheme.
6. I have had regard to the Wheatcroft Principles², the fairly modest nature of the amendments and that the Council and interested parties have had an opportunity to comment on the revised plans and additional information as part of the appeals. In these regards, I am satisfied that accepting them would not deprive those who should have been consulted on the changed development and works of the opportunity of such consultation. I have therefore taken the revised plans and additional information into account in my determination of the appeals.
7. The description of the proposed works set out in the heading above is taken from the application form for listed building consent. With regard to the above, the revised details of the connection with No 67 confirm that the proposed works comprise only the partial removal of the existing brickwork buttress. I have reflected this in my decision for Appeal B.
8. The appeals were submitted on the basis of the failure of the Council to determine the applications within the prescribed timescale. The appellant asserts that there is only one outstanding matter which concerns the connection between the proposal and No 67. However, this view is not reflected in the Council's statement of case which sets out four putative reasons for refusal. In forming the main issues, I have had regard to the matters raised by the Council, the representations submitted by interested parties and the statutory duties under sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I am satisfied that no parties' rights have been prejudiced by me taking this approach.

Main Issues

9. In the context of the above, main issues in Appeal A and the main issues in Appeal B are:
 - Whether the proposal would preserve the special interest of the Grade II listed building, 65, 66 and 67 North Street and its setting;
 - The effect of the proposal on the settings of adjacent Grade II listed buildings; and
 - Whether the proposal would preserve or enhance the character or appearance of the Ripon Conservation Area.

¹ Site at North Street and Coltsgate Hill, Heritage Statement Addendum. Woodall Planning and Conservation, Feb 2021 Rev B.

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37].

10. In addition, further main issues in Appeal A are:

- The effect of the proposal on the free flow of traffic and highway safety in the vicinity of the site;
- Whether the proposal would provide adequate living conditions for future occupiers with regard to internal space provision, be of a sustainable design and provide adequate cycle parking; and
- Whether the appeal site would be a suitable location for the proposal, having regard to its siting within Zone C concerning Gypsum Related Subsidence in the Ripon Area.

Reasons

Background

11. The appeals site (the site) is prominently positioned at the junction of North Street and Marshall Way. It forms part of land that was formerly occupied by retail units which were demolished to allow the construction of Marshall Way as part of the West of Market Place redevelopment scheme.
12. The land is set at a split level. The upper section incorporates an existing parking area, which is accessed off Coltsgate Hill, and the lower section fronts onto Marshall Way and North Street. There is currently no means of access between the two levels. The site is enclosed by a combination of rendered walling, brick walling with railings and close-boarded timber fences.
13. The site adjoins the Grade II listed building, 65, 66 and 67 North Street (Nos 65, 66 and 67) and is adjacent to several other Grade II listed buildings. It is also located within the Ripon Conservation Area (the CA).
14. A previous scheme for the redevelopment of the site comprising the erection of a retail unit, 3 flats and 3 dwellings was granted planning permission in 2014³. It is common ground between the parties that this permission has lapsed. The proposal which is the subject of the appeals follows an application for a previous scheme for the erection of 8 dwellings which was withdrawn in February 2019⁴.

Appeals proposal

15. The proposal comprises a three and a half storey corner building fronting the junction of Marshall Way and North Street, containing four flats. Attached at the rear of the corner building would be two, two and a half storey dwellings (TH1 and TH2). Additionally, at the rear of the site there would be two split level one and a half storey/two and a half storey dwellings (TH3 and TH4).
16. The proposed works to the listed building include the partial removal of the buttress adjoining No 67, the erection of a blockwork wall up against the gable of No 67 which would connect the corner building to the listed building, and the demolition and rebuilding of No 67's chimney stack.

Main issues in Appeal A and the main issues in Appeal B

17. I have considered the heritage issues together.

³ Application Ref: 12/03731/FUL for erection of retail unit, 3 flats and 3 dwellings. Approved 16 July 2014.

⁴ Application Ref: 18/05002/FUL Erection of 8 dwellings. Withdrawn 15 February 2019.

Special interest and significance

18. The site lies within a heritage rich area of Ripon. Adjoining it lies No 67 which forms part of the Grade II listed building Nos 65, 66 and 67. Dating from the 18th century with 19th century bracketed wooden eaves cornice and mid-19th century shopfronts, it is a two-storey, three-bay building, constructed of rendered brick with a pantile roof.
19. From the evidence before me, it is largely the historic and architectural interests of Nos 65, 66 and 67 that define its special interest and significance. These are directly supported by the building's age; surviving historic fabric; use of traditional materials; and modest vernacular design, which includes the sympathetic insertion of shop-fronts in the mid-19th century. Special interest and significance are also derived from the building's group value as part of the townscape and cherished local scene. Additionally, Nos 65, 66 and 67's setting, comprising the contrasting public commercial high street at the front and the intimate domestic buildings at the rear, also positively adds to its special interest and significance, which is only moderately diminished by the uncharacteristic openness and untidy nature of the neighbouring site.
20. The site is also immediately adjacent to the Grade II listed building, The Old Chapel, which is a former Wesleyan Chapel that now appears to be vacant. Dating from 1861 and constructed of brick with a slate roof, it is a substantial building which dominates the townscape at the junction of Marshall Way and Coltsgate Hill. The building's former use and association with the Methodism movement; surviving historic fabric and features of interest; and imposing form and aesthetically pleasing classical style all contribute to its historic and architectural interests and thus its special interest and significance. These are only marginally undermined by its current disuse and run-down appearance.
21. It is evident that the built context within which The Old Chapel sits has changed and evolved over time. Pertinently, the construction of Marshall Way and the loss of the buildings at the rear of the Chapel has compromised its historic setting to a degree, lessening the contribution the building's setting makes to its significance. This is compounded by the largely unkempt nature of the site. Nevertheless, the changes to the area surrounding The Old Chapel have provided a more spacious environment within which to experience the building and appreciate its heritage merit, as well as affording it greater prominence within the street scene. In these respects, The Old Chapel's setting affirms its special interest and significance.
22. The main parties refer to a number of listed buildings which are located within the vicinity of the site. Having regard to the submitted information and my observations on site, of those referred to, I consider the following to be adjacent listed buildings (all Grade II) with which the site possesses physical, visual and/or historic associations and which provide an important contextual historic built backdrop: Nos 62, 63 and 64 North Street (Nos 62, 63 and 64), No 28 North Street (No 28), Nos 24 and 25 North Street (Nos 24 and 25), Nos 26 and 27 North Street (Nos 26 and 27) and Nos 71 and 72 North Street (Nos 71 and 72).
23. These listed buildings vary in date, ranging from the 18th century through to the mid-19th century. They are generally constructed of traditional materials of brick, some with a rendered finish, and with pantile or slate roofs. With the exception of No 28, all of them have shopfronts (some historic and some

modern) with retail uses at ground floor level. These characteristics contribute to the buildings' historic and architectural interests and thus their special interest and significance, and whilst some of them have been subject to change, their heritage merit is still legible.

24. All of these listed buildings are testament to the historic evolution of the area, which has created a diverse but distinctive character that is part of the collective memory of the local community. As such, their value as a group within the heritage rich street scene also supports their special interest and significance. In addition, on the whole, their informal settings which enable their diverse charm to be experienced and heritage merit to be appreciated, positively contribute to their significance.
25. The site is also located within Character Areas B-Medieval City around Market Place with High St Agnesgate and D North-Victorian Suburbs of the CA⁵. The CA encompasses a large area that is centred on the historic core around the Cathedral precinct and the medieval city, but which also includes surrounding later development. As a whole, the CA possesses a strong identity and unique sense of place.
26. The CA's special interest and significance are, in part, derived from the survival of historic patterns of development, which includes burgage plots, along with the architectural richness and variety of its historic buildings of different ages, sizes, styles and uses, that stem from its multi-faceted history.
27. Due to its open aspect, rudimentary enclosure and unkempt appearance, the site is not characteristic of the generally tight-knit built form and aesthetic quality of the surrounding townscape. Consequently, there is general agreement between the main parties that it represents an unsightly gap-site which makes a negative contribution to the character and appearance of the CA. From my observations on site, I agree.

Effects of the appeals proposal – Proposed works

28. I acknowledge that the proposed works would not involve the loss of or intervention into historic fabric and/or features of interest. I also note that the previous building on the site appears to have adjoined the listed building in a similar way to that proposed. However, the size, scale and form of the proposed building which would connect to No 67 are very different to those of the previous building. Given that the listed building is an irreplaceable resource, the potential consequences of the proposed works to its fabric must be carefully considered.
29. The proposed blockwork wall would abut the majority of the listed building's gable wall. The use of non-traditional materials as part of these proposed works may reduce the breathability of the gable wall. For the listed building, the implications of this could be water retention within the wall and issues of damp.
30. Moreover, the construction of such a substantial three and a half storey structure adjoining the listed building may have implications in relation to the foundations and structural stability of Nos 65, 66 and 67. Although, as outlined in the letter from Topping Engineers, it may be entirely feasible to construct the proposed building without undue risk to Nos 65, 66 and 67, this is strongly

⁵ Ripon Conservation Area Character Appraisal, 2009.

caveated, with it being subject to the appropriate design and investigation measures being in place and that these are observed throughout the construction⁶.

31. Taking into account the limited details provided on drawing 046 (PL)83 B and the absence of any additional information on these matters, I cannot be certain that the proposal would not compromise the breathability or stability of the listed building. Given the potential adverse consequences of allowing the proposed works before these matters have been addressed, I consider that it would not be appropriate to leave such detail to be controlled by conditions and I am inclined to take a precautionary approach. Consequently, I am unable to conclude that the proposal would preserve the special interest of the Grade II listed building, Nos 65, 66 and 67.
32. That the Council did not require details of the proposed works when granting the previous scheme in 2014 is not determinative.

Effects of the appeals proposal – Proposed development

33. There is nothing in the Council's evidence which indicates that the broad principle of the site's development is not acceptable. Given the current nature and appearance of the site and the potentially positive effects its development could have, I have no reason to disagree.
34. The height and back of pavement position of the corner building would undoubtedly have presence in the street scene and provide a strong enclosure to the site at this prominent junction. It would reflect the height of adjacent buildings, being only marginally taller than Nos 62, 63 and 64 and, due to the topography of the site, would have a degree of subservience to The Old Chapel. Nevertheless, it would be of considerable mass and its long sweeping façade around the corner would cause it to appear larger and bulkier than many of the buildings that form its commercial and domestic townscape context.
35. I note that the design of the corner building has been considered with reference to the simple detailing, solid to void ratio and materials of local historic properties. However, over such a wide and tall building, the visual effects of such an overly simplistic approach would be harmfully more apparent and incongruous. The result would be a large uninspiring utilitarian block with monotonous fenestration. In these respects, it would be at odds with the more stylistically diverse character and appearance of the surrounding buildings, to the detriment of the adjoining listed building, Nos 65, 66 and 67 and the visual interests of the area.
36. The inclusion of residential accommodation on the ground floor of the corner building would jar awkwardly with the predominant presence of retail units at this level, as well as weakening a key townscape component and the street's active frontage. Whilst I acknowledge that changes have taken place within the commercial/retail sector in recent years and recognise the implications that this has had for local high streets, there is no substantive evidence before me which confirms that a retail unit in this location would not be viable or would have any servicing issues.
37. The corner building with adjoining townhouses TH1 and TH2 at the rear would go some way to reflect the prevalent burgage plot pattern and density of

⁶ Letter from Topping Engineers – Consulting Civil and Structural Engineers Dated 19 December 2019.

development in the area. However, townhouses TH3 and TH4 would run contrary to this, at an orientation which would be parallel to North Street. I am aware that an adjacent building is at the same alignment, but it is clear that this does not reflect the primary historic urban grain within the area and so does not justify taking a different approach. In this regard, the proposal would not respond to the local character of the area.

38. Moreover, in this position and at this orientation, townhouses TH3 and TH4 would markedly encroach into the existing open space around The Old Chapel. Whilst these dwellings would be wholly subordinate in size and scale to The Old Chapel, their presence in such close proximity would detract from the listed building, weakening the contribution its setting makes to its significance.
39. I appreciate the constraints of the site and the reasons given for the absence of entrances into townhouses TH1 and TH2 from Marshall Way. Nonetheless, the lack of a formal frontage at this location combined with the use of uncharacteristic elements such as lightwells, would cause these properties to appear out of keeping with the townscape. This would not be sufficiently mitigated by the use of matching materials and incorporation of traditional architectural features.
40. In all of the above respects, the proposal would not assimilate well into the street scene or reinforce the local distinctiveness of the area. Given the prominent location of the site which is readily visible in views from adjacent public routes, the uncomfortable juxtaposition of the proposal with Nos 65, 66 and 67 and The Old Chapel, as well as its discordance within the townscape, would be unduly conspicuous. The proposal would alter how the adjoining and adjacent listed buildings are experienced and adversely affect the ability to appreciate their significance. In addition, it would detrimentally undermine the positive attributes of the CA as a whole.
41. As such, the proposal would fail to preserve the settings of the listed buildings of Nos 65, 66 and 67 and The Old Chapel. It would also not preserve the settings of the adjacent listed buildings of Nos 62, 63 and 64, No 28, Nos 24 and 25, Nos 26 and 27 and Nos 71 and 72, albeit to a lesser degree. It would also fail to preserve or enhance the character and appearance of the CA. Consequently, it would not sustain or enhance, but rather cause harm to, the significance of these designated heritage assets.
42. In coming to my decision, I have had regard to the scheme which was granted planning permission in 2014⁷. The proposal before me differs from the permitted scheme in a number of key ways. This, combined with my comments on the permitted scheme as a fallback position set out in 'Other Matters' below, means that the 2014 permission carries little weight in favour of the appeals proposal.

Public benefits, balance and conclusion on heritage issues

43. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction

⁷ Application Ref: 12/03731/FUL for erection of retail unit, 3 flats and 3 dwellings. Approved 16 July 2014.

of the heritage asset or development within its setting and that this should have clear and convincing justification.

44. With reference to Paragraphs 201 and 202 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the localised nature of the proposal, I find the harm to be 'less than substantial' in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, Paragraph 202 advises that this harm should be weighed against the public benefits of the proposal.
45. Mindful of what is stated in the Planning Practice Guidance to constitute public benefits⁸, the proposal would provide eight additional residential units in a highly accessible location, giving a beneficial use to the site. These would contribute to the overall mix and supply of housing in the locale. Economic and social benefits would flow from their construction and occupation, as well as from future occupiers supporting local services and facilities. These wider public benefits are in line with the objectives of the Framework and carry moderate weight in favour of the appeals.
46. I do not dispute that, of itself, the development of such a prominent gap-site would have the potential to sustain and enhance the significance of the surrounding listed buildings as well as preserve or enhance the character or appearance of the CA. However, for the reasons outlined above, I am not convinced that the proposal before me would achieve this and, in my opinion, would result in harm to the identified designated heritage assets.
47. In the above respects, clear and convincing justification for the proposal has not been provided. Overall, the moderate weight that I ascribe to the public benefits which would accrue from the proposal is not sufficient to outweigh the considerable importance and weight that I attach to the harm I have found.
48. In conclusion, I am unable to confirm whether the proposal would preserve the special interest of the listed building, Nos 65, 66 and 67. However, I do find that the proposal would fail to preserve the settings of the listed buildings of Nos 65, 66 and 67 and The Old Chapel. It would also not preserve the settings of the adjacent listed buildings of Nos 62, 63 and 64, No 28, Nos 24 and 25, Nos 26 and 27 and Nos 71 and 72, albeit to a lesser degree. It would also fail to preserve or enhance the character and appearance of the CA.
49. As such, it would not satisfy the requirements of sections 16(2), 66(1) and 72(1) of the Act and the provisions within the Framework which seek to conserve and enhance the historic environment. It would also conflict with Policies HP2, HP3 and NE5 of the Harrogate District Local Plan 2014-2035, adopted 2020 (the HDLP); the Council's Heritage Management Guidance Supplementary Planning Document, 2014; and the Council's Residential Design Supplementary Planning Guidance, 1999. Together these policies and guidance require development and works to conserve and enhance the historic environment; be of a high quality design; and respond to local character and reinforce local distinctiveness.

⁸ What is meant by the term public benefits? Paragraph: 020 Reference ID: 18a-020-20190723, Planning Practice Guidance.

Further main issues in Appeal A

Free flow of traffic and highway safety

50. The Council's third putative reason for refusal is the result of an objection to the proposed development made by North Yorkshire County Council as Local Highway Authority (the LHA). The LHA contend that due to the location of the on-site parking in relation to the entrances to the dwellings, combined with the inclusion of a pedestrian access between the site and Marshall Way, residents or visitors would be likely to park outside the site on Marshall Way or Coltsgate Hill to gain quicker and easier access to the properties. This is notwithstanding that these roads are subject to 'double yellow line' waiting restrictions. Given the position of the site in proximity to a busy signal controlled junction, the LHA assert that any vehicles parked in such a way would be detrimental to the free flow of traffic and highway safety.
51. Whilst I acknowledge the concerns of the LHA on this matter, it is evident that the comments arise from the assessment of an earlier iteration of the scheme⁹. The most recent plans do not include a pedestrian access between the site and Marshall Way¹⁰. Given this, in all probability, it would be highly unlikely that any resident or visitor of the proposed development would park for a short or extended period of time outside the site on Marshall Way or Coltsgate Hill, rather than use the site's dedicated parking area which would provide an unrestricted and safer parking environment and allow quicker access to the dwellings.
52. On this basis, I conclude that the proposal would not have a harmful effect on the free flow of traffic and highway safety in the vicinity of the site. As such, it would not conflict with Policies TI1(B) and TI3(A) of the HDLP in so far as they require development to seek reductions in traffic congestion in Ripon and provide safe, secure and convenient parking at appropriate levels.

Provision of internal space, sustainable design and cycle parking

53. Policy HS5 of the HDLP requires that all new market and affordable homes should, as a minimum, meet the relevant Nationally Described Space Standard (the NDSS). The Council highlights that townhouses TH3 and TH4 and flats 3 and 4 would not meet the required minimum floor areas.
54. On the basis of the figures contained in the Design and Access Statement¹¹ (the D&AS), TH3 and TH4 with a total floor area of 69.8m² would fail to meet the minimum required standard of 70m²; and flat 4 with a total floor area of 57.1m² would fail to meet the minimum required standard of 79m². However, flat 3 with a total floor area of 39.8m² would meet the minimum required standard of 39m². The appellant highlights that the 'amount' of floorspace for each property as stated within the D&AS is the 'net internal floor area' not the 'gross internal floor area' as used in the NDSS for the assessment of space standards. On this basis, they assert that the properties would comply with the NDSS and provide adequate living conditions for future occupiers.

⁹ Drawing Ref: 046 (PL)54 G, as included in Appendix B of the North Yorkshire County Council as Local Highway Authority consultee response, Aug 2021.

¹⁰ Drawing Refs: 046 (PL)53 G Lower Level/Ground Floor Site Plan and 046 (PL)54 I Upper Level/First Floor Site Plan. Submitted February 2021.

¹¹ Design and Access Statement Mesh Architects, dated 25 October 2019.

55. I have no reason to doubt the appellant's contention regarding the basis of the figures provided. Having regard to the revised calculations submitted as part of the appellant's final comments, TH3 and TH4 with total gross internal floor areas of 90.3m² would exceed the minimum required standard of 70m². However, I question the figure submitted in relation to flat 4. Whilst it is correct that the total internal floor area at level 2 would measure 64m², this cannot be used to calculate the internal floor area at level 3. This is because it is within the roof space and the submitted plan¹² clearly shows that the internal floor area between the perimeter walls at this level would be less than at level 2. On this basis, I cannot be certain that flat 4 would meet the minimum required standard of 79m².
56. Policy CC4 of the HDLP requires all developments to be of a sustainable design in order to reduce both the extent and the impacts of climate change, and to reduce carbon dioxide emissions through the sequence of priorities as set out in the energy hierarchy. No information regarding this matter has been submitted by the appellant. Whilst this issue may be capable of being addressed as part of the proposed development's compliance with Part L of Building Regulations, that is a separate process. Nevertheless, given the requirements of Policy CC4, there is nothing before me which robustly confirms that this matter would not be capable of being addressed by appropriately worded conditions.
57. Policy TI3 of the HDLP sets out that development will be supported where it incorporates appropriately designed vehicle and bicycle parking. No information has been submitted regarding the provision of cycle parking within the site, although I note a condition has been suggested by the appellant to address this matter. The Council has not indicated what level and/or form of cycle parking/storage within the site would meet the requirements of the policy. However, there is nothing before me which indicates that an appropriate level of safe, secure and convenient parking/storage for cycles could not be provided as part of the proposed development. As such, I am satisfied that this matter could be dealt with by an appropriately worded condition.
58. Drawing all of the above together, I conclude that the proposal would provide adequate living conditions for future occupiers with regard to internal space provision in townhouses TH1-TH4 and flats 1-3. However, I cannot be certain that it would do so in flat 4. In this regard it would conflict, in part, with Policy HS5 of the HDLP referred to above.
59. Additionally, I find that, subject to appropriately worded conditions, a scheme could be achieved that would be of sustainable design and provide adequate cycle parking. In these regards the proposal would be capable of according with Policies CC4 and TI3 of the HDLP referred to above; as well as Policies A1 and G3 of the Ripon Neighbourhood Plan to 2030, adopted 2019 (the RNP), which support sustainable development and the provision of facilities for cyclists including storage and parking.
60. In its putative reason for refusal on these issues the Council has referred to the proposed development's conflict with Policy CC3 of the HDLP. I have taken this to be an error, with the correct reference being Policy CC4 of the HDLP.

¹² Drawing Ref: 046 (PL)58 H Third Floor Proposed Plan.

Gypsum dissolution

61. The site is located within development guidance Zone C concerning the potential for gypsum related subsidence. Within this zone gypsum is thought to be present at relatively shallow depth and potentially susceptible to dissolution by flowing groundwater. Zone C is also likely to possess natural underground cavities relating to gypsum dissolution.
62. Policy NE9 of the HDLP, amongst other things, controls development within the areas identified as having the potential to be affected by gypsum related subsidence and the supporting text sets out the policy requirements. This states that, in Zone C, 'a ground stability report and declaration form signed by a Competent Person will normally be required before planning applications for new buildings...can be determined. In most cases the report would need to be based on a geotechnical desk study and site appraisal followed up by a programme of ground investigation designed to provide information needed for detailed foundation design, unless adequate information from previous boreholes on the same site is available. Where planning permission is given, this may be conditional upon the implementation of approved foundation or other mitigation measures, designed to minimise the impact of any further subsidence activity.'
63. No ground stability report or declaration form has been submitted with the application and/or appeal and so the proposed development fails to comply with the requirements of Policy NE9 of the HDLP. The appellant submits that the site has been subject to several tests consisting of boreholes to determine whether gypsum is present. A letter accompanying the application and appeal confirms that gypsum was not found on site to a depth of 15m when borehole surveys were undertaken in 2014¹³.
64. I appreciate that the conclusions of a further ground investigation report for the appeal proposal may be no different to those contained within the report prepared in 2014. However, it remains the case that the proposal does not adhere to the current development plan policy requirements on this matter. Mindful of the potentially very significant adverse consequences of allowing the proposed development before this issue has been resolved, I have no option but to take a precautionary approach.
65. Even if I accepted the principle of utilising the previous report to address this issue, no copy has been submitted with the appeal for me to confirm its contents and determine if the information contained within it is adequate.
66. In these circumstances, I am unable to conclude whether the appeal site would be a suitable location for the proposal, having regard to its siting within Zone C concerning Gypsum Related Subsidence in the Ripon Area. The proposed development would therefore conflict with Policy NE9 of the HDLP, in so far as it seeks to ensure that the development can be safely undertaken and that there are no significant risks of instability over the lifetime of the development.

Other Matters

67. I am aware of the previous grant of planning permission on the site for the erection of retail unit, 3 flats and 3 dwellings in 2014¹⁴ which the parties agree

¹³ Letter from Dunster Consulting dated 6 March 2019.

¹⁴ Application Ref: 12/03731/FUL for erection of retail unit, 3 flats and 3 dwellings. Approved 16 July 2014.

has lapsed. Although the relevant statutory duties contained within the Act have not changed since the grant of that permission, there have been material changes in the national and local policy context within which the proposal is assessed and determined. Namely, revisions to the Framework (latest in 2021), the adoption of the HDLP in 2020 and the adoption of the RNP in 2019. On this basis, were the lapsed scheme to be submitted for planning permission again, I cannot be certain that it would be granted on the same terms as the 2014 permission.

68. Moreover, given that the submitted evidence states that the lapsed scheme could not be implemented as approved and was not considered financially viable by the appellant, I do not consider its resubmission to be a realistic or probable prospect. Nor do I consider that it would be as harmful as the proposal before me now. All of these considerations do not justify the acceptance of the proposed development and works and severely limit the weight that I can attach to the lapsed scheme as a fallback position.
69. I am aware of the extensive dialogue between the main parties during the determination of the applications and note the appellant's disappointment in relation to the position taken by the Council and the additional issues raised. However, of themselves, these matters are not for my consideration in the context of the appeals before me.
70. No objections were raised in relation to the proposed development and/or works by Ripon City Council and York Georgian Society. Nonetheless, these are neutral considerations in the balance and weigh neither for nor against the appeals.

Overall Planning Balance and Conclusions

71. Having regard to the economic, social and environmental objectives of the Framework, the benefits which would accrue from the proposal are as set out above in the heritage balance. These benefits are tempered by the modest amount of development that is proposed but, nevertheless, carry moderate weight in the appeals' favour.
72. I have found no harm in relation to the provision of adequate living conditions for future occupiers of townhouses TH1-TH4 and flats 1-3 or the free flow of traffic and highway safety in the vicinity of the site. Moreover, I consider that, subject to appropriately worded conditions, a scheme could be achieved that would be of sustainable design and provide adequate cycle parking. However, a lack of harm in these regards weighs neutrally in the planning balance.
73. Conversely, I am unable to conclude that the proposal would preserve the special interest of the listed building, Nos 65, 66 and 67. Furthermore, it would fail to preserve the settings of Nos 65, 66 and 67 and The Old Chapel. It would also not preserve the settings of the adjacent Nos 62, 63 and 64, No 28, Nos 24 and 25, Nos 26 and 27 and Nos 71 and 72, albeit to a lesser degree. It would also fail to preserve or enhance the character and appearance of the CA. In addition, I am unable to confirm that the proposal would provide adequate living conditions for future occupiers of Flat 4; and there is insufficient information before me which adequately demonstrates whether the appeal site would be a suitable location for the proposal, having regard to its siting within Zone C concerning Gypsum Related Subsidence in the Ripon Area. Together these matters attract substantial weight against the appeals.

74. I am mindful of the key role played by the delivery of housing in achieving sustainable development and recognise the Government's objectives to boost the housing supply and grow the economy. I also note the Framework's support for housing and the efficient use of land. However, the Framework is clear in stating that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Moreover, the creation of high quality buildings, achieving well-designed places and ensuring that sites are suitable for their proposed use are fundamental aims of the planning system.
75. Whilst there are considerations that weigh in favour of the proposal, in my judgement, they are not sufficient to outweigh the harm I have found. The proposal would therefore conflict with the development plan when taken as a whole and there are no other material considerations, including the Framework, that outweigh this conflict.
76. **Appeal A:** For the reasons given Appeal A should be dismissed and planning permission should be refused for the erection of 4no. apartments and 4no. townhouses.
77. **Appeal B:** For the reasons given Appeal B should be dismissed and listed building consent should be refused for the partial removal of buttress adjoining no.67 North Street and tying in of new structural walls into no.67 North Street to allow for the erection of 4no. apartments and 4no. townhouses including connection to no.67 North Street.

F Cullen

INSPECTOR