



SCARBOROUGH
BOROUGH COUNCIL

**REPORT TO PLANNING &
DEVELOPMENT COMMITTEE**

**TO BE HELD ON THURSDAY,
8 December 2022**

APPLICATION REFERENCE NO:

21/01397/FL

**Corporate Aims
Better Lives, Better Homes, Better
Places, Brighter Futures, Better
Council**

TARGET DATE:

2 August 2022

GRID REF:

502590-489941

REPORT OF THE HEAD OF PLANNING – HOP/22/247

SUBJECT: Construction of 6 no. three bedroom semi-detached dwellings with communal off street parking/courtyard and landscaping at Former Site Of 79 Cross Lane Newby Scarborough North Yorkshire for Mark Dunwell

1.0 THE PROPOSAL

1.1 This application relates to a roughly rectangular plot of land on the southern side of Cross Lane in a residential area opposite one the road frontages of the North Bay Golf Course. The plot was formerly occupied by a single detached dwelling and garage, which have now been demolished down to foundation level. The site measures 45m from east-west giving it a wider frontage than other nearby properties; the measurement north to south varies between 34 metres and 41 metres. It is bounded to the east (Cross Lane) and south (Newlands Park Crescent) by two storey, mainly semi-detached housing. To the west the site fronts onto a cul-de-sac of modern 2 storey flats (nos. 81-103 Cross Lane). Although the main body of the site is largely level, the existing residential development to the south and east, as well as the bottom end of the cul-de-sac and dwellings to the west, are set at a lower level. The existing gated access from Cross Lane is 11 metres east of a zebra crossing. The site was overgrown but during the consideration of this application has been substantially cleared.

1.2 The proposed development comprises 3 pairs of semi-detached dwellings. Each pair will measure 11.4 metres in width and 9.9 metres in depth with an eaves height of 5.2 metres and a ridge height of 8.2 metres. The properties will each have a 4 metre deep front garden and a 9 metre long rear garden containing a shed in each garden. To both the outer sides (abutting No. 77 Cross Lane and the existing cul-de-sac) there is proposed to be a private path and a 1.2 meter wide planting area. There is approximately 2 metres between the blocks of buildings with these areas comprising private pathways.

1.3 A shared pedestrian path is proposed centrally from Cross Lane, with vehicular access taken from the adopted cul-de-sac to the south western side. To the rear of the

proposed dwellings is a shared parking area proposed to be finished in tarmac containing 2 no. spaces and an electric charging point for each dwelling. Discrete low energy lighting is proposed within the parking areas. 1.8 metre high privacy fencing is proposed around the rear gardens, with a 1 metre high metal fence around the front gardens.

1.4 One pair of semi-detached dwellings is to be constructed wholly in red brick; one pair with render at first floor level on the front elevation; and, one pair with render on the whole front elevation. The render is proposed to be a smooth cream render. The roofs are proposed to be under a flat rustic red clay tile, with UPVc windows and doors in an anthracite colour.

1.5 The site is underlain by boulder clay and percolation tests have been submitted that demonstrate soakaways are not suitable on the site. Both surface water and foul water is proposed to be conveyed to the mains.

1.6 The application is accompanied by a Design & Access Statement, Tree Survey, and Ecology reports.

1.7 Members are advised that there have been substantial delays in the processing and consideration of this application. The application was originally validated in autumn 2021, however, following third party comments it became clear the ownership certificates were inaccurate and the application was made invalid in December 2021. The applicant did not at that time own part of the land within the red line. In addition, protected species were discovered on the site in December 2021, resulting in further complications and the need for monitoring and evaluation. The applicant subsequently acquired the whole site area and the correct certificate was signed, after which the application was made valid again in June 2022 and consultations were started again.

2.0 SCREENING OPINION REQUIRED?

2.1 No.

3.0 PRE-APPLICATION COMMUNITY ENGAGEMENT

3.1 None.

4.0 CONSULTATIONS AND COMMENTS

4.1 The following is a summary of the key and relevant comments received from consultees and interested parties. Their full comments and any accompanying documentation are available to view on the Council's website.

4.2 Newby & Scalby Town Council - No objection

4.3 Highway Authority - "This is an application for a development of six, three bedroom semi-detached dwellings with parking provided within the site. The existing vehicle entrance will be retained although reduced to a pedestrian link to Cross Lane. This will improve the current situation as the existing vehicle access onto Cross Lane is

immediately adjacent to a pedestrian zebra crossing. Intensification of this access in such close proximity to a zebra crossing could create vehicle conflicts and lead to conditions which are prejudicial to highway safety. The existing vehicle crossing onto Cross Lane should be permanently closed to vehicles and reinstated to highway verge and footway. The new vehicle access to the parking area has already been constructed from an existing publicly maintained highway, Cross Lane cul-de-sac to the east of the site. There is another access in the cul-de-sac and this should also be permanently closed." Recommended conditions from the Highway Authority relate to the closing of the existing access to the site from Cross Lane, parking for each dwelling, and a Construction Management Plan.

4.4 SBC Engineer - No comments received.

4.5 Yorkshire Water - No objection in principle, conditions recommended regarding surface water drainage details.

4.6 SBC Tree Officer - No comments received.

4.7 Environmental Health (Private Sector Housing) - No objection in principle. At 9.6 sq. m the smallest double bedroom is below the size requirement for a double room.

4.8 Police Architectural Liaison Officer - No comments to make on the scheme as it is below the threshold for their comments.

4.9 SBC Ecologist. - The revised mitigation proposal and location of artificial sett is far more workable than the original proposition, both in the construction phase and the longer term after build out, than the previous iteration. The site layout has been adjusted to provide more contiguous space for the animals and a safer location for the artificial sett. There are appropriate radii for construction activities with various types of machinery i.e. tracked plant or pneumatic tyres without committing an offence under the badger legislation. I am satisfied this demonstrates that a licence is possible: the artificial sett could be constructed prior to work on the rest of the site commencing. Then, once demonstrated that the animals have discovered the new artificial sett, the licenced closure of the existing setts could go ahead. After this, in line with the licence, the old setts would be filled in and the construction phase of the development can begin, again with appropriate working radii from the new location. As per standard procedures, the licence application will be informed by further survey checks immediately beforehand (and any final refinement to the mitigation as appropriate). The North Riding Badger group were involved in the previous and these revised proposals and suggest that in their view the new arrangement is a more sustainable outcome for badger on this site in the longer term. The present active setts are in a vulnerable location, lying close to the perimeter of the site and very possibly extend under the pavement and the road. My previous comments on other matters besides badgers still apply, namely:

A detailed landscaping and ecological enhancements plan can be conditioned, using native/wildlife friendly shrubs in landscaping proposals. To include 'hedgehog holes' in fencing, 1 no. bat roost box - preferably an integral bat brick and 1 no. Swift brick or Sparrow terrace box;

A lighting strategy guided by the recommendations in the Preliminary Ecological Assessment to minimise light spill onto retained trees and hedges, both during construction and post construction; and,

A method statement setting out further mitigation measures for site clearance.

4.10 Natural England - No views received.

4.11 Publicity - There has been public consultation on each occasion the application became valid with the latest consultation period expiring on 7 July 2022. In total, 6 representations have been received. Five of these comments made objections and raised concerns about the following issues:

- Disruption to wildlife
- Highway safety regarding the intensive use of the access road into the cul-de-sac, and the proximity of the pedestrian crossing
- Site clearance works;
- Loss of trees and landscaping during the consideration of the application;
- Disturbance to elderly and vulnerable residents.

The other third party comments have been made in regard to the mitigation for protected species on the site as part of a wider dialogue with the agent, and the agent's ecologist.

5.0 RELEVANT SITE HISTORY

5.1 2006 - demolition of house and erection of 8 dwellings in 3 storey block - refused due to overdevelopment and impact on neighbours.

5.2 2007 - demolition of house and erection of four 2 storey semi-detached dwellings - approved with conditions.

5.3 2009 - variation of condition on above permission relating to retention of trees - approved subject to new tree planting.

5.4 2010 - extension of time period for implementing 2007 planning permission for a further 3 years.

5.5 2018 - Planning permission granted for the construction of 8 no. two bedroom apartments with on-site parking.

5.6 2019 - Planning permission granted for variation of condition 1 relating to 16/01140/FL dated 01.02.2018 for the addition of a flat at second floor level, increasing the number of proposed flats to 9 no. flats.

6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of The Town and Country Planning Act 1990 require that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise (in the case of advertisement applications the Advertisement Regulations 2007 are applicable). Attention is drawn to the following Development Plan and other planning policies and guidance which are considered to be particularly relevant to the consideration of this application:-

Scarborough Borough Local Plan 2017

DEC 1 - Principles of Good Design

DEC 3 - The Efficient Use of Land and Buildings

DEC 4 - Protection of Amenity

HC 2 - New Housing Delivery

ENV 5 - The Natural Environment

ENV 3 - Environmental Risk

National Planning Policy Framework

NPPF12 - Achieving well-designed places

NPPF5 - Delivering a sufficient supply of homes

NPPF15 - Conserving and enhancing the natural environment

Scarborough Borough Supplementary Planning Documents

Residential Design Guide - SPD

Local Planning Policy and Guidance

None relevant

7.0 ASSESSMENT

7.1 The main considerations with this application are:

- (a) The principle of the proposed development;
- (b) The appearance of the proposed development;
- (c) Amenity impacts;
- (d) Highway safety;
- (e) Drainage;
- (f) Landscaping;
- (g) Impact upon protected species.

(a) The principle of the proposed development

7.2 The principle of redevelopment of this site for residential use is considered to be acceptable. The site is within the Development Limits and where Local Plan policies HC1 and HC2 generally encourage new housing. Planning permission was also previously granted for residential development on the site (separate permissions for housing and apartments).

(b) The appearance of the proposed development

7.3 Policy DEC1 requires that new development is of good design. Policy DEC3 encourages efficient use of land, assuming the development is in keeping with the character of the local area. Previously 9 no. flats have been approved on this site; arguably this scheme is a less intensive use of the site. The pattern of existing development in the immediately locality is dominated by semi-detached dwellings of a

similar scale to the proposed dwellings. Whilst the spaces between the proposed dwellings are narrower, in view of the earlier approval this is considered to be acceptable.

7.4 The proposed siting is also considered to be acceptable and whilst forward of the building line on No. 77 & 75 Cross Lane, given the position of the site and its relationship with the adjoining flats, the siting is not considered to be out of place or harmful to the character and appearance of the area.

7.5 The layout of the dwellings with front and rear gardens, a central pedestrian access from Cross Lane together with a private parking court to the rear is considered to be consistent with the wider area and not visually harmful.

7.6 The scale of the development proposed; 5.2 metres at eaves height and 8.2 metres at ridge height is considered to be relate well to the character and form of the surrounding residential development.

7.7 The design approach for the proposed dwellings picks up some of the distinctive local detail, such as the render, plain roof tiles, hipped roofs and the proportions of the semi-detached dwellings. The design approach is considered to be entirely appropriate in the locality and consistent with the local vernacular.

7.8 Regarding the external materials (red brick, cream render and red rustic flat clay tiles) these are again considered to be consistent with the locality. There is also no objection to the anthracite coloured grey UPVc windows and doors in this architecturally diverse setting.

7.9 Consequently, the proposed development is considered to be consistent with Policy DEC1 of the Scarborough Local Plan and the Residential Design SPD.

(c) Amenity impacts

7.10 Policy DEC4 of the Scarborough Borough Local Plan requires existing and proposed occupiers have a good standard of amenity.

7.11 The Environmental Health Officer has noted that the second bedroom is below the Nationally Described Space Standard for a double bedroom. However, that room should not necessarily be regarded as a double bedroom. The proposed houses have an adequately sized main double bedroom and the other two rooms can be regarded as adequate single bedrooms, i.e. the overall level of accommodation proposed is acceptable for a 3 bedroomed dwelling.

7.12 At 9 metres in depth, the rear gardens of the dwellings fall slightly below the minimum depth of 10 metres recommended within the Council's Residential Design Guide. This indicates a slight overdevelopment of the site; a reduced number of wider, less deep houses could have achieved that standard. However, a 10m rear garden is a recommendation, not a mandate within the Guide. In other respects the rear gardens are acceptable, being rectangular in shape and relatively level, with wholly useable space. They look onto their own private rear access and parking spaces and the back to back separation with the existing houses to the rear exceeds 20m. Therefore, taking these factors into account, it is considered that, in this case, the proposed rear gardens will offer an acceptable standard of amenity.

7.13 The separation distances between and juxtaposition of the proposed and existing houses will not result in unacceptable levels of overlooking or have any overbearing effects.

7.14 Therefore, this proposal is considered to comply with the requirements of policy DEC 4 for both existing and future residents.

(d) Highway safety

7.15 The Local Highway Authority has considered the scheme in detail. It considers that the access from the cul-de-sac onto Cross Lane is safe and can accommodate the additional traffic generated by the proposed development. The response also confirms the access into the site as proposed is safe in highway terms, and that the parking and turning facilities proposed are adequate. Subject to conditions regarding the closing off the existing access onto Cross Lane for vehicles, the improvements to the access onto the adopted cul-de-sac, and a Construction Management Plan there are no highway safety objections to the application.

7.16 Apart from the Construction Management Plan condition, these conditions are considered to meet all the tests for conditions and would be recommended on any approval. Regarding the Construction Management Plan condition, the Local Planning Authority does not impose such conditions given that, should vehicles park on the highway, the enforcement of the condition would not be possible. Government advice is not to impose conditions that duplicate other regimes of control, such as those powers that exist under the Highway Act.

(e) Drainage

7.17 Policy ENV3 of the Scarborough Borough Local Plan requires development to be drained in a sustainable manner where possible. It has been demonstrated that the site is unsuitable for soakaways and there are no suitable watercourses nearby to discharge into. Yorkshire Water has confirmed that there are no objections to the drainage of foul and surface water to the mains.

(f) Landscaping

7.18 During the consideration of this application the site has largely been cleared, for which there was no protections afforded to any of that landscaping. There is some planting that has been retained, however, this is not high quality or necessarily compatible with the proposed development. If the application were to be approved a condition could be imposed to ensure a suitable planting scheme across the frontage and sides of the development to soften the impact of the proposed development upon the visual amenity of the area and to support ecology. For similar reasons and in the interests of amenity, details of boundary treatment should also be required.

(g) Ecology

7.19 The site provides habitat for badgers and contains badger setts. There are currently 4 badgers on the site, 2 adult and 2 offspring. There was another badger offspring until recently. The offspring were born on site during the last winter. The site has 3 - 4 setts which are understood to be the home for these badgers with no other outlying setts. Two of the setts are understood to be actively used one by the female and an offspring and the other by the male and an offspring. The urban area in which they live offers limited prospect for new sett creation if these are lost. The badgers are known to use the site as habitat, to feed in nearby gardens and to use tracks through each side of the site and across Cross Lane. The Badgers were identified on site immediately after site clearance works by the developer in December 2021 and have been closely monitored by North Riding Badger Group since, with CCTV in conjunction with the applicant and the applicant's Ecologist.

7.20 Policy ENV5 of the Scarborough Borough Local Plan states that new development should respond positively and seek opportunities for enhancement of species, habitats and other assets thereby resulting in a biodiversity net gain. In particular, the policy states that adverse impacts upon species and habitats should be successfully mitigated.

7.21 A revised scheme of mitigation has been put forward in association with the development of the site. In brief terms this involves the construction of an artificial sett on the south-eastern side of the site (between the proposed parking area and the rear garden boundaries of the Newlands Park Crescent properties) on an area of approximately 15m². It is then proposed to close the existing setts on site to exclude the badgers, monitor the closed setts to ensure they do not enter before they are destroyed, with the expectation that the Badgers use the new artificial sett. Narrow corridors along the eastern and western site boundaries would provide routes into and out of the site.

7.22 Planning Officers had concerns about the adequacy of the proposed mitigation in a number of respects. The existing site offers the Badgers a large green space with vegetation and a foraging area away from direct human contact. The site is large and the development of the site in the intensive form proposed will remove any habitat value from the vast majority of the site and significantly increase the risk of human interaction and conflict. The location of the proposed artificial sett is located immediately adjacent to the vehicular access and parking area, with moving vehicles in very close proximity to the sett. Exhaust fumes, noise, vibration, lighting etc. may affect whether the sett is used. Construction works on the 6 no. properties, ground surfacing, landscaping etc. are all likely to be cause disturbance to the Badgers. It is also noted that the Badgers currently use two different setts for unknown reasons and the proposal only seeks to provide one new sett; this may also cause problems within the population on the site.

7.23 However, the revised mitigation proposals have been considered in detail by the Council's Ecologist who is satisfied that they are adequate and appropriate (para 4.9 above). As the Council's acknowledged expert, it is considered that his views on this matter should carry greater weight than the concerns of planning officers.

7.24 Although policy ENV 5 encourages the enhancement of habitat and net gains in biodiversity, the actual policy test is that any adverse impact on species and habitats be "successfully mitigated" rather than necessarily enhanced. Based on the advice of the

ecologist, that requirement will be met and, therefore, the proposal with the mitigation is considered to comply with ENV 5.

7.25 Both the Protection of Badgers Act 1992 and the Wildlife & Countryside Act 1981 provide strong protection for Badgers and their setts. The proposals to close the sett require a Protected Species Licence from Natural England. Although not a statutory consultee in this case, Natural England has been consulted to ascertain their views on the proposed mitigation and whether such a Licence would likely be granted but, unfortunately, no response has been received.

7.26 With regard to biodiversity in general, given the loss of vegetation from the site, it is considered that the developers should be required to submit a scheme of measures to improve the overall ecological value of the site.

(h) Other issues

7.27 Regarding land ownership, the applicant has provided title to the land within the red line area. A copy of a local search has provided proof that the cul-de-sac up to the point of the proposed access to the site and the verge between the site and cul-de-sac is highway land and not owned by a third party. Land registry search undertaken by Officers also confirm that there are no issues with the submitted ownership certificates.

8.0 PRE-COMMENCEMENT CONDITIONS

8.1 The applicant's agreement is required to the recommended pre-commencement conditions.

POSITIVE AND PROACTIVE STATEMENT

The development as originally submitted was not acceptable, so the Local Planning Authority acted positively and proactively by allowing the applicants to amend the layout and design of the scheme, establish the position regarding land ownership and explore the issues surrounding protected species and possible mitigation.

RECOMMENDATION

PERMISSION BE GRANTED, subject to the following condition(s)

- 1 Unless superseded by other planning conditions, the development hereby approved shall be carried out in accordance with the following plans:

Location Plan. CL/001A. Received by the Local Planning Authority on 10 August 2021.

Proposed Site Sections. CL/201. Received by the Local Planning Authority on 12 November 2021.

Site Layout. CL/101D. Received by the Local Planning Authority on 9 December 2021.

House Elevations. CL/310D. Received by the Local Planning Authority on 9 December 2021.

House Front Elevation Styles. CL/311. Received by the Local Planning Authority on 9 December 2021.

Reason: To avoid doubt.

- 2 The development hereby approved shall be undertaken in accordance with the proposals and recommendations contained within the following documents unless otherwise required or specified by other planning conditions:

Preliminary Ecological Appraisal. Received by the Local Planning Authority on 28 October 2021.

Badger Mitigation Strategy. Received by the Local Planning Authority on 29 November 2022.

Reason: To avoid doubt.

- 3 Prior to their erection full elevational details of the proposed rear garden sheds shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To avoid doubt and in the interests of the appearance of the area and residential amenity in accordance with policies DEC 1 and DEC 4 of the Scarborough Borough Local Plan.

- 4 Prior to their use in the construction of the development, samples of the brick, render and roofing tiles to be used for the construction of the exterior of buildings shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity and the appearance of the building to accord with Policy DEC 1 of the Scarborough Borough Local Plan.

Note - Samples that are required should be delivered direct to site for inspection by the planning officer.

- 5 Before the development is commenced, the written approval of the Local Planning Authority is required to a scheme of landscaping and tree planting for the site indicating, inter alia, the number, species, heights on planting and positions of all the trees, together with details of post-planting maintenance. Such scheme as is approved by the Local Planning Authority shall be carried out in its entirety within a period of twelve months beginning with the date on which the development is commenced. All trees, shrubs and bushes shall be maintained by the owner of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good.

Reason: In the interests of the appearance of the area and ecology in accordance with policies DEC 1 and ENV 5 of the Scarborough Borough Local Plan.

- 6 Prior to the commencement of the development, full details of all boundary treatments and other means of enclosure to be used in and around the site shall be submitted to and approved in writing by the Local Planning Authority. The

approved details shall be implemented in full prior to the first occupation of the buildings.

Reason: In the interests of the appearance of the area, the amenities of existing and future residents and protected species in accordance with policies DEC 1, DEC 4, and ENV 5 of the Scarborough Borough Local Plan.

- 7 Prior to the commencement of the development, details of a scheme to enhance biodiversity within the development shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the dwellings.

Reason: To respond positively to biodiversity in accordance with policy ENV 5 of the Scarborough Local Plan.

- 8 Prior to the commencement of the development, full details of existing and proposed ground levels and finished floor levels shall be submitted to and approved in writing by the Local Planning Authority. The levels on the development shall accord with the approved details.

Reason: In the interests of the appearance of the development within the streetscene and to protect the amenities of existing nearby residents in accordance with policies DEC 1 and DEC 4 of the Scarborough Borough Local Plan.

- 9 Before installation and use, details of all external lighting to be used in the development shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To avoid unnecessary light spillage and pollution in the interests of and wildlife protection in accordance with policy ENV 5 of the Scarborough Borough Local Plan.

- 10 Prior to the commencement of the development, full details of the foul and surface water drainage of the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be fully operational before first occupation of the dwellings.

Reason: In the interests of satisfactory and sustainable drainage in accordance with policy ENV 3 of the Scarborough Borough Local Plan.

- 11 The development must not be brought into use until the existing access onto Cross Lane has been permanently closed off in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety

Note - These works shall include, where appropriate, replacing kerbs, footways and verges to the proper line and level.

- 12 No dwelling shall be occupied until the related parking facilities have been constructed in accordance with the details approved by the Local Planning Authority.

Reason: To provide for adequate and satisfactory provision of off-street accommodation for vehicles in the interest of safety and the general amenity of the development.

- 13 Each dwelling shall be provided with an electrical socket capable of charging electric vehicles within a dedicated car parking space. It shall be provided before the dwelling is first occupied.

Reason: In the interests of sustainable development and to comply with policy DEC 2 of the Scarborough Borough Local Plan.

- 14 All window and door frames shall be set in a reveal of minimum depth of 50mm from the outer face of the wall.

Reason: In the interests of the appearance of and achieving high quality design on this development in accordance with policy DEC 1 of the Scarborough Borough Local Plan.

- 15 Prior to the commencement of the development a method statement for the clearance of the site shall be submitted to and approved in writing by the Local Planning Authority. The submitted statement shall include provision for the following:

- Staged site clearance to allow any small mammals, amphibians, reptiles which could be on the site to vacate. The sward should be strimmed initially down to 15cm. After 24 hours it may be strimmed further to 5cm and the following day full site clearance may take place as required along with any tree and shrub works;
- Soft-fell approach for any trees to be removed and work should halt and ecological advice obtained if any bat is discovered;
- Site cleared outside nesting season (nesting season March to Aug inclusive) or subject to a nest survey if carried out in nesting period;
- Invasive species, e.g. cotoneaster and buddleia mechanically removed and burnt on site or else disposed as controlled waste in a licensed landfill;
- Any excavations or voids to be covered overnight to prevent any mammals falling in, including hedgehogs, or a ramp provided to allow the animal to safely escape.

The further clearance of the site shall strictly accord with the approved method statement.

Reason: In order to protect wildlife in accordance with policy ENV 5 of the Scarborough Borough Local Plan.

David Walker

Background Papers:

Those documents referred to in this report.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT MR N READ ON 01723 232483 email nick.read@scarborough.gov.uk



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