
Appeal Decision

Hearing Held on 15 January 2024

Site visit made on 15 January 2024

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2024

Appeal Ref: APP/C2741/W/23/3330666

Chocolate Works Residents Parking, Bishopthorpe Road, York YO23 1LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Chris Bowden-Mills (McCarthy and Stone Retirement Lifestyles Ltd & Henry Boot Developments Ltd) against the decision of City of York Council.
 - The application Ref 23/00608/FULM, dated 21 March 2023, was refused by notice dated 11 July 2023.
 - The development proposed is Erection of Extra Care accommodation with associated private amenity space, landscaping, substation, vehicular access alterations, car parking and erection of decked car park for third party.
-

Decision

1. The appeal is allowed. Planning permission is granted for the erection of extra care accommodation including no.72 apartments and decked car park with associated private amenity space, landscaping, substation and vehicular access alterations at Chocolate Works Residents Parking, Bishopthorpe Road, York YO23 1LG in accordance with the terms of the application Ref 23/00608/FULM dated 21 March 2023 subject to the conditions set out in the attached schedule.

Procedural Matters

2. The description of the proposal in the formal decision above differs from that on the application form. It was however agreed between the parties at the Hearing that this description best described the proposal. I have considered it on that basis.
3. The Council's refusal reason makes reference to the version of the Framework¹ in place at the time of its decision. I must refer to the most recent version when making my decision.
4. Following the Council's decision, the NHS Humber and North Yorkshire Integrated Care Board (NYICB) raised concern with regard to the development in terms of its impact on local primary care services. I have dealt with this matter below.

¹ National Planning Policy Framework December 2023.

Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the area with regard to the proposed access arrangements to the site including whether an active street frontage to Bishopthorpe Road would be provided to the extra care building.

Reasons

6. The appeal site is currently utilised largely as a car park, laid to tarmac and surrounded by palisade security style fencing. It sits at a lower level than closely adjacent developed areas to the north and west.
7. Given the difference in land levels between Bishopthorpe Road and its footway, a pedestrian bridge would be provided to allow direct and level access for those on foot or for those using other light forms of transport such as a bicycle or mobility scooter. The access arrangements would allow residents to enter the building at this entrance via key fob and visitors to enter via an intercom system.
8. The entrance on Bishopthorpe Road would be the quickest and simplest way to leave from and arrive at the building if not using a car and travelling into the centre of York via any of the routes northwards. It would be the logical entrance and exit if using bus services. The proposal would therefore provide an active street frontage to Bishopthorpe Road in terms of pedestrian and other activity.
9. The access would be clearly defined, the wide pedestrian entrance and doors signposting this as a clear access point to the building. The visual sense of this appearing as an active entrance would be reinforced by the surrounding detailing which would resemble a porch like structure. The design of the building at this entrance would draw further legibility within the street-scene through its similarities in design to the entrance at the Chocolate Works Care Village across the road from the appeal site. The proposal would therefore provide an active street frontage to Bishopthorpe Road in terms of its appearance.
10. The building would not therefore appear isolated or inward looking. In any event, there is nothing especially pronounced with regard to entrances on buildings to the north of the site along Bishopthorpe Road, with side and rear accesses also in evidence. The proposed scheme would have no adverse impact on the character and appearance of the area with regard to the proposed access arrangements.
11. Subsequently, the proposal would not conflict with Policy D1 of the City of York Local Plan – Publication Draft February 2018 Regulation 19 Consultation (LPPD). Amongst other things this Policy seeks to resist development that would cause damage to the character and quality of an area and create active frontages to public streets. There would be no conflict with the Framework in terms of achieving well designed and beautiful places.

NHS Contribution

12. The NYICB raised concern with regard to the development in terms of its impact on local primary care services. On the basis of the evidence some future

residents would be likely to move from within the local area therefore not creating additional demand. However, that would not exclusively be the case.

13. Therefore, the provision of this development is likely to introduce some additional demand on local primary care services regardless of whether it is correct to assume that each apartment would be double occupied. There is nothing to indicate that harm in this sense would be anything other than limited.
14. The evidence indicates that any new health care provision would be likely to be provided through the reconfiguration or extension of existing practices as opposed to a new build facility. The capital figure suggested as a developer contribution is based on new build rather than extension or reconfiguration. There is no evidence that these costs are broadly equivalent to extensions or alterations to existing premises. It is subsequently not possible to conclude that the commuted sum proposed would be appropriate to the scale of the appeal scheme.
15. I can only therefore conclude that the evidence does not demonstrate that the commuted sum proposed (the 'Healthcare Contribution') and included within the planning obligation by the appellant is fairly and reasonably related in scale and kind to the development. Therefore, regardless of any support drawn from Policy DM1 of the LPPD, it would not meet all the tests within Regulation 122 of the Community Infrastructure Levy Regulations (2010).
16. Further, the Council advised at the Hearing that Policy HW5 of the LPPD which amongst other things seeks contributions for developments that will place demand upon primary care services should only be afforded limited weight due to unresolved objections.

Other Matters

17. The evidence indicates that the remaining undertakings by the owner and developer within the planning obligation are necessary to make the development acceptable in planning terms. They are directly related to the development and fairly and reasonably related in scale and kind to the development. The remainder of the obligation therefore meets the tests within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and at Paragraph 55 of the Framework.
18. A similar scheme² was the subject of a Public Inquiry and the decision on that appeal was issued in January 2023. The appeal reference was APP/C2741/W/21/3289470. The previous Inspector did not consider that the site should be treated as being within the Green Belt. This matter does not form an area of dispute between the main parties and I have no reason to take an alternative position to the previous Inspector on the basis of the evidence.
19. I consider that the design revisions that have been made to the scheme now provide an active frontage in terms of both appearance and function. Subsequently, I consider that concerns raised by the previous Inspector with regard to that matter have been addressed.

² Previous scheme subject to Public Inquiry (PI).

20. The scheme is appropriately designed such that it would be an appropriate design at the site, reflecting the broad form, massing and materiality of buildings within the area.
21. The site falls within the setting of Grade II listed buildings at the Terrys of York site to the west as well as the Racecourse and Terry's Factory Conservation Area. In considering whether to grant planning permission for development which affects the setting of listed buildings I am required to have special regard to the desirability of preserving the setting of such buildings.
22. I am mindful of the existing use and appearance of the site. The proposal would intervene in some very limited views towards the listed buildings and Conservation Area from the Ings area closely to the east of the appeal site. However, those views are not from the main riverside walking route along the river. In any event those views are likely to be restricted when planting on the eastern boundary of the site is in leaf as it would be for substantial periods of the year. There are also further bands of planting between the site and the river.
23. The built heritage statement³ submitted by the appellant concludes that the proposal does not affect any elements of the settings of heritage assets that have been established to positively contribute to their heritage significance. This is not disputed by the Council, and there is no compelling evidence presented which leads me to any alternative conclusion other than that the setting of the listed buildings and Conservation Area would be preserved.
24. I must also take into account that in relation to the PI scheme the Council considered the development would not cause harm to the setting of the heritage assets. The Inspector noted that no tangible evidence as to how the proposal could result in any harm to the setting of Heritage Assets had been provided and did not disagree with the Council on this matter.
25. The building is not excessive in height in comparison to the surrounding development and appropriate in design to the area. Having regard to this and the evidence as a whole, there is nothing to indicate that the proposal would result in any significant adverse impact on the living conditions of nearby residential occupiers including those at Ash House with regard to matters including view, light, privacy and overlooking.
26. There is nothing to indicate that the proposal would have any significant adverse impact upon the adjacent Trans-Pennine cycle route which passes to the west and north or adversely affect highway safety in general. A condition is included for Archaeological investigation.
27. The site is identified for approximately 33 dwellings under Policy SS14 of the ELP. The development before me proposes a greater number of dwellings albeit within an extra care scheme.
28. Whilst the Policy does not place a limit on the number of dwellings on site the number of dwellings would be well in excess of that number. The proposal would also result in some very limited restriction of views towards the factory building and clock tower. There is therefore some limited conflict with Policy SS14. The policy is afforded moderate weight by the Council, a position with which I would not disagree.

³ Built Heritage Statement, RPS Group March 2023.

29. My attention has been drawn to a planning refusal south of the Residence, across Bishopthorpe Road from this site. However, the details of that scheme before me are so limited that I cannot afford that matter anything other than very limited weight.

Conditions

30. The Standard time limit and plans conditions are necessary to define the development. Conditions 3, 11, 12, 14 and 27 are necessary in the interests of the character and appearance of the area. Conditions 4, 9, 13, 15 and 28 are necessary in the interests of the living conditions of nearby occupiers. Conditions 18 and 19 are necessary in the interests of the living conditions of future occupiers. Conditions 5, 6, 16 and 29 are necessary to ensure the site is properly remediated.
31. Condition 7 is necessary to ensure that any archaeological interest in the site is recorded. Conditions 8, 17, 20 and 21 are necessary in the interests of highway safety. Condition 10 is necessary to ensure there is no unacceptable impact on public sewerage infrastructure. Condition 22 is necessary in the interests of the sustainable development of the site. Conditions 23-25 are necessary to ensure proper and sustainable drainage of the site. Condition 26 is necessary in the interests of limiting impacts on the local bird population.
32. Conditions relating to drainage should be included as nothing within the evidence or discussed at the Hearing suggests that these are unnecessary. A condition relating to electric vehicle charging is excluded as this is covered by building regulations and duplication should be avoided.

Planning Balance and Conclusion

33. There could be some limited adverse impacts associated with the development due to the potential additional demand on local primary care services. There would also be some limited conflict with Policy SS14.
34. There would be social and economic benefits associated with the proposal. The units would contribute to the overall supply of housing and would provide some support to the local economy both during and after construction within a sustainable location within York.
35. The Council have afforded substantial weight to the need for extracare housing specifically within the western quadrant of York. On the basis of the evidence and given that this would be market accommodation rather than social provision, which appears to be better catered for, I agree with that weighting.
36. The Council does not currently have an adopted local plan and cannot demonstrate a five-year housing land supply. Paragraph 11 d) of the Framework is therefore applicable either by reason of the land supply position or as a result of the 2022 Housing Delivery Test results.
37. Permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The site is not within a protected area.
38. I have not identified any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the policies in the

Framework taken as a whole. The presumption in favour of sustainable development weighs in favour of the proposal.

39. However, regardless of this, the limited adverse impacts related to potential additional demand on local primary care services and the limited conflict with Policy SS14 to which I cannot afford full weight, are outweighed by the need for the scheme. I have not identified conflict with the Framework. Considerations therefore indicate that the appeal should be allowed.

T Burnham

INSPECTOR

Schedule of Conditions

1. The development shall be begun not later than the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following plans:

NE-2567-03-AC-003 Rev G ELEVATIONS AS PROPOSED

NE-2567-03-AC-004 Rev D ISOMETRIC VIEWS

NE-2567-03-AC-005 Rev H PROPOSED FLOOR PLANS

NE-2567-03-AC-006 SUBSTATION DETAILS

NE-2567-03-AC-007 Rev E STREET SCENE ELEVATIONS

NE-2567-03-AC-008 Rev D SITE SECTIONS

NE-2567-03-AC-009 Rev D TYPICAL FAÇADE DETAILS

NE-2567-03-AC-011 Rev C ARTIST IMPRESSIONS - SHEET 2 OF 2

NE-2567-03-AC-013 Rev F ELEVATIONS AS PROPOSED – SHEET 1 OF 2

NE-2567-03-AC-015 Ref F FLOOR PLANS - SHEET 1 OF 2

NE-2567-03-AC-016 Ref F FLOOR PLANS – SHEET 2 OF 2

NE-2567-03-AC-018 Rev D SITE SECTIONS – SHEET 1 OF 2

NE-2567-03-AC-019 Rev D SITE SECTIONS SHEET 2 OF 2

NE-2567-03-AC-022 Rev D SEPARATION DISTANCES

NE-2567-03-AC-100 LOWER GROUND CAR PARK PLAN

NE-2567-03-AC-101 UPPER-LEVEL CAR PARK PLAN

NE-2567-03-AC-102 CAR PARK ELEVATIONS & SECTIONS

NE-2567-03-AR-03B TREE PROTECTION & IMPACT PLAN

NE-2567-03-AC-014 Rev G PROPOSED ELEVATIONS SHEET 2 OF 2
NE-2567-03-AC-002 N SITE PLAN AS PROPOSED
NE-2567-03-AC-012 D BOUNDARY DETAILS
NE-2567-03-AC-010 D ARTIST IMPRESSIONS – SHEET 1 OF 2
12776-DB3-B01-00-DR-A-20001A CONTEXT & LOCATION
NE-2567-01-AR01 ARBORICULTURALREPORT & IMPACT PLAN
NE-2567-03-AR-02A TREE CONSTRAINTS PLAN
NE-2567-03-LA-01D LANDSCAPE GA PLAN
NE-2567-03-EC-03 PEA REPORT AND BIODIVERSITY NET GAIN ASS

3. Prior to the commencement of development, protection of existing trees shown to be retained on the approved plans and any adjacent trees within neighbouring properties shall be carried out in strict accordance with NE-2567-03-AR-03B Tree Protection and Impact Plan and NE-2567-01-AR01 Arboricultural Report and Impact Plan before construction operations proceed, the applicant's arboricultural consultant shall inspect the tree protection fencing and ground protection and confirm to the Local Planning Authority in writing that it is in accordance with the AMS. A copy of the document shall be available for reference and inspection on site at all times.
4. Prior to commencement of the development, a Construction Environmental Management Plan (CEMP) for minimising the creation of noise, vibration and dust during the demolition, site preparation and construction phases of the development shall be submitted to and approved in writing by the Local Planning Authority. The CEMP must include a site-specific risk assessment of dust impacts in line with the guidance provided by IAQM (see <http://iaqm.co.uk/guidance/>) and include a package of mitigation measures commensurate with the risk identified in the assessment. All works on site shall be undertaken in accordance with the approved CEMP.
5. Prior to the commencement of development, an investigation and risk assessment (in addition to any assessment provided with the planning application) must be undertaken to assess the nature and extent of any land contamination. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
 - (i) a survey of the extent, scale and nature of contamination (including ground gases where appropriate);
 - (ii) an assessment of the potential risks to:

human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments;

- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

6. Prior to the commencement of development, and subject to the results of the survey/risk assessment required by condition 5, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) must be prepared and agreed in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

7. A programme of post-determination archaeological mitigation, specifically an archaeological watching brief is required on this site.

The archaeological scheme comprises 3 stages of work. Each stage shall be completed and agreed in writing with the Local Planning Authority before it can be approved.

A) No development shall take place until a written scheme of investigation (WSI) for a watching brief has been submitted to and approved by the Local Planning Authority in writing. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI. The WSI should conform to standards set by Local Planning Authority and the Chartered Institute for Archaeologists.

B) The site investigation and post investigation assessment shall be completed in accordance with the programme set out in the Written Scheme of Investigation 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 shall be deposited with City of York Historic Environment Record to allow public dissemination of results within 3 months of completion.

8. Prior to the commencement of works a dilapidation survey of the highways adjoining the site shall be jointly undertaken between the developer and the

Council, the results of which shall be agreed in writing between the developer and the Local Planning Authority.

9. Prior to the commencement of any works on the site, a detailed method of works statement identifying the programming and management of site clearance/preparatory and construction works shall be submitted to and approved in writing by the Local Planning Authority. Such a statement shall include at least the following information.

- the routing that will be promoted by the contractors to use main arterial routes and avoid the peak network hours,
- where contractors will park,
- where materials will be stored within the site; and
- measures employed to ensure no mud/detritus is dragged out over the adjacent highway.

All works shall be carried out in accordance with the approved method of works statement.

10. No building or other obstruction including landscape features shall be located over or within 6 metres either side of the centre line of the public sewer i.e. a protected strip width of 12 metres, that crosses the site. Furthermore, no construction works in the relevant area(s) of the site shall commence until measures to protect the public sewerage infrastructure that is laid within the site boundary have been implemented in full accordance with details that have been submitted to and approved by the Local Planning Authority. The details shall include but not be exclusive to the means of ensuring that access to the pipe for the purposes of repair and maintenance by the statutory undertaker shall be retained at all times. If the required stand-off or protection measures are to be achieved via diversion or closure of the sewer, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been agreed with the relevant statutory undertaker and that, prior to construction in the affected area, the approved works have been undertaken.

11. Notwithstanding any proposed materials specified on the approved drawings or in the application form, samples of the external materials to be used for the buildings hereby authorised shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the construction of the development beyond damp proof course level. The development shall be carried out using the approved materials.

12. A sample panel of the brickwork to be used shall be erected on the site and shall illustrate the colour, texture and bonding of brickwork and the mortar treatment to be used and shall be approved in writing by the Local Planning Authority prior to the commencement of building works beyond damp proof

course level. This panel shall be retained until a minimum of 2 square metres of wall of the approved development has been completed in accordance with the approved sample.

13. Details of all machinery, plant and equipment to be installed in or located on the premises to allow the approved use to take place, which is audible outside of the premises, shall be submitted to the Local Planning Authority for approval prior to work being undertaken beyond damp proof course level. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the first occupation of the development and shall be retained and appropriately maintained thereafter.
14. Before the development is first occupied a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved.
15. There shall be adequate facilities for the treatment and extraction of cooking odours. Details of the extraction plant or machinery and any filtration system required shall be submitted to the Local Planning Authority for written approval prior to the first occupation of the development. Once approved it shall be installed and be fully operational before the first occupation of the development and shall be retained as approved and appropriately maintained and serviced thereafter in accordance with manufacturer guidelines.
16. Prior to first occupation, the approved remediation scheme in the event of requirement by condition 5 must 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 agreed in writing by the Local Planning Authority.
17. The development hereby permitted shall not be occupied until the following highway works have been completed in accordance with the agreed details;
(a) the widening of the existing shared use path to the north of the proposed development leading from the east side of Bishopthorpe Road directly abutting the site boundary (b) widening of the existing off road shared cycle path along the eastern carriageway of Bishopthorpe Road directly abutting the site boundary and (c) the construction of a central refuge situated on Bishopthorpe Road close to the proposed resident entrance. These features shall thereafter be retained for the lifetime of the development.

18. Prior to the first occupation of the building details of any external cycle parking areas, including means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority. The building shall not be first occupied until the external cycle parking areas and means of enclosure have been provided within the site in accordance with such approved details, and these areas shall not be used for any purpose other than the parking of cycles.
19. The building shall not be first occupied until the internal cycle store and mobility scooter store on the first floor have been provided and these areas shall be retained for their intended use thereafter for the lifetime of the development.
20. The building shall not be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles have been constructed and laid out in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.
21. The development shall not be first occupied until all existing vehicular crossings not shown as being retained on the approved plans have been removed by reinstating the kerb and footway to match adjacent levels.
22. Details of the reduction in carbon emissions the development hereby approved would achieve when compared against Part L of the Building Regulations (the notional building) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the construction of the building beyond foundation level and the development shall be carried out in accordance with the approved details.
- The details shall demonstrate a reduction in carbon emissions of at least 28% through the provision of renewable or low carbon technologies or through energy efficiency measures and at least a 19% reduction in dwelling emission rate compared to the Target Emission Rate (calculated using Standard Assessment Procedure methodology as per Part L1A of the Building Regulations).
- Details shall also be submitted that demonstrate that the development shall also achieve a water consumption rate of no more than 110 litres per person per day (calculated as per Part G of the Building Regulations).
23. There shall be no piped discharge of surface water from the development prior to the completion of surface water drainage works, details of which will have been submitted to and approved by the Local Planning Authority. If discharge to public sewer is proposed, the information shall include, but not be exclusive to:- a) evidence to demonstrate that surface water disposal via infiltration or watercourse are not reasonably practical; b) evidence of existing positive drainage to public sewer and the current points of

connection; and c) the means of restricting the discharge to public sewer to the existing rate less a minimum 30% reduction, based on the existing peak discharge rate during a 1 in 1 year storm event, to allow for climate change.

24. Surface water run-off from hardstanding (equal to or greater than 800 square metres) and/or communal car parking area(s) of more than 50 spaces must pass through an oil, petrol and grit interceptor/separator of adequate design that has been submitted to and approved in writing by the Local Planning Authority, prior to any discharge to an existing or prospectively adoptable sewer. The development shall proceed in accordance with the agreed details.
25. The site shall be developed with separate systems of drainage for foul and surface water on and off site. The separate systems should extend to the points of discharge to be agreed.
26. No vegetation clearance, tree works or building demolition works shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a detailed check of suitable habitat for active bird nests immediately before the start of works and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to the Local Planning Authority and approved in writing prior to any further construction works taking place and shall be strictly adhered to by the developer.
27. The development hereby authorised shall be undertaken in accordance with the detail contained within drawing ref: NE-2567-03-LA-01D and the agreed landscape management plan. The landscaping scheme shall be implemented within a period of six months of the completion of the development.
28. All demolition and construction work and ancillary operations, including deliveries to and dispatch from the site shall be confined to the following hours: Monday to Friday 0800 to 1800 hours, Saturday 0900 to 1300 hours, not at all on Sundays and Bank Holidays.
29. In the event that unexpected contamination is found at any time when carrying out the approved development, 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 and agreed in writing by the Local Planning Authority.

DOCUMENTS SUBMITTED AT HEARING

1. Draft Local Plan Status Document (Council)
2. Updated list of draft planning conditions (Council and Apellant)

DOCUMENTS SUBMITTED AFTER HEARING

1. Completed Planning Obligation (Apellant).