



**Forest Heath**  
District Council

# DEV/FH/17/022

## Development Control Committee 7 June 2017

### Planning Application DC/16/2184/FUL Nowell Lodge, Fordham Road, Newmarket

**Date:** 31/10/2017      **Expiry Date:** 30/01/2017  
**Registered:**      **EOT:** 10/05/2017

**Case Officer:** Charles Judson      **Recommendation:** Approve  
**Parish:** Newmarket      **Ward:** Severals

**Proposal:** 10 No. apartments (demolition of existing dwelling)

**Site:** Nowell Lodge, Fordham Road, Newmarket, Suffolk

**Applicant:** Hyperian Homes Ltd – Mr David Godffrey

**Synopsis:**

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

**Recommendation:**

It is recommended that the Committee determine the attached application and associated matters.

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# Committee Report and Risk Assessment DC/16/2184/FUL

## Section A – Background and Summary:

A1. This application was deferred from consideration at the Development Control Committee meeting on 3<sup>rd</sup> May 2017. Members resolved that they were 'minded to refuse' planning permission contrary to the officer recommendation of approval subject to conditions. Members were concerned that the proposal would result in; i) insufficient parking provision and adverse impact on highway infrastructure; ii) overdevelopment of the site; iii) a development out of character with the area with a detrimental impact on the Fordham Road street scene; iv) a development which would have an adverse impact on residential amenity; v) an unacceptable loss of trees.

A2. The previous Officer report for the 3<sup>rd</sup> May meeting of the Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper in relation to the site description, details of development, details of consultation responses received etc.

A3. This report sets out updates from the written papers presented to the meeting of the Development Control Committee on 3<sup>rd</sup> May and includes a risk assessment of the 5 potential reasons for refusal.

A4. The Officer recommendation, which is set out at the end of this report remains that planning permission should be granted.

A5. Since the Committee meeting on 3<sup>rd</sup> May, at the time of writing, the applicants have submitted a revised site plan to provide an additional 4 parking spaces, to demonstrate that 2 vehicles can pass at the site access and to provide an acoustic fence on the southern boundary. The applicants have also confirmed that a revised tree protection plan and a scheme for replacement planting will be submitted in due course. Members will be updated verbally on any further amendments which are submitted.

A6. Members are advised that there is an error in paragraphs 1 and 33 of the Officers report attached as Working Paper 1. The proposal seeks permission for 5 No. two bedroom apartments and 5 No. three bedroom apartments rather than 7 No. two bedroom and 3 No. three bedroom apartments as stated in working paper 1.

## **Section B – General Information:**

### **Proposal:**

B1. Please refer to Working Paper 1, paragraphs 1 to 3 for a description of the application proposals, including amendments made in advance of the June meeting. There have been no further amendments since the May meeting.

### **Application Supporting Material:**

B2. Please refer to working Paper 1, paragraph 4 for details of the drawings and technical information submitted with the planning application.

### **Site Details:**

B3. Please refer to Working Paper 1, paragraph 5 for a description of the application site

### **Planning History:**

B4. Please refer to Working Paper 1, paragraph 6 for details of the sites planning history.

### **Consultation Responses:**

B5. Please refer to Working Paper 1, paragraphs 7 to 16 for details of consultation responses received.

### **Representations:**

B6. Please refer to Working Paper 1, paragraphs 17 to 22 for details of representations received.

### **Policies:**

B7. Please refer to Working Paper 1, paragraphs 23 to 25 for details of relevant planning policy and considerations

### **Officer Comment:**

B8: Please refer to Working Paper 1, paragraphs 26 to 39 for the Officer assessment of the application proposals. The officer assessment remains unchanged following the Development Control Committee meeting on 3<sup>rd</sup> May 2017

### **Section C – Risk Assessment:**

C1. The main purpose of this report is to inform members of the risks associated with the 'of mind' resolution to refuse planning permission for these development proposals, given that a refusal of planning permission would be contrary to the Officer recommendation.

C2. As set out in the Background section of this report, Members deferred their consideration of this planning application from the 3<sup>rd</sup> May 2017 meeting of Development Control Committee. Members were 'of mind' to refuse planning permission on grounds of: i) insufficient parking provision for and adverse impact on highway infrastructure; ii) overdevelopment of the site; iii) a development out of character with the area with a detrimental impact on the Fordham Road street scene; iv) a development which would have an adverse impact on residential amenity; v) an unacceptable loss of trees.

C3. The remainder of this report discussed the potential reasons for refusal cited by Members before discussing the potential implications of a refusal of planning permission on these grounds.

### **Section D – Potential Reason for refusal 1; Parking provision and highway infrastructure**

D1. The application seeks permission for 10 No. residential apartments comprised of 5 No. two bedroom units and 5 No. three bedroom units. The plans considered by Development Control Committee on 3<sup>rd</sup> May showed the provision of 18 No. vehicular parking spaces, an existing detached double garage to be retained and provision for the storage of 26 cycles. An amended plan has subsequently been submitted to increase the number of parking spaces to 22. The Suffolk Parking Standards (2015) require the provision of 1.5 parking spaces for 2 bedroom units (1 allocated space and 1 shared between 2 units for flexible use) and 2 parking spaces for 3 bedroom units. This would equate to a requirement for 17.5 spaces which the proposal complies with and exceeds based on the amended plan.

D2. The 22 parking spaces would measure 5m x 2.5m in accordance with the parking standards to ensure that occupants are able to get in and out of an average sized family car and the driveway would be a width of 4m allowing two cars to pass freely.

D3. The Highway Authority has confirmed to Officers since the Development Control Committee of 3<sup>rd</sup> May that the level of parking proposed is acceptable. The Highway Authority has also confirmed that the site would not need to provide visitor parking due to its sustainable urban location and the fact that the dwelling type is apartments (whose occupiers tend to have less vehicles than equivalent house occupiers). Therefore, whilst the Suffolk

Parking Standards can require 0.25 visitor spaces per dwelling to be provided (which would equate to 4 spaces) the Highway Authority has not required this provision in this instance. In any case this has now been provided on the amended site plan. They have re-iterated that the Highway Authority have no objection to the application and confirmed that they would not recommend the proposal for refusal on parking grounds.

D5. The relevant development plan policy is DM46 (Parking Standards) of the Joint Development Management Policies Document 2015 which states that, inter alia, the Authority will seek to reduce overreliance on the car and requires all proposals for redevelopment to provide appropriately designed and sited car and cycle parking. Officers consider that this has been achieved and that a refusal of planning permission on grounds of insufficient parking provision to serve the proposed development could not be sustained at appeal and the Council would not be able to produce evidence to substantiate a reason for refusal on these grounds.

D6. In addition to parking, Members were concerned at the impact of the development on the local highway network. Whilst the proposal would result in an increase in vehicular movements to and from the site, the Highway Authority has raised no objection to the impact of the development in either capacity or safety terms. Due to the scale of development it is not considered necessary for the applicant to submit a Transport Assessment and Officers consider that there is no evidence to suggest that the proposed development, in conjunction with committed development, would result in an adverse impact on the local highway network. The site contains sufficient manoeuvring space for vehicles to enter and exit in a forward gear and the driveway is wide enough for two cars to pass, and this has been clarified on the amended layout plan. Policy DM2 requires development to maintain the safety of the highway network which the application is considered to achieve. Officers consider that refusal of the application on the grounds of an adverse impact on highway infrastructure could not be sustained at appeal and the Council would not be able to produce evidence to substantiate a refusal on these grounds.

D7. In the absence of evidence to substantiate a reason for refusal the Council could be liable to pay costs at an appeal and could adversely impact the reputation of the Council.

D8. Notwithstanding the above, if Members are minded to refuse the application on grounds of parking provision and highway infrastructure it is recommended that the following wording be used:

*"The proposal fails to provide an acceptable level of vehicular parking to cater for the development proposed and would likely lead to the need for future residents and visitors of the site to park within the highway and the proposed increase in dwellings on this site would result in an increase in*

*vehicles using the access and local highway network. The development would therefore have a detrimental impact on the safety and functioning of the local highway network in conflict with policies DM2 and DM46 of the Joint Development Management Policies Document 2015”.*

**Section E - Potential Reasons for Refusal 2 and 3 - Overdevelopment of site and out of character with the area detrimental to the Fordham Road street scene.**

E1. Matters of design and impact upon character are, to a degree, subjective and are to be considered in relation to the specific circumstances of the site and its wider context.

E2. Officers remain of the view that the form, scale, bulk and detailed design of the proposal would be acceptable and in accordance with relevant policies for the reasons set out in paragraphs 32 to 34 of the Officers report attached as Working Paper 1. The application has been subject to extensive negotiations to amend the scheme to ensure that its scale and form is appropriate for the area.

E3. Members are not duty bound to accept Officer advice particularly with respect to matters of design and impact upon character which are, to an extent, subjective. Furthermore, it is unlikely that a decision to refuse planning permission on grounds of poor design or adverse impact upon character would be vulnerable to an award of costs if that concern is genuine and the harm arising from that 'poor design' or 'adverse impact upon character' is properly demonstrated at any subsequent appeal.

E4. Officers however are mindful of the varied character of the area which comprises a wide variety of dwellings types (in terms of form, scale, materials and massing) sited in plots of various sizes which results in a varied street scene with little uniformity. Furthermore, the proposed building would be set behind the existing timber fence and mature landscaping to the front of the site providing screening to the development site.

E5. The proposed building would be of a similar height to the existing building and whilst it would have a greater width and footprint, Officers consider that that the site is large enough to accommodate a building of the scale proposed. Furthermore, whilst the proposed parking, driveway and manoeuvring space would result in the loss of land currently used as garden, this would not be readily perceived from outside of the application site resulting in no adverse impact on the appearance of the area.

E6. Notwithstanding the above, if Members are minded to refuse the application on grounds of overdevelopment and character and appearance of the street scene it is recommended that the following wording is used:

*"The proposed layout is considered to represent an overdevelopment of the application site and the building would not respect the character, scale and massing of the locality, detrimental to the visual amenities of the street scene and resulting in an adverse impact on the character and appearance of the Conservation Area. The proposals therefore fail to comply with policies DM2 and DM17 of the Joint Development Management Policies Document 2015 and CS3 and CS5 of the Forest Heath Core Strategy 2010".*

**Section F - Potential Reasons for Refusal 4 – Adverse impact on residential amenity.**

F1. At the Development Control Committee of 3<sup>rd</sup> May Members were concerned that the development would have an adverse impact on the amenity of adjacent residents. Officers remain of the view however that the development would not have a significant adverse impact on residential amenity sufficient to warrant refusal.

F2. The proposed use of the site for 10 apartments would result in a more intensive use of the site resulting in an increase in vehicular movements and the provision of a driveway and associated parking to the side and rear of the dwelling. It is likely that these vehicular movements would result in an increase in noise to adjacent residential gardens. However, Fordham Road carries a significant level of traffic and the vehicular speeds within the site are likely to be very low resulting in a modest noise impact. Furthermore, the use of a bound surface (as opposed to the existing shingle) would further limit the noise impact of cars using the driveway and parking area and could be secured as part of a hard landscaping scheme required by condition. On their amended site plan the applicant has also included provision for an acoustic fence on the southern boundary of the site and this is considered to further ensure that residential amenity would be safeguarded. Precise details of this acoustic fence could be secured through the suggested hard and soft landscaping condition.

F3. When considering neighbour amenity regard must also be given to the bulk and scale of a building and the potential for it being overbearing or result in overshadowing. Officers accept that the building would be visible from neighbouring properties, most notably the dwellings to the north and south of the site. However, in considering the impact of the proposed building, regard must be had to the impact of the existing building and officers consider that the overall impact above and beyond the existing situation would not be sufficient to warrant refusal.

F4. Members are not duty bound to accept Officer advice particularly with respect to matters of residential amenity which are, to an extent, subjective. Furthermore, it is unlikely that a decision to refuse planning permission on residential amenity grounds would be vulnerable to an award of costs if that

concern is genuine and the harm arising from that impact is properly demonstrated at any subsequent appeal.

F5. Notwithstanding the above, if Members are minded to refuse the application on grounds of residential amenity it is recommended that the following wording is used:

*"The proposed development would be detrimental to the amenity of adjacent residents by virtue of the proposals scale, massing and proximity to site boundaries and would result in a material increase in overlooking of private residential property. Furthermore, the intensification in use of the site would result in a material increase in noise and disturbance for neighbours. The proposal would therefore conflict with policy DM2 of the Joint Development Management Policies Document 2015".*

### **Section G Potential Reasons for Refusal 5 – Impact on trees**

G1. The application has been supported by an Arboricultural Impact Assessment prepared by a suitably qualified professional. This report identifies that the development would require the removal of four trees and one hedge. All 4 trees are classified as C1 which are considered to be "unremarkable tree, limited merit/impaired condition" in accordance with Table 1 of BS 5837:2012. The loss of these trees is therefore not considered to result in a significant adverse impact. However, the applicant has confirmed that they are happy to provide mitigation for the loss of these trees in the form of replacement planting and the site contains ample opportunity to do so. Whilst these details have not been submitted at the time of writing it is understood that this is being prepared and Members will be updated accordingly. Alternatively replacement planting can be secured through the soft landscaping condition proposed by Officers.

G2. To ensure the protection of trees to be retained the application was supported by a Tree Protection Plan. This will need to be updated to reflect the revised footprint following negotiations during the course of the application and the applicant has confirmed that this is currently being prepared. Whilst these details have not been submitted at the time of writing Officers are content that adequate tree protection can be secured to ensure those trees to be retained are adequately protected during the course of construction.

G3. Taking account of the above, officers consider that there are insufficient grounds to refuse the application on loss of trees and that a decision on this basis would be without adequate evidence to defend at appeal. In the absence of evidence to substantiate a reason for refusal the Council could be liable to pay costs at an appeal and could adversely impact the reputation of the Council.



G4. Notwithstanding the above, if Members are minded to refuse the application on grounds of loss of trees it is recommended that the following wording is used:

*"The development would result in the loss of existing landscaping features to the detriment of the character and appearance of the area contrary to policies DM2 and DM13 of the Joint Development Management Policies Document 2015".*

**Section H – Implications of a refusal of planning permission:**

H1. It is likely that should Members subsequently resolve to refuse planning permission the applicants will appeal that decision.

H2. Officers consider that it would be difficult to defend a refusal of planning permission on grounds of car parking provision and impact on highway infrastructure given the scale of development, the level of parking provided in accordance with standards, the location of the application site and the lack of objection from the Highway Authority. Furthermore, Officers consider that it would also be difficult to defend a refusal on the grounds of impacts on trees due to the limited tree removals, the category of trees which are to be removed and the ability to adequately protect trees to be retained.

H3. On the other hand, a case could be made at appeal to defend the potential reason for refusal on overdevelopment of the site; a development out of character with the area and a development which would have an adverse impact on residential amenity but officers consider the case to defend would be weak and probably result in a lost appeal. The application has been subject to extensive negotiations and the applicant has worked closely with Officers to produce a design which Officers consider to be acceptable.

H4. A refusal of planning permission for any development on indefensible and/or unsubstantiated grounds is likely to lead to planning permission being granted at appeal. This outcome could have administrative and financial implications for the Council.

H5. Firstly, the Council's reputation would be adversely affected by its inability to properly defend all its reasons for refusal at appeal.

H6. Secondly, if a Local Planning Authority experiences more than 20% of its major development appeals allowed in any two-year period, it is deemed an under-performing authority and would face Government sanction. This would include introduction of a right for applicants proposing major development to submit planning applications directly to the Planning Inspectorate, effectively taking the decision making power out of the hands of the Local Planning Authority. A lost appeal in this case would contribute to that possibility.

H7. Finally, the applicants would have the right to recover their appeal costs (in full or in part, depending upon the circumstances) from the Council should the Inspector appointed to consider the appeal conclude the Local Planning Authority has acted unreasonably. Advice about what can constitute unreasonable behaviour by a Local Authority at appeal is set out in the National Planning Practice Guidance. Three of the numerous examples cited in the advice are as follows:

*What type of behaviour may give rise to a substantive award against a local planning authority? Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:*

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- failure to produce evidence to substantiate each reason for refusal on appeal.*
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*

H8. In the absence of evidence to substantiate its reasons for refusal Officers consider it would be difficult to defend a potential claim for the partial award of costs at appeal. An award of costs (including partial costs) against the Council would have financial implications for the Council.

## **Section I - Recommendations**

I1 – That, **FULL PLANNING PERMISSION BE GRANTED**, subject to the following conditions:

1. The development hereby permitted shall be begun no later than 3 years from the date of this permission.
2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents:

Amended plans and elevations received 1 April 2017

Amended roof plan received 13 April 2017

Amended site plan received 24 May 2017

Amended Tree Protection plan – date TBC

Location Plan received 28 September 2016

3. Prior to their first use, samples of all external materials to be used in the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be constructed in accordance with the approved details.
4. No development above damp course level shall be constructed until a hard and soft landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The development shall then be constructed in accordance with the approved details.
5. No individual dwelling hereby approved shall be occupied until the optional requirement for water consumption (110 litres use per person per day) in Part G of the Building Regulations has been complied with for that dwelling.
6. No part of the development hereby permitted shall be occupied until the existing vehicular access has been improved, laid out and completed in all respects in accordance with SCC Drawing DM03; and with an entrance width of 4.5 metres. Thereafter the access shall be retained in the specified form.
7. Prior to the development hereby permitted being first occupied, the vehicular access onto the highway shall be properly surfaced with a bound material for a minimum distance of 5 metres from the edge of the metalled carriageway, in accordance with details previously submitted to and approved in writing by the local planning authority.
8. The areas to be provided for storage of Refuse/Recycling bins as shown on drawing number 01.2 rev B shall be provided in its entirety before the development is brought into use and shall be retained thereafter for no other purpose.
9. Gates shall be set back a minimum distance of 5 metres from the edge of the carriageway and shall open only into the site and not over any area of the highway.
10. The use shall not commence until the area(s) within the site shown on drawing no. 01.2 rev B for the purposes of manoeuvring and parking of vehicles and cycle storage has been provided and thereafter that area(s) shall be retained and used for no other purposes.
11. Before the access is first used visibility splays shall be provided as shown on Drawing No. 01.0 Rev A with an X dimension of 2.4 metres and a Y dimension of 80 metres and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high excluding the existing mature trees

within the highway verge of Fordham Road shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

12. The site preparation, demolition and construction works shall be carried out between the hours of 08:00 to 18:00 Mondays to Fridays and between the hours of 08:00 to 13:30 Saturdays and at no time on Sundays or Bank Holidays without the prior written consent of the Local Planning Authority.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online <https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OE7GJ6PDJZ100>