

**North Yorkshire Council**  
**Community Development Services**  
**Scarborough and Whitby Area Constituency Planning Committee**

**11 APRIL 2024**

**ZF23/01943/FL - CONVERSION OF 3 NO. RETAIL UNITS TO 3 NO. FLATS AT  
JAZZ COURT, ASHMEAD SQUARE, EASTFIELD, NORTH YORKSHIRE, ON  
BEHALF OF SANCTUARY GROUP LTD**

**Report of the Assistant Director/Planning – Community Development Services**

**1.0 Site, Surroundings and Background**

1.1 The application site refers to 3 x retail/commercial units which are situated on the ground floor of the Jazz Court retirement community building (extra care apartments) which provide self-contained living for people in their own homes, with care facilities available as and when required. The units are on the West-facing elevation of the building, facing onto the car park and courtyard area. The units are independent, with dedicated accesses and a large glass window on each of the respective frontages. Two of the retail units (numbers 1 and 2) both measure 67sqm, whilst retail unit 3 measures 51sqm. The agent has submitted information which argues that the units have never been occupied since they were constructed in 2014, with Ashmead Square intended to become a community hub. The site is also adjacent to the new Overdale primary school, which contains a room available for community use.

1.2 The site is part of the 'Middle Deepdale' site which is well advanced and was initially allocated in the 1999 Local Plan, with the total area being substantial in size (165 acres). The site lies at the heart of the former HA2 allocation, while the less advanced HA1 site lies to the west of the Deepdale valley. The site and area is located within the development limits of Scarborough, in the Eastfield area which forms part of the Scarborough Urban Area as indicated in the Local Plan.

1.3 The area of Eastfield is undergoing significant change, with three new housing allocations in the 2017 Local Plan in close proximity to the site. These are allocated as HA8, HA9 and HA10, with the largest being HA8 which is immediately to the North of the site. HA8 is also the largest of the Eastfield allocations, in terms of the site area which measures 22.93 hectares and outline permission has been granted for circa 650 dwellings. The cumulative total of dwellings on the 1999 Local Plan Allocations and the HA8 site, is approximately 2050 in addition to a separate 60 bedroom care home approved in 2023.

1.4 The site forms part of a planning application granted outline approval in 2013. The care home itself was approved under a separate full application (reference 12/02023/FL), in which it is described as an extra care facility consisting of 60 flats and associated communal facilities including three retail units and café/restaurant.

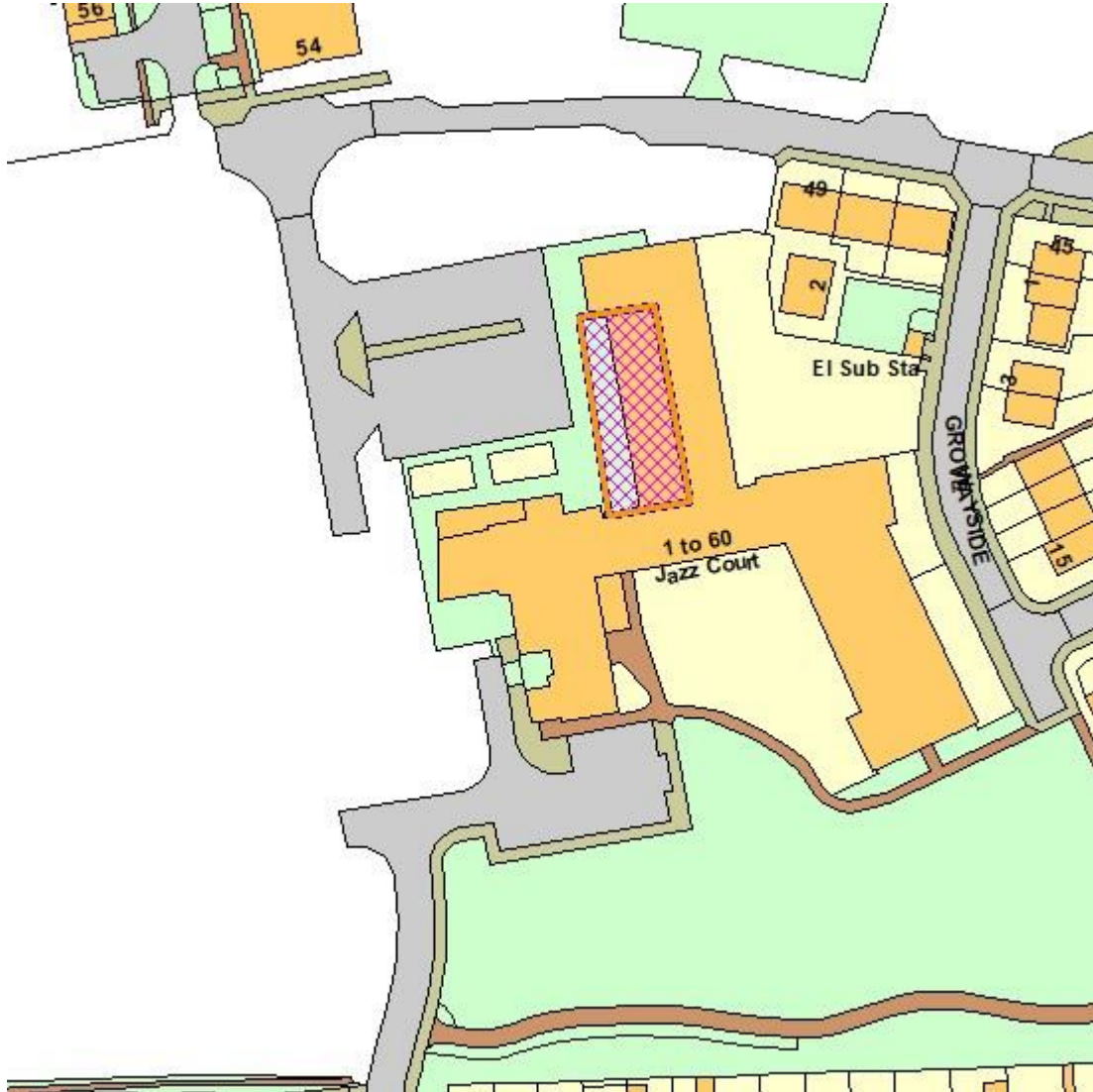
## **2.0 Description of Development**

2.1 The application is seeking approval to change the use of the retail units (not occupied) to 3 x no residential flats to provide additional bed spaces in the care facility. Two of the units will be laid out into two-bedroom flats, respectively, whilst the other will be a 1-bedroom flat. Each will have an open plan kitchen/living/dining room, with a large bathroom which could cater for wheelchair users. To the front of each flat is a semi-private gardens with direct garden access to/from each of the respective living rooms.

2.2 The proposed development will include alterations to the frontages of the building to replace the shopfronts with patio doors, a glazed side screen and front-facing windows. The cavity will be filled with buff coloured facing brick.



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### **3.0 Relevant Planning History**

3.1 The following relevant planning history has been identified for the application site:

12/02023/FL - Development of new extra care facility consisting of 60 flats and associated communal facilities including three retail units and cafe/restaurant

11/01914/OL - Outline planning permission for up to 1,350 dwellings, primary school, extra care, retail development and link road - approved in 2013 and covers land surrounding Jazz Court comprising the HA1 and HA2 allocations from the previous Local Plan, dated 1999.

### **4.0 Planning Policy and Guidance**

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each planning application in accordance with the planning policies that comprise the Development Plan unless material considerations indicate otherwise.

#### Adopted Development Plan

4.2 The Adopted Plan for this site is:

- Scarborough Borough Local Plan 2011 to 2032 adopted 2017
- Scarborough Borough Supplementary Planning Document (SPD) - Residential Design Guidance (2022)

#### Emerging Development Plan - Material Consideration

4.3 The North Yorkshire Local Plan is the emerging development plan for this site though no weight can be applied in respect of this document at the current time as it is at an early stage of preparation.

#### Guidance - Material Considerations

4.4 Relevant Guidance for this application is:

- National Planning Policy Framework 2021
- National Design Guide

### **5.0 Consultation Responses**

5.1 The following consultation responses have been received and have been summarised below.

Eastfield Town Council - Objections raised as the proposal will diminish any opportunity for the residents of Middle Deepdale to have a much needed and promised retail offering and no real effort has been put into bringing retail to the units. Concerns that Sanctuary are difficult to get in touch with which may have impacted the amount of quality or enquires the business has received from prospective tenants.

Environmental Health - CRT - No comments received.

Environmental Health Residential Regulation - No objections raised

Highways - No objections raised.

### Local Representations

5.2 The application was advertised via site notice, 28 comments have been received objecting to the proposal. The following concerns have been raised:

- The development goes against the original intention for the development in which residents were informed that the units would be local services, or community facilities, which has not been implemented by the developer.
- The removal of the units would undoubtedly remove any remaining hope that the site would be used as a community hub.
- There are little existing local services for the existing or future residents in the area, and the proposed conversion would exacerbate this problem by introducing more residential dwellings in an area which does not need it.
- The area is not very sustainable, with no local services/shops within walking distance to the site, and the public transport links are limited. The removal of the units would harm the amenity of the existing and future residents, especially older residents.
- Concerns that the developer has not encouraged businesses enough to take on the units, suggestion that the rents should be lowered.

## **6.0 Environmental Impact Assessment**

6.1 The development proposed does not fall within Schedule 1 or 2 of the Environmental Impact Assessment Regulations 2017 (as amended). No Environmental Statement is therefore required.

## **7.0 Main Issues**

7.1 The main issues are:

- Principle of Development
- Impact on Amenity
- Design & Impact on Visual Amenity
- Highways Safety

## **8.0 ASSESSMENT**

Principle of Development

8.1 This application seeks approval to change the use of the existing retail units on the ground floor of the site (the residential care home facility) to 3 x residential flats to add residential space to the existing facility. The units are not occupied, and the application states that the units have not been occupied since the facility was

completed in 2014. Nonetheless, the main consideration is in regard to the loss of the retail units, and whether this is justified in regard to the development brief/vision of the on-going development taking place in the wider area.

8.2 In terms of local planning policy considerations, the starting point would be Scarborough Local Plan (2017) Policies SD1: Presumption in favour of sustainable development and HC8: Community facilities. The background to the development is also key in regard to the original development plan - the 1999 Local Plan allocated the site for housing and (in Policy C1) set out the community facilities should be contained in the development, including 'shopping facilities to meet the local needs of the area'.

8.3 Local Plan Policy HC8 states that the loss of community services, including local shops (subtext 6.86), will only be permitted where one or more of the following situations can be demonstrated:

- It can be demonstrated that the facility is no longer required, having been vacant and marketed for a community use without success; or
- A replacement facility of at least an equal quality and suitable scale, in an equally or more accessible location will be provided through redevelopment of the existing site; or
- The proposal would result in the significant enhancement to the capacity, nature and quality of a separate existing facility, which serves the same community.

8.4 Whilst it is clear that the existing units are not occupied, and the applicant states that they have not been occupied since the facility opened in 2014, the current planning use of the site is retail (Use Class E) and the original intended use of the units prevails in planning terms. The applicant has submitted information in regard to the units being marketed for lease for retail use. Officers consider the information submitted is limited and in part, indicates that there has been some interest from prospective tenants. The submitted statements, including the original D&A Statement and the updated statement received 1st February 2024 indicates the following:

- The site opened in 2014, and Sanctuary Housing started marketing the units, however no businesses were interested in leasing/investing with very limited footfall due to the development of the site being in its very early stages.
- Sanctuary entrusted Harris Shields (Scarborough-based Estate Agents) to market the units by approaching various local enterprises and small chains with no success. N.B. There has been no timescale or further evidence for how the units were marketed at this juncture.
- In 2019, Harris Shields received interest from various entities including an opticians, a mobility shop, a flower shop, furniture shop, a grocery shop and Scarborough Borough Council, however none of these were completed. N.B. There has been no evidence submitted to explain why this interest did not result in a lease being taken up.
- In 2022, Sanctuary instructed a local agent (unnamed) and it is stated that proactive efforts were made to approach various chains, as well as independent shops.

- Sanctuary states that the business had an offer of £18k for a business to lease all three of the units (which would be a discount from the £24.1k if the units were leased individually), but this agreement did not complete.
- The second statement (Received on 1st February) also includes a background to the business but has no relevance or justification to the case for converting the units.
- A link has also been provided to existing advertisement (dated June 2023).

8.5 Officers consider that there is a lack of evidence in regard to the aforementioned statements. Firstly, there is no clarity as to how long the units has been marketed, whether sufficient contact details have been provided or via which medium. Various agents have been referenced such as Harris Shields who were argued to be 'very proactive' in approaching various local enterprises and small chains, but there is no detail as to what this actually entailed, or which businesses were approached. Secondly, the statement indicates that in 2019 Harris Shields did in fact receive interest from a wide range of potential occupiers, however 'none of these completed'. No information has been provided as to why these potential leases did not complete and at what stage did the negotiations break down. Then in 2022, Sanctuary instructed an unnamed local agent to approach various chains and independent shops (unnamed) to no avail. Again, there is unclarity here as to which businesses were approached, by what means, and for how long. However, Sanctuary also states that the business had an offer of £18k to lease all three units which was accepted but did not complete. Again, the timeline for this offer and why it did not complete has not been clarified in either of the statements. It is appreciated that this offer is at a discount to the advertised market value of all three units independently, but nonetheless, this would indicate that there has been at least some interest in prospective tenants taking on the lease for all three units. To this end, no such justification has been submitted to show that the proposed lease costs of the units are comparable to the lease cost of other similar units in the nearby area, of similar size and quality. Officers note that the period from spring 2020 onwards will have been particularly impacted by the Covid situation, which will have presented issues for potential leasees in terms of the certainty of being able to operate and general economic position, including the ramifications for the pace and scale of development in the locality.

8.6 Little of the submitted information is supported by concrete written evidence. The statement does show that there has been at least some interest from prospective tenants at various periods since the units have completed and the reasons why these have not completed is unclear. Equally, there is evidence submitted of some negotiation between parties given the agreement to a reduced fee for all three units, but no such written dialogue has been included to support this. The only form of firm evidence which has been submitted which shows the units have been advertised is dated June 2023, less than 12 months ago at the time of writing, and therefore can only carry minimal weight given the above context and the lack of marketing evidence.

8.8 It is clear from the third party representations that the design vision of a self-sustainable, integrated and walkable neighbourhood was advertised to residents, and this was an attractive prospect to prospective tenants and buyers. It is the opinion of the Local Planning Authority that such facilities have the potential to

provide valuable facilities in the local community. The current nearest local shop is located on Eastway, approximately 1km to the South. Whilst this is a relatively short drive, it would be difficult to access by foot for many elderly residents. It is also acknowledged that the high street of Eastfield is c.1.3km from the site, and contains a variety of uses and services including a supermarket. However, the distance presents a similar issue to the OneStop in that it would be a fairly long walk, difficult for the elderly and/or people with bags of shopping.

8.9 Officers recognise that the provision of commercial uses/services in the units would rely on negotiation and deals being brokered between private enterprises, and that the retail sector is under considerable pressure. However, as a principle officers consider the aspiration to secure local facilities in the centre of the wider 'Middle Deepdale' development remains valid, and that the loss of units earmarked for such uses should only be countenanced in the face of compelling evidence, as once the potential units are lost there appears little scope for provision to be provided in the 'central hub' of the development. It is noted that housing development in the areas continues, with the housing allocation (HA8) having now commenced, which will lead to population growth and potential increased market and footfall to the area.

8.10 Additionally, the agent has presented an argument for the development that the proposed development would introduce active frontages to the units. However, the existing layout of the units would result in active frontages when/if the units are occupied.

8.11 Officers consider that the removal of the units would require substantial justification and evidence that suitable marketing shows that a genuine attempt has been made to lease the units to prospective tenants. The retail units formed a key part of the original design vision for the area as set out in the 1999 Local Plan Policies and the development brief for the site (1997). The goal was to establish a self-sufficient community which is convenient and attractive to residents. Indeed, the development as marketed as such. This will be assisted by the proposed expansion of employment opportunities in the local area, including community facilities and the encouragement of small businesses within the new residential area. The housing areas are planned to be developed as a neighbourhood with a core of facilities within the housing sites providing for the needs of new residents. The aim was, and remains, to create a mixed-use development which would be enhanced by the retail units and the small businesses who would occupy them. The S106 agreement for the wider site approved in 2013 also contained planning obligations requiring the developers to provide retail premises. On the HA2 site this has by default been provided by the shop units at Jazz Court, albeit this was granted planning permission separately from the wider Middle Deepdale development.

8.12 NPPF paragraph 8 sets the overriding objectives of the planning system with a strong emphasis - principally in paragraph 8b - on the social objective of the system to support strong, vibrant and healthy communities, with accessible services that reflect current and future needs and support communities health, social and cultural wellbeing. Additionally, paragraphs 96 and 97 of the NPPF outline that planning decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, and should plan positively for the provision and use of



shared spaces, community facilities and other local services to enhance the sustainability of communities and residential environments.

8.13 As outlined in the above paragraphs of the report, the proposed development clearly does not seek to achieve these overarching goals, and the loss of the community facilities has not been appropriately justified. It is considered that the application as submitted is not in line with the NPPF as it seeks to remove a key element of the development vision for the area, without sufficient justification for the loss.

8.14 Officers consider that the proposed development is therefore contrary to Local Plan Policies SD1 and HC8, and paragraphs 8, 96 and 97 in the NPPF as it does not contribute to sustainable development, and seeks to convert retail units into residential, without sufficient justification to warrant the loss. As a result, this is harmful to social integration, inclusivity, and sustainability.

#### Impact on Amenity

8.15 The conversion into living accommodation would largely be in character with the existing use of the site as a residential care home. The development would offer 2 x 2-bed units, and a single 1-bed unit. All of the proposed units are at ground floor level and are of a sufficient size to be in line with the nationally described space standards for new residential units of this size.

8.16 The front of the proposed flats would feature a semi-private garden, bounded by a low height (1m high) wall. This would be intended as a boundary between public and private space within the courtyard area, but would not lead to direct segregation in terms of blocking views between the frontage of the units and the courtyard/parking area. Likewise, it would not result in significant levels of overshadowing or a loss of outlook for the proposed residential units.

8.17 The proposed development is considered to be in line with Local Plan Policy DEC4 and is acceptable in terms of the impact on amenity.

#### Visual Amenity

8.18 The proposed development primarily centres around the conversion of the units from retail units into 3 x residential flats to add residential space for the existing care facility. The frontages of each prospective flat would therefore be amended to remove the existing (albeit vacant) shopfronts and replace with a residential-type frontage for all units, in terms of their character and appearance.

8.19 The cavity created by the removal of the shopfront will be filled by buff brick which is similar to the existing elevation, with window types, sizes and materials which also are similar to the existing building. The detailing, orientation and appearance of the proposed frontages of the units is considered to be acceptable subject to the use of good quality, matching external materials. This can be ensured through the use of a planning condition, which could include the requirement for the development to submit further details to be approved by the Council prior to

development commencing, should the Local Planning Authority be minded to approve.

8.20 The proposed development is considered to be in compliance with Local Plan Policy DEC1 and the SPD for Residential Development and is acceptable in terms of visual amenity.

#### Highways Safety

8.21 There is sufficient parking provision within the car park to accommodate for the parking demand (1 x space per unit) for the proposed use. The existing retail units, when occupied, would have a greater parking demand and there are no concerns raised in terms of highways safety or parking provision.

### **9.0 PLANNING BALANCE AND CONCLUSION**

9.1 The application seeks to convert the existing retail units into 3 x residential flats to add to the residential offering of the existing residential care home, currently operated by Sanctuary. This is considered to be inconsistent with the intended urban form and layout of the development brief of the Middle Deepdale development, which is centred around a mixed-use, integrated and self-sustainable development. Local Plan Policy SD1 and NPPF paragraph 8b requires decisions to contribute to sustainable development, of which a social objective is included. NPPF paragraphs 96 and 97 state that decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, and should plan positively for the provision and use of community facilities. Principally, decisions should seek to support strong, vibrant and healthy communities partly by fostering well-designed places with accessible services that reflect current and future needs, supporting communities' health, social and cultural well-being. Local Plan Policy HC8 reflects the importance of local shops and services, considering them to be community uses, to which the loss is only supported under certain circumstances, including evidence that the units have been sufficiently marketed.

9.2 The loss of the retail units is considered to be unjustified based upon the information submitted in support of the application, the applicant having failed to make a compelling case that the retail units have been appropriately marketed as required through Local Plan Policy HC8. As such, the principle of development is considered to be unacceptable given the unjustified loss of retail units, in an area which is centred around sustainability, integration, encouragement of small businesses and a desire for a strong sense of community.

9.3 There are no other concerns raised with the development, including amenity, highways safety, and no internal consultees have objected to the proposal. If the proposed development was deemed to be acceptable, further details in regards to external materials and landscaping would have been sought.

9.4 For the reasons referenced in paragraph 9.1 and 9.2, the proposed development is not considered to be in compliance with Local Plan Policies SD1, HC8 and NPPF paragraphs 8, 96 and 97 and is recommended for refusal.

9.5 In making this recommendation Officers must draw attention to the fact that this development is being pursued by means of the submission of a planning application. Consequently, the starting point for consideration of the proposal is the development plan, alongside other material planning considerations. Officer opinion is that the application is contrary to the development plan, and therefore refusal is recommended. In so doing, officers must also draw attention to the fact that under permitted development regulations introduced by Government in recent years, there is the potential for the development to be pursued by other mechanisms (the 'prior approval' process) that could present the local planning authority with ostensibly the same decision, albeit with a narrower, more 'technical' scope of decision, with less room for nuance and 'sustainability' considerations. Indeed, the stated aim for that particular mechanism is to enable vacant commercial units to be changed to residential use in a streamlined manner. Members are advised to bear in mind the potential for this 'fall back' position to be pursued.

## **10.0 RECOMMENDATION**

10.1 That Permission be refused subject to the following conditions

1 The Local Planning Authority considers that the proposed development does not seek to contribute to the social objective of sustainable development, as it would result in community facilities being converted (local retail/commercial units) to residential use without sufficient evidence to demonstrate that the units have been appropriately marketed, are no longer required or will be replaced by another facility in an equally or more accessible location This is contrary to Local Plan Policies SD1 and HC8, alongside paragraphs 8, 96 and 97 of the NPPF which outlines that planning decisions should plan positively for community facilities. Such community facilities play an important role in facilitating social interaction and creating inclusive, sustainable communities that cater for local needs within a hierarchy of centres, and as outlined in the relevant local and national planning policies, should be protected.

Target Determination Date: 17 January 2024

Case Officer: Nathan Denman  
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