

ST ANDREW'S TRUST BISHOPTHORPE

STATEMENT OF CASE

FOR AN APPEAL AGAINST REFUSAL BY THE CITY OF YORK COUNCIL TO GRANT CONSENT FOR PLANNING APPLICATION **19/01510/LBC**

This appeal is made under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 in so far as they relate to the repair of historic monuments and enhancement of conservation areas. The purpose of our application is to establish agreed parameters for a flood alleviation scheme to be introduced into a conservation area, actions to preserve an unlisted monument, and a response to a threat by others to our ability to conserve our assets. Our SUMMARY POSITION is that our LPA has refused consent for an application we have not made and we disagree that our application is unfit for the purposes for which it has been made. We say our proposals conform in all respects to that Act and related parts of the National Planning Policy Framework, notably Section 16.

The LPA's reasons for refusal are set out in its decision notice and our grounds against them begin on page **17**. The application site is land and part of a river outlined in red on our Location Plan and on the HM Land Registry of our entitlement on page **2**. They differ from the LPA's Application Map on its public access portal under planning reference 19/01510/LBC. Our Location Plan is the correct application site for this appeal.

Attachments

Application form

Application drawings :

Proposed part plan with security zone.

Elevation from Chantry Lane and Location Plan.

SAT/01 existing and proposed part plans of site entrance works.

SAT/02 existing and proposed south elevations and existing and proposed north sectional elevations.

SAT/03 existing and proposed sectional elevations through footpath ramp and existing and proposed sectional elevations through restoration of historic verge.

Application Documents ;

Method statement for the pre-emptive dismantling of St. Andrew's Cross.

Proposed works to St. Andrew's Old Churchyard (described as a Heritage Statement by LPA).

Extracts from our current Conservation Management Plan to serve as a Heritage Statement (described as a Design and Access Statement by the LPA).

APPENDICES

1. E-mail from case officer of 14/8/2019.
2. Our reply of 15/8/2019.
3. Our objection comment of 1/3/2020 on applications 20/00066/TCA, 20/00014/FUL, and 20/00015/LBC, and reasons why floodgates are inappropriate in this location.
4. Our response of 21/4/2020 to Aecom's resubmissions.
5. Our response of 13/5/2020 to Aecom's further revised submissions.
6. Minutes of Meeting with Environment Agency on 5/3/2019.
7. Correspondence with the Environment Agency leading up to this meeting between the dates 8/10/2018 and 5/3/2019, notably that of 24/01/2019.
8. Correspondence with the case officer confirming purpose of our application dated 27/9/2019.
9. Approved application drawing for consent to relocate monuments.

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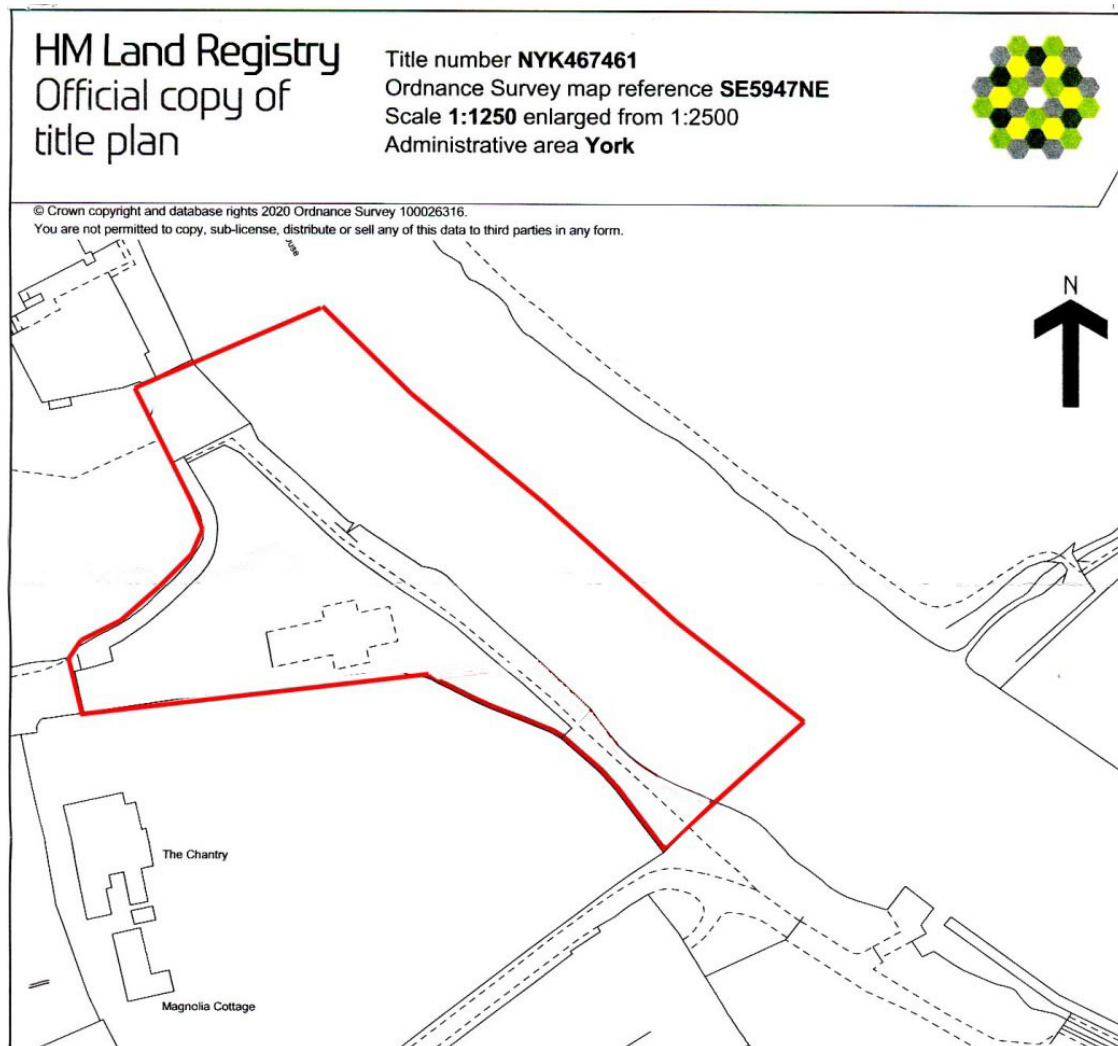
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APPLICATION SITE AND ITS ENVIRONS



We own and manage a small communal heritage site 3 miles downstream from central York at Bishopthorpe on the left bank in this view. The River Ouse is non-tidal at this point so our public ownership extends to the centre of this watercourse. This is important to us because the rest of Bishopthorpe's riverside is currently being degraded by a mile-long collection of shanties, ad-hoc barriers and fencing built around private moorings across the river.



This uncontrolled development hides the river from view and is taking place over a public right of way, an old towpath, unchecked by an inactive LPA. Whereas our control of our



riverside allows us to preserve it in this unsullied state as a valued, well-used, communal asset.

This is the only part of Bishopthorpe Reach where local people can still enjoy open views of their river, but managing our heritage site sometimes means that we have to close our

concessionary footpath for maintenance or to deal with dangerous incidents like this when an old tree fell across it from our neighbour's grounds.



Our neighbour is the Archbishop of York and his grounds are those of his official residence, Bishopthorpe Palace.

It's Grade 1 - listed buildings include a medieval manor house in the L - shaped brick-built range below on the left and three stone-built additions made to it in the 1770s: a gatehouse (foreground), the main Palace entrance in the centre, and the West Front of the archbishops' old manorial church of St. Andrew (top right).

Together these mid-Georgian additions introduced a new stylistic repertoire, Neo-Gothic, to our English cultural identity, and from these northern beginnings another much larger riverside palace arose eighty years later in the same revival style, the Palace of Whitehall at Westminster, our Houses of Parliament. The vocabulary of that architectural language was first codified and spoken here as **Improved Gothick** for the then Archbishop of York, Robert Hay Drummond (1761-1776). He is one of the archbishops buried on our heritage site in the archbishops' ancient cemetery. We took that into our public ownership as well in 1998.



The surviving West Front of the archbishops' old manorial church is an eye-catching local landmark and our concessionary path leading through our heritage site to our unspoilt riverside is widely regarded to be this community's principal environmental asset. **5**



Who we are and what we do

We are a charity and a company limited by guarantee, a member of the Association of Building Preservation Trusts, and an Environmental Body (EB) accredited by Entrust, Government's environmental watchdog. It supervises voluntary organisations like us deemed eligible to receive a proportion (a very small one) of national taxes to pursue environmental gains. Our acquisition of part of Bishopthorpe Palace and opening it to the public coupled with our professional credentials means that we fall in that category within the voluntary sector. We are entirely non-profit-making without any income generated by our assets.

The archbishop's tree that fell across our concessionary path was a stark reminder of our responsibility as landowners to keep the public safe while on our land. To these ends we pay for public liability insurance annually to enable people to use it, at our risk, and our other management roles and duties are prescribed by four legal documents.

The first is our charitable Constitution and the 'Objects' (objectives) we are required to pursue as a heritage trust. We are accountable to the Charity Commissioners in that regard.

Our second set of obligations arises from a series of agreements reached with the Church Commissioners (former owners) in exchange for their transfer to us of the title to this part of its ancient archiepiscopal estate. They include, for example, their right to vehicular entry (with our permission) to maintain boundary structures and party walls and they limit the uses we can make of our site. In turn the church authorities have surrendered all diocesan control or influence over their former lands.

The third determinant of the actions we can take in pursuit of our charitable objectives comes from our commitments to the National Heritage Memorial Fund in exchange for a large grant of public money to conserve our assets. We are required, in perpetuity, to identify any threat to them and to take appropriate actions to remove it. This appeal stems directly from one such threat and we alone have the authority under our agreements with the NHMF to define and respond to them as we see fit.

Last but not least are the statutory provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the constraints they place on any actions we may propose to alter this historic environment or its listed building or monuments. This application is solely for consents under the provisions of that Act (hereafter referred to as the 1990 Act). The question we are asking to be determined is: are our proposed alterations to the character and appearance of the conservation area permissible under the 1990 Act? We are not asking for consent for a fully developed flood alleviation scheme at this stage.

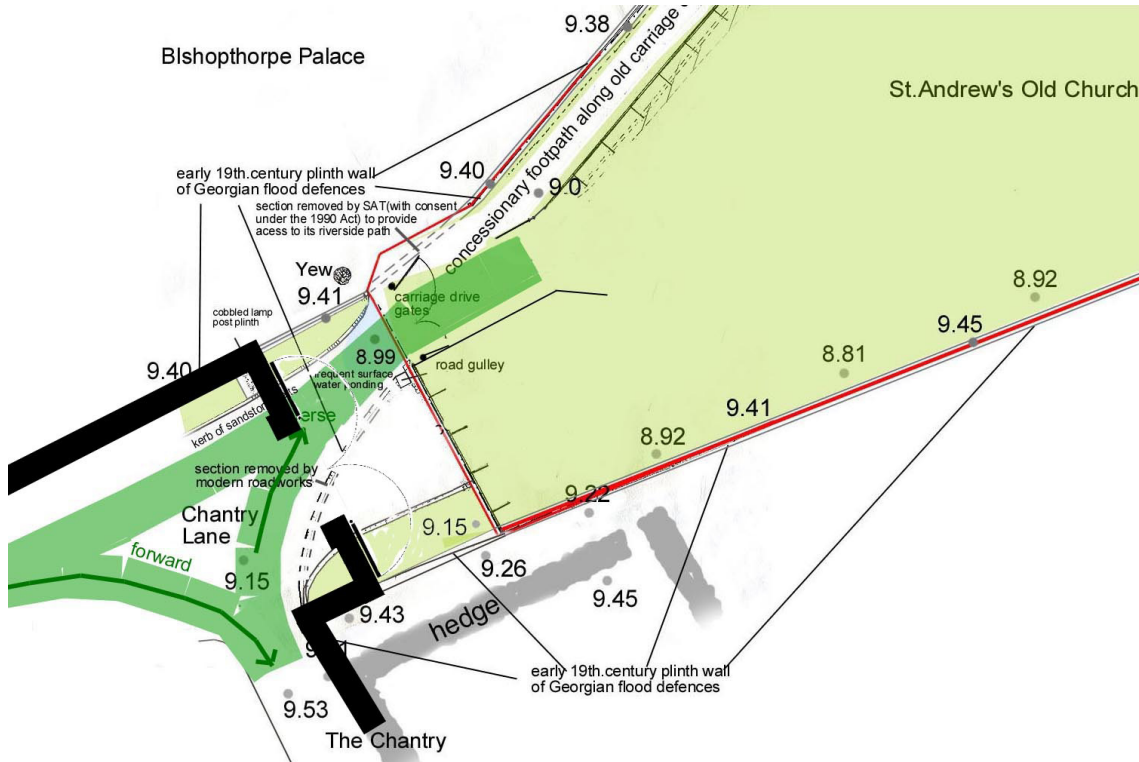
Identified threats to our assets

The main threat we identify to our heritage assets comes from our need for vehicular access to conserve them and to respond quickly to threats to public safety. In addition we need to be able to get these sheep on to our land in livestock trailers through our sheep-pen at the entrance to our site (see plan below). Our four - legged maintenance crew of Coloured Rylands (forerunners of the modern merino strain) are part of our ecological management regime.



They are also great favourites with visiting families and add to the historic character of this place without impacting on its below ground archaeology.

Late last year a full planning application was made to the City of York Council to block our road frontage with walls (black lines below) on behalf of the Environment Agency by a conglomerate called Aecom, part of the private Capita Group of companies. They would form part of a development to alleviate some of the effects of flooding on our riverside community. This is a desirable social objective which we of course support but not in a way that would deny our ability to manage our heritage site or keep our riverside path open. They too confer important social benefits and well-being on our community on a daily basis.



This is the only vehicular access we have and we need to get a variety of vehicles through our double gates.

Even a small reversing sheep trailer (green line) will collide with this obstruction, the full details of which can be seen on the LPA's planning portal under reference 20/00014/FUL together with our objections to it (Appendices 2-5).

Trees and burials

Every tree on our land is monitored and of an age to need regular health checks and, if necessary, surgery to keep them safe for people to walk among. We can't do this if we are prevented from getting transporters and maintenance and emergency equipment on to our land. 20 years ago our sheep-pen and railings enclosing the whole of this old burial ground did not exist. Their installation was a condition of the NHMF's conservation grant (page 7) to protect its archaeological content of buried archbishops and the estimated 6,000 remains of their feudal tenants interred here between 1226 and 1850.

The last internment took place in 2001. It was of our founding chairman, the Reverend John McMullen. It is still a churchyard as well as a heritage site and further burials under exceptional circumstances are not precluded. It is still consecrated ground in large part.



Change from Palace Grounds to heritage site

So designing a new layout for its new public role in 1999 presented several difficulties.

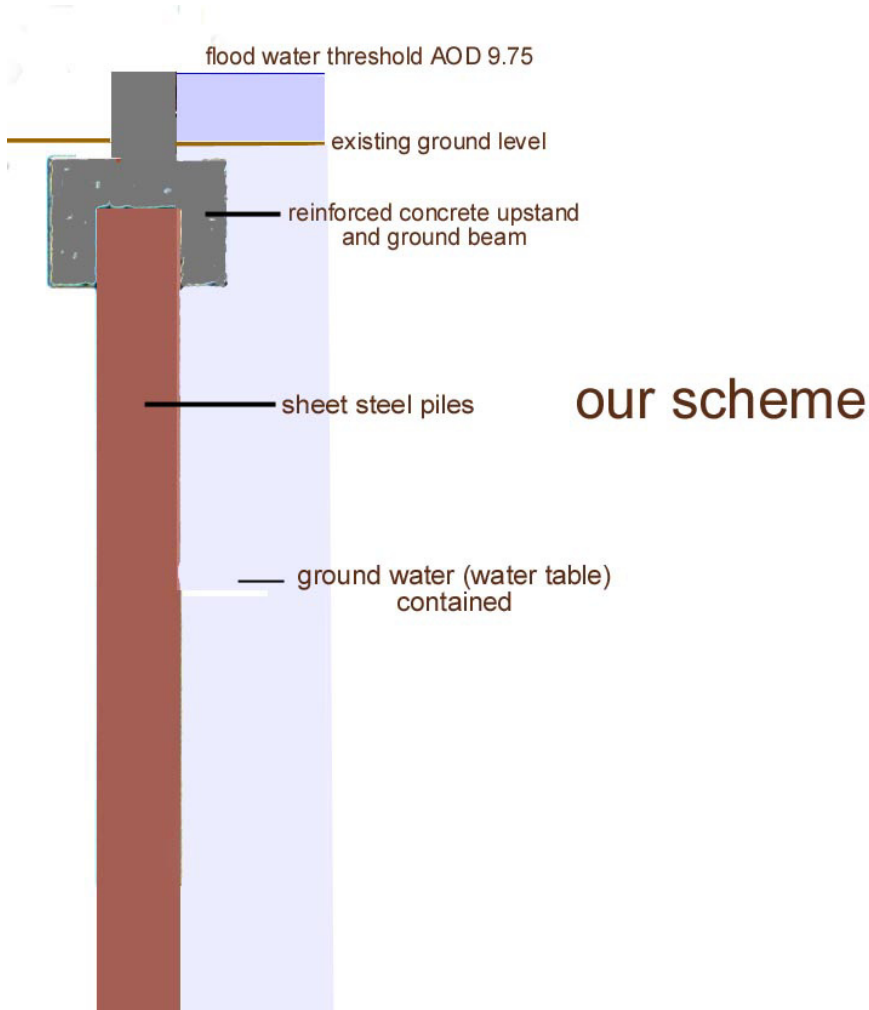
Firstly, our narrow road frontage had to accommodate a separate pedestrian access to our newly-created riverside path on the left.

Secondly, we had to be able to drive a variety of vehicles on to our land ranging from ambulances to livestock trailers to lorries bringing in bulk building materials and the occasional hearse. The width of our gates is dimensioned for these purposes.

Thirdly, this view of our iconic monument from a distance had to be preserved as an important landmark in the conservation area.

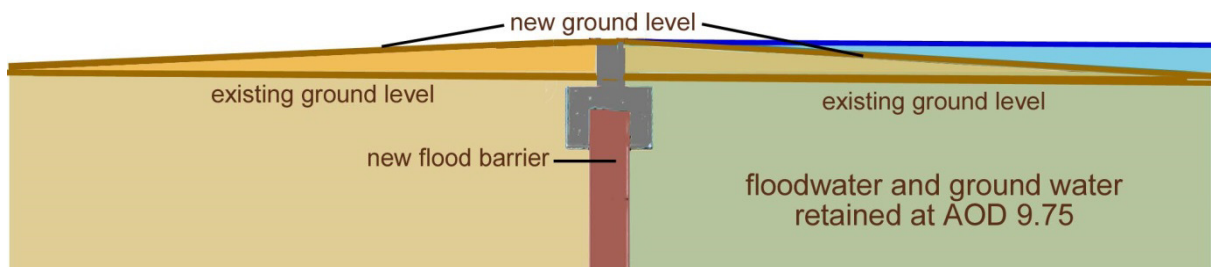
Now it is under threat from an additional requirement to form a flood barrier in this same position that promises to make our heritage site unmanageable.

Resolution



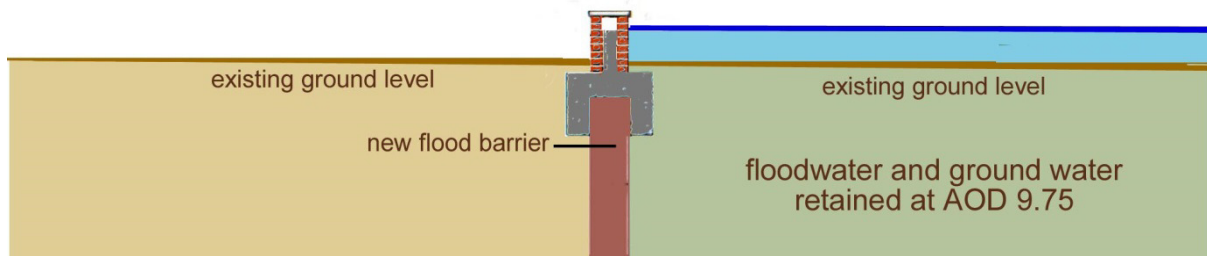
Our consultants have designed a schematic flood alleviation proposal to overcome these problems and preserve the character of the conservation area with a below - ground barrier in three parts :

- 1) a wall of sheet steel piles to contain ground water.
- 2) RC ground beams to contain floodwater from a river level of AOD 9.75 (see below).
- 3) a shallow reinforced earth ramp to allow vehicles and pedestrians to pass unrestricted over the top .



Our scheme was submitted for planning consent on 15 July 2019 and validated by the LPA on 7 August 2019.

The threatening scheme submitted on behalf of the Environment Agency last December adopts parts 1) and 2) but replaces our access ramps with encasing brick walls. A five metre wide gap would be left in them fitted with steel floodgates to give people access to our land. They would be folded back in the open position for a flood warning (alert) when



operatives from the Environment Agency would travel to Bishopthorpe to close them. These alerts happen quite often but actual flood events are rare, the last occurring briefly in 2015. This scheme does not allow vehicular access to our land and it would degrade the value of the conservation area and setting of our assets in our view. This is the threat we have identified under our obligations to the NHMF (page 7) and that underpins our application.

Reasons why Bishopthorpe is susceptible to occasional flooding

Both schemes are viable as hydrological installations and they respond to the same set of circumstances that cause a flood event in Bishopthorpe, of which there are three. They are historic as well as topographic and are laid out fully in our Design and Access Statement but a summary here is useful.

1) In periods of low rainfall a 19th century tidal weir downstream at Naburn maintains a fairly constant river level at Bishopthorpe of around 5 AOD (i.e. 5 metres above a mean North Sea datum) but in periods of prolonged precipitation over the Ouse catchment this weir acts like a dam to the dispersal of floodwaters towards the sea under gravity (some 80 miles distant) across the Ouse floodplain. Low-lying parts of Bishopthorpe become functioning floodplain when river levels rise here to around 9 AOD (i.e. 4 metres above the seasonal average). This last happened 20 years ago when the river level in Bishopthorpe Reach peaked for 48 hours at 9.4 AOD and to a lesser extent in 2015 for 24 hours at 9.1 AOD. We monitor these events carefully as our assets are directly affected by them.

The significance of the topographical levels included with our site entrance plan (page 8) will be obvious from this data. Those below 9.0 AOD are most at risk from flooding.

An important point to make is that Aecom's scheme and our own are both predicated on a river level reaching around 9.7 AOD in future i.e. a foot (0.3 M) above the 2000 flood event peak. We both agree that, although speculative, this is an adequate response to the distinct possibility that global warming will increase the frequency of precipitation on the Ouse catchment combined with a slower rate of dispersal of flood water towards a raised North Sea level. There is no disagreement between us on this sensible allowance. But we disagree with the need for an extra foot of non-functional structure added by Aecom to that design threshold with encasing brickwork. It appears to us superfluous and to add a strident new unsustainable feature to this outstanding conservation area as well as preventing vehicular access to our land.

2) Another contributory cause of flooding, acting with the first, are the porous alluvial silts and sandy clays on which Bishopthorpe is built. The local water table rises rapidly through them to cause surface water and basement flooding of property at river levels of around 8 AOD. This is the reason sheet piling must form part of any effective flood barrier in this location.

The depth of below - ground piling proposed by Aecom is 6 metres according to its latest correspondence with the local authority but 5 metres according to its application drawings. We understand that the actual depth cannot be finalised without further test core boring to discover if a continuous layer of clay exists for the piling to connect to. That test has yet to take place due to the current pandemic. Consequently both depths are provisional at present.

We are content to adopt whichever depth its tests indicate to be most efficacious but such information is irrelevant to a planning application made under the 1990 Act. Hidden underground it has no effect on the appearance of the conservation area.

3) The third contributory factor to cause low - lying areas of Bishopthorpe to flood is a large surface water culvert that collects precipitation falling on Bishopthorpe, and on a large area of its agricultural hinterland, and conducts it to the river via an outfall on our land.

That sluice is fitted with a non-return valve (top – hung steel flap).

Under normal conditions surface water within the culvert keeps it open. Water pressure from a rising river level causes it to close at around 7 AOD. Then unable to flow to the river, water collecting in the culvert rises to the surface through road drainage gullies on to the highway and eventually into some properties if unchecked by pumping.



These are not difficult engineering problems to solve.

Well – tried construction methods are available to address all of them.

We were faced with more intractable ones 20 years ago when the eroding riverbanks we inherited looked like this.

The ranging pole stuck in the river bed on the left marked the extent of grave goods and human remains washed out of the Archbishops’ old burial ground.

Notice the undermined tree fallen across the river and absence of a riverside path as well. This was private land owned by the Church Commissioners in a state of total neglect and degradation.



And this is the same view today with a young Willow growing in the same place as the ranging pole. Despite appearances this is an artificially created and restored landscape (using advanced bio-engineering technology of the time) and below is our contractor building it.

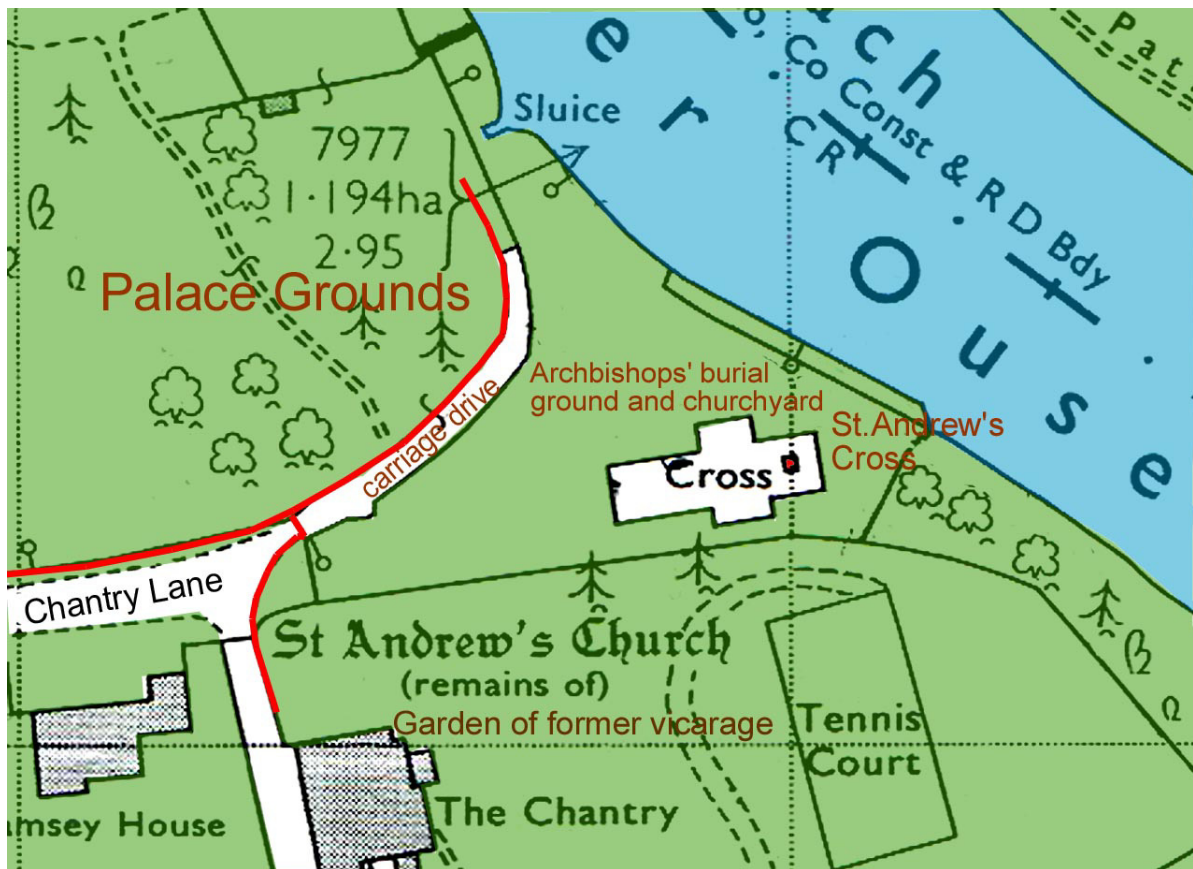
Few now realise that it has not always existed and we are proposing the same 'invisible' approach to enhancing this historic environment with our proposed flood alleviating work.



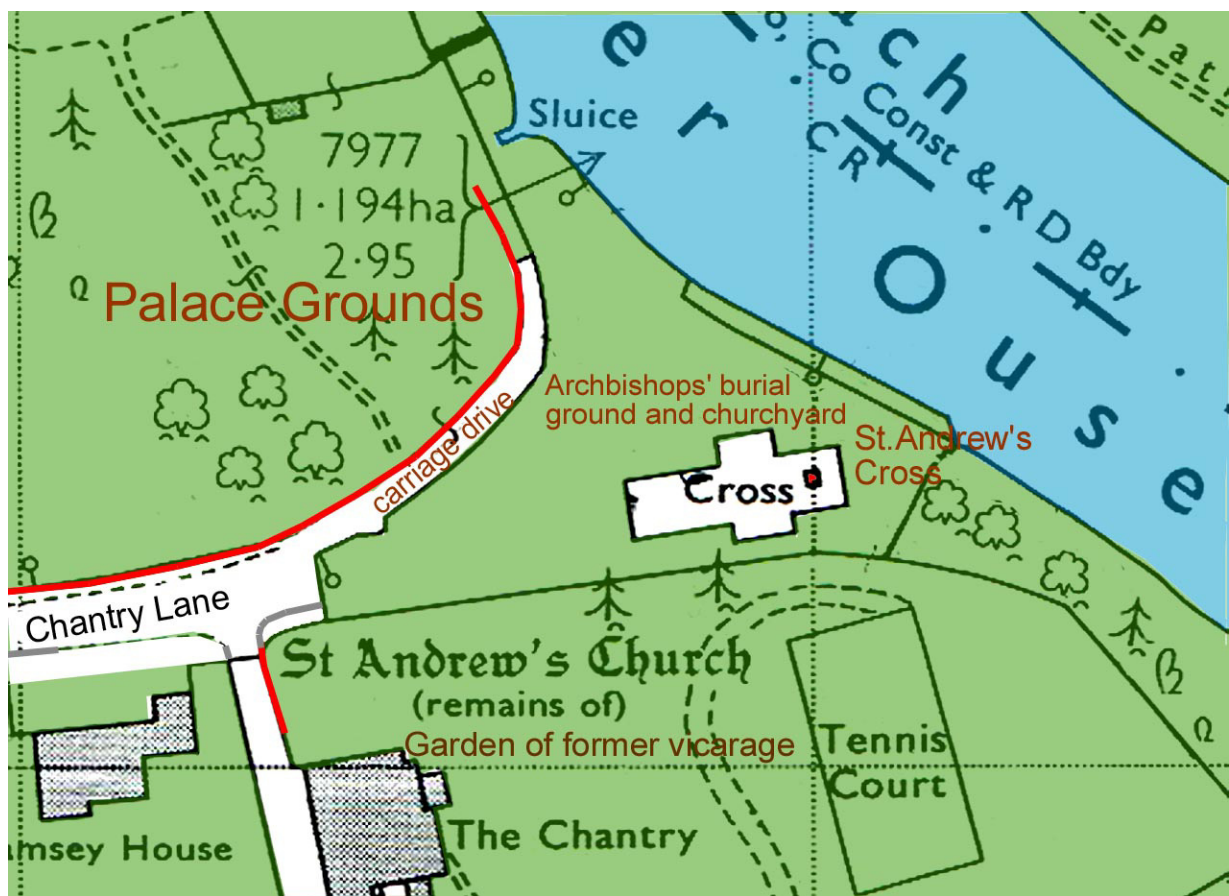


This is our restored riverside ready for seeding and planting in 2002 with the line of our future riverside path spray marked out in blue. Yet one of the reasons the LPA has given for refusing us planning consent is that we have neither the qualifications nor experience to undertake hydrographic engineering works. Our credentials and abilities in these respects were investigated rigorously by the NHMF's selection panel *before* awarding us substantial public funding (about £1.2 million in today's money) to design and carry them out.

Historical basis of our restorative approach



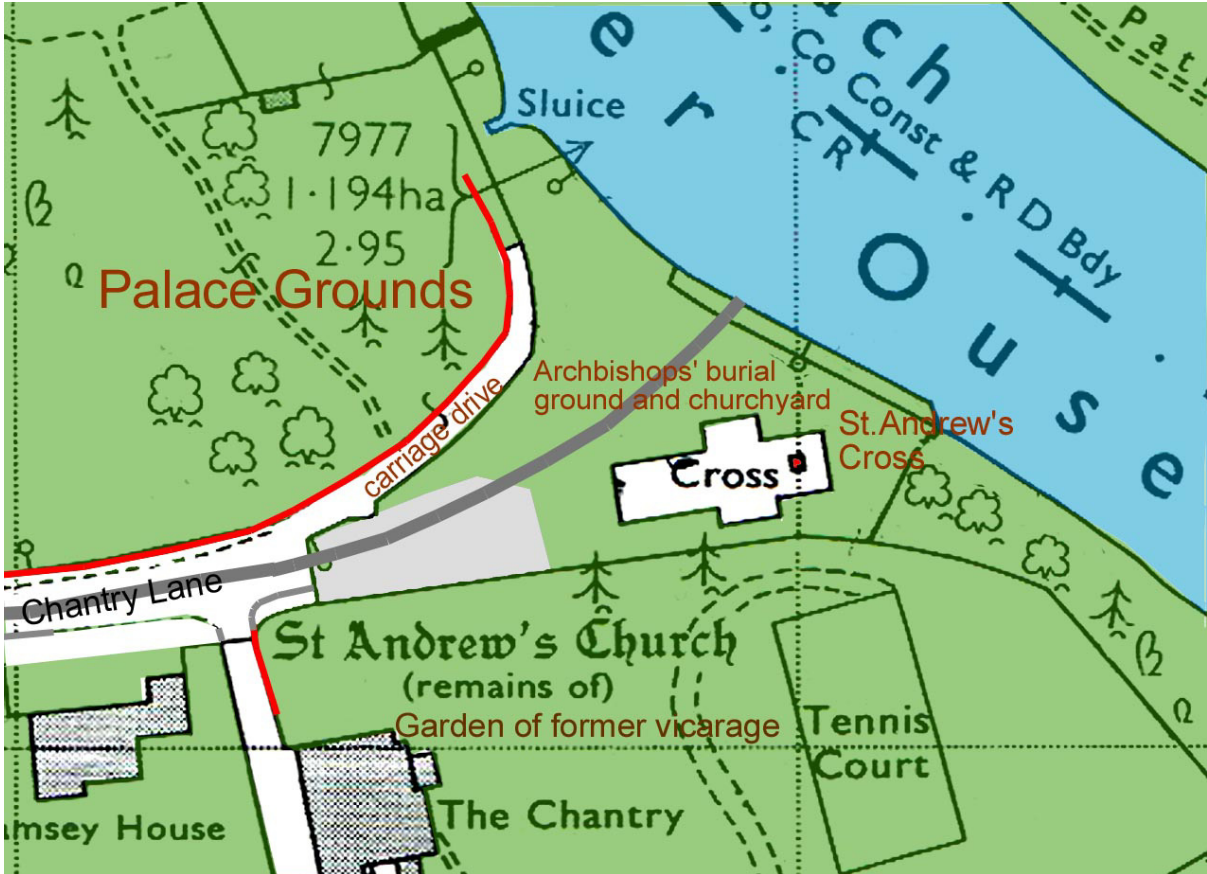
This Ordnance Survey compiled in 1970 records the position of the eroded riverbank at that date and is the best record we have of the more recent history of this conservation area. At that time all the green areas were still owned by Church Commissioners as a part of their Bishopthorpe Palace estate. Chantry Lane was then a private drive to the parish vicarage (The Chantry) and to an old carriage drive to the south side of the Palace Grounds. This now provides access to our riverside path and where the tree fell on page 4. This O.S. is especially useful for explaining the presence of several enigmatic features within this conservation area that, combined with documentary research, can piece together its more recent past. An unusual one, specific to Bishopthorpe Palace, is a continuous brick plinth under its mile-long circuit of early 19th century boundary fencing. These red lines mark their remains nearest our site entrance.



And these are the alterations made to Chantry Lane by the local authority following its subsequent adoption as public highway in the 1990s. The grass verge in front of our churchyard was replaced by tarmac, the curving plinth wall demolished above ground, and a small ramp across it for vehicular access to the old carriage drive scraped away. The gap made in this historic circuit of plinth walls allowed flood waters to migrate through it in the 2000 and 2015 flood events. This is why re-filling this gap must form a key part of any scheme to alleviate flooding in Bishopthorpe. It is the product of work by an unformed highway authority. No LBC consent was obtained for removing this part of the curtilage of Bishopthorpe Palace by these highway works.



Earlier, these historic headstones were uprooted from the front of the churchyard and stacked along our southern boundary where they remain today. This was done to form a levelled construction site to build the drainage culvert referred to on page 12.



These alterations are shown in grey. They created the low flat empty space in our churchyard evident on page 9. These alterations were sanctioned by the Diocesan Council and Church Commissioners but are unacceptable to us as they robbed some of the historic character from our heritage site.

Our earthworks would not only conceal a functioning flood barrier but also restore the topography of our churchyard to its most recent historic form and allow us to remount our displaced headstones back where they belong. Using the same amount of public money to achieve multiple social gains in this way seems to us to be an exemplary objective that any reputable LPA would support, not seek to prevent.

REASONS FOR REFUSAL / GROUNDS FOR APPEAL

A) Local representations and objections

The LPA has said it reached its decision *“having regard to concerns from local residents”* (e-mail to us of 11/2/2020) but declines our request of 25/3/2020 to say which ones for the purposes of this appeal. It has since removed them from its planning portal and substituted its own version in a list of *‘representations’* in Section 4.0 of its decision notice. So below from our contemporary records are the real words used by objectors and our responses to them in colour followed by our assessment of their worth. We have to assume that the LPA regards all being relevant and to place them in context our GGI below shows the proposed alterations the named objectors are objecting to.

1. *“The Environment Agency (mistakenly referred to as the Department of the Environment by an objecting Church Commissioner) “have (sic) advanced plans for flood defences (and) they are the experts” (Watts) and “neither the applicant nor its consultants have any qualifications in the area of flood alleviation (Halstead) so “the Environment Agency are (sic) best placed to provide it” (City of York Council). Whereas the Agency has not devised its scheme or formulated its application but appointed a private agent to do so for it by proxy. We see little evidence for expertise in that application (see Appendices 3-5) but, in any event, the LPA should not be making comparisons between one application to determine another. All should all be determined individually on their own merits.*



proposed



existing

2. *“The planning application is for listed building consent whereas the proposal for any flood defence would require full planning permission and more consultation. It is not a listed building consent proposal”* (Kennedy).

Agreed. Ours is not just a listed building application but an application for consent under all provisions of the Planning (Listed Buildings and Conservation Areas) so far as they apply to above-ground alterations to the character and appearance of a conservation area. It is not an application made under any other Act or for any other purpose.

The LPA’s Conservation Architect (its specialised in-house advisor) has no difficulty in recognising it as such and concluding that *“In my opinion the works will not impact on the significance of St. Andrews Church and will preserve the special architectural and historic interest. Having visited the site and considered the proposals I have no objections”*. (Since removed by the LPA from the public record of its planning portal).

The LPA appears to have ignored its own specialised advisor.

3. *“ This application should be regarded simply as a ruse to stop the public using the pathway around the churchyard. This pathway should be a Public right of way, as it has been in existence for over 40 years”* (Kennedy). Actually 19 years and not as a public right of way (page 13). Our path is concessionary only and may be closed by us at any time for any reason.

“ the area drawn in red on the applicant’s Location Plan, which convention says is the area that they claim to own, is in fact incorrect. This is not the first time the Trust has tried to claim ownership of this section of riverbank and its path” (Cooke) (see HMLR’s registration of our title on page 2).

“There are no difficulties with the proposals from a rights of way perspective assuming access is restored (i.e.to a public right of way) once the work has been completed”(City of York Council).

The majority of objectionable comments and concerns the LPA has said it has taken into account have focused almost exclusively on these twin but irrelevant assertions that we don’t own our land and that our concessionary footpath is a public right of way and, bizarrely, that the purpose of our application is to close it to the public. None make any reference to the effects of our proposals on the character and appearance of the conservation area and the LPA knows very well that our path is not a public right of way. It employs a Definitive Map Officer specifically to maintain a record of them within its jurisdiction. No public right of way across our land is shown on the LPA’s own Definitive Map.

4. *“they (we) have bound up together an application for repairs to the St Andrew’s Cross and a flood alleviation scheme, which are two very different things.”* (Cooke).

“There is no submitted proof that works to the cross is (sic) needed urgently” (Kennedy).

“St. Andrew’s Cross is one of our churchyard monuments. Following corroborative site inspections by the LPA’s Senior Building Control Officer and by its City Archaeologist we have been ordered by the City of York Council to keep our site locked from the danger this monument presents to the public.

We had already done so last year as being our most pressing problem but Aecom's proposed flood barrier is now the most serious threat of all to our assets. This is the connection between them in this application. They are both threats to our assets that this application seeks permission to address.

5. *"The trust has no funds or any motivation to maintain the land"* (Kennedy).

"it would be better owned by a public and accountable organisation with appropriate and necessary funding" (City of York Council)." The Environment Agency has (sic) their (sic) own, superior and widely protective scheme" (Scott, Church Commissioner).

Realities are somewhat different :- a) The Environment Agency is certainly well-funded (by DEFRA) and substantial funding has been allocated to it to install flood defences in Bishopthorpe, but they are conditional on a scheme that first obtains planning consent. The Agency's agent has yet to obtain one so it has no funds either at the moment. This places the LPA in the position of needing to grant Aecom planning consent in order to secure DEFRA funding for the Environment Agency to spend.. We believe that this may have coloured its attitude to our own but this is not a legitimate reason to refuse us consent.

b) We **are** an accountable public body (page 5) and we are currently without sufficient funds as (Kennedy) points out. This is the same position we were in 20 years ago on taking a part of Bishopthorpe Palace into our public ownership. Consents for our restorative proposals under the 1990 Act were necessary before we could approach our sponsors for development funding. Exactly the same conditions apply today, as they do to the Environment Agency. By refusing us the limited consent we seek the LPA has ensured that we cannot obtain funding to implement our restorative development, or continue with our conservation work, or keep our riverside path open if consent is granted to Aecom's inferior and unsustainable scheme.

B) The LPA's further reasons for refusal

6. The general thrust of the LPA's reasoning is that we have provided insufficient *'technical'* information on which to base a full planning consent. This is unsurprising as we are not seeking one.

The application we have made is for consent to alter the character and appearance of a conservation area. We have not made one to install flood defences in it in any technical sense. The LPA has determined an application we have not made.

Its position is that one sort of application cannot be determined without the other, yet its Conservation Architect has readily been able to do so. This seems contradictory to us.

Moreover, the LPA has already been supplied with the further particulars it has requested concerning wall heights and site levels in order for our application to be accepted as valid. It cannot now belatedly claim otherwise or call for additional information irrelevant to an application made under the provisions of the 1990 Act. That the applications site is at risk from occasional flooding is not in question and our Design and Access Statement has said how and why in much greater detail than the Agency's FRA included with its agent's application . It is based only on speculative modelling.

Ours is site-specific but we have no disagreements with it or the LPA's own published Strategic Risk Assessment of the Ouse Flood Plain, or the Environment Agency's Flood Risk Maps. Although lacking site-specific detail, they clearly show the application site to be within zones 2 and 3. We have no cause to disagree or elaborate other than to add site-specific information on the dynamics of a flood event in this location. We have done so with our Design and Access Statement (pages 18 - 24). It is far more informative than any theoretical modelling of this location. These matters are discussed more thoroughly in Appendix 4 .

7. Non-compliance is cited by the LPA with reference to two paragraphs of the NPPF, one local plan policy, and section 16 of the 1990 Planning (Listed Buildings and Conservation Areas) Act that has prevented the LPA, it says, *"from being able to establish whether there are any public benefits arising from"* (our proposals) partly due to *"a lack of detailed and accurate scaled plans."*

Taking each reason in turn therefore :-

Public benefit

a) Paragraphs 190 and 193 of the NPPF are cited by the LPA in support of its claim of unclear social gain.

From them the LPA concludes that there is no clear evidence that being able to conserve our heritage assets, or keep our riverside path open, or alleviate flooding in Bishopthorpe have any social benefits. We do not understand the LPA's reliance on these paragraphs to support such nonsense. Para. 190 urges *"Local planning authorities to ...minimise any conflict between the heritage asset's conservation and any aspect of the proposal."*

Which aspects of our proposals conflict with our conservation of our heritage assets? We see none. Nor does the LPA's Conservation Architect. On the contrary our proposals are designed to facilitate actions to conserve.

Similarly Para.193 of the NPPF advocates that *"Great weight should be given to the asset's conservation...irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm"*. Again, what harm, of any sort, will our proposals cause to our asset's conservation? We see no justification at all in using either of these paragraphs to support the LPA's claim of its inability to detect any clear social advantages.

b) Policy D5 of the Publication Draft City of York Local Plan 2018 is also cited by the LPA as another reason to refuse consent on grounds of unclear public benefit. It is concerned with listed buildings and their preservation and that of their settings as social assets, viz *"Harm to an element which contributes to the significance of a Listed Building or its setting will be permitted only where this is outweighed by the public benefits of the proposal"* (our underlining). Again, what harm to *the significance of a Listed Building or its setting* will result from our proposals that the LPA might be minded to overlook? We are not asking for any harm to be disregarded and none has been identified in our proposals by the LPA. The case officer appears to be confusing Aecom's application with our own.

c) The LPA's allegation of our non-compliance with Section 16 of the 1990 Act seems even odder to us in support of a claim of uncertain social gain.

The only passing reference it makes to 'benefit' is in part (3.) viz "Any listed building consent shall (except in so far as it otherwise provides) enure (in law: 'be available to as a right or custom') for the benefit of the building and of all persons for the time being interested in it". In plain English: *in determining a listed building application the LPA shall have regard to the best interests of the building and of all those accustomed to have a vested interest in it*. Who could have more of a vested interest in conserving the listed building of St. Andrew's Old Church than us? By referring to this section of the 1990 Act the LPA appears to be giving, as a reason for refusal, that our proposals do not demonstrate that we have any vested interest in securing our assets for public benefit. We struggle to understand how the LPA has reached that strange conclusion or why it makes reference to our listed centrepiece for which we have made no proposals at all in this application.

8. "The submitted application contains.....a lack of detailed and accurate scaled plans".

Leaving aside the obvious paradox that an application cannot 'contain' and 'lack' simultaneously, our architects refute this claim that their drawings are unscaled or inaccurate and are seeking their own explanation from this LPA for this calumny.

They point out that SAT/01 is clearly scaled at 1:100 and 'contains' the highlighted information that 1:50 sectional elevations in the positions marked are provided by SAT/02. Drawing SAT/03 provides further information at the same scale requested by the LPA of site levels and flood level thresholds, and the all - important elevation of our architectural centrepiece from Chantry Lane is rendered with absolute precision by a drawing clearly stated to be at a scale of 1:100, and with the proposed ramp and earth bank clearly represented relative to site levels. The location plan on this drawing matches the O.S. on which our registration of title is based (page 2) to a clearly stated scale of 1:2500.

The scale of the Proposed Part Plan is clearly stated as 1:200 and this drawing is the product of a measured site survey by our consultants who want to know what evidence the LPA has for claiming it to be inaccurate.

We suspect that these unsupported assertions by the LPA may again stem from comparisons made with Aecom's application drawings of the same site. They are evidently based, not on site - specific surveying, but on the low - resolution information provided by enlarging O.S. maps.

Aecom's entire scheme appears formulated on that uncertain basis, its Landscape Masterplan for example being a reproduction of an out-of-date O.S. This 'Masterplan' is also the only application drawing to include an elevation of our centrepiece from Chantry Lane.

We have no lessons to learn about accurate drawing from that unrecognisable representation and again the LPA should not be referring to one application to influence its determination of another.

9. "The submitted application contains insufficient technical information"

The LPA does not explain its use of this term. We are left to guess from how it is applied in its decision notice, for example :-

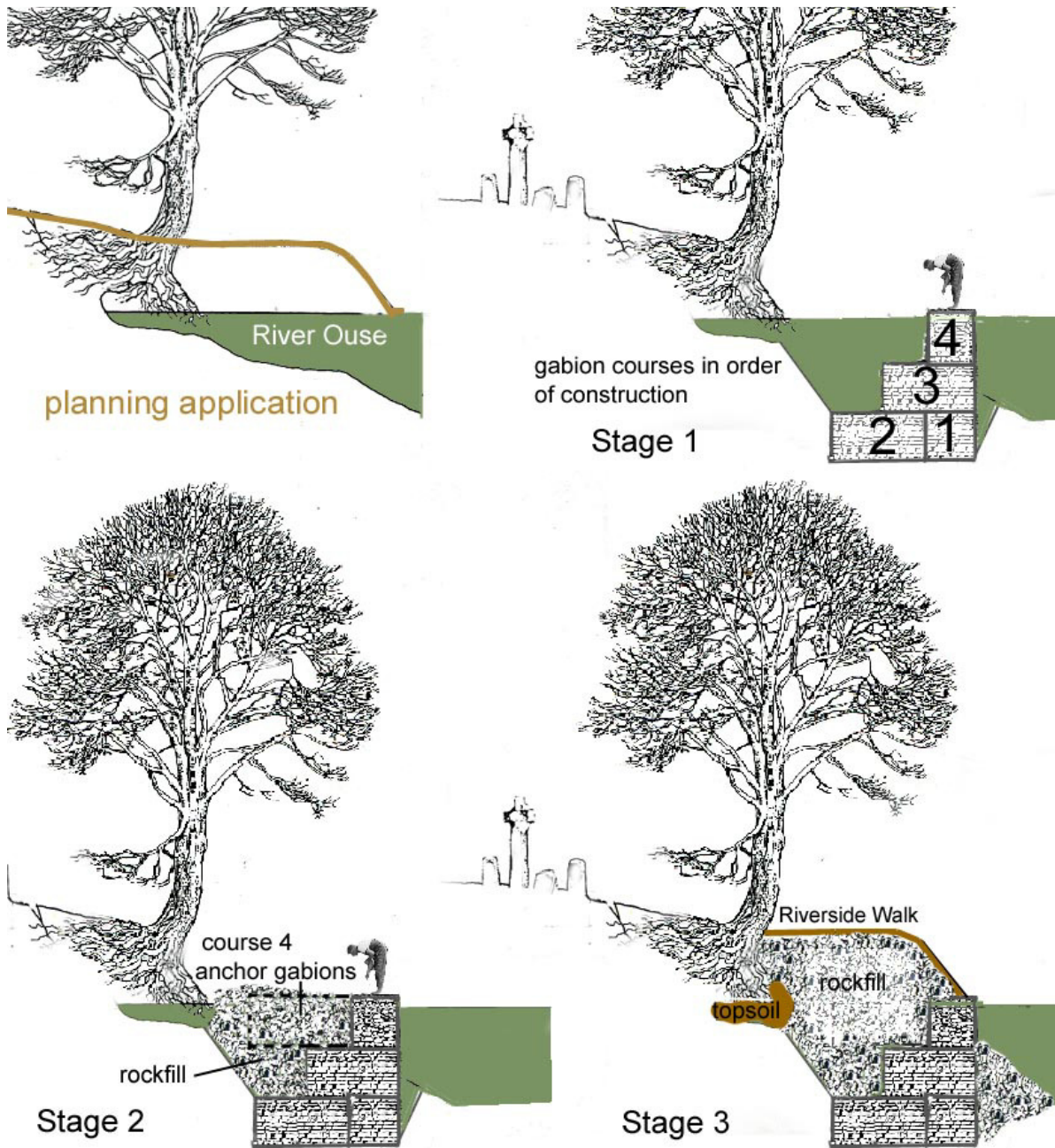
a) Para.5.8 viz *"part of the 'earth mounding' (i.e. concealing earthworks)...is in local authority ownership... as such a full and proper assessment of the impacts of the scheme on the heritage asset....cannot be fully made"*. Why not? The LPA may certainly prevent us implementing a part of our development as landowner but this does not prevent it making value judgements about the effects of our proposals on a conservation area or our assets. This appears to us to be more informative than reason to refuse.

b) from Para.4.2 of the LPA's decision notice we learn that *"Although not a statutory consultee on Listed Building Applications (nor in fact on any application made under the 1990 Act) the nature of the application... means that the Environment Agency have (sic) an interest in the application"*.

It may certainly express an opinion as any commentator may but it has no reason to expect its views to carry any more weight than any other non-statutory interest. The LPA was quite wrong in our view to have invited it to do so under the 1990 Act. The Agency is not a recognised authority on such matters and specifically excluded from expressing opinions on them. And while we shall certainly provide its style of FRA with our subsequent full application to implement our proposed Works there is no call for us to do so in one solely concerned (for the moment) with topographical impacts of proposals on the appearance of a conservation area. If a missing FRA of this non-specific type is indeed some of the *'technical information'* absent from our current application (we cannot be sure) we fail to see how this would deter an LPA from making a value judgement about appearances. It certainly hasn't deterred its Conservation Architect.

c) We suspect the *'technical'* matters the LPA really has in mind may have to do with construction details like those shown below for our embankment Works.

This is how we went on to design and build our artificial riverbanks once we had obtained consents for the topographical alteration represented by the brown line of the top left diagram. None of this subsequent *'technical information'* was included in that application made under the 1990 Act or called for by the LPA. The risk was entirely ours, not the LPAs, of being able to fit efficacious engineering solutions within the shape of a restored landscape permitted by that consent. It is not for the LPA to presume, in advance, that we will be unable to do so with this application as well.



We are not yet ready to provide this level of detail, primarily, but not exclusively, for archaeological reasons explained on page 24.

Further planning applications and agreements for our embankment Works were necessary before we could implement them in partnership with the National Rivers Authority, local drainage boards, Environment Agency, and many others including archaeologists, or to obtain funding from our sponsors to do so.

Approval under the 1990 Act is a precondition of all such applications to heritage - funding bodies in the U.K. The LPA should know this and that it is entirely premature for us to embark on further development work or to progress to this level of detail without first establishing the acceptability (or otherwise), of our proposals in principal under the 1990 Act. The LPA appears to have totally misunderstood the purpose of our application.

Archaeological constraints



The drainage works referred to on page 19 exposed a dense carpet of burial pits at the entrance to the churchyard. Many were desecrated and destroyed, unrecorded, by these drainage works, and other intact, high status, brick-lined vaults like these were left dangerously exposed. This is the burial ground of archbishops as well as commoners and here are some of our



trustees giving greater protection to this former construction site with as much imported topsoil we could afford at the time. It wasn't much and this remains the situation today, but we do know where the dividing line is between intact burials and archaeologically sterile ground. It has determined the position of our piling but not with enough precision to be confident that finalising the exact form of our ground beams might not prove inadvertently destructive. We first need to plot that dividing line with millimetre accuracy by detailed archaeological recording. The same applies to Aecom's proposals.

In this location the possibility that piling may slice through undetected archaeological remains, anywhere, is very great including below the modern road surface. This is why our piling line is represented by a nominal blue line on our application drawings rather than by exact *'technical information'*. That belongs in a further post - archaeological application, not this one, and we will not finalise our constructional details in any *'technical'* sense until we are absolutely certain that no harm will accrue to our assets as a result. Neither ourselves nor Aecom are in positions to do so at present. In our view, and with our level of knowledge of this location, the entire line of any ground - disturbing flood alleviation scheme must be preceded by full - scale archaeological interrogation of the intended route. Our application places that route where we have good reason to know that it will do least harm to below - ground archaeological evidence. And we are not about to make that evidence public in view of the sensitive nature and importance of those remains.

11. “The applicant was requested to submit a full planning application alongside the Listed Building Consent (application but) but failed to submit such information”.

a) we did not make an LBC application only but an application made under all relevant provisions of the 1990 Act regarding listed buildings and their settings and the character and appearance of conservation areas, primarily the latter.

b) there is no requirement in that Act for it to be accompanied by any other application, whatever the circumstances. FRAs and construction details and specifications of invisible below – ground engineering works form no part of matters governed by that Act.

c) Section 17(2) of the 1990 Act enables LPAs to impose conditions making granted consents conditional on the applicant’s subsequent provision of further details of the type indicated as ‘*technical*’ by the LPA as informatives. LPAs have no license to then use informatives as reasons to refuse consent. Such appears to us to have been the case with this LPA’s determination of this application.

d) the LPA’s own consultant on applications made under the 1990 Act finds no shortage of information for the purposes of determination or for understanding the application drawings.

e) we have not ‘*failed*’ to make a ‘*full*’ application ‘*alongside*’. We have refused to do so as inopportune and contrary to the interests of our heritage assets. There is no point in us gaining blind consents under any other Act for technically development installations that may, in ignorance, destroy the very assets we are trying to protect.

Misrepresentation of Application Site by the LPA.

The application site for this appeal is all the land and part of the river over which our ownership rights extend as shown by our Location Plan and as confirmed by our HMLR title on page 2. Whereas the LPA’s version of the application site delineated by its Application Map on its planning portal under reference 19/01510/LBC is not recognised by us as the application site.

Misrepresentation of ‘*missing information*’.

The primary reason the LPA has given for refusing consent is our refusal to make a separate planning application to go ‘*alongside*’ this one in order to provide ‘*technical*’ information said to preclude determination.

We remain uncertain about the LPA’s use of this term because the type of ‘*technical*’ information called for by the decision notice contrasts markedly with the information requested and required by the LPA in order for our application to be validated.

We sought clarification on this point from the LPA on 12/8/2019 and on the parallel planning application the LPA had in mind.

Appendix 1 is the response we received from the case officer promptly on 14/8/2019.

No requirement for 'technical' information of any sort is mentioned. Instead the clarification sought by the case officer concerned the proposed height of some of our boundary fencing.

Our application drawings show the amended height of the 'brick walls' (i.e. its plinth) raised to a proposed level of 9.7 AOD, that is, 30 centimetres above its present level of 9.4 AOD.

So this 'technical' question can only relate to the height of the remainder, the paling fencing along the top.

That clarification was requested by the LPA under Part 2 of the General Permitted Development Order 2015 (TCP). We complied with our e-mail of 15/8/2019 the next day (Appendix 2).

We had been informed by the LPA of its intention to consult the Environment Agency despite not being a recognised authority on LBC applications or having anything to say on paling fencing. Nevertheless we waited in vain for the Agency's views for two months before making a decision on which of the three slightly different options we had in mind and as presented and explained to the LPA in Appendix 2. We stated unequivocally a) that the overall height of the existing boundary fencing is 1.4 metres and b) that our preference is to keep to that level as much as possible with our proposed amendments.

In our view any of these variations are acceptable under the 1990 Act and our application drawings show our choice in high resolution. No other digital representation or drawing programme is as accurate. Every individual brick and fence paling is depicted with absolute precision, in realistic colour, yet these are the application drawings the LPA refers to as being too inaccurate to be determined.

This episode in the evolution of our proposals presents, we submit, a very different picture to the one to be inferred from the LPA's decision notice.

The only formal request for additional 'technical' information came in this e-mail from the case officer on 14/8/2019 and was complied with the next day.

From it the LPA knew the height of existing boundary fencing as a fixed on - site reference (1.4 metres) for all amendments shown by our comparable 'before' and 'after' application drawings.

The case officer's request for this information concludes with this advice :

"For clarity works to the cross would not require planning permission, just the works for the wall and therefore works to the wall could not proceed until such a consent is obtained. Obviously it is up to you at this stage whether you wish to apply for planning permission, however I am required to draw this to your attention."

This is the advice we took in making our application, and we have not changed that submission. There are no revisions shown on any of our application drawings and we have not submitted any revised scheme.

We disagree that dismantling St. Andrew's Cross would not require planning consent as it could be construed to be demolition under the 1990 Act. It is essential that we clarify this point. We want a consent and a ruling by the relevant authority that such is not the case before we approach our sponsors for funding. It is likely to be the first question they ask. "*works to the wall*" we took to mean raising the height of the existing plinth wall between points A - B and C on our submitted Proposed Part Plan. No other '*wall*' forms any part of our application.

The height of this existing boundary structure (i.e.plinth plus palings) is, as we state, 1.4 metres. The LPA knew this when determining our application.

Adding 30 cms to its plinth will therefore result in an overall height of 1.7 metres, well within the tolerances allowed by the GPDO. The LPA knew this when refusing consent.

We were given to understand that the additional planning permission we needed in order that "*works to the wall could proceed*" would be granted under this GPDO. This we took to be the other planning application "to go along side."

There is little indication in the case officer's request of 14/8/2019 that the LPA was having difficulty understanding our application drawings or in assessing the impact of proposals on the conservation area. The '*technical information*' requested arose only from the 'technicality' that raising the height of boundary fencing required additional consent under a GPDO. This request bears little resemblance to the '*technical information*' said to be missing from our application by the refusal notice.

We therefore respectfully appeal to the Inspectorate to determine our application properly under the terms of the planning Act on which it is made, the reasons for its submission, and the application site to which it actually relates.

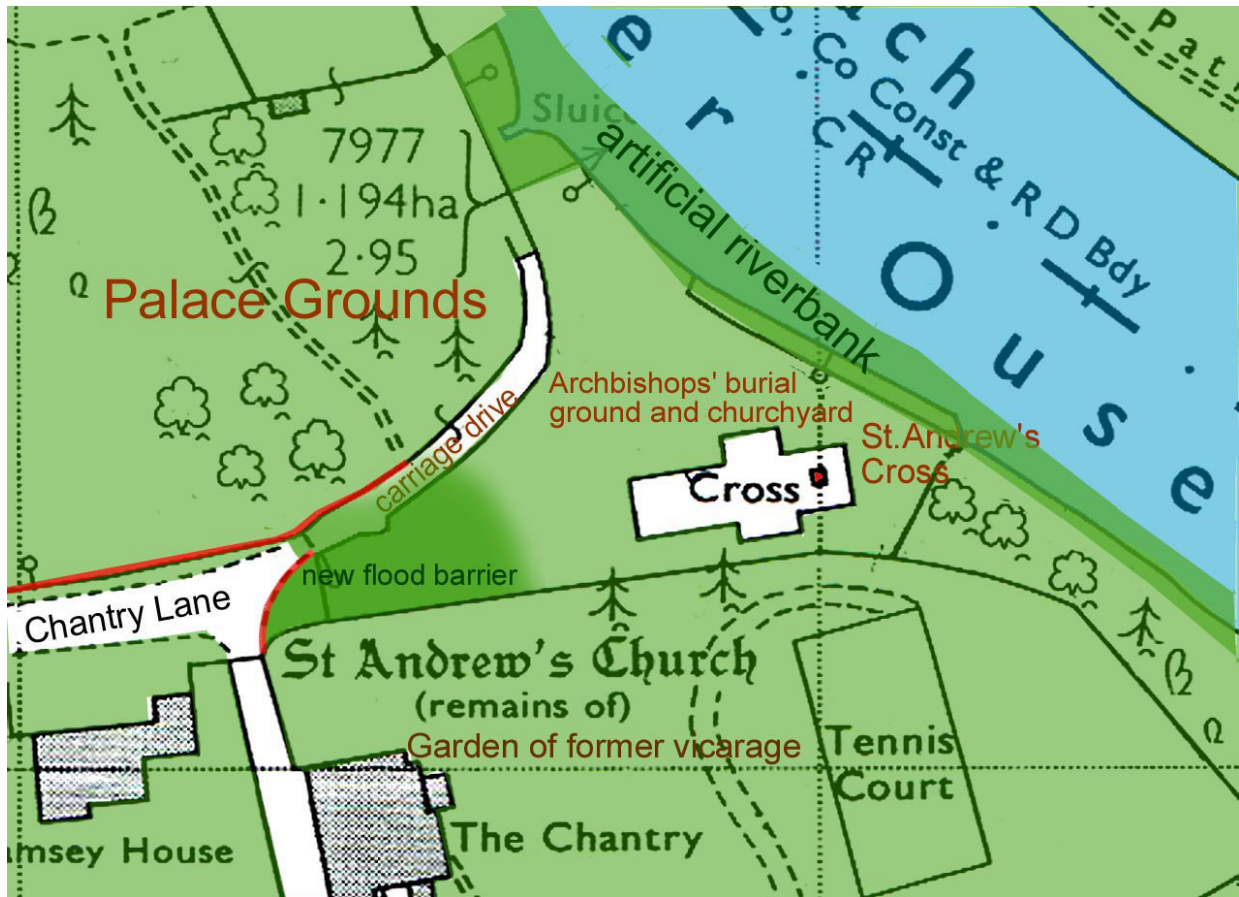
Compliance of our proposals with the 1990 Act and Section 16 of the National Planning Policy Framework

Attached Appendix 5 is our response of 13/5/2020 to further revisions still being made by Aecom to its planning application five months after submission.

It contains our consultant's assessment of the extent of its compliance with the 1990 Act and Section 16 of the NPPF. Little compliance with any of the 18 paragraphs of Section 16 are apparent to us in Aecom's planning application, whereas we contend that our proposals satisfy all of them.

That is our position in this appeal and to reinforce it we return briefly in conclusion to one of our main sources of inspiration, the 1970 O.S. (page **14**).

Below we have added our proposed restorative earthworks to it to show how they would combine with our artificial riverbanks of 20 years ago to complete the transformation of this conservation area back to its undegraded state, thereby enhancing its character and appearance as advocated by the NPPF and as a key objective of the 1990 Act.



As a public heritage trust our proposals must comply in particular with the following paragraphs of Section 16 of the NPPF ; 184, 185, 187 (together with the LPA) 194, 196, 197, 199, 200 and 202. We contend they do so fully.

Of these, Para. 200 (identification of elements that make a positive contribution to the asset) and Para. 202 (enabling development to secure the future of a heritage asset) are especially relevant. The latter sums up the whole purpose of our application. (See also Appendix 8)

Given the inevitability that any flood risk assesemnt made of this location must produce exactly the same results as those drawn by the Envirnment Agency, our failure to reproduce it as a verbatim accompaniment to our application, or our refusal to specify the exact depth of invisible sheet piling seem to us to be excuses rather than tenable reasons for the LPA's inability to determine our application on grounds of insufficient and inaccurate information or to detect any clear social advantages .

Significance of Appendix 6

Appendix 6 is a record of our consulting trustee's meeting with the Environment Agency on 5/3/2019.

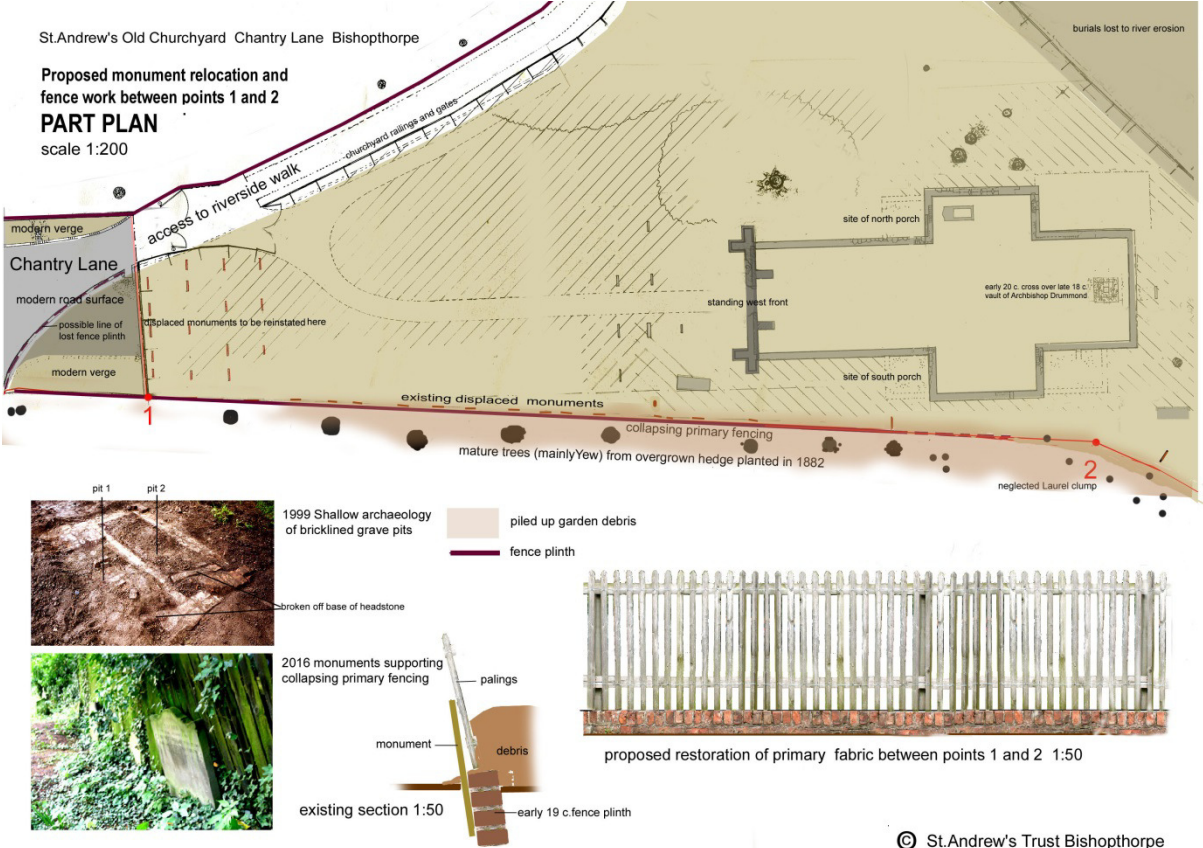
Correspondence with the agency during the preceeding 6 months is set out in Appendix 7.

Minutes of this meeting were sent to the LPA via its local Ward Councillor. We were informed by the agency that the LPA was part of a team set up to oversee the development of Aecom's proposals.

We wanted to ensure that the LPA knew our views as a major stakeholder during that developmental stage.

So our engagement with the Environment Agency lasted from its first thoughts on “some sort of flood barrier at the end of Chantry Lane” in October 2018 to its presentation to us in March 2019 of two options for our consideration.

Both the agency and LPA knew at that date that we had consent under the 1990 Act to relocate our displaced monuments at the entrance to our churchyard (page 16), and that our work with the NHMF in 2000 had given us a good understanding of archaeological remains in this position (page 24). This is that approved application drawing.



A larger version is included with this statement as Appendix 9 if required.

It can be seen that the repositioning of our monuments has been designed to allow emergency and other vehicles to drive on to our site through our entrance gates and make a reverse exit turn within the churchyard between two grave groups.

Appendix 3 shows why Aecom’s proposals would prevent this.

It can also be seen that the relocation of our monuments precludes one of two options presented to us by Aecom at our meeting on 5/3/2019 i.e. either a ramped side access from the highway up and over piling, or a central floodgate. It will not be possible to drive vehicles into our site directly through the latter opening. Monuments would be in the way.

Aecom knew this when submitting its application on behalf of the Environment Agency 6 months ago. So did the LPA in its advisory role, and that our existing planning consent places the onus on the Environment Agency to accommodate our needs, not the other way around.

It can also be seen from our correspondence with the Environment Agency of 24/01/2019 Appendix 7) that our application 19/01510/LBC (the subject of this appeal) adopts one of **three** viable options presented to us for our consideration by the agency prior to our meeting of 5/3/2019.

This evidence shows **a)** we have not developed our proposals in isolation without reference to the agency but in partnership with it, further invalidating another reason apparently given by the LPA to refuse consent .

b) The three options presented to us by the agency prior to our meeting with it on 5/3/2019 were founded on its own flood risk assessment of the context in which any of them could be introduced to serve a flood alleviating purpose. Thus “**a flood resilient embankment** “ had already been assessed as viable by the agency from its own FRA prior to our submission of our application. The agency knew this when making its objection to our flood resilient embankment on the grounds of not including a FRA to support it. This objection is also a nonsensical objection therefore to its own FRA.

c) We saw little need to reproduce the same information with our application even if relevant to one made under the 1990 Act. Which it isn't. The LPA appears to have refused consent on the basis of this lack of 'technical information' it says precludes it making an assessment of the effects of our application on the appearance of a conservation area and its historic content on the basis of the agency objecting to its own FRA. This too is self evidently irrational.

It can also be seen from Appendix 9 that the boundary fencing **proposed** by our application 20/01510/LBC is exactly the same pattern as that of previously **approved** application 17/01974/LBC of 2017.

Our description of the scope of Works and material changes proposed by our application in section 10 of the application form, “Boundary treatments (e.g. fences,walls)” matches these previously consented Works. No other material changes are prescribed in section 10.

We are fully aware that this limited consent, if granted, will not give us licence to build the alterations proposed. That is not its immediate purpose and we ask the Inspectorate to determine it within the statutory parameters to which it does relate, and to the application site stated by our application documents.

Trustees of St Andrew's Trust, Bishopthorpe

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