



Appeal Decision

Inquiry held on 9-12 February 2021

Site visit made on 15 March 2021

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2021

Appeal Ref: APP/N2739/W/20/3258833

Land south of Main Street, Church Fenton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to details required by a condition of a planning permission.
 - The appeal is made by Strata Homes against the decision of Selby District Council.
 - The application Ref 2017/0736/REMM, dated 30 June 2017, sought approval of details pursuant to conditions Nos 1 and 2 of planning permission Ref 2015/0615/OUT, granted on 3 December 2015.
 - The application was refused by notice dated 5 March 2020.
 - The approval is for residential development to include access.
 - The details for which approval is sought are: appearance, landscaping, layout and scale.
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Procedural matters

1. Revised plans have been submitted as part of the appeal. These have been the subject of consultation in the area. Although I can understand the confusion of some residents regarding the process of the appeal, I am satisfied that no party would be prejudiced by considering the revised plans.
2. Church Fenton Forward, a Rule 6 Party, raised the question as to whether flood risk was a matter for me at this reserved matters stage. At the time of the grant of outline permission the majority of the site was in Flood Zone 1, but it has since been redesignated as entirely within Flood Zone 2. All parties submitted legal opinions on the matter and the appellant and the Council submitted a Statement of Common Ground on flood risk.
3. During the course of the Inquiry the appellant asked me to rule on the matter, to provide clarity as to the evidence which needed to be submitted. My ruling is appended to this decision, from which it can be seen that I concluded that the question of flood risk was not a matter I could consider at the Inquiry or in my decision.

Decision

4. The appeal is allowed and the reserved matters are approved, namely appearance, landscaping, layout and scale, submitted in pursuance of conditions 1 and 2 attached to planning permission Ref 2015/0615/OUT, granted on 3 December 2015.

Main issues

5. There are two main issues in this case:

- The effect of the proposal on the setting of the Church of St Mary's, 'The Croft', and 'The Old Vicarage', including whether any harm is outweighed by public benefits.
- The effect of the proposal on the character and appearance of the area.

Reasons

The site and surrounding area

6. Church Fenton is a village set in a generally rural area. The site is outside the defined development limits of the settlement and is therefore in the countryside in policy terms.
7. The appeal site comprises around 7.4 hectares of agricultural land on the southeast side of the Church Fenton¹. To the north and west of the site are the rear of dwellings fronting Main Street and Church Street, whilst to the east and south are open agricultural fields. The site is not in an area designated for landscape or wildlife purposes.
8. There are three Listed Buildings in the immediate vicinity: the Grade I Listed Church of St Mary's, the Grade II dwelling known as 'The Croft' (both fronting Church Street), and the Grade II dwelling known as 'The Old Vicarage' (fronting Main Street). A further property, 'Ingledene' (Grade II) lies further from the site on the north side of Main Street, and the Council and the appellant assess the effect on the setting of this property as negligible². I do not consider the appeal site to be within the setting of this property and I will not refer to it again.
9. There are a number of footpaths across and adjacent to the site. One effectively cuts the site in half as it runs east-west -east across the centre of the site, beginning in the churchyard. There are also other routes from the church to a frontage gap on Main Street by the village hall, and another from the church to Main Street at the Old Vicarage.

Planning history and the current proposal

10. On 3 December 2015 outline planning permission was granted for residential development, including access, on the site. The outline planning permission did not include a parameters plan nor did it include reference to the number of units approved. The outline permission was subject to a number of conditions and a s106 agreement. This covered affordable housing (at 40% unless otherwise justified and agreed), contributions to waste and recycling, and obligations regarding open space.
11. Various apparent inconsistencies on the outline permission were the subject of subsequent changes. Two non-material amendments were made to the 2015 permission. These clarified that the outline permission included the access to the site (previously identified as a reserved matter in error) and that the

¹ Description of the site boundary at Statement of Common Ground (SOCG) 1.2

² Ingledene was not considered relevant in the Heritage Statement submitted with the outline application, but was assessed as part of the reserved matters application.

Indicative Layout Plan should not be included as one of the approved plans at outline stage.

12. In 2016 a Deed of Variation to the original s106 agreement, relating to the definition of the proposal to exclude reference to the number of dwellings, was executed.
13. As a separate matter a further planning application was lodged with the Council showing an alternative access from Main Street into the appeal site (the access approved at outline stage was from Church Street). This application was withdrawn and is not before me.
14. A further variation to the original s106 obligation, dealing with open space and affordable housing, was submitted as part of the appeal process. I have considered this matter below.
15. With this background history it is important to understand what has been approved at the outline stage, and therefore what is under consideration in this appeal. The outline planning permission (as amended) included access and established the principle of residential development on the site. These matters were conclusively decided at the outline stage and matters relating to that permission are not for reconsideration in this appeal. The appeal only relates to appearance, landscaping, layout and scale pursuant to the outline permission.
16. I emphasise this as some residents have expressed the view that the outline permission should not have been granted and/or that matters have changed since that time which mean that it should be reconsidered. That is not something I can lawfully address.
17. It is additionally important to understand what was being considered by the authority at the time of the grant of the outline permission. The illustrative elements of the proposal had been the subject of discussions and revisions before the decision was taken, and it is clear that development of only the northern part of the site was being considered, and that a scheme of 50 houses was contemplated. This is made clear in the officer's report on the current scheme, which states that "...it was established under the outline planning permission that only the area of development in the northern part of the site would be acceptable. An indicative layout was negotiated which provided for 50 houses and was superseded from the original indicative scheme. Although the outline permission granted did not specify the housing numbers nor did it include a parameters plan³.

Planning policy context

18. The development plan comprises the Selby District Core Strategy Local Plan (2013) (CS) and the remaining policies (saved by the Secretary of State and not superseded by the CS) of the Selby District Local Plan (2005) (LP).
19. In relation to the heritage issue, the reason for refusal refers to CS policies SP18 and SP19. These deal with achieving a good quality of development in relation to the conservation of historic assets and high quality design, having regard to local character and historic townscapes. The character and

³ Officer's report para 4.4

appearance reason for refusal also references CS policy SP19, along with LP policy ENV1.

20. A list of other relevant LP and CS policies are included in the Statement of Common Ground (SOCG)⁴. The Council is in the early stages of preparing a new Local Plan. However given its very early stage the parties agree that no weight can be accorded to it⁵. I have no reason to disagree.
21. The Church Fenton Village Design Statement (2012) is a Supplementary Planning Document, and was the subject of consultation and adoption by the Council. It is a material consideration in this appeal.
22. The Church Fenton Neighbourhood Development Plan is being prepared, and consultation finished on the last day of the Inquiry. It has obviously yet to be formally examined and I agree with the parties that it can be accorded only very limited weight⁶.

The effect of the proposal on heritage assets – background

23. I have already identified the three heritage assets whose settings may be affected by the current proposal. The statutory duty is found at Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that special regard is paid to the desirability of preserving the buildings or their settings or any features of special architectural or historic interest which they possess. In addition paragraph 193 of the National Planning Policy Framework (the Framework) gives great weight to the conservation of heritage assets. Paragraph 196 provides that, where development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against public benefits.
24. Significance is defined in the Glossary to the Framework and includes not only the asset's physical presence but also its setting. This is the issue in relation to all the assets in this case, and can include land which has a visual, functional and/or historic relationship with the building itself.
25. The Council's reason for refusal refers specifically to the design details of this reserved matters proposal, and identifies a number of aspects which, it states, would be harmful to the setting of the Church of St Mary and other unspecified (at that stage) listed buildings. It also refers to the diminution of the established historic links between them. The wording of this reason for refusal, and the Council's stance on appeal, acknowledges the existence of the outline permission and focusses on the submitted details. I have taken the same approach.

Heritage asset – the Church of St Mary's

26. The church dates mainly from the 13th century with additions in the 14/15th century including a large tower - and Victorian restorations. The listing description illustrates the very significant amount of historic and architectural detailing within the church. As a focal point of the village it provides a tangible link with the history of the area. The churchyard, which includes a number of

⁴ Paras 4.4 - 4.5

⁵ SOCG 4.7 - 4.9

⁶ SOCG 4.11 - 4.13

mature trees, is relatively small. It is a tranquil space in which one can appreciate the building and its rural environs.

27. While views over the appeal site are limited by intervening trees, hedges and vegetation there is no doubt in my mind that the appeal site is within the setting of the Church and contributes to understanding its significance in the village and the surrounding countryside. Particularly from the east there are views of the tower and chancel and the views towards and from the church in this direction give an appreciation of the architectural and historic significance of the church in its semi-rural setting. The location of the church at the edge of the settlement also clearly illustrates its role in relation to the settlement and the surrounding rural area.
28. The church also makes a contribution to understanding the significance of the other assets under consideration in this appeal. I will return to that matter particularly when dealing with the Old Vicarage.
29. The erection of housing in the northern part of the appeal site would clearly change this part of the setting of the church from undeveloped rural land to a housing development. This was clearly contemplated by the Council at the time of the grant of the outline permission. However a combination of the detailing of the layout (to which I return below) and the location of the housing well to the north of the church and the footpath limits the effect of the proposal.
30. In coming to that view, I am also conscious that the southern extent of the proposed housing is shown as pulled back further to the north away from the church and the east-west footpath in comparison with the indicative layout considered by the Council at the outline stage. Insofar as the indicative layout was in the Council's mind when outline permission was granted, this lessens the effect on the church and its setting.
31. The Council criticises the layout of the scheme in heritage terms as the proposal now features the main elevations of houses facing south, in the general direction of the church. This is criticised as it did not feature in the indicative outline plans. However, rather than being a negative feature, I consider it would present a more clearly defined urban edge towards the church and open countryside and would not be incongruous. Admittedly this would contrast with the more distant views currently experienced of the rather cluttered rear elevations of properties in Main Street and Lockton Court but if the appeal site is to be developed for housing, the proposed layout is preferable.
32. Turning to the southern part of the appeal site, largely south of the east-west footpath, the proposed roadway leading from the approved access point to the housing site to the north would inevitably have a somewhat urbanising effect on the currently open land at the rear of the church. That said the appreciation of the church from the south and southeast would be maintained and the principle of this route was implicitly approved by the outline permission. Additionally the current scheme downgrades the route to a more winding private lane and footpath to better conserve the rural setting of the church.
33. In coming to my conclusion on the effect on the setting of the church, I am conscious that Historic England, whose main concern was the relationship of the church with the fields to the south and east, has withdrawn its objection to

the scheme and made suggestions as to amendments which would reduce the level of harm. These suggestions have apparently been incorporated in the current proposal.

34. Although, as set out above, the principle of development on the northern part of the appeal site has already been established by the outline permission, the replacement of open fields by built development would cause less than substantial harm (in the terminology of the Framework). This would be well towards the low end of the scale of such harm.

Heritage asset – 'The Croft'

35. The Croft appears to date from the 16th century or earlier with later additions especially at the rear. It is a timber framed dwelling apparently with significant internal timber detailing. The significance of the building arises from its age, plan form and fabric, together with potential archaeological interest.
36. The setting of The Croft is largely confined to its substantial garden, but it can be appreciated to a limited degree from the appeal site through the intervening vegetation. It is of note that the Heritage Impact Assessment which was submitted with the appeal scheme stated that the property was in a well treed site and was not visible from the appeal site. This is an overstatement as although the main elevations of The Croft face away from the appeal site the low status rear face is visible to a limited degree from the appeal site. However, while both this document and the Council's Conservation Officer concluded that the setting of The Croft did not include the appeal site, I consider the site forms part of the setting of the asset and contributes to an extent to an understanding of the significance of the building at the edge of the settlement.
37. Part of the area at the rear of The Croft would be occupied by a loose-knit development of detached dwellings, adjacent to which would be an area of green space. It is of note that this detailed layout would pull the built development further from The Croft than was shown on the indicative layout seen by the Council at the outline stage.
38. However overall the proposal would diminish the significance of the asset to a very limited degree and would cause less than substantial harm. This would be at the lowest end of the scale of such harm.

Heritage asset – 'The Old Vicarage'

39. The Old Vicarage appears to date from the 14th century, with later additions and remodelling in the 1980s. It has an un-aisled plan form with a later cross wing although there is a suggestion that there may have been some internal remodelling. Externally there have been various extensions to the building, including the use of overtly modern roof covering, altered external finishes and a garage.
40. The architectural interest has been eroded by recent works and its legibility in relation to the church is considerably diminished. Nevertheless the setting of this heritage asset including the appeal site is of some limited significance, as the building can be appreciated in a semi-rural context.
41. Obviously developing the currently open field at the rear of the Old Vicarage, as was shown in the indicative plans at the outline stage, would affect the

appreciation of the asset. The detailed design of the appeal scheme in this area seeks to minimise consequences by design features including low level lighting and hedgerows which would reduce the urbanising effect.

42. The historic association with the church along the linking footpath is of some importance. The suggestion from the appellant was that this footpath is 'defunct'. Certainly it is not anything like as well used as the main east-west footpath across the appeal site, but I found it without difficulty on my visit. At present it is only possible to obtain a very limited view of the church/churchyard and the Old Vicarage together, and this would not be changed by the proposal. It is unlikely that many people using the footpath would be aware of the historic association, especially given the alterations which have taken place at the Old Vicarage. In any case the proposal would strengthen the line of the footpath to the church to reinforce this historic connection.
43. However overall the proposal would diminish the significance of the asset to only a very limited extent and would therefore cause less than substantial harm. This would be at the lowest end of the scale of such harm.

Other heritage matter and conclusion

44. The Council noted that the only detailed Heritage Statement⁷ submitted by the appellant assessed the effect of a much larger scheme, as did the heritage section of the planning statement supporting the outline application. However this point does not go anywhere as I have ample heritage evidence from all parties to assess the current proposal.
45. Any harm to heritage assets should be given great weight but, as advised in Planning Practice Guidance, the extent of the harm may vary and should be clearly articulated so as to assist in the heritage balance.
46. Church Fenton Forward's position is that the proposal would cause substantial harm. However substantial harm is a high test which will not arise in many cases. The current proposal comes nowhere near having an adverse impact on any key element of the special architectural or historic interest of any of the assets.
47. The Council accepts that the harm would be less than substantial, in the language of the Framework, but considers that this would be at the upper end of the scale. Even leaving aside the effect of the outline permission and the indicative details, this is appreciably higher than my assessment. For the reasons set out above, I assess this harm to be towards the lower end of the spectrum, but I nonetheless give it great weight. The proposal would conflict with CS policies SP18 and SP19. I shall weigh this against the public benefits later in this decision.

The effect on the character and appearance of the area

48. The initial point which needs to be repeated is that this as an appeal related to the approval of details pursuant to an outline permission. The change in character of the site from open fields to a built residential development has been approved in principle and is not before me. Although the number and disposition of houses, the road layout and the scale and detailing were not

⁷ CD 7.3

fixed at the outline stage, the Council (as set out above) had a very clear idea of the type of development which was likely to arise from the grant of outline permission.

49. For that reason, a number of matters which have been raised under the heading of character and appearance, such as poor connectivity with the settlement, were essentially fixed at the outline stage. The access point was approved and there was no doubt that the built development would be in the northern part of the site as it is in the scheme before me.
50. The reason for refusal raises a number of issues. These include in particular the lack of integration with the characteristics of the area, and the suggestion that the layout is dictated by roads and parking. I will deal with these and other matters raised by the Council and local residents in turn.

Character and appearance – overall design approach

51. Before addressing the way in which the proposal fits in with the character of the settlement, it is necessary to consider the defining characteristics of the village. Church Fenton includes a number of undoubtedly attractive buildings including, but not limited to, the heritage assets considered above. But overall the character of the village is very mixed and has been affected to a significant extent by some large infill developments of variable townscape quality. Overall, the character of the settlement is of a very loose arrangement of properties largely facing Main Street and Church Lane. With this background it is perhaps unsurprising that the village does not include a Conservation Area at its heart. The Church Fenton Village Design Statement includes a broadly similar assessment, and notes that one key characteristic of the village is a mix of houses with little or no repetition.
52. The appellant could have either adopted a wholly modern design concept as a stand-alone development or a more traditional approach reflecting the characteristics of the settlement. The latter approach has been followed.
53. One criticism of the proposed details by the Council and Church Fenton Forward is that the appellant has used standard house designs which could be employed in any location across the country. I do not agree with this assertion. I understand that in the early stages of discussions with Council officers the appellant's standard house types were intended to be used, but the scheme's architect clearly demonstrated in evidence that this was no longer the case and that the individual properties now incorporate some 30+ designs.
54. The variety of house types, with short rows of terraced properties, detached and semi-detached properties reflects the mix of the settlement. Given the very varied character of the village, this is entirely appropriate. The architect's evidence sought to explain how individual house designs have been influenced by particular features of properties in the village. I have to say that this approach has not been entirely successful with a rather tokenistic nod in some cases towards individual features. However, this criticism falls far short of a reason for dismissing the appeal and the Council's position is unhelpful - on the one hand criticising a standardised approach whilst also objecting to the number of different designs.

55. Overall, I consider that the design approach provides a cohesive streetscape, with a variety reasonably reflecting some key features of the better buildings in the settlement.

Character and appearance – road layout

56. The generally outward facing dwellings, especially along the southern edge of the development toward the open part of the site and the countryside beyond gives a clearly defined transition towards the open space. It would make for a clear delineation between the built form and the open land.
57. Although this was an approach discussed with and supported by Council officers, the authority now maintains that the roads dominate the layout. However if the approach were reversed, and the rear of houses faced outwards, this would lead to a ragged and less coherent appearance facing the open space and agricultural land beyond. The proposed layout is also softened by the use of shared drives in the most sensitive southern part of the development. Additionally the use of parking courts in some areas would assist in reducing the effect of frontage parking in the layout

Character and appearance - focal and corner points

58. One criticism of the scheme is that the comparatively homogeneous scale of the proposed dwellings would not sufficiently emphasise corners and focal points within the development. However, accepting the overall lack of significant variation in height, the scheme does deal specifically with nodal and corner points.
59. There was some suggestion that more overtly dual elevation buildings should be incorporated into the design on corners. However I am unconvinced by the rationale for this, as the treatment of nodal points in the scheme is entirely appropriate to the concept of the development. In addition my attention was not drawn to comparable examples of dual elevation buildings on corners in the village.

Character and appearance - overdevelopment

60. The layout is alleged to be overcrowded and cramped, and not reflecting the characteristics of the village. However I saw a number of instances in the village of development not fronting directly onto the highway and there is no reason to consider that the proposed layout would be out of keeping with the generally varied layout of the village.
61. The authority, in support of its position on overdevelopment, stated that the proposed front to front distances failed to meet the requirements of the Urban Design Compendium (it being agreed that there was no development plan policy on this matter). However, during the discussion my attention was not drawn to any such guidance and, in any event, I do not consider that such an overtly mechanistic approach is justified. In the specific context of this scheme, I consider that the proposed layout achieves satisfactory spacing between buildings in visual and privacy terms.

Character and appearance – other matter and conclusion

62. In a similar criticism to that raised in relation to heritage matters, the Council has criticised the appellant's Design and Access Statement on the basis that it

does not explain the iterative process which has led to the current scheme. I understand the point but the Design and Access Statement was produced at a particular moment in time, and I have ample evidence from the appellant to explain the subsequent process.

63. Overall, I conclude the proposal would not harm the character and appearance of the area. It would not conflict with LP policy ENV1 or CS policy SP19.

Conditions and planning obligation

64. As this is a reserved matters appeal the relevant conditions imposed at the outline stage remain applicable. I have considered the additional conditions put forward, without prejudice, by the parties. These were discussed at the Inquiry and broadly agreed. I have made minor amendments to the conditions in line with guidance and for clarity. The reasons for the conditions are set out after each one.
65. The proposal is accompanied by a planning agreement under s106 of the 1990 Act, which amends two matters from the original agreement which dates from the time of the outline permission. Firstly, and uncontentiously, there is an increase in the extent of the public open space as compared with what was originally envisaged.
66. The second matter relates to the level of affordable housing to be provided. This was originally intended to be 40%, but is now reduced to 5 dwellings (10%). This reduction has been brought about by viability considerations, which have been assessed by the District Valuer and accepted by the Council. The policy requirement (CS policy SP9) is up to a maximum of 40% (my underlining). I appreciate that local residents have expressed concern at this reduction but given the agreement of the parties and the absence of any evidence that a greater percentage would be possible, I consider this provision to be policy compliant.
67. The evidence demonstrates that the obligations are directly related to the proposed development and are necessary to make the scheme acceptable in planning terms. Therefore I consider that the obligations meet the policy in paragraph 56 of the National Planning Policy Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have therefore taken them into account.

Planning balance and conclusion

68. I have found that the details cause no harm to the character and appearance of the area. However there would be less than substantial heritage harm, in the language of the Framework, but that this harm is towards the lower end of the spectrum. I shall weigh this harm, which I give great weight, against the public benefits.
69. The Council acknowledge two particular benefits arising from the proposal. Firstly the provision of market housing – although the authority gives this reduced weight as a five year housing land supply exists. I accept that there is a five year supply, but this is not a cap and in the light of national policy to significantly boost the supply of homes I give this matter significant weight. Secondly the provision of affordable housing – to which I also ascribe significant weight. In this case I appreciate the Council's point that the quantum of affordable housing has been reduced (for reasons which the

authority accepts) but this nevertheless remains a benefit arising from the proposal.

70. There are two additional benefits arising from the scheme. Firstly the economic benefits in the short term arising from construction jobs and in the longer term stemming from continuing occupation. I give this limited weight though there is a danger of double counting as this may well have been taken into account at the outline stage. Secondly the provision of recreational open space for use by existing and future residents, which stems directly from the proposed details before me and to which I attach some weight.
71. Overall, these cumulative benefits clearly outweigh the heritage harm. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

Land south of Main Street, Church Fenton Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following plans/drawings: SK/01/03; DWP/SK/01/01; DWP-18-CF-BH-01 K; DWP-18-CF-BH-AH-01 J; DWP-18-CF-LD-AR-01 L; DWP-18-CF-BH-EM-01 J; DWP-18-CF-BH-MA-01 J; DWP-18-CF-BH-MAT- 01 J; DWP-18-CF-BH-SS-01 F; DWP/1987/11 L; DWP/1987/12 D; DWP-18-CF-HT-01 B; DWP-18-CF-HT-02 B; DWP-18-CF-HT-03 B; DWP-18-CF-HT-04 B; DWP-18-CF-HT-05 B; DWP-18-CF-HT-06 B; DWP-18-CF-HT-07 B; DWP-18-CF-HT-08 B; DWP-18-CF-HT-09 B; DWP-18-CF-HT-10 B; DWP-18-CF-HT-11 B; DWP-18-CF-HT-12 B; DWP-18-CF-HT-13 B; DWP-18-CF-HT-14 B; DWP-18-CF-HT-15 B; DWP-18-CF-HT-16 B; DWP-18-CF-HT-17 B; DWP-18-CF-HT-18 B; DWP-18-CF-HT-19 B; DWP-18-CF-HT-20 B; DWP-18-CF-HT-21 B; DWP-18-CF-HT-22 B; DWP-18-CF-HT-23 B; DWP-18-CF-HT-24 B; DWP-18-CF-HT-25 B; DWP-18-CF-HT-26 B; DWP-18-CF-HT-27 B; DWP-18-CF-HT-28 B; DWP18CFG1 A; DWP18CFG2 A; DWP18CFG3 A; SD10.EX.110; GTC-E-SS-0012_R1-7.

Reason – for the avoidance of doubt.

2. Notwithstanding the Materials Plan, no development above foundation level shall commence until details of the materials to be used in the construction of the exterior walls, window materials and roofs of the development have been submitted to and approved in writing by the Local planning authority, and only the approved materials shall be used.

Reason – in the interests of visual amenity.

3. Notwithstanding the Landscape Master Plan (R/1987/11\L), Landscape Details, (R/1987/12D,) and the Areas Plan (REF- 18-CF-LD-AR01 Revision L), no development shall commence until a full detailed landscaping scheme and tree and shrub planting scheme for all the Public Open Space areas as indicated on the Areas Plan, has been submitted, together with a Phasing Plan for the implementation of both the landscaping scheme within the housing development area and the Public Open Space Areas has been submitted to and agreed in writing with the Local planning authority. The scheme shall include:

- Identification of all existing trees and shrubs on site to be retained setting out measures for their protection throughout the course of development.
- Details of the species, location, planting density and stock size in respect of all tree and shrub planting.
- Details of replacement hedge planting at the main access to Church Lane.
- Details of the surface materials of the footpaths.
- Details of the benches and bins and any other street furniture.
- Details of the Suds drainage basin area (including cross sections) which should provide for a basin that can be integrated into an area of public open space without the need for fencing to ensure safety.

- Details of stockproof fencing where the site adjoins open fields to the east.
- Details of the measures for the management and maintenance of the approved landscaping.
- Details of the proposed open space land management regime.

All planting, seeding, or turfing shall be carried out in the first planting and seeding seasons following the first occupation of the buildings or the substantial completion of the development, whichever is the sooner. Any trees or shrubs which die, are removed, or become seriously damaged or diseased within the first five years following completion of the development shall be replaced in the next planting season with others of similar size and species.

Reason – in the interests of the overall appearance of the development.

4. The site layout shall incorporate the following measures;
 - All access roads shall be constructed with speed humps or raised tables the details of which will have received the prior written approval of the Local planning authority.
 - Plots with integral garages shall be set back to ensure a minimum of 6 metres drive length between the back of the footway and the garage door.
 - All boundary details should not be greater than 600mm above road level for a distance of 2 metres back from the rear of the footway.
 - Trees should not be planted within 1.5m of any footway and 2.5 metres of any road.

Reason – to ensure highway safety.

5. The development shall take place in full accordance with the recommendations and measures advised in sections 1.4, 1.5 and 1.6 of the Geo-environmental Appraisal by Lithos dated June 2017.

Reason – to minimise the risk of harm to health, property and infrastructure.

6. The area to the south and east of the access road shown on the Areas Plan Referenced DWP-18-CF-LD-AR-01 Revision L, described as “Existing arable land to be retained and managed by the current landowner” and shown hatched by brown diagonal lines, shall be used only for agricultural purposes only.

Reason - in the interests of the character and appearance of the area and so as to maintain the setting of the church.

7. Notwithstanding the submitted layout plan, prior to commencement of development details of the following shall be submitted to and approved in writing by the Local planning authority:
 - Details of the boundary treatment to plot 16 to include supplementary planting on the outside of the boundary fencing shared with the open space.

- Details of the boundary treatment to clearly demarcate the boundaries between Plots 18 & 19, 21 & 22, 32 & 33, 37 & 38, 38 & 39 and 49 & 50.
- Details of a non-destructive climbing plant to the gable ends of Plots 41 and 42.
- Details of the boundary treatment to plots 27, 28, 35, 44 and 45 shall include the erection of a 1.8m high visually permeable gate with a key operated lock fitted.

The development shall be carried out in accordance with the approved details and retained as approved.

Reason – in the interests of the appearance of the development and the surrounding area and in the interests of highway safety.

8. Notwithstanding the details shown on layout plan DWP-18-CF-BH-01/Rev L, no development shall commence until full details of the emergency access of 3.7m width have been submitted to and approved in writing by the local planning authority. The details shall include the means of preventing access for vehicles other than emergency vehicles. The development shall be carried out only in accordance with the approved details. The approved emergency access shall be used only for emergency vehicles and shall be kept closed and locked at all other times.

Reason – so as to prevent use by other vehicles in accordance with the submitted proposal.

9. No development shall commence until a Construction Management Plan for that phase has been submitted to and approved in writing by the Local planning authority. Construction of the development must be undertaken in accordance with the approved Construction Management Plan. The Plan shall address the following:

- Measures to protect the existing hedging and trees on the site.
- Details of any temporary construction access to the site including measures for its removal following completion of construction works.
- Restriction on the use of Main Street, Church Fenton for access for construction purposes.
- Wheel and chassis underside washing facilities on site to ensure that mud and debris is not spread onto the public highway.
- Arrangements for the parking of contractors' operatives and visitors' vehicles (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction).
- Areas for storage of plant and materials used in constructing the development clear of the highway.
- Measures to manage the delivery of materials and plant to the site including timing of deliveries and loading and unloading areas and arrangements to receive abnormal loads or unusually large vehicles.
- Measures to protect vulnerable road users (cyclists and pedestrians).
- Measures to protect users of the public rights of way.
- Protection of carriageway and footway users at all times during demolition and construction.

- Protection of contractors working adjacent to the highway.
- Details of site working hours.
- Erection and maintenance of hoardings including any decorative displays, security fencing and scaffolding on/over the footway & carriageway and facilities for public viewing where appropriate.
- Means of minimising dust emissions arising from construction activities on the site, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.
- Measures to control and monitor construction noise.
- Arrangements to prevent burning of materials on site at any time during construction.
- Removal of materials from the site including a scheme for recycling/disposing of waste resulting from construction works.
- Details of external lighting equipment.
- A detailed method statement and programme for the building works; and contact details for the responsible person (site manager/office) who can be contacted in the event of any issue and a 24 hour emergency contact number.

Reason – to protect the amenity and safety of local residents

-----End of conditions-----

APPEARANCES

FOR THE APPELLANT:	
David Hardy LL.B (Hons) BCL (Hons) Oxon	Partner, Squire Patten Boggs LLP
He called:	
Beth Davies BA(Hons) PGDipLA MA Urban Environmental Design	Heritage Consultant and Director of 1Voyage
John Flynn BA(Hons) DipLA MA Urban Environmental Design	Principal Urban Designer, Dryden Wilkinson Partnership
Claire Richards MA MRTPI	Principal Planning Consultant, AAH Planning Consultants

FOR THE LOCAL PLANNING AUTHORITY:	
Jonathan Easton of Counsel, instructed by the Solicitor to the Council	
Clare-Louise Booth Dip TP MA MRTPI IHBC	Heritage Consultant, ELG Planning
Neil Turner BA(Hons) BArch (Hons) MAPM CDA CA	Director, Howarth Lichfield
Jamie Reed BA(Hons) DipTP MRTPI	Principal planner, ELG

CHURCH FENTON FORWARD (CFF):	
Joseph Miller	Chair of CFF and member of Neighbourhood Development Plan Working Group
Sarah Chester	Parish Councillor and member of Neighbourhood Development Plan Working Group
Nina Wrightson OBE	Local resident
Christa Lovisetto	Local resident
Rebecca Thompson	Local resident
Rebecca Hunt	Local resident

INQUIRY DOCUMENTS

Doc 1	Appellant's opening statement
Doc 2	Council's opening statement
Doc 3	Church Fenton Forward opening statement
Doc 4	Overlay plan of indicative plan and current proposal, including access route
Doc 4	CFF email and attachments related to flooding (9 February 2021)
Doc 5	CFF email 9 February enclosing covenants on boundary treatments
Doc 6	CFF email 9 February 2021 giving Council decision references
Doc 7	SV viewpoints agreed by three parties (9 February 2021)
Doc 8	CIL Compliance Statement (8 February 2021)

Doc 9	Submission by the appellant (10 February 2021) on flood risk issue
Doc 10	Submission by the Council (10 February 2021) on flood risk issue
Doc 11	CFF Statement of Clarification (11 February 2021)
Doc 12	Closing submissions by Church Fenton Forward
Doc 13	Closing submissions by the Council
Doc 14	Closing submissions by the appellant
Doc 15	Deed of variation S106A (19 February 2021)

CORE DOCUMENTS

Adopted development plan and emerging development plan	
CD 1.1	Selby District Core Strategy Local Plan October 2013 (relevant extracts only)
CD 1.2	Selby District Local Plan 2005 (Part 1) (relevant extracts only)
CD 1.3	Church Fenton Neighbourhood Development Plan Dated • 2020 • SUBMISSION DRAFT (Church Fenton Parish Council)
Planning policy and guidance	
CD 2.1	National Planning Policy Framework (February 2019)
CD 2.2	Church Fenton Village Design Statement Adopted February 2012
CD 2.3	Government Guidance on Historic Environment (July 2019)
CD 2.4	Planning for the Future: White Paper (MHCLG, August 2020) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907647/MHCLG-Planning-Consultation.pdf
Heritage	
CD 3.1	Historic England's Guidance 'Conservation Principles' 2008
CD 3.2	Historic England's Guidance 'The Setting of Heritage Assets-Historic Environment Good Practice Advice in Planning, Note 3' 2017
CD 3.3	Court Judgement (18 th July 2018)
Design	
CD 4.1	National Design Guide (October 2019, MHCLG) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843468/National_Design_Guide.pdf
CD 4.2	Building For Life 12 (January 2015, Design Council) https://www.designcouncil.org.uk/sites/default/files/asset/document/Building%20for%20Life%202012_0.pdf
CD 4.3	Living with Beauty: Promoting health, well-being and sustainable growth (BBBCC, January 2020) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/861832/Living_with_beauty_BBBCC_report.pdf

CD 4.4	Delivering design value: The housing design quality conundrum (CaCHE, December 2020) https://housingevidence.ac.uk/wp-content/uploads/2020/12/12506_CaCHE_Delivering_Design_Main_Report_IA-1.pdf
Legislation and caselaw	
CD 5.1	Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990
CD 5.2	Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990
CD 5.3	Catesby Estates Ltd v Steer [2018] EWCA Civ 1697
CD 5.4	Barnwell Manor v East Northamptonshire and Others [2014] EWCA Civ 137
CD5.5	Forge Field Society and Others, Regina (on the application of) v Sevenoaks District Council [2014] EWHC 1895 (Admin)
Application documents and plans 2015/0615/OUT	
CD 6.1	Indicative Layout Plan (May 2015, Dryden Wilkinson Partnership)
CD 6.2	Officer Report to Committee Report (23 rd November 2015)
CD 6.3	Planning Supporting Statement including Design and Access Statement (June 2015, AAH Planning Consultants Ltd)
CD 6.4	Heritage Assessment
CD 6.5	Ecology Statement (June 2015, Christopher Shaw Brooks Ecological)
CD 6.6	Flood Risk Assessment (June 2015, AAH Planning Consultants Ltd)
CD 6.7	Transport Assessment (June 2015, HY Consulting)
CD 6.8	Section 106 (3 rd December 2015)
CD 6.9	Section 106 Deed of Variation (19 th September 2016)
Application documents and plans 2017/0736/REMM (electronic only)	
CD 7.1	Application Form (30 th June 2017)
CD 7.2	Planning Statement (June 2017, DPP Planning)
CD 7.3	Heritage Impact Assessment (May 2017, Dave Pinnock On Site Archaeology Ltd)
CD 7.4	Geoenvironmental Appraisal. (June 2017, Lithos Consulting Ltd)
CD 7.5	Drainage Statement (12 th May 2017, Martin Huddleston, Haigh Huddleston & Associates)
CD 7.6	Design and Access Statement (June 2017, Ian Corner, Strata Homes Ltd)

CD 7.7	Community Involvement Statement (May 2017, DPP Planning)
CD 7.8	Refused Layout (Strata Homes Ltd)
CD 7.9	Refused House Type Pack
CD 7.10	Officer Report to Planning Committee (4 th March 2020)
Appeal documents	
CD 8.1	Appellant's Statement of Case (September 2020, AAH Planning Consultants Ltd)
CD 8.2	Council's Statement of Case (November 2020)
CD 8.3	Inspector's Note from Case Management Conference
CD 8.4	Inspector's Supplementary Note from Case Management Conference
CD 8.5	Appeal Revised Drawings:
	Location Plan (18 th April 2016, Strata Homes Ltd)
	Topographical Survey (18 th April 2016, Strata Homes Ltd)
	Planning Layout (8 th July 2020, Dryden Wilkinson Partnership Ltd)
	Affordable Housing Plan (8 th July 2020, Dryden Wilkinson Partnership Ltd)
	Areas Plan (8 th July 2020, Dryden Wilkinson Partnership Ltd)
	Emergency Access Plan (8 th July 2020, Dryden Wilkinson Partnership Ltd)
	Massing Plan (8 th July 2020, Dryden Wilkinson Partnership Ltd)
	Materials Plan (8 th July 2020, Dryden Wilkinson Partnership Ltd)
	Street Scenes (8 th July 2020, Dryden Wilkinson Partnership Ltd)
	Landscape Masterplan (8 th July 2020, Dryden Wilkinson Partnership Ltd)
	Landscape shrub beds (8 th July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 1 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 2, 3 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 4 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 5 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 6, 7, 12, 13, 49, 50 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 8 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 9 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 10 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 11, 42 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 14, 15 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 16 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 17 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 18, 21, 40 (July 2020, Dryden Wilkinson Partnership Ltd)

	House Type 19, 43 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 20 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 22 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 23, 47, 48 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 24 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 25 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 26, 27, 28, 29 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 30 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 31 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 32, 38 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 33, 39 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 34, 35, 36 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 37 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 41 (July 2020, Dryden Wilkinson Partnership Ltd)
	House Type 44, 45, 46 (July 2020, Dryden Wilkinson Partnership Ltd)
	Garage type G1 (July 2020, Dryden Wilkinson Partnership Ltd)
	Garage type G2 (July 2020, Dryden Wilkinson Partnership Ltd)
	Garage type G3 (July 2020, Dryden Wilkinson Partnership Ltd)
	Post and wire fence details
	Double boarded Fencing (October 2017, Strata Homes Ltd)
	Substation Drawing (29 th March 2012, The Electricity Network Co.)
CD 8.6	Statement of Common Ground

APPEAL REF: APP/N2739/W/20/3258833
Land south of Main Street, Church Fenton
Ruling related to flood risk – as read at Inquiry 11/2/21

This relates to a request for a ruling by the appellant as to whether flooding and flood risk is a matter before me in this appeal and at this Inquiry. For the avoidance of subsequent doubt this request was made before the Inquiry received a document today from Church Fenton Forward (CFF) entitled 'Statement of Clarification', in which their position changed. The request for a ruling was maintained.

The background is that outline conditional planning permission was granted by Selby District Council on 3 December 2015. The description of the development read "outline application to include access for a residential development on land to the south of Main Street, Church Fenton".

There were subsequently two non-material amendments, approved by the Council in February 2016 and May 2016. These dealt with inconsistencies/errors in the outline permission and their effect was the removal of access as a reserved matter from the original permission and the removal of all but a redline plan from the permission.

The planning permission was therefore in outline with the access point shown.

An application dated 30 June 2017 (within the required timescale) was submitted to the Council for approval of appearance, landscaping, layout and scale. This was refused by notice in March 2020. It is this decision which is the subject of the appeal before me.

Condition 22 of the outline permission stated

"All dwellings shall be located in flood zone 1 as stated in paragraph 1.3 of the FRA introduction."

The Environment Agency subsequently updated its flood risk maps so that the entire appeal site is now located in Flood Zone 2 – previously the majority of the land was in FZ1.

During the period leading up to this Inquiry and this morning I received opinions from Mr Easton and Mr Henderson for the authority, Mr Cannock, Mr Hardy and a letter from Walker Morris LLP for the appellant, and Mr Fraser-Urquhart for CFF. I read these opinions when they were submitted and read them again this morning (along with further material from Mr Easton and Mr Hardy this morning - including case references.) I was also advised at the Inquiry yesterday that CFF had received further verbal advice last week from Mr Tabachnik related to the second matter I will deal with below. The gist of this verbal advice and reference to two cases was relayed to me yesterday by CFF.

The joint position of the appellant and the Council is succinctly summarised in a flooding Statement of Common Ground. These parties agreed that flood risk was an issue which went to the heart of whether the proposed residential development was acceptable in principle. Given that the issue of flood risk was resolved at the

outline stage, they say there is no requirement or no legal power by which I could reconsider this question.

From the Statement which I received today from CFF, based on advice from their planning consultant Mr Wright and Mr Tabachnik, it appears that they now accept the position as set out by the Council – presumably in the flooding Statement of Common Ground. CFF now surprisingly refer to their previous advice, from Mr Fraser-Urquhart, as ‘misconceived’. I will however deal with this matter as it has been a live issue at the Inquiry and previously. It also feeds into the remaining issue concerning a potential condition.

I consider that Condition 22 on the outline permission could have been more precisely worded, and this may well be the reason for the different opinions as to interpretation.

However its intention is clear and it deals with flooding and Flood Zones as they existed at that time. I do not agree that the wording is descriptive or is capable of leaving open the question of flood risk for subsequent consideration. The condition could have included a reference to Flood Zones ‘as might be subsequently amended’, but it did not. If it was intended that the consideration could vary over time, I see no reason why condition 22 referred specifically to a particular section in the Flood Risk Assessment. The condition clearly disposed of the question of flood risk at the outline stage.

I appreciate that the reason for the condition was to reduce flood risk, as referenced by Mr Fraser-Urquhart, and this is clearly what it was intended to achieve. But I see no reason to imply from that point that flooding was left open for further consideration.

The opinion from Mr Fraser-Urquhart also notes that, if his view of the role of condition 22 is not accepted, there is no other mechanism for reducing flood risk. I agree that this is the case, and am sympathetic to the concerns of CFF and others on that basis. But that does not mean that I am able to extend my remit into areas not before me.

As I understand the Statement of Clarification from CFF, the matters I have been dealing with to this point are no longer contested.

However a related matter was raised yesterday by CFF, apparently based on verbal advice from Mr Tabachnik, and this is still the position of CFF today. That is the (without prejudice) suggestion that I could impose a condition on any approval of details requiring that the finished floor levels (and by association presumably the overall height of the buildings) should be raised to allow for flood risk. A draft condition has today been submitted by CFF which would require the details of the finished floor levels to be submitted to the Council for approval, and that those levels should be in accordance with the standing advice of the Environment Agency.

Such a condition has the potential to affect other issues which are live in this appeal, particularly the effect on heritage assets and the character and appearance of the area. I have no evidence from any party as to the consequences of such a raising of floor levels or building heights. But in any event, the details of the proposed slab levels and ridge heights are before me as part of the approval of

details, and such a condition would not, in my view, meet the tests for conditions. More importantly it would be outside the scope of the reserved matters before me, as is clear from the Fulford Parish Council (2019) case.

Perhaps even more fundamentally, the reason for such a condition would obviously be related to flood risk, and for no other reason. This relates back to the question of whether flooding is a matter which I can legally consider, which I have already discussed. CFF refer to such a condition as 'theoretically lawful' – I am not clear precisely what this means, but in any event I am clear that I cannot reopen a consideration which was dealt with at the outline stage.

CFF referred to two further cases, Redrow Homes (2004) and Proberun (1990), details of which have been supplied by the appellant. I have read both cases (in the Proberun case I have read a report rather than the judgement) and considered the legal opinions of the Council and the appellant. I have also considered the view of CFF in the Statement of Clarification. In the absence of any legal submissions from CFF I fail to see the relevance of these very fact-specific cases, and they do not they appear to establish any principle related to the key question of what I can consider in this appeal.

Taking the two matters originally raised by CFF together, I am clear that the question of flood risk, in principle or by way of a condition, is not a matter I can consider at this Inquiry or in my decision, as it was dealt with at the outline stage and is not an issue which is part of the approval of details sought in this appeal.

P. J. G. Ware

Inspector

11 February 2021