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# Appeal Decision

Site visit made on 10 May 2022

**by S Dean MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 May 2022**

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**Appeal Ref: APP/C2741/W/21/3284884**

**Frederick House, Fulford Road, York YO10 4EG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Watkin Jones Group against the decision of City of York Council.
- The application Ref 21/00116/FUL, dated 19 January 2021, was refused by notice dated 18 August 2021.
- The application sought planning permission for the "Erection of 6no. purpose-built 4 storey student accommodation buildings (providing 368 bedrooms), associated change of use of and alterations to existing 'Guard House' building to multi-amenity use associated with the accommodation, construction of energy/plant facility, car and cycle parking, refuse/recycling storage and landscaping (re-submission of withdrawn application 18/02797/FULM)" without complying with a condition attached to planning permission Ref 19/00603/FULM, dated 22 May 2020.
- The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following plans and other submitted details:-  
(415)1808-GWP-00-XX-DR-A-(PA)-0057-P05  
(415)1808-GWP-01-GF-DR-A-(PA)-0030-P06  
(415)1808-GWP-01-GF-DR-A-(PA)-0031-P06  
(415)1808-GWP-01-GF-DR-A-(PA)-0048-P06  
(415)1808-GWP-01-GF-DR-A-(PA)-0049-P02  
(415)1808-GWP-01-ZZ-DR-A-(PA)-0035-P06  
(415)1808-GWP-01-ZZ-DR-A-(PA)-0045-P06  
(415)1808-GWP-01-ZZ-DR-A-(PA)-0046-P02  
(415)1808-GWP-01-ZZ-DR-A-(PA)-0047-P06  
(415)1808-GWP-04-00-DR-A-(PA)-0036-P06  
(415)1808-GWP-04-00-DR-A-(PA)-0037-P06  
(415)1808-GWP-04-E-DW-A-(PA)-0058-P05  
(415)1808-GWP-04-GF-DR-A-(PA)-0055-P06  
(415)1808-GWP-04-GF-DR-A-(PA)-0056-P06  
(415)1808-GWP-XX-00-DR-A-(PA)-0007-P12  
(415)1808-GWP-XX-00-DR-A-(PA)-0008-P04  
(415)1808-GWP-XX-00-DR-A-(PA)-0009-P04  
(415)1808-GWP-XX-00-DR-A-(PA)-0010-P03  
(415)1808-GWP-XX-00-DR-A-(PA)-0017 P05  
(415)1808-GWP-XX-00-DR-A-(PA)-0018 P05  
(415)1808-GWP-XX-00-DR-A-(PA)-0019 P05  
(415)1808-GWP-XX-00-DR-A-(PA)-0020 P05  
(415)1808-GWP-XX-00-DR-A-(PA)-0073 P05  
(415)1808-GWP-XX-00-DR-A-(PA)-0075-P03  
RFM-XX-00-DR-L-0001-S1-PL04  
RFM-XX-00-DR-L-0003-S1-PL04."
- The reason given for the condition is: "For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority."

## **Decision**

1. The appeal is allowed, and planning permission is granted for the "Erection of 6no. purpose-built 4 storey student accommodation buildings (providing 368 bedrooms), associated change of use of and alterations to existing 'Guard House' building to multi-amenity use associated with the accommodation, construction of energy/plant facility, car and cycle parking, refuse/recycling storage and landscaping (re-submission of withdrawn application 18/02797/FULM)" at Frederick House, Fulford Road, York YO10 4EG in accordance with the application Ref 21/00116/FULM dated 19 January 2021 without compliance with condition number 2 previously imposed on planning permission Ref 19/00603/FULM dated 22 May 2020 and subject to the conditions set out in the Schedule attached to this Decision.

## **Procedural Matters**

2. The appeal proposal seeks to vary condition 2 of the original planning permission to address a number of practical matters relating to the implementation of that permission. In summary the changes are the replacement of timber cladding with brick, removal of Juliet balconies and alterations to window design, rearrangement of and amendments to the energy centre and substation, landscaping alterations, rearrangement of accessible rooms, amendments to the refuse and cycle stores, as well as the alteration of the heights of each new block; lowering blocks B, C and D, but increasing the heights of blocks E, F and G.
3. The maximum additional height for block E is 25mm at the ridge, although it is proposed to raise the eaves by 205mm. The maximum additional height for block F is 300mm at the ridge. The maximum additional height for block G is 315mm at the ridge.
4. Since the Council's decision on the appeal application and the submission of this appeal, a further application has been made under section 73 for all of the changes proposed in this appeal application, but for the increased height of blocks E, F and G. That application has now been approved<sup>1</sup>, albeit with some minor differences in drawing revision numbers to those before me. As a result of that, and the reason for refusal specifically referring to the increased heights my main issue and reasoning will be similarly limited.
5. From my site visit, it was apparent that development of the site is underway. This has not altered my consideration of the merits of the appeal before me.

## **Main Issue**

6. Having regard to the above, the main issue is whether the condition is reasonable and necessary, having regard to the effect of the proposed increased block heights on the living conditions of occupiers of properties on Kilburn Road with specific regard to overshadowing and loss of outlook.

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<sup>1</sup> Application reference 21/02227/FUL, dated 3 May 2022

## Reasons

7. As noted, the appeal proposal is for purpose-built student-accommodation in six new blocks to the rear of a converted building, along with various associated smaller structures, landscaping and ancillary development. The blocks are four-storey, but otherwise varied in form and appearance. The site lies to the south of houses on Kilburn Road. According to information provided by the Council, block E is 36m away from houses on Kilburn Road, block F is 43m and block G is 42m.
8. Owing to the relationship of the site to properties on Kilburn Road, the original application was accompanied by a Daylight, Sunlight and Overshadowing Assessment. This found that none of the houses on Kilburn Road lay within the extent of potential significant effect in terms of daylight, sunlight or overshadowing and that the proposal would comply with industry standard BRE guidelines.
9. That assessment was revisited for this proposal, and whilst the change is measurable, it would still be the case that none of the houses on Kilburn Road would lie within the extent of potential significant effect in terms of daylight, sunlight or overshadowing and that the proposal would still comply with industry standard BRE guidelines.
10. Turning to any loss of outlook which would arise from the additional height of blocks E, F and G, the Council acknowledges that the proposed increase in height is relatively modest when compared to the scale of the development which already has planning permission. In addition, the blocks are a substantial distance from the rear of the properties on Kilburn Road, further limiting the effect of any additional height on the outlook from those properties.
11. I note the guidance in the National Planning Policy Framework (the Framework) that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme, and accept that small, incremental changes to a proposal could lead to greater, cumulative harm. I also acknowledge that a 'line must be drawn' beyond which mass, scale and associated impacts are unacceptable.
12. However, I do not consider that the changes proposed here are harmful, or that the quality of the approved development would be materially diminished. The additional height is minor when considered against the scale of the proposal as whole, and coupled with the separation distances, I find that it is not so great as to make the proposal unacceptable.
13. In addition, the quality of the development is not affected, but the ability of the development as a whole to meet Framework requirements for sustainability, environmental efficiency, and quality standards is improved by the appeal scheme, in particular, the additional height to ensure proper insulation and waterproofing.
14. In the face of the detailed, convincing and compelling evidence of the appellant, the minor additional height and the lack of any additional or otherwise unacceptable harm or effect on amenity, I therefore find that a revised condition, updating the approved drawings is reasonable and necessary. I find that the proposed increased block heights would not have an

unacceptable effect on the living conditions of occupiers of properties on Kilburn Road with specific regard to overshadowing and loss of outlook. The proposal would not therefore conflict with Policy ENV2 of the Publication Draft City of York Local Plan 2018, which seeks, amongst other things to ensure that new development would not cause significant adverse environmental impact to existing communities. The proposal would also not conflict with guidance in the Framework aimed at achieving well-designed places.

### **Other Matters**

15. Despite the comments of third-parties, it is not possible to revisit principle and permission of the development as a whole in this appeal. It is only open to me to consider the effect of the proposed variation to the condition as set out.
16. The appeal site lies within a Conservation Area. Given the overall appearance of the development is substantively unchanged from that already granted permission, I am satisfied that the proposal would preserve the appearance of the area. Also, having regard to the great weight to be given to the conservation of the area as a heritage asset, I am satisfied that the proposal would not harm its significance, in accordance with guidance in the Framework.

### **Conditions**

17. The Council has suggested a number of conditions to be attached, should planning permission be granted. Having had regard to the requirements of the Framework and the Planning Practice Guidance I have reimposed the conditions attached to the original permission, updated as requested by the Council and accepted by the appellant, to refer to details and subsequent approvals already granted. As the permission has already been implemented, no time limit condition is required. I am therefore satisfied that the conditions I have imposed meet the tests in, and requirements of both the Framework and the Planning Practice Guidance.
18. Although as noted above, a subsequent section 73 application has been approved, the condition specifying plan numbers sets out those drawings that were before the Council when it determined the appeal application, on which third-parties were consulted, and which were submitted with the appeal. It is not appropriate for me to amend the approved drawings to include any revisions made subsequent to the Council's decision on the appeal application.

### **Planning obligation**

19. The original planning permission was granted subject to a planning obligation under section 106. This appeal is accompanied by a signed and sealed supplemental agreement which ensures that the original agreement, modified by the deed of variation remains in full force and effect.

### **Conclusion**

20. For the reasons given above I conclude that the appeal should be allowed, the condition varied, and planning permission granted, subject to the conditions set out.

*S Dean*

INSPECTOR

## Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following plans:-
 

|                                    |     |                                              |
|------------------------------------|-----|----------------------------------------------|
| 1077-TGA-XX-XX-DR-A-0229           | -   | Site Location Plan                           |
| 1077-TGA-XX-00-DR-A-2109           | F   | Substation                                   |
| (415)1808-GWP-XX-00-DR-A-(PA)-0017 | P05 | Guard House Demolition Plan                  |
| (415)1808-GWP-XX-00-DR-A-(PA)-0018 | P05 | Guard House Demolition Elevations            |
| (415)1808-GWP-XX-00-DR-A-(PA)-0019 | P05 | Guard House Floor Plans                      |
| (415)1808-GWP-XX-00-DR-A-(PA)-0020 | P05 | Guard House Proposed Elevations and Sections |
| 1077-TGA-ZZ-00-DR-A-0220           | B   | Proposed Ground Floor Plan                   |
| 1077-TGA-ZZ-01-DR-A-0221           | A   | Proposed First Floor Plan                    |
| 1077-TGA-ZZ-02-DR-A-0222           | A   | Proposed Second Floor Plan                   |
| 1077-TGA-ZZ-03-DR-A-0223           | A   | Proposed Third Floor Plan                    |
| 1077-TGA-ZZ-04-DR-A-0224           | B   | Proposed Roof Plan                           |
| 1077-TGA-XX-XX-DR-A-0520           | B   | Block B Elevations 01                        |
| 1077-TGA-XX-XX-DR-A-0521           | B   | Block B Elevations 02                        |
| 1077-TGA-XX-XX-DR-A-0522           | B   | Block C and D Elevations 01                  |
| 1077-TGA-XX-XX-DR-A-0523           | B   | Block C and D Elevations 02                  |
| 1077-TGA-XX-XX-DR-A-0524           | B   | Block E, F and G Elevations 01               |
| 1077-TGA-XX-XX-DR-A-0525           | B   | Block E, F and G Elevations 02               |
| 1077-TGA-XX-XX-DR-A-0526           | B   | Block E and F Elevations                     |
| 1077-TGA-XX-XX-DR-A-0527           | B   | Block G Elevations                           |
| 3473 101 Rev O                     |     | Landscape Layout                             |
| 3473 101 Rev H                     |     | Hardworks Layout                             |
| 1077-TGA-XX-XX-DR-A-9002           | E   | Cycle Parking Plan                           |
| 3473_302                           | B   | Surface and Edge Details (1 of 2)            |
| 3473_303                           | B   | Surface and Edge Details (2 of 2)            |
2. The foul and surface water drainage works shall be carried out in accordance with the details approved under reference AOD/20/00301.
3. The development shall be carried out using the approved materials agreed under reference AOD/21/00037.
4. Large scale details of the items listed below, approved under reference AOD/21/00023, shall be carried out in accordance with the approved details.
  - Detailed bay elevations and sections for all fenestration types including ground to roof level parts to demonstrate interfaces at scale 1:20
  - Window reveals and wall pane recesses at scale 1:10
  - Details of all fixed equipment to the exterior of the proposed buildings.
  - The Guard House window reveal at scale 1:10

5. The development shall not be occupied until a detailed landscaping scheme in accordance with the approved General arrangement and Planting strategy has been submitted to the Local Planning Authority and approved in writing. This shall include the species, stock size, density (spacing), and position of trees, shrubs and other plants; and seed mixes, sowing rates and mowing regimes where applicable. It will also include details of ground preparation; tree planting details; paving, and street furniture. The proposed tree planting shall be compatible with existing and proposed utilities. This scheme as approved shall be implemented within a period of six months of the practical completion of the development. Any trees or plants which within a period of ten years from the substantial completion of the planting and development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species.
6. A suitably qualified arboriculturalist shall carry out regular inspections and supervision of works as necessary during development operations to ensure the proposed protection measures within the approved method statement are strictly applied and adhered to. In the first instance the appointed arboriculture consultant shall inspect and confirm that all tree protection fencing and ground protection is in place before the relevant construction starts on site. Any incidents and/or deviations from the approved AMS shall be monitored. The appointed arboriculture consultant shall record all site visits and observations and any actions taken. These records shall be made available for inspection by the Local Authority if requested.
7. The development hereby approved shall be occupied only for the purposes of student accommodation by either students engaged at all times in full-time or part-time further or higher education courses within the City of York administrative boundary or by delegates at all times attending courses or conferences within the City.
8. The archaeological scheme comprises 3-5 stages of work. Every stage shall be completed and approved by the Local Planning Authority (LPA) before the condition can be discharged.
  - B) The site investigation and post-investigation assessment shall be completed in accordance with the programme set out in the Written Scheme of Investigation approved under AOD/21/00027 and the provision made for analysis, publication and dissemination of results and archive deposition will be secured. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.
  - C) A copy of a report on the evaluation and an assessment of the impact of the proposed development on any of the archaeological remains identified in the evaluation shall be deposited with City of York Historic Environment Record to allow public dissemination of results within 6 weeks of completion or such other period as may be agreed in writing with the Local Planning Authority.
  - D) Where archaeological features and deposits are identified proposals for the preservation in-situ, or for the investigation, recording and recovery of archaeological remains and the publishing of findings shall be submitted as an amendment to the original WSI. It should be understood that there shall be presumption in favour of preservation in-situ wherever feasible.

E) No development (other than demolition to present ground level) shall take place until:

- details in D have been approved and implemented on site
- provision has been made for analysis, dissemination of results and archive deposition has been secured
- a copy of a report on the archaeological works detailed in Part D should be deposited with City of York Historic Environment Record within 3 months of completion or such other period as may be agreed in writing with the Local Planning Authority.

9. A programme of archaeological building recording, specifically a written description and photographic recording of the Guard House and any other historic structures on site to Historic England Level 2 is required for this application. The archaeological scheme comprises 3 stages of work. Each stage shall be completed and approved by the Local Planning Authority before it can be discharged.

B) The programme of recording and post investigation assessment shall be completed in accordance with the programme set out in the Written Scheme of Investigation approved under AOD/20/00239 and the provision made for analysis, publication and dissemination of results and digital archive deposition with ADS will be secured. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

C) A copy of a report shall be deposited with City of York Historic Environment Record and digital archive images with ADS to allow public dissemination of results within 3 months of completion or such other period as may be agreed in writing with the Local Planning Authority.

10. The detailed scheme of noise insulation measures for protecting current and proposed residents from externally generated noise shall be carried out in accordance with the details approved under reference AOD/20/00272. Upon completion of the insulation scheme works no part of the development shall be occupied until a noise report demonstrating compliance with the approved noise insulation scheme has been submitted to and approved in writing by the Local Planning Authority.

INFORMATIVE: The building envelope of all residential accommodation shall be constructed so as to achieve internal noise levels in habitable rooms of no greater than 35 dB LAeq (16 hour) during the day (07:00-23:00 hrs) and 30 dB LAeq (8 hour) and LAFMax level during the night (23:00-07:00 hours) should not exceed 45dB(A) on more than 10 occasions in any night time period in bedrooms and should not regularly exceed 55dB(A). These noise levels shall be observed with all windows open in the habitable rooms or if necessary windows closed and other means of ventilation provided.

11. The details of all machinery, plant and equipment to be installed in or located on the premises, which is audible outside of the premises shall be installed or located as per the details approved under reference AOD/21/00007. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

12. The lighting levels achieved at the development shall not exceed those stated in the lighting report by Desco dated: 1 September 2019 reference: 1809-60-RPT-01-External Lighting Assessment Report.
13. There shall be no external lighting between the hours of 23:00hrs and 07:00hrs by obtrusive lights (as defined in the External Lighting Assessment Report by Desco dated 3rd September 2019 as A1 and C1) at the site, other than those necessary for emergency and security lighting. A scheme outlining which lights will be switched off between these hours shall be submitted to and agreed by the Local Authority in writing before use of the site commences and the curfew implemented in accordance with the said scheme as approved thereafter.
14. All means of enclosure to the site boundaries shall be provided in accordance with the details approved under reference AOD/20/00301 before the development is occupied.
15. Prior to first occupation or use of the development hereby approved four integrated features providing a roosting crevice for bats must be constructed across the site within the fabric of the new buildings, and four Swift nest boxes.
16. The building shall not be occupied until the cycle parking areas and means of enclosure have been provided within the site in accordance with details approved under reference AOD/20/00272, and these areas shall not be used for any purpose other than the parking of cycles.
17. The building shall not be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles (and cycles, if shown) have been constructed and laid out in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.
18. Before the occupation of the development 1 Electric Vehicle Recharging Point shall be provided and retained in a position and to a specification to be first agreed in writing by the Council. Charging points should be located in a prominent position on the site and should be for the exclusive use of zero emission vehicles. Parking bay marking and signage should reflect this. The charge points should include sufficient cabling and groundwork to upgrade that unit and to provide for an additional Electrical Vehicle Recharging Point of the same specification, should demand require this in this future. Within 3 months of the first occupation of the development, the owner will submit to the Council for approval in writing an Electric Vehicle Recharging Point Maintenance Plan that will detail the maintenance, servicing and networking arrangements for each Electric Vehicle Recharging Point for a period of 10 years. The approved Electric Vehicle Recharging Point Maintenance Plan shall thereafter be implemented in accordance with its terms
19. The Carbon Emission Reduction Measures shall be carried out in accordance with the details approved under reference AOD/20/00285.
20. Prior to first occupation or use, the approved remediation scheme shall be carried out in accordance with its terms and a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.

21. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.
22. Except in case of emergency no demolition and construction works or ancillary operations, including deliveries to and dispatch from the site which are audible beyond the boundary of the site shall take place on site other than between the hours of 08:00-18:00 Monday to Friday and between 09:00-13:00 on Saturdays.
23. The development shall be constructed in accordance with the Construction Environmental Management Plan (CEMP) approved under reference AOD/20/00229.
24. The site shall thereafter be occupied in accordance with the aims, measures and outcomes of the Travel Plan approved under reference AOD/20/00301.  
  
Within 12 months of occupation of the site a first year travel survey shall have been submitted to and approved in writing by the Local Planning Authority. Results of yearly travel surveys shall then be submitted annually to the authority's travel plan officer for approval.
25. The area shown as 'potential future cycle storage' on drawing no (415) 1808-GEP-XX-00-DR-A-(PA)-0007-P12 shall be reserved for cycle parking only at all times throughout the lifetime of the development.
26. A full 3 stage road safety audit carried out with advice set out in the DMRB HD19/03 and guidance issued by the Council, will be required for the internal highway layout and all off-site works requiring alteration, stage 1 of which was approved under reference AOD/21/00007.
27. The front and rear pedestrian/cycle access doors to the Guard House shall be automatically operated.
28. The development hereby permitted shall not come into use until the following highway works ((a) creation of shared use footway cycleway on east side of Fulford Road from the existing pelican crossing on Fulford Road north of the site to join the existing shared use footway cycleway on east side of Fulford Road south of the site and (b) extending the length of the central refuge situated on Fulford Road south of Wenlock Terrace) have been carried out in accordance with the approved plans, or arrangements entered into which ensure the same.

29. The survey of on street parking on highways within an area agreed with the local planning authority under reference AOD/20/00313 shall be carried out annually. The surveys shall be carried out to a specification and at a time agreed with the local planning authority.

Within three months of the annual survey being carried out, the developer will review the on street parking survey results and submit the review to the local planning authority to demonstrate whether the volume of on street parking in any of the areas shown on the plan has increased by more than 20% of the first annual survey as a consequence of the development.

**End of Schedule of Conditions**